



Department of **Consumer
and Employment Protection**
Government of **Western Australia**

Your Ref:
Our Ref: WB/0165/2002#20
Enquiries: Kelly Morgan 9222 7608

CIRCULAR TO DEPARTMENTS AND AUTHORITIES NO 16 OF 2002

WORKPLACE AGREEMENTS - TRANSITIONAL PROVISIONS

Part 3 of the Labour Relations Reform Act 2002 has amended the *Industrial Relations Act 1979* and the *Workplace Agreements Act 1993* to provide for the cessation of all workplace agreements.

Part 3 came into effect on 15 September 2002 and will progressively bring about the cessation of all workplace agreements by 14 September 2003. The *Workplace Agreements Act 1993* will also expire on this date.

The attached Policy Statement provides workplace agreement transitional provisions specific to the public sector.

The policy includes transitional guidelines for implementation of the policy and a pro-forma information kit for distribution to all employees on workplace agreements or statutory contracts. The kit provides employees with assistance to move to collective employment arrangements.

Agencies need to be familiar with the detail of the transitional provisions and the changes to the legislation. A copy of the legislation and additional information is located on the department's website at www.docep.wa.gov.au.

**JEFF RADISICH
ACTING EXECUTIVE DIRECTOR
LABOUR RELATIONS**

22 November 2002

WORKPLACE AGREEMENTS – TRANSITIONAL PROVISIONS

POLICY OBJECTIVE

- *The expedient transition of public sector employees from individual to collective employment arrangements.*

POLICY PRINCIPLES

- *Public sector employers will only agree to replace individual employment arrangements with relevant collective employment arrangements.*
- *The terms and conditions of employees' cancelled or ceased workplace agreements will no longer apply when statutory contracts are replaced.*

STATEMENT

1. On cessation of workplace agreements under the *Labour Relations Reform Act 2002*, and in situations where employees can unilaterally cancel or withdraw from workplace agreements, employers are to offer employees the opportunity to replace resulting statutory contracts of employment with relevant collective employment arrangements.
2. Public sector statutory contracts of employment are not to be varied. Contracts will be replaced in their entirety.
3. Statutory contracts of employment will be replaced in circumstances which include:
 - a) promotion;
 - b) transfer to new employers;
 - c) transfer internal to an agency other than for like to like positions; and
 - d) redeployment.
4. Statutory contracts of employment may continue in circumstances which include:
 - a) reclassification;
 - b) like to like or temporary transfer within an agency;
 - c) higher duties; and
 - d) secondment.
5. Seconded employees' statutory contracts of employment may be temporarily replaced, for the period of a secondment.
6. Employees in receipt of pay higher than that provided by awards/EBAs, will have their pay maintained where they move from statutory contracts on or after 1 January 2003 or transfer at level.
7. Workplace agreement transitional guidelines are provided in **Attachment A**.

WORKPLACE AGREEMENTS - TRANSITIONAL GUIDELINES

LABOUR RELATIONS REFORM ACT 2002

1. The *Labour Relations Reform Act 2002* reflects the Government's commitment to the discontinuance of workplace agreements in the public sector.
2. Part 3 of the *Labour Relations Reform Act 2002* has amended the *Industrial Relations Act 1979* and the *Workplace Agreements Act 1993* to provide for the cessation of all workplace agreements.
3. Part 3 came into effect on 15 September 2002 and progressively ceases all workplace agreements by 14 September 2003. The *Workplace Agreements Act 1993* will also expire on this date.

CANCELLATION OF WORKPLACE AGREEMENTS PRIOR TO CESSATION BY STATUTE

4. Workplace agreements can be cancelled by agreement between the parties. Only the terms and conditions of awards, and if applicable, enterprise bargaining agreements (EBAs) will apply to these employees upon cancellation.
5. Where employees can unilaterally cancel or withdraw from agreements, employers are to offer employees the opportunity to replace statutory contracts of employment with the terms and conditions of awards/EBAs. Employees may choose to remain on statutory contracts of employment.
6. Upon cancellation of Part 2A workplace agreements, employees will be covered by the relevant federal award, and if applicable, certified agreement.
7. Employers must retain signed written records cancelling workplace agreements. Formal registration of cancellation is no longer required.

