



New South Wales

# Industrial Relations Amendment (Unfair Contracts) Bill 2002

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

Part 9 of Chapter 2 of the *Industrial Relations Act 1996* gives the Industrial Relations Commission in Court Session the power by order to set aside, or vary, any contract whereby a person performs work in any industry if the Commission finds that the contract is unfair (an **unfair contract order**). The Commission is also given the power to make orders for the payment of money in connection with a contract it has set aside or varied.

The object of this Bill is to amend the *Industrial Relations Act 1996*:

- (a) to prevent an application being made to set aside or vary a contract of employment by the making of an unfair contract order if the remuneration package paid or receivable under the contract during the 12 months preceding the application (or, if paid or receivable for a shorter period, that would have been paid or receivable if converted to an annual basis) exceeds \$200,000 (or a greater indexed amount), and

- (b) to prevent an application being made to set aside or vary a contract between partners in a partnership by the making of an unfair contract order, and
- (c) to require the Commission to take into account whether or not an applicant (or person on behalf of whom an application is made) took any action to mitigate loss in assessing the amount of money payable in connection with a contract that is set aside or varied by an unfair contract order, and
- (d) to require an application for an unfair contract order in relation to a contract that has been terminated to be made within a period of 12 months after termination.

## 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 the date of assent.

**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

### Limits on contracts in respect of which unfair contract orders can be made

Section 106 (1) of the Principal Act confers jurisdiction on the Industrial Relations Commission to make unfair contract orders.

**Schedule 1 [2]** inserts proposed section 108A into the Principal Act.

Proposed section 108A gives effect to the amendments described in paragraph (a) and (b) of the Overview.

Proposed section 108A prevents an application, or order, being made to set aside or vary a contract of employment if the remuneration package paid or receivable under the contract in the 12 months preceding the application (or, if paid or receivable for a shorter period, that would have been paid or receivable if converted to an annual basis) exceeds \$200,000 (or a greater indexed amount).

### Mitigation of loss

**Schedule 1 [1]** inserts proposed section 106 (6) into the Principal Act.

Proposed section 106 (6) gives effect to the amendment described in paragraph (c) of the Overview.

**Limitation period for applications with respect to terminated contracts**

**Schedule 1 [2]** also inserts proposed section 108B into the Principal Act to give effect to the amendment described in paragraph (d) of the Overview.

**Savings and transitional provisions**

**Schedule 1 [3]** amends clause 2 of Schedule 4 to the Principal Act to enable the making of savings and transitional regulations consequent on the enactment of the proposed Act.



New South Wales

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New South Wales

# Industrial Relations Amendment (Unfair Contracts) Bill 2002

No , 2002

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## A Bill for

An Act to amend the *Industrial Relations Act 1996* to make further provision with respect to unfair contracts.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1    Name of Act</b>	2
This Act is the <i>Industrial Relations Amendment (Unfair Contracts) Act 2002</i> .	3 4
<b>2    Commencement</b>	5
This Act commences on the date of assent.	6
<b>3    Amendment of Industrial Relations Act 1996 No 17</b>	7
The <i>Industrial Relations Act 1996</i> is amended as set out in Schedule 1.	8

## Schedule 1 Amendments

1

(Section 3)

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### [1] Section 106 Power of the Commission to declare contracts void or varied

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Insert after section 106 (5):

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- (6) In making an order under this section, the Commission must take into account whether or not the applicant (or person on behalf of whom the application is made) took any action to mitigate loss.

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### [2] Sections 108A and 108B

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Insert after section 108:

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#### 108A Employment contracts in respect of which applications cannot be made

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- (1) An application cannot be made for an order under this Division if the application relates to a contract of employment under which:
- (a) a remuneration package that exceeds the remuneration cap is paid or received (or is payable or receivable) during the period of 12 months immediately before the application is made, or
- (b) a remuneration package is paid or received (or is payable or receivable) during a period of less than 12 months immediately before the application is made that would, if the remuneration package had been paid or received (or been payable or receivable) for a period of 12 months, have exceeded the remuneration cap.
- (2) An application cannot be made for an order under this Division if the application relates to a contract between partners in a partnership.
- (3) An order must not be made under this Division in relation to a contract in respect of which an application cannot be made because of this section.

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- (4) In this section: 1
- contract of employment*** means any contract or arrangement 2  
under which work is done by a person in the capacity of an 3  
employee, and includes a related condition or collateral 4  
arrangement with respect to such a contract. 5
- employment benefit*** means a benefit provided to an employee 6  
at the cost of his or her employer (being a benefit of a private 7  
nature) and, without limitation, includes: 8
- (a) contributions payable to a superannuation scheme by an 9  
employer in respect of the employee, including any 10  
liability of that employer to make any such contributions 11  
or to pay costs associated with that scheme, or 12
- (b) the provision by an employer of a motor vehicle for 13  
private use by the employee, or 14
- (c) any other benefit prescribed by the regulations for the 15  
purposes of this definition. 16
- monetary remuneration*** includes any performance-related 17  
bonus or incentive payment. 18
- remuneration cap*** means: 19
- (a) \$200,000, except as provided by paragraph (b), or 20
- (b) any greater amount prescribed by the regulations (being 21  
a regulation that increases the amount by reference to 22  
increases in the amount referred to in section 83 (1) (b)). 23
- remuneration package*** means the total value of monetary 24  
remuneration and employment benefits payable or receivable 25  
under a contract of employment. 26
- 108B Time for making application** 27
- (1) An application for an order under this Division in relation to a 28  
contract that has been terminated must be made not later than 29  
12 months after the termination of the contract. 30
- (2) The Commission does not have jurisdiction to extend the time 31  
for making any such application or to accept an application 32  
made after the time prescribed by subsection (1). 33



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<b>[3] Schedule 4 Savings, transitional and other provisions</b>	1
Insert at the end of clause 2 (1):	2
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