

INDUSTRIAL RELATIONS AMENDMENT BILL 2023

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

The NSW Government made an election commitment to abolish the wages cap and end the recruitment and retention crisis. On 5 June 2023, the Government established an Industrial Relations Taskforce, led by Ms Anna Booth and the Hon. Roger Boland, to consult with stakeholders and provide the Government with recommendations about building a modern industrial relations framework in NSW. The Taskforce recommended modernising the NSW industrial relations system to provide for an interest-based approach to bargaining. Further, it found during consultations there was a general consensus from stakeholders about the need for improvement to the structure, powers, and functions of the Industrial Relations Commission.

Objectives: What is the policy's objective couched in terms of the public interest?

Amendments to the industrial relations framework will provide participants with a one-stop shop for workplace justice in NSW by restoring the Industrial Court and integrating it with the NSW Industrial Relations Commission.

The Mutual Gains Bargaining provisions will promote cooperation and mutual interest between Government and public sector unions to achieve outcomes which benefit the citizens of NSW accessing public services, the workers who deliver the services and the NSW Government.

Options: What alternative policies and mechanisms were considered in advance of the bill?

When formulating its 49 recommendations in its Report, the Taskforce consulted with a wide range of stakeholders and utilised its experience in the field of industrial relations and bargaining. During its consultations it was made clear by stakeholders that they did not want the federal system of industrial regulation to apply to the NSW public sector or local government. The Taskforce found that the less complex NSW Industrial Relations system should be the basis for building a modern industrial relations framework.

Analysis: What were the pros/cons and benefits/costs of each option considered?

The Industrial Relations Taskforce considered that the former Government's wages policy, implemented via section 146C of the Industrial Relations Act had a detrimental effect on public sector bargaining and failed to effectively incentivise parties to pursue workplace reforms.

The Taskforce found that a mutual gains bargaining approach would deliver the best chance of achieving both sustainable public finance outcomes and desirable terms and conditions of employment for public sector employees.

A new Fair Pay and Bargaining Policy to be implemented via a Premier's Memorandum will supplement the amendments to encourage the adoption of mutual gains bargaining by NSW public sector employers.

Amendments to section 146(2) to provide that the Industrial Relations Commission to must take into account when exercising its functions in relation to the public sector, the fiscal position and outlook of the New South Wales Government is an appropriate

safeguard against the risk of excessive wage increases being awarded by the Industrial Relations Commission.

Alternative Court models were considered by the Industrial Relations Taskforce. The feedback from stakeholders interviewed by the Taskforce during its enquiry is that they find the prospect of having to approach the Supreme Court, or even the District Court, in relation to an industrial matter, acts as a deterrent. These courts are seen as costly, legalistic, and less agile than a specialised Industrial Court.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

There are many administrative and logistical issues to be addressed before a reconstituted Industrial Relations Commission can be established and is operational. If the Bill is passed by Parliament, schedule 1.2 will not be effective immediately, to allow for a period of structured transition.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

The Industrial Relations Taskforce consulted 40 individuals and organisations that either have an interest or stake in the operation of the NSW industrial relations system, or who could offer assistance or guidance to the Taskforce.