

First print



New South Wales

Industrial Relations Amendment (Independent Contractors) Bill 2000

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Industrial Relations Act 1996 No 17	2
Schedule 1 Amendments	3

Clerk of the Parliaments

Legislative Council

Schedule 1 originates from Schedule 1 [1], [24], [25] and [26] to the Industrial Relations Amendment Bill 2000, which was divided by the Legislative Council on 28 June 2000.



New South Wales

Industrial Relations Amendment (Independent Contractors) Bill 2000

No. , 2000

A Bill for

An Act to amend the *Industrial Relations Act 1996* with respect to independent contractors.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Industrial Relations Amendment (Independent Contractors) Act 2000</i> .	3 4
2 Commencement	5
This Act commences on a day to be appointed by proclamation.	6
3 Amendment of Industrial Relations Act 1996 No 17	7
The <i>Industrial Relations Act 1996</i> is amended as set out in Schedule 1.	8

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 5 Definition of employee	3
	Insert after section 5 (3):	4
	(3A) Declared employees	5
	The persons declared to be employees by an order of the Commission under Part 9A of Chapter 2 that is in force are taken to be employees for the purposes of this Act. The employer of such an employee is the person taken to be the employer under that Part.	6 7 8 9 10
	Explanatory note	11
	This amendment is consequential on the proposed insertion of Part 9A into Chapter 2 of the Principal Act.	12 13
[2]	Chapter 2, Part 9, Division 3 Determination of remuneration under unfair building and certain other contracts	14 15
	Omit the Division.	16
[3]	Chapter 2, Part 9	17
	Omit “Division” from Division 2 wherever occurring. Insert instead “Part”.	18
	Omit the headings to Divisions 1 and 2.	19
	Explanatory note (items [2] and [3])	20
	These amendments are consequential on the proposed insertion of Part 9A into Chapter 2 of the Principal Act. The existing provisions enable the Commission to determine rates of remuneration payable to contractors engaged in building and certain other door-to-door work if it first declares that the contract concerned is unfair. Under Part 9A, rates of remuneration will be able to be set if the Commission declares that the contractors concerned should be treated as employees.	21 22 23 24 25 26

[4] Chapter 2, Part 9A	1
Insert after Part 9 of Chapter 2:	2
Part 9A Declared employees	3
116A Definition	4
In this Part:	5
<i>contract</i> means any contract or arrangement, or any related	6
condition or collateral arrangement, but does not include a	7
Commonwealth or State industrial instrument.	8
116B Commission may declare independent contractors to be employees	9
(1) A Full Bench of the Commission may make an order declaring	11
a class of persons who perform work in an industry under	12
contracts for services (<i>independent contractors</i>) to be	13
employees for the purposes of this Act.	14
(2) The Full Bench may make the order only if it considers the	15
class of independent contractors concerned would be more	16
appropriately regarded as employees.	17
(3) In determining whether to make an order, the Full Bench may	18
take into account any or all of the following:	19
(a) the relative bargaining power of the class of	20
independent contractors concerned,	21
(b) the economic dependency of the class of independent	22
contractors concerned on their contracts for services,	23
(c) the particular circumstances and needs of the class of	24
independent contractors concerned, including low-paid	25
persons, women, persons from a non-English speaking	26
background, young persons and outworkers,	27
(d) whether the contracts for services are designed to, or do,	28
avoid the provisions of an industrial instrument,	29
(e) the consequences of not making an order for the class of	30
independent contractors concerned.	31
(4) If the Full Bench makes the order, the employer of the	32
independent contractors declared to be employees is:	33

