

Queensland



*Workplace Relations Act 1997*

# **WORKPLACE RELATIONS REGULATION 1997**

**Reprinted as in force on 4 July 1997  
(includes amendments up to SL No. 114 of 1997)**

**Reprint No. 1A**

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# Information about this reprint

This regulation is reprinted as at 4 July 1997. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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# WORKPLACE RELATIONS REGULATION 1997

[as amended by all amendments that commenced on or before 4 July 1997]

## PART 1—PRELIMINARY

### Short title

1. This regulation may be cited as the *Workplace Relations Regulation 1997*.

### Commencement

2. This regulation commences on 27 March 1997.

### Definitions

3. In this regulation—

“**authorised leave**” means leave authorised by—

- (a) the employer; or
- (b) an industrial instrument, industrial agreement or EFA; or
- (c) an order of a court or tribunal having power to fix wages and other employment conditions; or
- (d) the employee’s employment contract; or
- (e) a Commonwealth or State law.

## **PART 2—CERTIFIED AGREEMENTS**

### **Certifying an agreement—Act, s 25**

**4.(1)** For section 25(9) of the Act, an agreement must be accompanied by the following information—

- (a) the region, defined by the chief executive, where the relevant employees<sup>1</sup> are employed;
- (b) the number of male relevant employees and the number of female relevant employees;
- (c) the number of apprentices and trainees;
- (d) whether or not the agreement is made with an employee organisation;
- (e) the industry or principal activity in which the employer is engaged;
- (f) the name of the relevant or designated award;
- (g) the average percentage by which the wages of relevant employees will increase or decrease under the agreement.

**(2)** The information under subsection (1) must be in the form provided for in the rules of court.

### **Particulars to accompany notice—Act, s 41**

**5.** For section 41(e) of the Act, if the initiating party is an employee acting on his or her own behalf and for other employees, the notice must state the basis on which the employee acts for the other employees.

### **Protected action—Act, s 43**

**6.** For section 43(7) of the Act, the prescribed purpose is the assessment of eligibility for, or the calculation of, an entitlement arising from the employee's employment including, for example—

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<sup>1</sup> Relevant employees are the employees whose employment will be subject to the agreement: see section 25(10) of the Act.



- (a) a superannuation entitlement; and
- (b) an authorised leave entitlement; and
- (c) an entitlement to remuneration and promotion as affected by seniority; and
- (d) any entitlement to notice of dismissal.

**Complementary laws—Act, s 66**

**7.(1)** For section 66 of the Act, the Commonwealth provisions that apply as a law of the State are amended as set out in this section.

**(2)** Part VIB, division 2, heading—

*omit, insert—*

**‘Division 2—Making agreements with employers other than constitutional corporations or the Commonwealth’.**

**(3)** Section 170LH, ‘employers who are constitutional corporations or the Commonwealth’—

*omit, insert—*

‘employers other than constitutional corporations or the Commonwealth’.

**(4)** Section 170LH(b)—

*omit, insert—*

‘(b) employees any of whose terms and conditions are governed by:

- (i) an award, a certified agreement or an AWA under this Act in its operation as a law of the Commonwealth; or
- (ii) an old IR agreement (within the meaning of regulation 2 of the Workplace Relations Regulations of the Commonwealth).’.

**(5)** Section 170LI(1)(a)—

*omit, insert—*

‘(a) an employer other than a constitutional corporation or the Commonwealth; and’.

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(6) Section 170LI—

*insert—*

‘(3) In this section:

**persons** means persons any of whose terms and conditions are governed by:

- (a) an award, a certified agreement or an AWA under this Act in its operation as a law of the Commonwealth; or
- (b) an old IR agreement (within the meaning of regulation 2 of the Workplace Relations Regulations of the Commonwealth).’.

(7) Section 170MB(1)(b)—

*omit, insert—*

‘(b) at a later time, a new employer;’.

(8) Section 170MB—

*insert—*

‘(1A) If:

- (a) an employer that is a Commonwealth-law employer within the meaning of subsection (1B) is bound by an agreement that, under this Act in its operation as a law of the Commonwealth, is a certified agreement (***the certified agreement***); and
- (b) the application for certification for the certified agreement stated that it was made under Division 2 of Part VIB in its operation as law of the Commonwealth; and
- (c) at a later time, a new employer that is not a Commonwealth-law employer within the meaning of subsection (1B) becomes the successor, transmittee or assignee (whether immediate or not) of the whole or a part of the business concerned;

then from the later time:

- (d) the new employer is bound by the certified agreement (to the extent that it relates to the whole or the part of the business), as if:
  - (i) that agreement had been certified under Division 4; and
  - (ii) the new employer became bound by that agreement under

subsection (1); and

- (e) the previous employer is not bound by that agreement, to the extent that it relates to the whole or the part of the business; and
- (f) a reference in this Part to the employer includes a reference to the new employer, and does not include the previous employer, to the extent that the context relates to the whole or the part of the business.