CESSATION OF WORKPLACE AGREEMENTS BY STATUTE

8. The effective dates for the cessation of public sector workplace agreements will occur as follows:
 - a) workplace agreements that have passed their nominal expiry date prior to 15 September 2002 but continue to operate by virtue of a continuation clause in the agreement will cease on 14 March 2003;
 - b) workplace agreements that have a nominal expiry date after 15 September 2002 and prior to 14 September 2003 will cease on their expiry dates; and
 - c) workplace agreements that have a nominal expiry date after 14 September 2003 will cease on 14 September 2003.

EFFECTS OF CESSATION

9. Part 2A workplace agreements will not translate into statutory contracts of employment. Employees will be covered by the relevant federal award, and if applicable, certified agreement.

10. All other workplace agreements, on cessation, automatically translate to unwritten statutory contracts of employment that reflect the employment terms and conditions (including hours of work) of ceased agreements and existing contracts of employment. A copy of ceased workplace agreements should be retained as a written record of the terms and conditions that constitute statutory contracts.
11. Where awards/EBAs extend to the employment of employees, these instruments apply in conjunction with statutory contracts of employment.
12. Employers are to offer employees the opportunity to replace statutory contracts in their entirety with the terms and conditions of awards/EBAs only. Employees may choose to remain on statutory contracts.

MONETARY ENTITLEMENTS UNDER STATUTORY CONTRACTS

13. Employers are required to calculate and compare employees' annual monetary entitlements under both statutory contracts of employment and the relevant awards/EBAs.
14. Employers are to pay the greater of the annual monetary entitlements under either statutory contracts or awards/EBAs.
15. Employers should undertake comparisons at the commencement of statutory contracts and each 12 months thereafter, or when changes to awards/EBAs may affect the outcome of the comparison.
16. Calculations under awards/EBAs are to be based upon the award or EBA pay rate, and applicable allowances and penalties in awards/EBAs, applied to the hours of work under statutory contracts.

NON-MONETARY ENTITLEMENTS UNDER STATUTORY CONTACTS

17. Where awards/EBAs provide for non-monetary employment conditions that are better than those in statutory contracts of employment, employees are entitled to the enhanced conditions.
18. Employees retain non-monetary employment conditions that exist in statutory contracts of employment that are in addition to or better than those in awards/EBAs.

REPLACEMENT OR VARIATION OF STATUTORY CONTRACTS

19. Employers and employees in the public sector may by agreement replace statutory contracts to give effect to the terms and conditions of awards/EBAs applying to employees. Public sector statutory contracts are not to be varied.
20. The terms and conditions arising out of employees' cancelled or ceased workplace agreements, other than where salary maintenance applies, will no longer apply where a statutory contract is replaced or ceases under this policy.

21. Statutory contracts are to cease in circumstances which include:
 - a) promotion;
 - b) transfer to new employers;
 - c) transfer internal to an agency other than for like to like positions; and
 - d) redeployment.
22. Statutory contracts may continue in circumstances which include:
 - a) reclassification;
 - b) like to like or temporary transfer within an agency;
 - c) higher duties; and
 - d) secondment.
23. Though statutory contracts of employment may continue in circumstances referred to in paragraph 22, employees and employers are by agreement able to replace contracts.
24. Seconded employees' statutory contracts may be temporarily replaced, for the period of a secondment, through written arrangements with host employers. Temporary replacement can only provide for the terms and conditions of awards/EBAs applying to employees.

MOVING FROM STATUTORY CONTRACTS

Salary Maintenance

25. Employees whose statutory contracts are replaced on or after 1 January 2003 and who are in receipt of pay higher than that provided by awards/EBAs, will have their pay maintained until absorbed by future increases under awards/EBAs.
26. Employees on statutory contracts who transfer at level will have their salary maintained until absorbed.
27. In cases of redeployment the relevant redeployment salary maintenance provisions apply.

Leave

28. Service for long service leave accrued under arrangements different from relevant awards/EBAs will be recognised, on a pro-rata basis, as qualifying service for the purposes of long service leave under awards/EBAs.
29. Accrued leave is preserved in days and part days. Where expressed in hours, and statutory contract normal hours differ from awards/EBAs, hours will be adjusted on a pro-rata basis with the effect of preserving the accrued equivalent in days and part days.

