

This Bill is cognate with the Industrial Relations (Child Employment) Bill 2006.

Overview of Bill

The objects of this Bill are:

(a) to amend the Industrial Relations Act 1996:

(i) to enable the Industrial Relations Commission of New South Wales (the Commission) to exercise certain dispute resolution functions if it is authorised or permitted to do so under federal workplace agreements, and

(ii) to enable the Commission to exercise its functions in co-operation with the industrial relations tribunals of other States, and

(iii) to enable documents and notices that are currently published in the Industrial Gazette to be published instead on a NSW industrial relations website, and

(iv) to confirm the effect of certain provisions of the Act that deal with outworkers in clothing trades, and

(v) to make it an offence for certain persons (in addition to subcontractors) to give a false written statement to principal contractors for the purposes of section 127 of the Act, and

(b) to amend the Occupational Health and Safety Act 2000 to enable certain employees who have been dismissed because of making a complaint about, or exercising certain functions in connection with, occupational health and safety matters to apply to the Industrial Court of New South Wales for reinstatement, and

(c) to amend the Workers Compensation Act 1987 to relocate the provisions of Part 7 (Protection of injured employees) of Chapter 2 of the Industrial Relations Act 1996 in the former Act, and

(d) to make consequential amendments to the Employment Protection Act 1982 and the Industrial Relations Commission Rules 1996.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the Industrial Relations Act 1996 set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Occupational Health and Safety Act 2000 set out in Schedule 2.

Clause 5 is a formal provision that gives effect to the amendments to the Workers Compensation Act 1987 set out in Schedule 3.

Clause 6 is a formal provision that gives effect to the consequential amendments to the Employment Protection Act 1982 and the Industrial Relations Commission Rules 1996 set out in Schedule 4.

Clause 7 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced, the proposed Act will be spent and section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Industrial Relations Act 1996

Dispute resolution functions under federal workplace agreements

Section 353 of the Workplace Relations Act 1996 of the Commonwealth (the federal Act) provides that a federal workplace agreement must include procedures for settling disputes about matters arising under the agreement between the employer and the employees whose employment will be subject to the agreement. The section also provides that if the workplace agreement does not include such procedures, then the agreement is taken to include the model dispute resolution process set out in Part

13 of that Act.

Schedule 1 [8] inserts section 146B in the Industrial Relations Act 1996 to enable the Commission to exercise any dispute resolution functions conferred on it by or under a federal workplace agreement. The functions that the Commission may exercise will be limited to what it is authorised or permitted to do under the workplace agreement concerned and the federal Act.

Co-operation between State industrial tribunals

Schedule 1 [9] inserts a new Part 9A in Chapter 4 of the Industrial Relations Act 1996 to facilitate co-operation between the Commission and the industrial tribunals of other States. The new Part contains the following provisions:

(a) Proposed section 206A contains definitions for terms and expressions used in the new Part.

(b) Proposed section 206B enables a member of the Commission to exercise functions of the Commission in joint proceedings with a member of an industrial relations tribunal of another State. The provision enables evidence to be given, and submissions to be made, jointly for the purposes of the proceedings before the Commission and the industrial tribunal of another State.

(c) Proposed section 206C enables the Commission to exercise a function conferred on it by an industrial law of another State unless the regulations exclude the Commission from exercising that function.

NSW industrial relations website

Schedule 1 [10] inserts a new Part 11 in Chapter 4 of the Industrial Relations Act 1996 to enable matters to be published on a NSW industrial relations website instead of the Industrial Gazette. The new Part contains the following provisions:

(a) Proposed section 208A provides that the NSW industrial relations website is the Internet website used for the time being by the Industrial Registrar to provide public access to information relating to New South Wales industrial relations matters.

(b) Proposed section 208B provides for when a matter is published on the NSW industrial relations website. The date of publication will be whatever date is notified by the Industrial Registrar as the publication date. The provision also authorises the Industrial Registrar to publish a matter by other means if the matter cannot be published on the NSW industrial relations website for technical or other reasons.

(c) Proposed section 208C enables the Industrial Registrar to issue certificates concerning certain matters about the NSW industrial relations website and publications on the website. These certificates are admissible as evidence in legal proceedings of the matters that they certify.

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Industrial Relations Further Amendment Bill 2006

Explanatory note

Schedule 1 [2], [11], [12] and [15] make consequential amendments to the Industrial Relations Act 1996.

Outworkers in clothing trades

Part 11 of Chapter 2 of the Industrial Relations Act 1996 provides that the conditions of employment set out in the Clothing Trades (State) Award made by the Commission and published in the Industrial Gazette on 19 October 2001, as amended and in force from time to time, apply by force of section 129B of that Part as the conditions of employment for outworkers in clothing trades employed by constitutional corporations.

Schedule 1 [6] amends section 129B of the Industrial Relations Act 1996 to make it clear that the conditions of employment that are made applicable by force of that section include provisions of the award relating to:

- (a) the giving out of work, and
- (b) the making or keeping of records in connection with the giving out of work, and
- (c) the disclosure of information about the giving out of work, and
- (d) the registration of persons for the purpose of giving out work.