‘(1B) For subsection (1A), an employer is a Commonwealth-law employer if the employer:

- (a) is a constitutional corporation; or
- (b) is the Commonwealth; or
- (c) carries on a single business or part of a single business in a Territory; or
- (d) is a waterside employer who employs waterside workers in a single business or part of a single business of the employer; or
- (e) employs maritime employees in a single business or part of a single business of the employer; or
- (f) is a flight crew officer’s employer who employs flight crew officers in a single business or part of a single business of the employer.’.

(9) Section 170MB(2), ‘Subsection (1) does not’—

*omit, insert—*

‘Subsections (1) and (1A) do not’.

### **PART 3—QUEENSLAND WORKPLACE AGREEMENTS**

#### **Matters to be included in QWA—Act, s 75**

**8.(1)** For section 75(1) of the Act, the prescribed provisions about discrimination are in schedule 1.

(2) For section 75(5) of the Act, the prescribed model dispute resolution procedure is in schedule 2.

### **Filing requirements—Act, s 82**

**9.(1)** For section 82(7) of the Act, the other information required<sup>2</sup> is as follows—

- (a) the address where the employee is employed, including the postcode;
- (b) a postal address nominated by the employee;
- (c) whether any of the following applies—
  - (i) the employee is female;
  - (ii) the employee is an apprentice or trainee;
- (d) if the employee is under 21 years—the employee’s date of birth;
- (e) whether the employee was employed by the employer when the agreement was made;
- (f) the industry or principal activity in which the employer is engaged;
- (g) the name of the relevant or designated award;
- (h) the percentage by which the wages of the employee will increase or decrease under the agreement.

(2) The information under subsection (1) must be in the form provided for in the rules of court.

### **QWA industrial action—continuity of employment not affected**

**10.** For section 101(4)<sup>3</sup> of the Act, the prescribed purpose is the assessment of eligibility for, or the calculation of, an entitlement arising

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<sup>2</sup> This information will be the basis for the chief executive’s report to the Minister about developments in the State in bargaining for the making of QWAs. The report will not identify either of the parties to a QWA, except with the consent of both parties. See section 111 of the Act.

<sup>3</sup> Section 101 of the Act (Limited immunity conferred)

from the employee's employment including, for example—

- (a) a superannuation entitlement; and
- (b) an authorised leave entitlement; and
- (c) an entitlement to remuneration and promotion as affected by seniority; and
- (d) any entitlement to notice of dismissal.

### **Immunity conditional on giving notice—Act, s 102**

**11.** For section 102 of the Act, a notice must be in writing and must include, or be accompanied by, particulars of—

- (a) any matter that the party intending to take the action proposes as a matter that should be dealt with by the QWA; and
- (b) the proposed nominal expiry date of the QWA; and
- (c) the proposed date or dates on which the action will take place; and
- (d) the proposed duration of the action; and
- (e) the proposed nature and form of the action.

### **Identity of QWA parties not to be disclosed—Act, s 109**

**12.** For section 109(2)(b) of the Act, a disclosure to an officer of the court, commission or department who is performing official duties is authorised.

### **Form of QWAs or ancillary documents—Act, s 485**

**13.** For section 485(2)(c)<sup>4</sup> of the Act, a QWA or ancillary document must—

- (a) be made in the form provided for in the rules of court; and
- (b) be in the English language; and

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<sup>4</sup> Section 485 of the Act (Regulation-making power)

- (c) be printed in legible typescript; and
- (d) include the full name of each party who signs the document.

**Witnessing signatures on QWAs or ancillary documents—Act, s 485**

**14.** For section 485(2)(d)<sup>5</sup> of the Act, the following persons can not witness a party's signature on a QWA or ancillary document—

- (a) the other party to the QWA or ancillary document;
- (b) the bargaining agent of the other party to the QWA or ancillary document;
- (c) if the other party to the QWA or ancillary document is a corporation—a person who is a director of the corporation or a person involved in the day to day management of the corporation.

**Complementary laws—Act, s 375**

**15.(1)** For section 375 of the Act, the Commonwealth provisions that apply as a law of the State are amended as set out in this section.

**(2)** Section 170VC, 'unless at least one'—

*omit, insert—*

'if any'.

**(3)** Section 170VC—

*insert—*

- (g) none of the employee's terms and conditions of employment are governed by:
  - (i) an award, a certified agreement or an AWA under this Act in its operation as a law of the Commonwealth; or
  - (ii) an old IR agreement (within the meaning of regulation 2 of the Workplace Relations Regulations of the Commonwealth);
- (h) the employee is employed in one of the following:

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<sup>5</sup> Section 485 of the Act (Regulation-making power)

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- (i) a department, or part of a department, of the State;
- (ii) a public service office, or part of a public service office, of the State;
- (iii) an agency, authority, commission, corporation, instrumentality, office, or other entity, established under a State Act or under State authorisation for a public or State purpose;
- (iv) a part of an entity mentioned in subparagraph (iii);
- (v) a court of the State of any jurisdiction;
- (vi) a registry or other administrative office of a court of the State of any jurisdiction;
- (vii) any parliamentary service of the State;
- (viii) the Governor's official household and its associated administrative unit;
- (ix) the police service of the State.'