ADVERTISING POSITIONS

30. Positions within the public sector are to be advertised subject to awards/EBA's only. Offers of employment will be subject to awards/EBA's, except in the circumstances referred to in paragraph 22.
31. Employees who are promoted internally and who are covered by workplace agreements may choose to remain on their agreement, until its cancellation or cessation.

DISPUTES UNDER STATUTORY CONTRACTS

32. Employees have access to the dispute settlement procedures of awards/EBA's.

UNFAIR DISMISSAL CLAIMS FOR EMPLOYEES ON WORKPLACE AGREEMENTS

33. Employees subject to workplace agreements have access to the provisions of the *Industrial Relations Act 1979* if they are dismissed and wish to lodge an unfair dismissal claim.

FURTHER INFORMATION

34. A copy of the legislation and further information is located on the Department of Consumer and Employment Protection's website at www.docep.wa.gov.au.
35. A pro-forma information kit has been developed for distribution to employees on workplace agreements and statutory contracts. A copy is provided in **Appendix 1**.
36. The kit provides employees with awareness of transitional provisions and assistance to move to collective employment arrangements. Electronic copies of the kit can be obtained by email request to jmsa@doplar.wa.gov.au.

WORKPLACE AGREEMENTS - TRANSITIONAL PROVISIONS

PRO-FORMA INFORMATION PACKAGE FOR EMPLOYEES AFFECTED BY THE TRANSITIONAL PROVISIONS

Notes on application of the information package

Two sets of information relating to individual workplace agreements and collective workplace agreements are included for employees affected by the transitional provisions. Agencies will need to ascertain which is applicable.

Each information package will need to be tailored by agencies to reflect the specifics of agency workplace agreements, and refer to relevant awards and, if applicable, relevant enterprise bargaining agreements (EBAs). No other amendments should be made to this standard document.

Prior to providing information to employees affected by the transitional provisions, a comparison of employment conditions between relevant awards/EBAs and workplace agreements must be undertaken.

In addition, a comparison of annual monetary entitlements under the relevant awards/EBAs and workplace agreements will need to be carried out to ascertain the appropriate annual monetary entitlement of employees.

Areas in the information packages requiring information specific to your agency are:

- the headings of the information packages;
- paragraph 4;
- paragraph 7;
- paragraph 10, and insert the outcome of the comparison of employment conditions;
- paragraph 11, and insert the outcome of the comparison of employment conditions;
- paragraph 14 – package for individual workplace agreements only;
- paragraph 25 – package for individual workplace agreements only;
- paragraph 26 – package for individual workplace agreements only;
- paragraph 31; and
- all forms.

Part 2A workplace agreements will cease in accordance with the provisions of the Labour Relations Reform Act 2002 (LRRRA) and affected employees' terms and conditions of employment will become subject to relevant certified agreements/awards.

An electronic copy of the kit can be obtained by email request to jmsa@doplar.wa.gov.au.

Please contact your labour relations adviser if you require further information.

TRANSITIONAL PROVISIONS FOR INDIVIDUAL WORKPLACE AGREEMENTS

WHAT THIS MEANS FOR EMPLOYEES COVERED BY

<INSERT TITLE OF WORKPLACE AGREEMENT>

Note: This information relates to individual workplace agreements. An alternative set is available for collective workplace agreements.

1. The *Labour Relations Reform Act 2002* (LRRRA) provides for the ceasing of all workplace agreements progressively over a 12 month period, from 15 September 2002. Workplace agreements will not continue beyond 14 September 2003.
2. The LRRRA provides for transitional provisions to facilitate a smooth phasing out of workplace agreements. This information sheet is provided to explain the impact of the LRRRA on employees and the options available.

When do workplace agreements cease?

3. The LRRRA stipulates the following dates for the cessation of the three categories of public sector workplace agreements, including Part 2A workplace agreements:
 - a) workplace agreements that have passed their nominal expiry date by 15 September 2002, but continue to operate by virtue of a continuation clause in the agreement, will cease on 14 March 2003;
 - b) workplace agreements that have a nominal expiry date after 15 September 2002 and prior to 14 September 2003, will cease on their expiry dates; and
 - c) workplace agreements that have a nominal expiry date after 14 September 2003, will cease on 14 September 2003.
4. The <insert title of workplace agreement> has/has not reached its nominal expiry date. The agreement will cease operation on <insert date>.

What happens when the <insert title of workplace agreement> ceases?

