

Industrial Relations Amendment Bill 2006

Explanatory note

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

The *Public Sector Employment Legislation Amendment Bill 2006* is cognate with this Bill.

Overview of Bill

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

- (a) to enable the Industrial Relations Commission (the **Commission**) to resolve certain disputes in circumstances where the parties to the dispute have agreed in writing for the Commission to do so, and
- (b) to remove the requirement that a Full Bench of the Commission (other than in Court Session) be constituted with at least one of its members being a Commissioner, and
- (c) to confirm that the power of the President of the Commission to direct the business of the Commission includes the power to make a direction in relation to particular proceedings or classes of proceedings, and
- (d) to provide that certain awards made by the Commission to give effect to an agreement of the parties to such awards are to have effect as enterprise agreements under the principal Act.

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 to the proposed Act.

Clause 3 is a formal provision that gives effect to the amendments to the principal Act set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [1] inserts section 146A in the principal Act. The new section will enable the Commission to resolve disputes where the parties to the dispute have agreed in writing (a **referral agreement**) for the Commission to do so if the dispute is:

- (a) a dispute about any conditions of employment or industrial matter between an industrial organisation of employees and one or more employers (or industrial organisations of employers), or
- (b) a dispute of the kind referred to in section 332 (2) or (3) of the principal Act or a dispute about a claim for compensation of the kind referred to in section 346 of that Act between:
 - (i) an industrial organisation of employees and one or more employers (or industrial organisations of employers), or
 - (ii) an association of contract carriers and one or more principal contractors (or associations of employing contractors), or
 - (iii) an association of contract drivers and one or more bailors (or associations of employing contractors).

The functions of the Commission in respect of any such dispute referred to the Commission by a referral agreement will be limited to the functions specified in the agreement. Also, the enforceability of any order, determination or other decision made by the Commission in exercise of such functions will be entirely dependant on whether the referral agreement itself makes it legally binding on the parties. Finally, no appeal will lie against a decision of the Commission under Part 7 of Chapter 4 of the principal Act unless the referral agreement provides that the decision may be appealed.

Schedule 1 [2] amends section 156 of the principal Act to remove the requirement

that a Full Bench of the Commission (other than in Court Session) be constituted with at least one of its members being a Commissioner. Under the amended section, a Commissioner may (but need not) be included in a Full Bench.

Schedule 1 [3] amends section 159 of the principal Act to confirm that the power of the President of the Commission to direct the business of the Commission conferred by that section includes the power to make a direction in relation to particular proceedings or classes of proceedings.

Schedule 1 [4] amends clause 2 of Schedule 4 to the principal Act to enable the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [5] inserts a new Part 8A in Schedule 4 to the principal Act, which contains provisions of a savings or transitional nature.

The new Part will also contain a provision that treats certain awards made by the Commission with the agreement of the parties as enterprise agreements.

The provision will operate by reference to the beginning of the day (the **relevant time**) that occurs immediately before the day on which Part 2 of Schedule 4 (Transitional and other provisions) to the *Workplace Relations Amendment (Work Choices) Act 2005* of the Commonwealth commences.

The provision will apply only to an award in force immediately before the relevant time that has the following features:

- (a) the award applies to a group of employees that is constituted wholly or partly by employees of any constitutional corporation and in respect of which an enterprise agreement could have been made (as referred to in section 30 of the principal Act),
- (b) the parties to the award are limited to the kinds of persons or bodies that could have been parties to an enterprise agreement (as referred to in section 31 of the principal Act) in respect of those employees,
- (c) the award binds only the parties to the award and the employees for whom the award was made,
- (d) the award was made by the Commission so as to give effect to an agreement of the parties to the award.

However, the provision will create an enterprise agreement that supersedes the award only to the extent that the award applies to employees of a constitutional corporation.

The award will continue to apply to any other kinds of employees (including employees that are employed by the Government in the service of the Crown).

For the purposes of the provision, a **constitutional corporation** is defined to mean a corporation to which paragraph 51 (xx) of the Commonwealth Constitution applies.

That paragraph of the Commonwealth Constitution applies to foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth.

Examples of awards that give effect to an agreement of the parties include awards made by consent of the parties and awards that substantially give effect to conditions of employment agreed to, or jointly proposed to the Commission, by the parties.

An enterprise agreement that results from the operation of the provision will have the same conditions of employment, bind the same parties and have the same nominal term as the award. The enterprise agreement will be able to be varied and terminated in the same way as any other enterprise agreement.

The new Part also makes provision for a party to an award to apply to the Commission for a ruling as to whether the provision described above operates to treat the party's award as an enterprise agreement.