

Industrial Relations Amendment (Industrial Agents) Bill 2002

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*:

(a) to prohibit certain fee agreements that provide for costs or fees, or both, to be determined as a proportion of, or to vary according to, the amount recovered in proceedings, and

(b) to regulate the activities of industrial agents (that is, persons, other than legal practitioners or employees or officers of industrial organisations, who represent a party in proceedings before the Industrial Relations Commission for fee or other reward) by:

(i) prohibiting an industrial agent from representing a party in conciliation proceedings without the leave of the Commission, and

(ii) requiring an industrial agent to disclose his or her fee structure to a client and the Commission before or at the commencement of proceedings, and

(iii) making payments to industrial agents an ineffective means of extinguishing the rights or liabilities of an applicant or employer arising from proceedings under Part 6 of Chapter 2, and

(iv) requiring an industrial agent representing an applicant or an employer in proceedings under Part 6 of Chapter 2 in which compensation is sought to certify that there are reasonable grounds for believing, on the basis of provable facts, that there is a reasonable prospect of success in the proceedings.

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 giving effect to the amendments to the *Industrial Relations Act 1996* set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 contains the amendments to the *Industrial Relations Act 1996* described in the Overview of the Bill.

Industrial agents

Schedule 1 [10] amends the Dictionary to the Act to insert definitions of **industrial agent** and **industrial agent service**. An **industrial agent** means a person (other than a legal practitioner or an employee or officer of an industrial organisation) who represents a party in proceedings before the Commission for fee or other reward.

An **industrial agent service** means any service performed by a person in the person's capacity as an industrial agent.

Schedule 1 [1] inserts sections 90A and 90B into the Act.

Proposed section 90A prevents an industrial agent from representing an applicant or employer in proceedings on a claim under Part 6 of Chapter 2 of the Act in which an order for compensation is sought unless the agent has filed a certificate with the Industrial Registrar certifying that the agent has reasonable grounds for believing, on the basis of provable facts, that the applicant's claim or employer's response to the claim has reasonable prospects of success.

Schedule 1 [3] amends section 181 of the Act to enable the Commission to make a costs order against an industrial agent who fails to file a certificate as required by proposed section 90A or who files a certificate certifying that the agent has reasonable grounds for believing, on the basis of provable facts, that the applicant's claim or employer's response to the claim has reasonable prospects of success when

the agent does not have such grounds for believing that the claim or response has reasonable prospects of success.

Proposed section 90B makes payments to industrial agents made after the commencement of the section an ineffective means of extinguishing the rights or liabilities of an applicant or employer arising from a proceeding under Part 6 of Chapter 2 of the Act.

Schedule 1 [2] amends section 166 of the Act to prohibit an industrial agent from representing a party in any conciliation proceedings without the leave of the Commission.

Disclosure of costs and costs agreements

Schedule 1 [4] inserts section 181A into the Act.

Proposed section 181A is based on the provisions of Division 2 (Disclosure of matters relating to costs) of Part 11 of the *Legal Profession Act 1987*.

Proposed section 181A requires an industrial agent who acts for a client in proceedings before the Commission to disclose to the client and the Commission in accordance with the section the basis of the costs to be charged for any industrial agent services provided by him or her in the proceedings and specifies certain matters that must be disclosed.

If an industrial agent fails to make a disclosure to a client in accordance with the section, the client need not pay the costs of the representation and the industrial agent may not maintain proceedings for the recovery of the costs.

Proposed section 181A requires a disclosure to be made at or before the commencement of the proceedings in which the industrial agent is representing the client. It must be in writing and be in clear plain language. It may be made separately or in a costs agreement or in any other contract relating to the representation of the client in the proceedings. A disclosure is not required to be made under the section when it would not be reasonable to require it.

Provision is made for the making of regulations for or with respect to the information to be disclosed under the section and when it would not be reasonable to require a disclosure to be made under that section.

Schedule 1 [5] inserts section 406A into the Act.

Proposed section 406A is based on section 188 of the *Legal Profession Act 1987*.

It prohibits a costs agreement (an agreement between a party to proceedings under the Act and an industrial agent or person other than a legal practitioner as to the costs of representing the party in the proceedings) from providing that costs are to be determined as a proportion of, or are to vary according to, the amount recovered in any proceedings to which the agreement relates.

Savings, transitional and other provisions

Schedule 1 [6] inserts a savings and transitional regulation-making power into Schedule 4 to the Act.

Schedule 1 [7], [8] and [9] amend Schedule 4 to the Act to insert the savings and transitional provisions related to the amendments described above.