5. Upon ceasing, workplace agreements will *automatically translate to unwritten statutory contracts of employment* that reflect the employment terms and conditions of ceased workplace agreements.
6. The ceasing of workplace agreements does not change the employment status (ie permanent, fixed term, casual).
7. As well as being covered by statutory contracts of employment, the <insert title of industrial agreement> (EBA) and the <insert title of award> (award) will also apply to employees.

What happens to employment conditions?

8. Upon the ceasing of workplace agreements non-monetary conditions of employment that are better than awards and, if applicable, relevant enterprise bargaining agreements (EBAs) will be retained in statutory contracts of employment. Conditions of employment that are provided for in awards/EBAs, but not in statutory contracts of employment, will be gained.

9. Hours of work will not change as a result of the ceasing of workplace agreements. If the hours of work in statutory contracts of employment are greater than the ordinary hours provided for in awards/EBAs, the additional time worked will be treated as overtime in accordance with the provisions of awards/EBAs. This does not necessarily mean the additional time worked will be paid as overtime. Some awards require minimum additional time to be worked before overtime is paid.
10. From ceasing of the *<insert title of workplace agreement>* employees will be entitled to the following conditions provided for in the award/EBA:
 - a) *<List all the conditions in the award/EBA to which the employee will now be entitled. Contact your labour relations adviser if it is unclear what should be listed here>.*
11. However, the following conditions of the *<insert title of workplace agreement>* will no longer apply:
 - a) *<List all the conditions in the ceased workplace agreement that are directly inconsistent with the award/EBA and will no longer apply. Contact your labour relations adviser if it is unclear what should be listed here.>*

What happens to pay?

12. Total annual monetary entitlements will not decrease as a result of the ceasing of workplace agreements and the application of statutory contracts of employment.
13. Employers are required to carry out a comparison of monetary entitlements over a 12 month period under awards/EBAs, and statutory contracts of employment, based on the hours specified in the statutory contracts, as follows:
 - a) Annual monetary entitlement A: calculated using the award/EBA hourly rate of pay, plus any allowances and penalty rates to which employees would be eligible if covered by the award/EBA; and
 - b) Annual monetary entitlement B: calculated using the hourly rate of pay under the statutory contract of employment, plus any allowances and penalty rates which were provided for in ceased workplace agreements.
14. Employees will receive the higher total annual monetary entitlement. Should employees require additional information on monetary entitlements, please contact *<insert name and title>* on *<insert telephone number>* or *<insert email address>*.

What happens to leave entitlements?

15. The service or leave accruals of employees will not be affected. The manner in which leave entitlements are recorded may change when statutory contracts of employment are replaced to reflect the provisions of the awards/EBAs. The actual entitlement will not change.

How can statutory contracts of employment be replaced after workplace agreements cease?

16. Employers in the public sector may only offer to replace statutory contracts to give effect to the terms and conditions of awards/EBAs applying to employees.

17. Statutory contracts of employment can only be replaced by agreement between the parties. The parties cannot unilaterally replace statutory contracts of employment.
18. The terms and conditions arising out of employees' cancelled or ceased workplace agreements, other than where salary maintenance applies, will not apply to the employment of employees from the effective date of the replacement of the statutory contract.
19. If employers and employees agree to replace statutory contracts of employment prior to 1 January 2003, and existing rates of pay are higher than awards/EBAs, pay will not be maintained at the higher rate. If statutory contracts are replaced on or after 1 January 2003, and existing rates of pay are higher than awards/EBAs, pay rates will be maintained, until the award/EBA pay rates exceeds the maintained rates.
20. This approach is consistent with the treatment of employees under EBAs.
21. To replace statutory contracts of employment, where salary maintenance is not an issue, employers and employees will need to complete Form 1 – Statutory Contract of Employment Replacement.
22. To replace statutory contracts of employment, where salary maintenance applies, employers and employees will need to complete Form 2 – Statutory Contract of Employment Replacement - Salary Maintenance.

Can workplace agreements be cancelled prior to ceasing?

