



New South Wales

Industrial Relations Amendment (Unfair Contracts) Bill 1998

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Industrial Relations Act 1996* to remove the possibility of unfair dismissal claims being dealt with by the Industrial Relations Commission under provisions relating to unfair contracts.

At present, Part 6 of Chapter 2 of the Act confers on the Commission jurisdiction with respect to employees whose dismissal is harsh, unreasonable or unjust. If reinstatement or re-employment is not practical, the Commission may order the payment of compensation (limited to a maximum of 6 months' remuneration). Section 83 of the Act excludes the dismissal of certain employees from that jurisdiction (for example, certain employees whose annual remuneration exceeds \$62,200 or other prescribed amount).

The Commission has also exercised jurisdiction under Part 9 of Chapter 2 of the Act to provide compensation or other relief to dismissed employees on the basis that the contract of employment (or a collateral employment

arrangement) is an unfair contract. A contract can be declared unfair, and orders made for the payment of money, because of the terms of the contract or the subsequent conduct of the parties or for any other reason. The Commission may exercise that jurisdiction in respect of any employee, and may order the payment of any amount of compensation it considers appropriate.

The Bill will prevent the Commission exercising its jurisdiction with respect to unfair contracts in cases in which a contract of employment is alleged to be an unfair contract for any reason for which:

- (a) an application has been or could have been made by the employee under the provisions of the Act relating to unfair dismissals, or
- (b) such an application could have been made but for the provisions of section 83 of the Act that exclude the employee from making such an application.

The Bill will, for example, prevent the Commission exercising its unfair contracts jurisdiction for any of the following reasons:

- (a) the employee was not given a reasonable period of notice before dismissal,
- (b) the employee was not warned that his or her performance may result in dismissal,
- (c) the employee did not receive adequate compensation for the dismissal.

The Bill does not affect the jurisdiction of the Commission with respect to unfair dismissals under the Act or the jurisdiction of the Supreme Court under the *Contracts Review Act 1980*.

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 to be appointed by proclamation.

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

Schedule 1 [1] inserts proposed section 109A into the Principal Act to give effect to the object outlined above.

Schedule 1 [2] enables regulations of a savings and transitional nature to be made consequent on the enactment of the proposed Act.

Schedule 1 [3] provides that proposed section 109A does not affect the jurisdiction of the Industrial Relations Commission in connection with dismissals occurring before the commencement of that section.

First print



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New South Wales

Industrial Relations Amendment (Unfair Contracts) Bill 1998

No , 1998

A Bill for

An Act to amend the *Industrial Relations Act 1996* with respect to the jurisdiction of the Industrial Relations Commission relating to unfair contracts.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Industrial Relations Amendment (Unfair Contracts) Act 1998*.

2 Commencement

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This Act commences on a day to be appointed by proclamation.

3 Amendment of Industrial Relations Act 1996 No 17

The *Industrial Relations Act 1996* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 109A

Insert after section 109:

109A Exclusion of certain contracts in connection with unfair dismissals 5

- (1) This Division does not apply to a contract of employment that is alleged to be an unfair contract for any reason for which:
- (a) an application has been or could have been made by the employee under Part 6 (Unfair dismissals), or 10
 - (b) such an application could have been made but for the provisions of section 83 that exclude the employee from making an application under that Part. 15

- (2) In this section:

contract of employment means any contract or arrangement under which work is done by a person in the capacity of an employee, and includes a related condition or collateral arrangement with respect to such a contract. 20

dismissal has the same meaning that it has in Part 6.

[2] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 2 (1): 25

Industrial Relations Amendment (Unfair Contracts) Act 1998.

[3] Schedule 4

Insert after clause 19:

19A Transitional provision consequent on changes to unfair contracts jurisdiction

Section 109A (which was inserted by the *Industrial Relations Amendment (Unfair Contracts) Act 1998*) does not affect the jurisdiction of the Commission under Part 9 of Chapter 2 in connection with the dismissal of an employee before the commencement of that section.

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