**(4) Section 170VS(1)—**

*omit, insert—*

'(1) If an employee who is a party to an AWA becomes an employee of a new employer because the new employer is a successor to the whole or any part of the previous employer's business or undertaking, then the new employer replaces the previous employer as a party to the AWA from the succession time.

'(1A) Despite subsection (1), a new employer will not become bound by an AWA if the new employer employs the employee in one of the following:

- (i) a department, or part of a department, of the State;
- (ii) a public service office, or part of a public service office, of the State;
- (iii) an agency, authority, commission, corporation, instrumentality, office, or other entity, established under a State Act or under State authorisation for a public or State purpose;

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- (iv) a part of an entity mentioned in subparagraph (iii);
- (v) a court of the State of any jurisdiction;
- (vi) a registry or other administrative office of a court of the State of any jurisdiction;
- (vii) any parliamentary service of the State;
- (viii) the Governor's official household and its associated administrative unit;
- (ix) the police service of the State.

(1B) If:

- (a) an employee is a party to an agreement that, under this Act in its operation as a law of the Commonwealth, is an AWA (*the AWA*); and
- (b) the employee becomes an employee of a new employer because the new employer is a successor to the whole or any part of the previous employer's business or undertaking; and
- (c) at the succession time, none of the following apply:
  - (i) the new employer is a constitutional corporation;
  - (ii) the new employer is the Commonwealth;
  - (iii) the employee's primary workplace is in a Territory;
  - (iv) the new employer is a waterside employer, the employee is a waterside worker and the employee's employment is in connection with constitutional trade or commerce;
  - (v) the employee is a maritime employee and the employee's employment is in connection with constitutional trade or commerce;
  - (vi) the employee is a flight crew officer and the employee's employment is in connection with constitutional trade or commerce;

then the new employer is taken to be a party to the AWA as if:

- (d) the AWA had been approved under this Part; and



- (e) from the succession time, the new employer replaced the previous employer as a party to the AWA under subsection (1).’.

## **PART 4—ADOPTION LEAVE**

### **Object of part—Act, s 189**

**16.(1)** This part gives an employee adoption leave entitlements.<sup>6</sup>

(2) However, if another State law, industrial instrument, industrial agreement or EFA or order also gives the employee adoption leave entitlements, this part supplements those entitlements.

### **Basic principles**

**17.(1)** Under this part, if a child under 5 years is placed with an employee for adoption, the employee and the employee’s spouse are entitled to unpaid adoption leave (totalling 52 weeks) to care for the child.

(2) However, an employee’s entitlement to leave under this part is reduced by the employee’s adoption leave entitlements other than under this part.

*Example of ways an employee may be entitled to adoption leave other than under this part—*

Under another State law, industrial instrument or order.

(3) To obtain adoption leave under this part, an employee must satisfy requirements about—

- (a) length of service; and
- (b) notice periods; and
- (c) information and documentation.

(4) Except for 3 weeks at the time of the placement, an employee and the employee’s spouse must take adoption leave at different times.

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<sup>6</sup> This part is made under section 189 of the Act.

(5) An employee may take other leave, including for example annual leave, in conjunction with adoption leave, but this reduces the amount of adoption leave the employee may take.

(6) Adoption leave may be changed in certain circumstances.

(7) Generally, an employee must give notice of a change only if it is foreseeable.

(8) An employer may cancel adoption leave only if—

- (a) the employee will not become, or ceases to be, the child's primary caregiver; or
- (b) a mistake has been made in calculating the amount of leave the employee is entitled to.

(9) An employee who takes adoption leave is, in most circumstances, entitled to return to the position the employee held before the leave was taken.

(10) Adoption leave does not break an employee's continuity of service.

### **Definitions for part**

**18.** In this part—

**“adoption”** means adoption under a Commonwealth or State law.

**“adoption agency”** means an agency, body, office, or court, authorised by a Commonwealth or State law to perform functions about adoption.

**“adoption leave”** means short adoption leave or long adoption leave.

**“child”** does not include a child or stepchild of the employee or the employee's spouse.

**“court order”** means an order of a court or tribunal having power to fix wages and other employment conditions.

**“employee”** includes a part-time employee, but not a casual or seasonal employee.

**“law”** includes an unwritten law.

**“long adoption leave”** means part 4 long adoption leave or leave (other than under this part) that—

- (a) an employee is entitled to, has applied for, or has been given for the child's adoption; and
- (b) is analogous to part 4 long adoption leave, or would be analogous except that—
  - (i) it is paid leave; or
  - (ii) different rules govern eligibility for it; or
  - (iii) it can be taken for a different period.

**“part 4 adoption leave”** means part 4 short adoption leave or part 4 long adoption leave.

**“part 4 long adoption leave”** see section 19(1)(b).

**“part 4 short adoption leave”** see section 19(1)(a).

**“placement”** means the placement, by an adoption agency, of a child with an employee for adoption.

**“relevant statutory declaration”**, for an employee, means a statutory declaration submitted under section 20(1)(f).<sup>7</sup>

**“short adoption leave”** means part 4 short adoption leave or leave (other than under this part) that—

- (a) an employee is entitled to, has applied for, or has been given for the child's adoption; and
- (b) is analogous to part 4 short adoption leave, or would be analogous except that—
  - (i) it is paid leave; or
  - (ii) different rules govern eligibility for it; or
  - (iii) it can be taken for a different period.