23. Unless otherwise provided for in workplace agreements, agreements can be cancelled by mutual agreement between employers and employees prior to ceasing. To cancel workplace agreements, employers and employees can only agree to do so on the basis that the terms and conditions of awards/EBAs apply.
24. If employers and employees agree to cancel workplace agreements prior to 1 January 2003, and existing rates of pay are higher than awards/EBAs, pay will not be maintained at the higher rate. If workplace agreements are cancelled on or after 1 January 2003, and existing rates of pay are higher than those of awards/EBAs, existing rates of pay will be maintained until the award/EBA pay rates exceed the maintained rates.
25. To cancel workplace agreements, where salary maintenance is not an issue, employers and employees will need to complete Form 3 – Agreement to Cancel <insert title of workplace agreement>.
26. To cancel workplace agreements, where salary maintenance applies, employers and employees will need to complete Form 4 – Agreement to Cancel <insert title of workplace agreement> - Salary Maintenance.
27. Some workplace agreements provide for unilateral withdrawal of either party after the nominal expiry date of the agreement. Under these circumstances agreement with the employer is not required and employees can unilaterally withdraw.
28. Where employees unilaterally withdraw from workplace agreements, statutory contracts of employment that reflect the terms and conditions of the workplace agreements, including the pay rates, automatically apply, irrespective of whether withdrawal is prior to or after 1 January 2003. The same conditions apply to these statutory contracts of employment, as would be the case if the workplace agreements ceased in accordance with the LRA.

What happens if workplace agreements cease prior to 1 January 2003, and pay rates are higher than the award/EBA pay rates?

- 29. If workplace agreements cease as a result of the provisions of the LRRRA, pay rates will not be affected and will be 'maintained' through statutory contracts of employment, until the pay rates in the award/EBA exceed existing rates of pay.

Additional Information

- 30. Additional information is available on the Department of Consumer and Employment Protection's website at www.docep.wa.gov.au.
- 31. Should employees wish to discuss the issues raised in this handout, or have other questions please contact <insert name and title> on <insert telephone number> or email <insert email address>.

<insert employer's name>
<insert agency name>

WORKPLACE AGREEMENTS – TRANSITIONAL PROVISIONS

FORM 1**STATUTORY CONTRACT OF EMPLOYMENT REPLACEMENT**

We, the undersigned, agree to replace the statutory contract of employment of the employee to provide that only the terms and conditions of the *<insert title of industrial agreement>* and *<insert title of award>* will apply to the employee's employment, in their entirety, with effect from *<day, month, year>*.

The terms and conditions of the statutory contract of employment arising out of the cessation of *<insert title of workplace agreement>* will have no application to the employment of the employee, from the effective date of this agreement.

Employee Name:	
Employee Number:	
Employee Address:	
Employee Telephone Number:	
Employee Signature:	
Witness Signature:	
Witness Printed Name:	
Date:	

AND

Employer Name:	
Employer Title:	
Employer Signature:	
Witness Signature:	
Witness Printed Name:	
Date:	

WORKPLACE AGREEMENTS – TRANSITIONAL PROVISIONS

FORM 2

STATUTORY CONTRACT OF EMPLOYMENT REPLACEMENT – SALARY MAINTENANCE

We, the undersigned, agree to replace the statutory contract of employment of the employee to provide that only the terms and conditions of the <insert title of industrial agreement> and <insert title of award> will apply to the employee’s employment, with effect from <day, month, year>.

The employee’s existing rate of pay will be maintained at the existing rate until the rates of pay in the <insert title of industrial agreement> exceed the employee’s maintained rate of pay.

Other than for salary maintenance, the terms and conditions of the statutory contract of employment arising out of the cessation of <insert title of workplace agreement> will have no application to the employment of the employee, from the effective date of this agreement.

Employee Name:	
Employee Number:	
Employee Address:	
Employee Telephone Number:	
Employee Signature:	
Witness Signature:	
Witness Printed Name:	
Date:	

AND

Employer Name:	
Employer Title:	
Employer Signature:	
Witness Signature:	
Witness Printed Name:	
Date:	

WORKPLACE AGREEMENTS – TRANSITIONAL PROVISIONS

FORM 3

AGREEMENT TO CANCEL <INSERT TITLE OF WORKPLACE AGREEMENT>

We, the undersigned, agree to cancel the <insert title of workplace agreement> that applies to the employment of <insert name of employee>, with effect from <day, month, year> in accordance with s.24(1) of the *Workplace Agreements Act 1993*.

We, the undersigned, also agree that the employee's statutory contract of employment will be in accordance with the <insert title of industrial agreement> and <insert title of award> which will apply to the employee's employment, in their entirety, with effect from <day, month, year>.

