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New South Wales

# Industrial Relations Amendment (Federal Award Employees) 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* (the *State Act*) to enable the Australian Industrial Relations Commission, and the Federal Court of Australia, to exercise functions relating to the unfair dismissal of certain Federal award employees.

A "Federal award employee" is defined in the *Workplace Relations Act 1996* of the Commonwealth (the *Federal Act*) as an employee any of whose terms and conditions of employment are governed by a (federal) award, certified agreement or Australian workplace agreement.

The employees affected by the Bill are those who are covered by federal awards or agreements but who are not employed by corporations (and are therefore outside the constitutional reach of the relevant provisions of the Federal Act). The Industrial Relations Commission of New South Wales has decided that these employees are not covered by the current provisions of the State Act: *Moore v Newcastle Council; Re The Civic Theatre Newcastle* (1997) 77 IR 210.

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The Bill:

- (a) inserts a section 90A that applies provisions of the Federal Act to such Federal award employees (this amounts to a conferral of power on the federal Commission and Court), and
- (b) inserts a section 90B to enable the conferral of power to be terminated by proclamation, and
- (c) contains other ancillary or consequential provisions.

The application of provisions of the Federal Act in this manner is contemplated by section 5 (8) and (9) of the Federal Act. The provisions of the Federal Act will be applied as in force for the time being (section 68 of the *Interpretation Act 1987*).

## 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** contains the amendments to the *Industrial Relations Act 1996* described above.

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New South Wales

## **Industrial Relations Amendment (Federal Award Employees) Bill 1998**

No. , 1998

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### **A Bill for**

An Act to amend the *Industrial Relations Act 1996* to enable the Australian Industrial Relations Commission and the Federal Court of Australia to exercise functions with respect to the unfair dismissal of certain Federal award employees; and for other purposes.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Industrial Relations Amendment (Federal Award Employees) Act 1998*.

**2 Commencement**

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This Act commences on a day or days 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.

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## Schedule 1 Amendments

(Section 3)

### [1] Section 83 Application of Part

Insert after section 83 (1):

- (1A) This Part applies to the termination of employment of a Federal award employee employed in the State, but only to the extent that section 90A applies to it. 5

### [2] Section 83 (5)

Insert in alphabetical order:

*Federal Act* means the *Workplace Relations Act 1996* of the Commonwealth. 10

*Federal award employee* has the same meaning as in section 170CD of the Federal Act.

### [3] Sections 90A and 90B

Insert after section 90: 15

#### 90A Federal award employees

- (1) The purpose of this section is to enact provisions relating to the termination of employment of certain Federal award employees, as contemplated by section 5 (8) and (9) of the Federal Act. 20

- (2) In this section:

*affected employee* means a person whose employment is terminated and who is, or who was before the termination, a Federal award employee employed in the State, but does not include an employee referred to in section 170CB (1) (a)–(d) of the Federal Act. 25

- (3) The provisions of Subdivision B of Division 3 of Part VIA of the Federal Act (and any other relevant provisions of the Federal Act and any relevant regulations under the Federal Act) apply as a law of the State for the purpose of enabling the Australian Industrial Relations Commission to exercise functions with respect to the termination of employment of affected employees. 5
- (4) The provisions of the Federal Act (and any relevant regulations under the Federal Act) apply as a law of the State for the purpose of enabling the Federal Court of Australia to exercise functions with respect to the termination of employment of affected employees in connection with orders of the Australian Industrial Relations Commission to the extent that those orders are made in the exercise of the provisions of the Federal Act as applied by this section. 10  
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- (5) The regulations may:
- (a) declare that specified provisions of the Federal Act or of the regulations under the Federal Act are within the operation of subsection (3) or (4) or both, or 20
- (b) exclude specified provisions of the Federal Act or of the regulations under the Federal Act from the operation of subsection (3) or (4) or both. 25

**90B Termination of operation of section 90A**

- (1) The Governor may, at any time, by proclamation, fix a day as the day on which section 90A ceases to operate.
- (2) Section 90A ceases to operate on the day fixed under this section, except as regards matters pending before the Australian Industrial Relations Commission or the Federal Court of Australia immediately before that day. 30

**[4] Schedule 4 Savings, transitional and other provisions**

Insert at the end of clause 2 (1):

*Industrial Relations Amendment (Federal Award Employees) Act 1998* 35

**[5] Schedule 4, clause 17A**

Insert after clause 17:

**17A Federal award employees**

Section 90A (which was inserted by the *Industrial Relations Amendment (Federal Award Employees) Act 1998*) does not apply to a termination of employment that occurred before the commencement of that section.

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