### **Entitlement to adoption leave**

**19.(1)** An employee with whom a child is placed for adoption is entitled to—

- (a) a continuous period of up to 3 weeks unpaid leave (**“part 4 short**

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<sup>7</sup> Section 20 deals with conditions of entitlement to adoption leave.

**adoption leave**”) beginning on the placement day to care for the child; and

- (b) a continuous period of up to 52 weeks unpaid leave (“**part 4 long adoption leave**”) to be the child’s primary caregiver.

(2) However, the total of the employee’s and the employee’s spouse’s short adoption leave and long adoption leave must not be more than 52 weeks.

- (3) This section applies subject to section 21.

*Example of an employee’s total adoption leave entitlement—*

If the employee and the employee’s spouse have each been given 3 weeks short adoption leave, the employee is entitled to only 46 weeks long adoption leave.

### **Conditions of entitlement to adoption leave**

**20.(1)** An employer must give an employee part 4 short adoption leave and part 4 long adoption leave if—

- (a) the employee notifies the employer, as soon as practicable after receiving notice of approval of the placement, that the employee intends to apply for adoption leave; and
- (b) within 60 days after giving the employer notice under paragraph (a), the employee gives the employer written notice of the period or periods of adoption leave the employee intends to apply for; and
- (c) as soon as practicable after the employee is notified of the proposed placement date, the employee gives the employer—
  - (i) written notice of the date; or
  - (ii) a statement from the adoption agency of the date; and
- (d) the employee applies for the leave—
  - (i) for part 4 short adoption leave—at least 14 days before the proposed placement date; or
  - (ii) for part 4 long adoption leave—at least 70 days before the first day of the long adoption leave; and
- (e) the application states the first and last days of the period or

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periods of leave; and

- (f) the employee submits with the application a statutory declaration stating—
  - (i) the employee proposes to take one or both of the following types of leave—
    - (A) part 4 short adoption leave to care for the child;
    - (B) part 4 long adoption leave to be the child's primary caregiver; and
  - (ii) the child—
    - (A) will be at the proposed placement date, or was at the placement date, under 5 years; and
    - (B) is not a child or stepchild of the employee or the employee's spouse; and
    - (C) will not have at the proposed placement date, or had not at the placement date, previously lived with the employee for a continuous period of 6 months or more; and
  - (iii) the first and last days of—
    - (A) short adoption leave for which the employee's spouse intends to apply, or has applied; and
    - (B) long adoption leave for which the employee's spouse intends to apply, or has applied; and
    - (C) annual or long service leave for which the employee's spouse intends to apply, or has applied, instead of or in conjunction with the adoption leave; and
  - (iv) the employee—
    - (A) will be the child's primary caregiver throughout the long adoption leave proposed to be taken by the employee; and
    - (B) will not engage in conduct inconsistent with the employee's employment contract while on adoption leave; and

- (g) the child will be, or has been, placed with the employee for adoption; and
  - (h) it is reasonable to expect the employee will have finished, at least 1 year of continuous service with the employer on the day before the first day of the adoption leave.
- (2) Subsection (1)(d)(i) does not apply if—
- (a) because of the placement date set by the adoption agency, it was not reasonably practicable for the employee to comply with the subparagraph; and
  - (b) the employee applies for the leave as soon as practicable before the placement date.
- (3) Subsection (1)(d)(ii) does not apply if—
- (a) because of the placement date set by the adoption agency, it was not reasonably practicable for the employee to comply with the subparagraph; and
  - (b) the employee applies for the leave as soon as practicable before the first day of the leave.

### **Period of adoption leave**

- 21.(1)** Part 4 short adoption leave must—
- (a) begin on the placement date; and
  - (b) be for a continuous period of not more than 3 weeks.
- (2) Part 4 long adoption leave—
- (a) must begin on the later of—
    - (i) the day stated in the application as the first day of the leave; or
    - (ii) the placement date; and
  - (b) must not extend beyond the first anniversary of the placement date; and
  - (c) must not overlap with the employee's spouse's leave, other than short adoption leave, stated in the relevant statutory declaration;

and

- (d) must be for a continuous period of not more than the period of entitlement calculated under subsection (3).

(3) The period of entitlement, for part 4 long adoption leave, is 52 weeks less the total of all the following—

- (a) short adoption leave the employee notifies the employer the employee intends to apply for;
- (b) annual or long service leave the employee applies for instead of, or in conjunction with, long adoption leave;
- (c) the employee's spouse's leave stated in the relevant statutory declaration.

### **Entitlement reduced by other adoption leave available to employee**

22.(1) This section applies if, had this part not been made—

- (a) an employee could have applied for alternative leave, whether or not the employee has in fact applied; and
- (b) if the employee had applied under the rules governing the alternative leave, the employee would have a legally enforceable right to the leave.