The terms and conditions of the <insert title of workplace agreement> will have no application to the employment of the employee from the effective date of this agreement.

Employee Name:	
Employee Number:	
Employee Address:	
Employee Telephone Number:	
Employee Signature:	
Witness Signature:	
Witness Printed Name:	
Date:	

AND

Employer Name:	
Employer Title:	
Employer Signature:	
Witness Signature:	
Witness Printed Name:	
Date:	

WORKPLACE AGREEMENTS - TRANSITIONAL PROVISIONS

FORM 4

**AGREEMENT TO CANCEL <INSERT TITLE OF WORKPLACE AGREEMENT> -
SALARY MAINTENANCE**

We, the undersigned, agree to cancel the <insert title of workplace agreement> that applies to the employment of <insert name of employee>, with effect from <day, month, year> in accordance with s.24(1) of the *Workplace Agreements Act 1993*.

We, the undersigned, also agree that the employee's statutory contract of employment will be in accordance with the <insert title of industrial agreement> and <insert title of award> with effect from <day, month, year>.

The employee's existing rate of pay will be maintained at the existing rate until the rates of pay in the <insert title of industrial agreement> exceed the employee's maintained rate of pay.

Other than for salary maintenance, the terms and conditions <insert title of workplace agreement> will have no application to the employment of the employee, from the effective date of this agreement.

Employee Name:	
Employee Number:	
Employee Address:	
Employee Telephone Number:	
Employee Signature:	
Witness Signature:	
Witness Printed Name:	
Date:	

AND

Employer Name:	
Employer Title:	
Employer Signature:	
Witness Signature:	
Witness Printed Name:	
Date:	

WORKPLACE AGREEMENTS - TRANSITIONAL PROVISIONS

TRANSITIONAL PROVISIONS FOR COLLECTIVE WORKPLACE AGREEMENTS

WHAT THIS MEANS FOR EMPLOYEES COVERED BY

<INSERT TITLE OF WORKPLACE AGREEMENT>

Note: This set of information relates to collective workplace agreements. An alternative set is available for individual workplace agreements.

1. The *Labour Relations Reform Act 2002* (LRRRA) provides for the ceasing of all workplace agreements progressively over a 12 month period, from 15 September 2002. Workplace agreements will not continue beyond 14 September 2003.
2. The LRRRA provides for transitional provisions to facilitate a smooth phasing out of workplace agreements. This information sheet is provided to explain the impact of the LRRRA on employees and the options available.

When do workplace agreements cease?

3. The LRRRA stipulates the following dates for the cessation of the three categories of public sector workplace agreements, including Part 2A workplace agreements:
 - a) workplace agreements that have passed their nominal expiry date by 15 September 2002, but continue to operate by virtue of a continuation clause in the agreement, will cease on 14 March 2003;
 - b) workplace agreements that have a nominal expiry date after 15 September 2002 and prior to 14 September 2003, will cease on their expiry dates; and
 - c) workplace agreements that have a nominal expiry date after 14 September 2003, will cease on 14 September 2003.
4. The *<insert title of workplace agreement>* has/has not reached its nominal expiry date. The agreement will cease operation on *<insert date>*.

What happens when the *<insert title of workplace agreement>* ceases?

5. Upon ceasing, workplace agreements will *automatically translate to unwritten statutory contracts of employment* that reflect the employment terms and conditions of ceased workplace agreements.
6. The ceasing of workplace agreements does not change the employment status (ie permanent, fixed term, casual).
7. As well as being covered by statutory contracts of employment, the *<insert title of industrial agreement>* (EBA) and the *<insert title of award>* (award) will also apply to employees.

What happens to employment conditions?

8. Upon the ceasing of workplace agreements non-monetary conditions of employment that are better than awards and, if applicable, relevant enterprise bargaining agreements (EBAs) will be retained in statutory contracts of employment. Conditions of employment that are provided for in awards/EBAs, but not in statutory contracts of employment, will be gained.

