

Passed by both Houses



New South Wales

Industrial Relations Amendment (Unfair Contracts) Bill 2002

Contents

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

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council

2002

Clerk of the Parliaments



New South Wales

Industrial Relations Amendment (Unfair Contracts) Bill 2002

Act No , 2002

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

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Industrial Relations Amendment (Unfair Contracts) Act 2002*.

2 Commencement

This Act commences on the date of assent.

3 Amendment of Industrial Relations Act 1996 No 17

The *Industrial Relations Act 1996* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

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

Insert after section 106 (5):

- (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.

[2] Sections 108A and 108B

Insert after section 108:

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

- (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, if the application concerned relates to a contract that has been terminated, immediately before the termination), 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 (or, if the application concerned relates to a contract that has been terminated, immediately before the termination) 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 by a person who is a partner carrying on a business if:

- (a) the application relates to a contract between that partner and the other persons carrying on that business in partnership, and
- (b) the share of the net profits, or payments contingent on the net profits, of the business that are paid to or received by (or payable to or receivable by) the applicant during the period of 12 months immediately before the application is made (or, if the application relates to a contract that has been terminated, immediately before the termination) exceed:
 - (i) \$200,000, or
 - (ii) if an amount is prescribed for the purposes of paragraph (b) of the definition of “remuneration cap” in subsection (3)—that amount.

- (3) In this section:

contract of employment means any contract or arrangement under which work is done by a person in the capacity of an employee, and includes a related condition or collateral arrangement with respect to such a contract.

employment benefit means a benefit provided to an employee at the cost of his or her employer (being a benefit of a private nature) and, without limitation, includes:

- (a) contributions payable to a superannuation scheme by an employer in respect of the employee, including any liability of that employer to make any such contributions or to pay costs associated with that scheme, or
- (b) the provision by an employer of a motor vehicle for private use by the employee, or
- (c) any other benefit prescribed by the regulations for the purposes of this definition.

monetary remuneration includes any performance-related bonus or incentive payment.

remuneration cap means:

- (a) \$200,000, except as provided by paragraph (b), or

- (b) any greater amount prescribed by the regulations (being a regulation that increases the amount by reference to increases in the amount referred to in section 83 (1) (b)).

remuneration package means the total value of monetary remuneration and employment benefits payable or receivable under a contract of employment.

108B Time for making application

- (1) An application for an order under this Division in relation to a contract that has been terminated must be made not later than 12 months after the termination of the contract.
- (2) The Commission does not have jurisdiction to extend the time for making any such application or to accept an application made after the time prescribed by subsection (1).

[3] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

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