(2) If the alternative leave period is at least as long as the unadjusted adoption leave period, the employer must not give the employee adoption leave under this part.

(3) Otherwise, the employer must, on the employee's application, give the employee, instead of the unadjusted adoption leave, adoption leave that—

- (a) equals the difference between the unadjusted adoption leave period and the alternative leave period; and
- (b) begins immediately after the alternative leave (if the employer gives the alternative leave); and
- (c) otherwise accords with the employee's entitlements under

section 21.<sup>8</sup>

(4) In this section—

**“alternative leave”** means leave, other than leave under this part, that—

- (a) an employee is entitled to, has applied for or has been given in connection with the child’s adoption; and
- (b) is analogous to part 4 adoption leave, or would be analogous except that—
  - (i) it is paid leave; or
  - (ii) different rules govern eligibility for it; or
  - (iii) it can be taken for a different period.

**“unadjusted adoption leave”** means the part 4 adoption leave this part would, apart from this section, require the employer to give the employee.

**Annual leave or long service leave taken instead of, or in conjunction with, adoption leave**

**23.** If an employee applies for annual leave or long service leave instead of, or in conjunction with, adoption leave, the employer must give the annual or long service leave if—

- (a) had this part not been made, the employer would have been required to give it; or
- (b) the total of the following is not more than 52 weeks—
  - (i) the annual or long service leave;
  - (ii) annual or long service leave the employer has already given the employee instead of, or in conjunction with, the adoption leave;
  - (iii) adoption leave the employer has already given the employee for the placement;

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<sup>8</sup> Section 21 (Period of adoption leave)



- (iv) the employee's spouse's leave stated in the relevant statutory declaration.

### **Extending adoption leave**

**24.(1)** An employee may apply to extend the part 4 long adoption leave given to the employee.

**(2)** The employer must give the leave if—

- (a) the application is given to the employer at least 14 days before the last day of the leave; and
- (b) the application states the first and last day of the extended leave; and
- (c) unless the things mentioned in section 20(1)(f)(iii)<sup>9</sup> are still as stated in the relevant statutory declaration—the employee submits a statutory declaration stating the things mentioned in the subparagraph with the application; and
- (d) the period of leave, if extended, would not be more than the period of entitlement under section 21(3), calculated as at the time of giving the leave.

**(3)** The adoption leave may be extended again only by agreement between the employer and the employee.

### **Shortening adoption leave**

**25.(1)** An employee may apply to shorten the part 4 adoption leave given to the employee.

**(2)** The employer may shorten the leave if the application states the last day of the shortened leave.

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<sup>9</sup> Section 20(1)(f)(iii) requires the employee, in the statutory declaration submitted with the employee's application for adoption leave, to state the first and last days of leave for which the employee's spouse has applied, or intends to apply.

**Cancellation of adoption leave if employee does not finish 1 year of continuous service**

**26.** The employer may cancel part 4 adoption leave if—

- (a) it has been given on the basis that it is reasonable to expect the employee will finish a period of at least 1 year of continuous service with the employer on a particular day; and
- (b) the employee does not finish the period on the day.

**Cancellation of adoption leave in other circumstances**

**27.** The employer may also cancel part 4 adoption leave if—

- (a) the child will not be under 5 years on the placement day; or
- (b) the child had, at the placement date, previously lived with the employee for a continuous period of 6 months or more; or
- (c) the child is a child or stepchild of the employee or the employee's spouse.

**Effect on adoption leave if placement does not happen**

**28.(1)** An employer may cancel part 4 adoption leave given to an employee if the placement—

- (a) does not happen; or
- (b) happens but does not continue.

**(2)** If an event mentioned in subsection (1) happens before the leave begins, the employer may cancel the leave before it begins.

**(3)** If the leave has begun, the employee may notify the employer that the employee wishes to return to work.

**(4)** If the employee does so, the employer must notify the employee of the day when the employee must return to work.

**(5)** The day must be within 4 weeks after the employer receives the notice.

**(6)** Also, despite subsections (3) to (5), if the leave has begun, the employer may notify the employee of the day when the employee must

return to work.

(7) The day must be at least 4 weeks after the employer gives the notice.

(8) If the employee returns to work, the employer must cancel the rest of the leave.

### **What happens if employee ceases to be the primary caregiver**

**29.(1)** This section applies if—

- (a) for a substantial period of an employee's part 4 long adoption leave, the employee is not the child's primary caregiver; and
- (b) having regard to the length of the period and other relevant circumstances, it is reasonable to expect the employee will not again become the child's primary caregiver within a reasonable period.

(2) The employer may notify the employee of the day when the employee must return to work.

(3) The day must be at least 4 weeks after the employer gives the notice.

(4) If the employee returns to work, the employer must cancel the rest of the leave.

