

Industrial Relations Amendment Bill 2005

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to enable the Industrial Relations Commission in Court Session to be called the Industrial Court of New South Wales,
- (b) to reverse so much of the decision of the Court of Appeal of the Supreme Court in *Solution 6 Holdings Limited and Others v Industrial Relations Commission of NSW* [2004] NSWCA 200 which held that the industrial relations privative clause (section 179) did not prevent the exercise of the Supreme Court's supervisory jurisdiction in relation to proceedings or proposed proceedings before the Industrial Relations Commission if an application is made to the Supreme Court before the Industrial Relations Commission makes a decision in the proceedings,
- (c) to restrict the operation of that privative clause so that the Supreme Court's supervisory jurisdiction is available if a purported decision of the Industrial Relations Commission in Court Session (in dealing with unfair contracts or other matters) is alleged to be outside the jurisdiction of the Commission, but only after the exercise of any right of appeal to the Full Bench of the Commission,
- (d) to clarify so much of the decision of the Court of Appeal of the Supreme Court that limited the unfair contracts jurisdiction of the Industrial Relations Commission with respect to related conditions or collateral arrangements that are not work-related, so as to make it clear that the jurisdiction extends to any related conditions or collateral arrangements (such as superannuation arrangements, share option agreements or franchise agreements) so long as the contract to which they are related or collateral is a contract whereby a person performs work in an industry and the performance of work is a significant purpose of the contractual arrangements made by the parties,
- (e) to enable the Commission, in exceptional circumstances, to extend the time in which an application relating to an alleged unfair contract may be made.

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* (**the Principal Act**) set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [1] amends section 106 of the Principal Act to give effect to the object outlined in paragraph (d) of the Overview above.

Schedule 1 [2] and [3] amend section 108B of the Principal Act to give effect to the object outlined in paragraph (e) of the Overview above.

Schedule 1 [4] inserts section 151A into the Principal Act to give effect to the object outlined in paragraph (a) of the Overview above.

Schedule 1 [5] substitutes section 179 of the Principal Act to give effect to the objects outlined in paragraphs (b) and (c) of the Overview above.

Schedule 1 [6] amends Schedule 4 to the Principal Act to enable regulations of a savings or transitional nature to be made consequent on the enactment of the proposed Act.

Schedule 1 [7] amends Schedule 4 to the Principal Act so as to apply the

amendments made by Schedule 1 [1] to existing contracts and pending proceedings. **Schedule 1 [8]** amends Schedule 4 to the Principal Act so as to apply the amendments made by Schedule 1 [5] to previous decisions of the Commission and to pending proceedings in any court or tribunal. However, the proposed Act will not affect the appeal proceedings pending in the High Court on the Solution 6 case.