9. Hours of work will not change as a result of the ceasing of workplace agreements. If the hours of work in statutory contracts of employment are greater than the ordinary hours provided for in awards/EBAs, the additional time worked will be treated as overtime in accordance with provisions of awards/EBAs. This does not necessarily mean the additional time worked will be paid as overtime. Some awards require minimum additional time to be worked before overtime is paid.
10. From ceasing of the *<insert title of workplace agreement>* employees will be entitled to the following conditions provided for in the award/EBA:
 - a) *<List all the conditions in award/EBA to which the employee will now be entitled. Contact your labour relations adviser if it is unclear what should be listed here.>*
11. However, the following conditions of the *<insert title of workplace agreement>* will no longer apply:
 - a) *<List all the conditions in the ceased workplace agreement that are directly inconsistent with the award/EBA will no longer apply. Contact your labour relations adviser if it is unclear what should be listed here.>*

What happens to pay?

12. Total annual monetary entitlements will not decrease as a result of the ceasing of workplace agreements and the application of statutory contracts of employment.
13. Employers are required to carry out a comparison of monetary entitlements over a 12 month period under awards/EBAs and statutory contracts of employment, based on the hours specified in the statutory contract, as follows:
 - a) Annual monetary entitlement A: calculated using the award/EBA hourly rate of pay, plus any allowances and penalty rates to which employees would be eligible if covered by the award/EBA; and
 - b) Annual monetary entitlement B: calculated using the hourly rate of pay under a statutory contract of employment, plus any allowances and penalty rates which were provided for in ceased workplace agreements.
14. Employees will receive the higher total monetary entitlement. Should employees require additional information on monetary entitlements rates, please contact *<insert name and title>* on *<insert telephone number>* or *<insert email address>*.

What happens to leave entitlements?

15. The service or leave accruals of employees will not be affected. The manner in which leave entitlements are recorded may change when statutory contracts of employment are replaced to reflect the provisions of award/s/EBAs. The actual entitlement will not change.

How can statutory contracts of employment be replaced after workplace agreements cease?

16. Employers in the public sector may only offer to replace statutory contracts to give effect to the terms and conditions of relevant awards/EBAs applying to employees.
17. Statutory contracts of employment can only be replaced by agreement between the parties. The parties cannot unilaterally replace statutory contracts of employment.

18. The terms and conditions arising out of employees' cancelled or ceased workplace agreements, other than where salary maintenance applies, will not apply to the employment of employees from the effective date of the replacement of the statutory contract.
19. If employers and employees agree to replace statutory contracts of employment prior to 1 January 2003, and existing rates of pay are higher than awards/EBAs, pay will not be maintained at the higher rate. If statutory contracts are cancelled on or after 1 January 2003, and existing rates of pay are higher than awards/EBAs, pay rates will be maintained, until the award/EBA pay rates exceed the maintained rates.
20. This approach is consistent with the treatment of employees under EBAs.
21. To replace statutory contracts of employment where salary maintenance is not an issue, employers and employees will need to complete Form 5 – Statutory Contract of Employment Replacement.
22. To replace statutory contracts of employment where salary maintenance applies, employers and employees will need to complete Form 6 – Statutory Contract of Employment Replacement - Salary Maintenance.

Can workplace agreement be cancelled prior to ceasing?

23. Unless otherwise provided for in workplace agreement, collective workplace agreements can only be cancelled with the agreement of ALL the parties ie the employer and all the employees covered by the workplace agreement. Where this is impracticable, the employer and employee/s can agree in writing to vary the terms and conditions of employment so that the workplace agreement no longer applies. Such an agreement can only be reached if employers and employees agree on the basis that in lieu of the workplace agreement the terms and conditions of the award/EBA will apply. Any terms and conditions arising out of the collective workplace agreement will not apply from the date of any such agreement.
24. If employers and employees agree to vary employment terms and conditions prior to 1 January 2003, and existing rates of pay are higher than those of awards/EBA, pay will not be maintained at the higher rates. If employment terms and conditions are varied on or after 1 January 2003, and existing rates of pay are higher than those of awards/EBAs, rates of pay will be maintained, until the awards/EBA pay rates exceed maintained rates.
25. To cancel collective workplace agreements where salary maintenance is not an issue, employers and employees will need to complete Form 7 – Variation to Employment Terms and Conditions.
26. To cancel collective workplace agreements where salary maintenance applies, employers and employees will need to complete Form 8 – Variation to Employment Terms and Conditions - Salary Maintenance.

What happens if workplace agreements cease prior to 1 January 2003, and pay rates are higher than the EBA/award pay rates?

27. If workplace agreements cease as a result of the provisions of the LRRRA, pay rates will not be affected and will be 'maintained' through a statutory contract of employment, until the pay rates in the award/EBA exceed existing rates of pay.