### **Employee's duty if excessive leave given or if periods of long adoption leave overlap**

**30.(1)** This section applies if—

- (a) the total of all the following is more than 52 weeks—
  - (i) adoption leave given to the employee for the placement;
  - (ii) annual or long service leave given to the employee instead of, or in conjunction with, adoption leave;
  - (iii) adoption leave given to the spouse for the placement;
  - (iv) annual or long service leave given to the spouse instead of, or in conjunction with, adoption leave; or
- (b) leave (other than short adoption leave) given to the employee overlaps with leave given to the spouse.

- (2) The employee must give the employer a notice—
- (a) if subsection (1)(a) applies—stating the amount by which the total exceeds 52 weeks; and
  - (b) if subsection (1)(b) applies—stating the period of overlap; and
  - (c) suggesting how the employer may change or cancel leave given to the employee (other than leave the employee has already taken) to reduce or remove the excess or overlap; and
  - (d) unless the changes and cancellations suggested will remove the excess or overlap—stating the suggestions the spouse has made or will make under subsection (3)(c).
- (3) The spouse must give the spouse’s employer a notice—
- (a) if subsection (1)(a) applies—stating the amount by which the total exceeds 52 weeks; and
  - (b) if subsection (1)(b) applies—stating the period of overlap; and
  - (c) suggesting how the spouse’s employer may change or cancel leave given to the spouse (other than leave the spouse has already taken) to reduce or remove the excess or overlap; and
  - (d) unless the changes and cancellations suggested will remove the excess or overlap—stating the suggestions the employee has made or will make under subsection (2)(c).
- (4) The changes and cancellations suggested must be of a kind that, if they are all made, the excess or overlap will be removed.

(5) An employer who receives a notice under subsection (2) or (3) may change or cancel leave as suggested in the notice, or as agreed with the employee or the spouse.

(6) In this section—

“spouse” means the employee’s spouse.

### **Employer to warn replacement employee employment is only temporary**

**31.(1)** An employer may employ a person (the “**replacement employee**”) to replace an employee—

- (a) while the employee is on adoption leave; or
- (b) who, while another employee is on adoption leave, must perform the duties of the position held by the other employee.

(2) However, before employing the replacement employee, the employer must inform the person—

- (a) the person's employment is only temporary; and
- (b) about the rights of the employee who is on adoption leave.

### **Return to work after adoption leave**

**32.(1)** This section applies if an employee returns to work after part 4 adoption leave.

(2) The employer must employ the employee in the position the employee held immediately before the leave.

(3) However, if—

- (a) the position no longer exists; and
- (b) the employee is qualified for, and can perform the duties of, other positions in the employer's employment;

the employer must employ the employee in whichever of the other positions is nearest in status and remuneration to the employee's former position.

### **Adoption leave and continuity of service**

**33.** A period of adoption leave does not break an employee's continuity of service, but does not count as service other than—

- (a) to work out the employee's entitlement to a later period of adoption leave or other parental leave; or
- (b) as expressly provided in the Act, or in an industrial instrument or order.

## **PART 5—DISMISSALS**

### **Exclusion of employees from ch 5—Act, s 216**

**34.(1)** Chapter 5, part 2<sup>10</sup> of the Act does not apply to—

- (a) a short term casual employee; or
- (b) an employee engaged for a specific period or task, unless the main purpose of engaging the employee in that way is, or was at the time of the employee's engagement, to avoid the employer's obligations under that part.

**(2)** Chapter 5, parts 2 and 3<sup>11</sup> of the Act do not apply to—

- (a) an employee serving a probation period, if the period determined before the employment commenced—
  - (i) is 3 months or less; or
  - (ii) is more than 3 months but is a reasonable period, having regard to the nature and circumstances of the employment; or
- (b) an employee—
  - (i) who is not employed under an industrial instrument, industrial agreement or EFA; and
  - (ii) who is not a public service officer employed on tenure under the *Public Service Act 1996*; and
  - (iii) whose annual remuneration immediately before the dismissal is more than \$64 000.

**(3)** An employee is excluded from the operation of chapter 5, part 2 in as far as a dismissal is harsh, unjust or unreasonable if—

- (a) the employee is employed by an employer whose undertaking employs no more than 15 employees when either of the following first happens—

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<sup>10</sup> Part 2 of the Act (Unlawful dismissals)

<sup>11</sup> Part 3 of the Act (Requirements for dismissal)

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- (i) the employer gives the employee notice of dismissal;
- (ii) the employer dismisses the employee; and
- (b) the employee was first employed by the employer on or after 1 July 1997; and
- (c) the employee has not been employed by the employer—
  - (i) for more than 1 year; or
  - (ii) on a regular and systematic basis for a sequence of periods of employment during a period of more than 1 year.

(4) For subsection (3)(a), a casual employee is an employee of the employer’s undertaking only if the casual employee is employed on a regular and systematic basis.

(5) In this section—

**“long term casual employee”** means a casual employee who—

- (a) is engaged—
  - (i) by a particular employer on a regular and systematic basis; and
  - (ii) for several periods of employment during a period of at least 1 year; and
- (b) apart from the employer’s decision not to offer the person further employment, had a reasonable expectation of further employment by the employer.

