



New South Wales

# Industrial Relations Amendment Bill 2023

## 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 amend the *Industrial Relations Act 1996* to—
  - (i) re-establish the Industrial Relations Commission in Court Session, and
  - (ii) provide for mutual gains bargaining, and
  - (iii) require the Industrial Relations Commission (the **Commission**) to take into account the New South Wales Government’s fiscal position and outlook in the exercise of the Commission’s functions about public sector employees, and
  - (iv) repeal section 146C concerning the duty of the Commission to give effect to government policies on conditions of employment of public sector employees prescribed by the regulations,
- (b) to amend certain other legislation consequent on the re-establishment of the Industrial Relations Commission in Court Session.

## 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.

## **Schedule 1      Amendment of Industrial Relations Act 1996 No 17**

**Schedule 1.1[1]** inserts proposed Chapter 2A into the *Industrial Relations Act 1996* (the *IR Act*). The proposed chapter provides for mutual gains bargaining, including in relation to the applicable principles of bargaining and requirements relating to the notification, facilitation and resolution of mutual gains bargaining between an industrial organisation and an employer. **Schedule 1.1[3]** makes a consequential amendment.

**Schedule 1.1[2]** provides that, during conciliation proceedings, the Commission may make a recommendation that the parties to a dispute undertake mutual gains bargaining under proposed Chapter 2A. Under the IR Act, section 134(2), a failure to comply with a recommendation may not be penalised but may be taken into account by the Commission in exercising the Commission's functions.

**Schedule 1.2** deals with the re-establishment of the Industrial Relations Commission in Court Session (the *Industrial Court*). The amendments—

- (a) re-establish the Industrial Court, and
- (b) abolish the office of Chief Commissioner and reinstate the offices of President, Vice-President and Deputy President as judicial members of the Commission, and
- (c) transfer certain jurisdiction from the Supreme Court, the District Court and the Commission to the Industrial Court, and
- (d) make other consequential amendments to the IR Act.

**Schedule 1.3[1]** amends the IR Act, section 3 to insert a new object of the IR Act, being to encourage strategies to attract and retain skilled staff where there are skill shortages so as to ensure effective and efficient delivery of services.

**Schedule 1.3[3]** amends the IR Act, section 146(2) to provide that the Commission must, in exercising the Commission's functions about public sector employees, take into account the fiscal position and outlook of the New South Wales Government and the likely effects of the Commission's decisions on the position and outlook.

**Schedule 1.3[4]** omits the IR Act, section 146C, which required the Commission, when making or varying an award or order, to give effect to government policies on conditions of employment of public sector employees prescribed by the regulations. **Schedule 1.3[2]** makes a consequential omission.

## **Schedule 2      Consequential amendment of other legislation**

**Schedule 2** amends certain legislation consequent on the re-establishment of the Industrial Court. The proposed schedule includes provisions that—

- (a) update references to the reinstated Industrial Court and the offices of the Court, and
- (b) enable the transfer of proceedings between the Supreme Court and Industrial Court (**Schedule 2.6[4]**), and
- (c) provide that the Industrial Court has jurisdiction to deal with, and to hear appeals from the Local Court in relation to, certain offences under the *Work Health and Safety Act 2011* (**Schedule 2.35[3] and [4]**), and
- (d) enable the Industrial Court to deal with applications by persons aggrieved by decisions about covert surveillance authorities under the *Workplace Surveillance Act 2005* (**Schedule 2.37[1]**).