(a)	the person specified in the order as the person who is to be treated as the employer of those independent contractors, or	1 2 3
(b)	if no such person is specified in the order—the person with whom the independent contractors contract to provide services.	4 5 6
116C	Persons not eligible to be declared to be employees	7
	The following persons are not eligible to be declared to be employees under this Part:	8 9
(a)	a person described in Schedule 1 (Persons deemed to be employees),	10 11
(b)	a bailee under a contract of bailment, or a carrier under a contract of carriage, to which Chapter 6 applies.	12 13
116D	Who may apply for order	14
(1)	An order may be made under this Part on the application of:	15
(a)	the Minister, or	16
(b)	a State peak council, or	17
(c)	an industrial organisation,	18
	and not otherwise.	19
(2)	Anyone who can apply for an order under this Part, or who will be directly affected by the making of the order, may become a party to proceedings for the making of an order.	20 21 22
116E	Assessment of costs and benefits of making order	23
(1)	An applicant for an order under this Part is required to furnish to the Full Bench of the Commission a statement of the costs and benefits of the making of the order sought. Any other party to the proceedings may also furnish such a statement.	24 25 26 27
(2)	The statement is to assess the likely costs and benefits of the proposed order for:	28 29
(a)	the class of independent contractors who are to be declared to be employees, and	30 31
(b)	the persons who will be treated as the employers of those independent contractors, and	32 33

(c)	the industry in which those independent contractors work.	1 2
	The statement is to contain details of any relevant matter that the Full Bench is authorised to consider under section 116B (3).	3 4 5
(3)	The statement is to address economic and social costs and benefits and set out any net public benefit of making the order.	6 7
(4)	The Full Bench is required to take the statement into account when deciding whether or not to make the order sought.	8 9
(5)	The regulations may make further provision for or with respect to the furnishing or content of a statement under this section.	10 11
116F	Publication and taking effect of order	12
(1)	An order under this Part takes effect on the date on which a copy of the order is published in the Industrial Gazette by the Industrial Registrar or, if the order so provides, on a later day specified in the order.	13 14 15 16
(2)	An order under this Part applies to work performed, and other acts or omissions, in connection with a contract after the order takes effect, even if the contract was made before the order takes effect. This subsection is subject to subsection (3).	17 18 19 20
(3)	An order under this Part may provide that it applies only to contracts made after the order takes effect.	21 22
	Note. See section 406 (2) which provides that any provision of a contract does not have effect if it provides an employee with a benefit that is less favourable to the employee than the benefit provided by an industrial instrument.	23 24 25 26
116G	Review and variation or revocation of orders	27
(1)	A Full Bench of the Commission may review an order in force under this Part and may confirm, vary or revoke the order.	28 29
(2)	The Full Bench may review an order on its own initiative or on the application of anyone who was or could have become a party to the making of the order. Anyone who can apply for a review may become a party to proceedings on the review.	30 31 32 33
(3)	The Full Bench is to determine whether the independent contractors declared to be employees by an order under review continue to be more appropriately regarded as employees.	34 35 36

(4) The Full Bench may, in accordance with this section, periodically review orders in force under this Part.	1 2
(5) The revocation of an order does not prevent the making of a subsequent order in respect of the same or a similar class of independent contractors.	3 4 5
116H Exemption from orders	6
(1) The Commission may, on application, exempt a person or class of persons from being declared to be an employee or employees by an order in force under this Part if it is satisfied that it is not contrary to the public interest.	7 8 9 10
(2) The Commission may, on application or on its own initiative, review any exemption, and may confirm, vary or revoke the exemption.	11 12 13
(3) An application under this section may be made by any person authorised to apply for the order or by any person who is treated as an employee or employer because of the order.	14 15 16
Explanatory note	17
At present the Principal Act defines employees in terms that exclude independent contractors who perform work under contracts for services rather than contracts of service (apart from a number of independent contractors described in Schedule 1 who are deemed to be employees). The amendment adapts a provision contained in section 275 of the <i>Industrial Relations Act 1999</i> of Queensland that enables a Full Bench of the Industrial Relations Commission to declare any class of persons who work under a contract for services to be employees for the purposes of the Principal Act.	18 19 20 21 22 23 24