**“probation period”** means a period of probation when first employed and includes a qualifying period of employment.

**“short term casual employee”** means a casual employee who is not a long term casual employee.

**Meaning of temporary absence—Act, s 217**

**35.(1)** For section 217(b)(i)<sup>12</sup> of the Act, an absence from work because of illness or injury is temporary if—

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<sup>12</sup> Section 217 of the Act (When dismissal is unlawful)

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- (a) the employee gives the employer a certificate signed by a doctor for the illness or injury within—
  - (i) 24 hours after the start of the absence; or
  - (ii) a longer period that is reasonable in the circumstances; or
- (b) the employee—
  - (i) is required under an industrial instrument, industrial agreement or EFA to notify the employer of an absence from work and substantiate the reason for the absence; and
  - (ii) complies with the industrial instrument, industrial agreement or EFA.

(2) However, an absence from work because of illness or injury is not temporary if—

- (a) the absence extends for more than 3 months, unless the employee is on paid sick leave for the duration of the absence; or
- (b) the total absences within a 1 year period, whether because of 1 or more illnesses or injuries, extend for more than 3 months, unless the employee is on paid sick leave for the duration of the absences.

**Prescribed amount—Act, s 222**

**36.** The amount prescribed for section 222(3)(a)(i)<sup>13</sup> of the Act is—

- (a) for an employee who is a public service officer employed on tenure under the *Public Service Act 1996*—the remuneration the employer would have been liable to pay the employee for the 6 months immediately after the dismissal, paid at the rate the employee received immediately before the dismissal; or
- (b) otherwise—\$32 000.

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<sup>13</sup> Section 222 of the Act (Remedies and sanctions for unlawful dismissal)



**Misconduct—Act, s 226**

**37.** Misconduct of a type mentioned in section 226(1)(b)<sup>14</sup> of the Act also includes—

- (a) the employee being intoxicated at work; and
- (b) conduct by the employee that causes imminent and serious risk to—
  - (i) a person’s health or safety; or
  - (ii) the reputation, viability or profitability of the employer’s business; and
- (c) wilful or deliberate behaviour by the employee that is inconsistent with the continuation of the employment contract; and
- (d) the employee refusing to carry out a lawful and reasonable instruction that is consistent with the employment contract.

**Working out continuous service—Act, s 226**

**38.(1)** For section 226(5)<sup>15</sup> of the Act, the following things do not break an employee’s continuity of service with the employer—

- (a) a suspension, stand down or other interruption or termination of the employee’s employment, by the employer, to avoid the employer’s obligations under section 226 of the Act;
- (b) the employee’s absence from work on authorised leave;
- (c) the employee’s absence from work if there was a reasonable cause for the absence, including, for example, because of an illness or injury;
- (d) the employee’s absence from work because of—
  - (i) protected action under section 43 of the Act; or
  - (ii) QWA industrial action under section 101<sup>16</sup> of the Act;

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<sup>14</sup> Section 226 of the Act (Notice of dismissal or compensation)

<sup>15</sup> Section 226 of the Act (Notice of dismissal or compensation)

<sup>16</sup> Section 43 of the Act (Protected action)  
Section 101 of the Act (Limited immunity conferred)

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- (e) another absence from work by the employee, unless the employer gives the employee notice that the absence from work breaks the employee's continuity of service.

**(2)** An employee's absence from work under subsection (1)(c) does break the continuity of service unless—

- (a) if a decision requires the employee to—
  - (i) notify the employer of an absence from work; and
  - (ii) substantiate the reason for the absence;the employee complies with the decision; or
- (b) if a decision mentioned in paragraph (a) does not apply to the employee—the employee informs the employer within 24 hours after the start of the absence, or within a longer period if it is reasonable in the circumstances, of—
  - (i) the employee's absence from work; and
  - (ii) the reason for the absence; and
  - (iii) the likely duration of the absence.

**(3)** An employee's absence from work under subsection (1)(d) does break the continuity of service if the commission has decided (when working out the employee's entitlement to notice of dismissal or to compensation instead of notice) the absence must be taken to be a break in the employee's continuity of service.

**(4)** A notice under subsection (1)(e)—

- (a) must be given during, or within 14 days after the end of, the absence; and
- (b) may be withdrawn by the employer.

**(5)** If the employer withdraws the notice, it is taken not to have been given.

**(6)** If an employee's absence from work does not break the employee's continuity of service under this section, the period of absence must be included as a period of service when calculating the employee's continuous service.

**Compensation for commission or piece rate employees—Act, s 226**

**39.** For section 226(8)<sup>17</sup> of the Act, the amount taken to be payable is the average weekly remuneration received by the employee—

- (a) for an employee who was continuously employed by the employer for 3 months or more immediately before dismissal—in the 3 months before dismissal; or
- (b) for an employee who was continuously employed by the employer for a period of less than 3 months immediately before dismissal—in that period.

**PART 6—MISCELLANEOUS****Application for issue of authorisation—Act, s 392**

**40.(1)** For section 392(4)(a)<sup>18</sup> of the Act, an application for the authorisation of a person must—

- (a) be made in the form provided for in the rules of court; and
- (b) be accompanied by the fee provided for in the rules of court; and
- (c) be signed by the president and secretary of the applicant organisation.