Additional Information

- 28. Additional information is available on the Department of Consumer and Employment Protection's website at www.docep.wa.gov.au.
- 29. Should employees wish to discuss the issues raised in this handout, or have other questions please contact *<insert name and title>* on *<insert telephone number>* or email *<insert email address>*.

<insert employer's name>
<insert agency name>

FORM 5**STATUTORY CONTRACT OF EMPLOYMENT REPLACEMENT**

We, the undersigned, agree to replace the statutory contract of employment of the employee to provide that only the terms and conditions of the *<insert title of industrial agreement>* and *<insert title of award>* will apply to the employee's employment, in their entirety, with effect from *<day, month, year>*.

The terms and conditions of the statutory contract of employment arising out of the cessation of *<insert title of workplace agreement>* will have no application to the employment of the employee, from the effective date of this agreement.

Employee Name:	
Employee Number:	
Employee Address:	
Employee Telephone Number:	
Employee Signature:	
Witness Signature:	
Witness Printed Name:	
Date:	

AND

Employer Name:	
Employer Title:	
Employer Signature:	
Witness Signature:	
Witness Printed Name:	
Date:	

WORKPLACE AGREEMENTS - TRANSITIONAL PROVISIONS

FORM 6

**STATUTORY CONTRACT OF EMPLOYMENT REPLACEMENT – SALARY
MAINTENANCE**

We, the undersigned, agree to replace the statutory contract of employment of the employee to provide that only the terms and conditions of the *<insert title of industrial agreement>* and *<insert title of award>* will apply to the employee's employment, with effect from *<day, month, year>*.

The employee's existing rate of pay will be maintained at the existing rate until the rates of pay in the *<insert title of industrial agreement>* exceed the employee's maintained rate of pay.

Other than for salary maintenance, the terms and conditions of the statutory contract of employment arising out of the cessation of *<insert title of workplace agreement>* will have no application to the employment of the employee, from the effective date of this agreement.

Employee Name:	
Employees Number:	
Employee's Address:	
Employee Telephone Number:	
Employee Signature:	
Witness Signature:	
Witness Printed Name:	
Date:	

AND

Employer Name:	
Employer Title:	
Employer Signature:	
Witness Signature:	
Witness Printed Name:	
Date:	

FORM 7

VARIATION TO EMPLOYMENT TERMS AND CONDITIONS

We, the undersigned, agree that the *<insert title of workplace agreement>* will not apply to the employee's employment and to cancel the statutory contract of employment of the employee to provide that only the terms and conditions of the *<insert title of industrial agreement>* and *<insert title of award>* will apply to the employee's employment, in their entirety, with effect from *<day, month, year>*.

The terms and conditions of the *<insert title of workplace agreement>* will have no application to the employment of the employee from the effective date of this agreement.

Employee Name:	
Employee Number:	
Employee Address:	
Employee Telephone Number:	
Employee Signature:	
Witness Signature:	
Witness Printed Name:	
Date:	

AND

Employer Name:	
Employer Title:	
Employer Signature:	
Witness Signature:	
Witness Printed Name:	
Date:	

WORKPLACE AGREEMENTS - TRANSITIONAL PROVISIONS

FORM 8

VARIATION TO EMPLOYMENT TERMS AND CONDITION - SALARY MAINTENANCE

We, the undersigned, agree that the *<insert title of workplace agreement>* will not apply to the employee's employment and to cancel the statutory contract of employment of the employee to provide that only the terms and conditions of the *<insert title of industrial agreement>* and *<insert title of award>* will apply to the employee's employment, with effect from *<day, month, year>*.

The employee's existing rate of pay will be maintained at the existing rate until the rates of pay in the *<insert title of industrial agreement>* exceed the employee's maintained rate of pay.

Other than for salary maintenance, the terms and conditions *<insert title of workplace agreement>* will have no application to the employment of the employee, from the effective date of this agreement.

Employee Name:	
Employee Number:	
Employee Address:	
Employee Telephone Number:	
Employee Signature:	
Witness Signature:	
Witness Printed Name:	
Date:	

AND

Employer Name:	
Employer Title:	
Employer Signature:	
Witness Signature:	
Witness Printed Name:	
Date:	

WORKPLACE AGREEMENTS - TRANSITIONAL PROVISIONS