

Queensland



Industrial Relations Act 1999

WORKPLACE RELATIONS REGULATION 1997

**Reprinted as in force on 2 December 1999
(includes amendments up to SL No. 133 of 1999)**

Reprint No. 1C

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Information about this reprint

This regulation is reprinted as at 2 December 1999. 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 reprints 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 2 December 1999]

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

- (a) the region, defined by the chief executive, where the relevant employees¹ 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;
- (h) the name of the relevant or designated award;
- (i) the nominal expiry date of the agreement;
- (j) the steps taken to ensure—
 - (i) section 25(4) and (5) of the Act has been complied with; and
 - (ii) section 61 of the Act has not been contravened;
- (k) where the procedures for preventing and settling disputes can be found in the agreement;
- (l) if the agreement was made under section 20 of the Act—the steps taken to ensure section 25(7) of the Act has not been contravened;
- (m) if the agreement applies only to a part of a single business—an explanation as to how the part is—

¹ Relevant employees are the employees whose employment will be subject to the agreement—see section 25(10) of the Act.

- (i) a geographically distinct part of the single business; or
- (ii) a distinct operational or organisational unit within the single business;
- (n) the persons who negotiated the agreement and the persons for whom they acted.

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—

- (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’—

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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’.

(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 required² is as follows—

- (a) the address where the employee is employed, including the postcode;
- (b) a postal address nominated by the employee;

² 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.

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- (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.

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)³ 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
- (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)⁴ 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.

PART 5—DISMISSALS**Meaning of temporary absence—Act, s 217**

35.(1) For section 217(b)(i)⁵ of the Act, an absence from work because of illness or injury is temporary if—

- (a) the employee gives the employer a certificate signed by a doctor for the illness or injury within—

³ Section 485 (Regulation-making power) of the Act

⁴ Section 485 (Regulation-making power) of the Act

⁵ Section 217 (When dismissal is unlawful) of the Act

- (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.

Misconduct—Act, s 226

37. Misconduct of a type mentioned in section 226(1)(b)⁶ 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.

⁶ Section 226 (Notice of dismissal or compensation) of the Act

Working out continuous service—Act, s 226

38.(1) For section 226(5)⁷ 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 101⁸ of the Act;
- (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

⁷ Section 226 (Notice of dismissal or compensation) of the Act

⁸ Section 43 (Protected action) of the Act
Section 101 (Limited immunity conferred) of the Act

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(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)⁹ 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.

⁹ Section 226 (Notice of dismissal or compensation) of the Act

PART 6—MISCELLANEOUS

Application for issue of authorisation—Act, s 392

40.(1) For section 392(4)(a)¹⁰ 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 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;

¹⁰ Section 392 (Authorising industrial officers) of the Act

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- (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

SCHEDULE 2 (continued)

- (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 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

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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 2 December 1999. 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	=	previous
amd	=	amended	(prev)	=	previously
amdt	=	amendment	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
o in c	=	order in council	sch	=	schedule
om	=	omitted	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

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
1A	to SL No. 114 of 1997	4 July 1997
1B	to SL No. 209 of 1997	1 August 1997

5 List of legislation

Workplace Relations Regulation 1997 SL No. 78

made by the Governor in Council on 27 March 1997
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)
exp 1 September 2007 (see SIA s 54)

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)

Workplace Relations Amendment Regulation (No. 2) 1997 SL No. 209

notfd gaz 11 July 1997 pp 1229–30
commenced on date of notification

Workplace Relations Amendment Regulation (No. 1) 1999 SL No. 133

notfd gaz 25 June 1999 pp 932–8
ss 1–2 commenced on date of notification
remaining provisions commenced at the end of 30 June 1999 (see s 2)

6 List of annotations

Certifying an agreement—Act, s 25

s 4 amd 1997 SL No. 209 s 3

QWA industrial action—continuity of employment not affected

s 10 om 1999 SL No. 133 s 4

Complementary laws—Act, s 375

s 15 om 1999 SL No. 133 s 5

PART 4—Adoption leave**pt hdg** om 1999 SL No. 133 s 6**pt 4 (ss 16–33)** om 1999 SL No. 133 s 6**Exclusion of employees from ch 5—Act, s 216****s 34** amd 1997 SL No. 114 s 4

om 1999 SL No. 133 s 7

Prescribed amount—Act, s 222**s 36** om 1999 SL No. 133 s 8**Repeal****s 44** om R1 (see RA s 40)