

REVIEW OF INDUSTRIAL AGREEMENTS

PN 10

PRACTICE NOTE

30 June 2004

Objective

1. The objective of this Practice Note is to provide guidance about certain filing requirements to parties that seek to make or amend an industrial instrument as a result of the Review of Industrial Agreements being conducted by the Commission.

Scope

1. This Practice Note is to be read in conjunction with the following:
 - (i) Chapter 5, Parts 1 and 2 of the *Industrial Relations Act 1999*;
 - (ii) s. 169 of the *Industrial Relations Act 1999*;
 - (iii) s. 713 of the *Industrial Relations Act 1999*; and
 - (iv) those sections of the *Industrial Relations (Tribunals) Rules 2000* that relate to the making or amending of industrial instruments.
2. Failure to comply with any of the following requirements may result in delay in having the application listed for hearing.

Application made under s. 713(5) of the Act

1. A party to an Industrial Agreement that continues to have effect may make an application pursuant to s. 713(5) of the *Industrial Relations Act 1999* (the Act) to have the Commission decide that the Industrial Agreement has effect as an award.
2. An application made pursuant to this section must:
 - in Schedule 1, duplicate the terms of the Industrial Agreement as they presently appear; and
 - in the Statement of Material Facts, note that the application is made as a result of the Review of Industrial Agreements.
3. The application will be given a Case Number commencing with the initials “EA” (e.g. EA1 of 2004) to identify it as an application that an Industrial Agreement has effect as an award.
4. The Registry will prepare a Directions Order requiring the applicant to serve a copy of the application on all parties to the Industrial Agreement.
5. An application made pursuant to s. 713(5) of the Act must be accompanied by a separate application for a new award made pursuant to s. 125 of the Act (see below).

Application for a new Award

1. A party to an Industrial Agreement that continues to have effect may make an application for a new award to be made based on the Industrial Agreement.
2. Such application may be made irrespective of whether the party has made an application pursuant to s. 713(5) of the Act.
3. An application to make a new award based on an Industrial Agreement must be in the format developed under the Award Review process and conform with the Sample Award. (see Format of Awards Practice Note – PN 9 of 2004).
4. The application for a new award will be given a separate Case Number to the application made pursuant to s. 713(5) of the Act.
5. Any provision that exceeds a General Ruling or Declaration of Policy is to be followed by this note:

“This clause has been inserted as a result of an application to make this Award arising from the decision of the Full Bench of the Commission on [insert date] (and published at (2004) xxx QGIG xxx) to move to declare Industrial Agreements obsolete. Given the origin of this clause the provisions contained within it are not to be used as a precedent for any other matter whatsoever.”.

6. An application for a new award will be examined by Registry staff before being allocated to a Member to ensure that it meets the award format requirements. Any application that does not meet these requirements will be returned to the applicant with advice about the amendments that are considered necessary for the application to be allocated.
7. The Registry will prepare a Directions Order requiring the applicant to serve a copy of the application on all organisations that may have an interest in the matter.
8. An application for a new award that accompanies an application made pursuant to s. 713(5) of the Act will usually be listed for hearing immediately following the application made pursuant to s. 713(5) of the Act.

Application to amend an Award

1. In cases where a party believes that the terms of an Industrial Agreement that continues to have effect are best accommodated within an award that is already in force, the party may make an application to amend the Award. Where the Award is common rule or applies to multiple employers the amendment should proceed by adding a Schedule.
2. The form and content of the proposed Schedule and the process to be followed are generally those detailed in paragraphs 3 - 7 inclusive of the section “Application for a new Award”. This includes the provisos and notes relating to certain clauses. In relation to the note that appears in paragraph 5 of the section “Application for a new Award”, the words “to make the Award” are to be replaced by the phrase “to amend the Award”.

Application to amend a Certified Agreement

1. Where a Certified Agreement refers to a particular Industrial Agreement as continuing to have application, the Certified Agreement concerned does not usually repeat the provisions of the Industrial Agreement. Consistent with the provisions of Practice Note 6 – Certified Agreements, and as a result of the Commission’s Review of Industrial Agreements, parties to a Certified Agreement that has not passed its nominal expiry date will be permitted to amend the Certified Agreement to incorporate the (relevant) terms of the Industrial Agreement to which reference has been made in the Certified Agreement.
2. Where an Industrial Agreement is made into a new Award, a Certified Agreement that references the Industrial Agreement is to be amended to substitute the title of the newly made award for the title of the Industrial Agreement.
3. Where parties to a Certified Agreement consider this approach is desirable and appropriate an application may be made pursuant to s. 169 of the Act.
4. All requirements for filing an amendment to a Certified Agreement must comply with s. 169 of the Act and the *Industrial Relations (Tribunals) Rules 2000*.
5. A ballot of employees covered by the Certified Agreement will not be required. The Commission will rely on the original ballot that approved the agreement.

Effect on Industrial Agreement when an industrial instrument has been made or amended

1. In an application to make or amend an industrial instrument or to have an Industrial Agreement given effect as an award the applicant must state in the Statement of Material Facts that the particular Industrial Agreement is to be declared obsolete on the successful outcome of the application.

This Practice Note will be effective as and from 1 July 2004.

Dated 30 June 2004.

D.M. LINNANE
Vice President.