Schedule 1 [7] amends section 129C of the Industrial Relations Act 1996 to make it clear that section 406 (Awards and other industrial instruments provide minimum entitlements) has effect in relation to the conditions of employment made applicable in relation to constitutional corporations by Part 11 of Chapter 2 of that Act.

Schedule 1 [5] omits the definition of outworker in the clothing trades from section 129A because of the relocation of that definition to the Dictionary by Schedule 1 [15].

Schedule 1 [1] amends section 6 of the Industrial Relations Act 1996 to make it clear that an example of an industrial matter for the purposes of that Act includes the mode, terms and conditions under which work is given out, whether directly or indirectly, to be performed by outworkers in the clothing trades.

False statements given under section 127

Section 127 of the Industrial Relations Act 1996 provides that a principal contractor is liable for the payment of any remuneration of the employees of a subcontractor that has not been paid for work done in connection with a contract for work during any period of the contract unless the principal contractor has a written statement given by the subcontractor under the section for that period of the contract.

Section 127 (8) makes it an offence for a subcontractor to give a principal contractor a written statement knowing it to be false. The maximum penalty for the offence is 100 penalty units (currently, \$11,000).

Schedule 1 [4] replaces section 127 (8) with a new provision that makes it an offence for a person to give a principal contractor a written statement if:

- (a) the person is the subcontractor, or
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor, or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

The maximum penalty for the offence will continue to be 100 penalty units.

Relocation of provisions for protection of injured employees from dismissal

Schedule 1 [3] omits Part 7 of Chapter 2 of the Industrial Relations Act 1996 relating to the protection of injured employees from dismissal. The provisions are to be relocated to the Workers Compensation Act 1987 by amendments made by Schedule 3 to the proposed Act.

Savings and transitional provisions

Schedule 1 [13] amends clause 2 of Schedule 4 to the Industrial Relations Act 1996 to enable the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [14] inserts a clause 31C in Schedule 4 to the Industrial Relations Act 1996 to provide that any matter that was duly published in the Industrial Gazette before the commencement of the amendments relating to the NSW industrial relations website continue to be duly published for the purposes of the amended provisions.

Schedule 2 Amendment of Occupational Health and Safety Act 2000

Section 23 of the Occupational Health and Safety Act 2000 makes it an offence for an employer to dismiss an employee, injure an employee in his or her employment or alter an employee's position to his or her detriment because the employee:

- (a) makes a complaint about a workplace matter that the employee considers is

not safe or is a risk to health, or

(b) is a member of an OHS committee or an OHS representative, or

(c) exercises any functions conferred on the employee under Division 2 of Part 2 of that Act (which deals with certain employer consultation duties in relation to occupational health and safety).

Schedule 2 [2] inserts a new section 23A in the Occupational Health and Safety Act 2000 to enable employees who have been dismissed in contravention of section 23 of that Act to apply to the Industrial Court of New South Wales for reinstatement. Schedule 2 [1] makes a consequential amendment to section 23 of that Act.

Schedule 2 [3] amends clause 1 of Schedule 3 to the Occupational Health and Safety Act 2000 to enable the Governor to make regulations of a savings or transitional nature consequent on the amendment of that Act by the proposed Act.

Schedule 3 Amendment of Workers Compensation Act 1987

Part 7 of Chapter 2 of the Industrial Relations Act 1996 currently makes provision with respect to the protection of injured employees from dismissal. That Part, among other things, enables an employee who is dismissed because he or she is not fit for employment as a result of an injury to apply, in the first instance, to the employer to be reinstated and then, if the employer does not reinstate the employee, to the Commission for a reinstatement order.

Schedule 3 [1] amends the Workers Compensation Act 1987 so as to relocate these provisions in a new Part 8 of that Act. The relocated provisions are in substantially the same terms as the provisions of Part 7 of Chapter 2 of the Industrial Relations Act 1996.

Certain minor modifications have been made to the relocated provisions to ensure that they have the same operation despite their relocation. For instance, the term employee has been replaced with worker for consistency with the language of the Workers Compensation Act 1987. Also, proposed section 250 in the new Part incorporates into the Part by reference certain enforcement provisions in the Industrial Relations Act 1996 that are applicable to the current provisions.

The relocated provisions (in particular, proposed section 248 (2)) have also been modified to take into account the effect on industrial instruments (both State and federal) of the amendments made by the Workplace Relations Amendment (Work Choices) Act 2005 of the Commonwealth.

Schedule 3 [2] inserts a new Part in Schedule 6 to the Workers Compensation Act 1987 that contains savings and transitional provisions consequent on the enactment of the proposed Act. In particular, it provides that the new Part 8 applies to workers who are dismissed on or after its commencement while the existing provisions in the Industrial Relations Act 1996 will continue to apply to employees who were dismissed before that commencement.

Schedule 3 [3] amends clause 1 of Part 20 of Schedule 6 to the Workers Compensation Act 1987 to enable the Governor to make regulations of a savings or transitional nature consequent on the relocation of provisions by the proposed Act.

Schedule 4 Consequential amendment of other legislation

Schedule 4 makes amendments to the Employment Protection Act 1982 and the Industrial Relations Commission Rules 1996 that are consequential on the establishment of the NSW industrial relations website as the principal mechanism for the publication of information relating to industrial relations matters.