**(2)** The application must—

- (a) identify whether the person is an officer, or whether the person is an employee, of the organisation; and
- (b) be accompanied by—
  - (i) 2 passport size (4.5 cm x 3.5 cm) photographs, each signed on the reverse side by the person; and
  - (ii) 2 specimen signatures of the person endorsed by the

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<sup>17</sup> Section 226 of the Act (Notice of dismissal or compensation)

<sup>18</sup> Section 392 of the Act (Authorising industrial officers)

president or the secretary of the applicant organisation as being genuine signatures of the person.

### **Recovery from employee of amounts overpaid—Act, s 425**

**41.** The amount prescribed for section 425(4) of the Act is three-quarters of the wages payable for the pay period.

### **Certificate of employment on termination—Act, s 477**

**42.(1)** For section 477(1) of the Act, a certificate of employment on termination must include the following particulars—

- (a) the full name and address of the employee;
- (b) a description of the trade or occupation in which the employee was engaged;
- (c) the dates on which the employee commenced and ceased employment in each of the respective trades or occupations;
- (d) the address of the workplace at which the employee was engaged.

**(2)** The certificate must be signed and dated by the employer.

### **Application of Commonwealth regulations**

**43.(1)** For sections 66, 215 and 375 of the Act, the Commonwealth regulations apply as a law of the State.

**(2)** In this section—

**“Commonwealth regulations”** means the regulations made under the Commonwealth Act relating to—

- (a) part VIA, division 3, subdivision B of the Commonwealth Act; and
- (b) part VIB of the Commonwealth Act, and the other provisions of that Act as far as they relate to the part; and
- (c) parts IVA and VID of the Commonwealth Act, and the other provisions of that Act as far as they relate to the parts.

**SCHEDULE 1****PROVISIONS ABOUT DISCRIMINATION**

section 8(1)

The parties agree that the effect of this agreement is not to allow any conduct or treatment, either direct or indirect, that would—

- (a) contravene the *Anti-Discrimination Act 1991*; or
- (b) discriminate on the basis of family responsibilities.

**SCHEDULE 2****MODEL DISPUTE RESOLUTION PROCEDURE**

section 8(2)

In relation to any matter that may be in dispute between the parties to this QWA, the parties—

- (a) will attempt to resolve the matter at the workplace level, including, for example—
  - (i) the employee and his or her supervisor meeting and conferring on the matter; and
  - (ii) if the matter is not resolved at the meeting, the parties arranging further discussions involving more senior levels of management (as appropriate); and
- (b) acknowledge the right of either party to appoint, in writing, another person to act for the party in relation to resolving the matter at the workplace level; and
- (c) agree to allow either party to refer the matter to mediation if the matter can not be resolved at the workplace level; and
- (d) agree that if either party refers the matter to mediation, both parties will participate in the mediation process in good faith; and
- (e) acknowledge the right of either party to appoint, in writing, another person to act for the party in relation to the mediation process; and
- (f) agree that while the parties attempt to resolve the matter—
  - (i) the parties continue to work in accordance with normal work practices unless the employee has a reasonable concern about an imminent risk to his or her health or safety; and
  - (ii) even if the employee has a reasonable concern about an imminent risk to his or her health or safety, the employee must not unreasonably fail to comply with a direction by his

## SCHEDULE 2 (continued)

or her employer to perform other available work, whether at the same workplace or another workplace, that is safe and appropriate for the employee to perform; and

(iii) the parties must cooperate to ensure the dispute resolution procedure is carried out as quickly as is reasonably possible; and

(g) agree not to commence an action—

(i) to obtain a penalty under section 96 of the Act; or

(ii) to obtain damages for breach of the QWA; or

(iii) to enforce a provision of the QWA or part 2 of chapter 2 of the Act (other than an action to enforce section 95 of the Act);

unless—

(iv) the party initiating the action has genuinely attempted to resolve the dispute at the workplace level; and

(v) either—

(A) a period of 7 days has expired from the date when the party initiating the action gave notice that mediation is not requested; or

(B) mediation was requested by either party and either party considers mediation has not resolved the dispute.

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 July 1997. Future amendments of the Workplace Relations Regulation 1997 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			



## 4 Table of earlier reprints

### TABLE OF EARLIER REPRINTS

[If a reprint number includes an arabic letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	none	4 April 1997

## 5 List of legislation

### **Workplace Relations Regulation 1997 SL No. 78**

notfd gaz 27 March 1997 pp 1333–6  
ss 1–2 commenced on date of notification  
remaining provisions commenced 27 March 1997 (see s 2)  
as amended by—

### **Workplace Relations Amendment Regulation (No. 1) 1997 SL No. 114**

notfd gaz 9 May 1997 pp 162–3  
ss 1, 3 commenced on date of notification  
remaining provisions commenced 1 July 1997 (see s 3)

## 6 List of annotations

### **Exclusion of employees from ch 5—Act, s 216**

s 34 amd 1997 SL No. 114 s 4

### **Repeal**

s 44 om R1 (see RA s 40)