

FIRST PRINT

**INDUSTRIAL RELATIONS (CONTRACTS OF CARRIAGE)
AMENDMENT BILL 1993**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Industrial Relations Act 1991:

- (a) to provide that a contract carrier whose contract of carriage is terminated by the principal contractor has a right to compensation for certain losses (such as loss of goodwill) arising from the termination; and
- (b) to provide for the arbitration of disputes arising out of claims for any such compensation; and
- (c) to enact transitional provisions; and
- (d) to make other provision of a minor, consequential or ancillary nature.

Clause 1 specifies 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 that gives effect to the Schedule of amendments.

SCHEDULE 1—AMENDMENTS

The Bill inserts a new Part 5A into Chapter 6 (proposed sections 697A-697I) of the Principal Act.

Proposed section 697A confers a right to compensation on a contract carrier whose contract of carriage is terminated by the principal contractor.

Proposed section 697B sets out the circumstances in which compensation is payable under the proposed Part.

Proposed section 697C enables any dispute arising out of a claim for compensation to be referred to arbitration.

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Proposed section 697D sets out the constitution of the arbitration panel that is to deal with any such dispute. The panel is to consist of a nominee of the principal contractor, a nominee of the contract carrier, and a barrister (who is to be the presiding member of the panel) nominated by the other two members or, if they cannot agree, by the Bar Association.

Proposed section 697E sets out the matters that the arbitration panel must take into consideration in determining whether compensation is payable and (if so) the amount of compensation payable.

Proposed section 697F provides for the calculation of the amount of compensation payable in the event that the members of the panel cannot agree on a single amount.

Proposed section 697G provides that the fees and expenses of the arbitration panel are to be borne by the principal contractor.

Proposed section 697H prohibits contracting out from the provisions of the proposed Part.

Proposed section 697I provides that the provisions of the proposed Part apply despite any other provision of the Principal Act.

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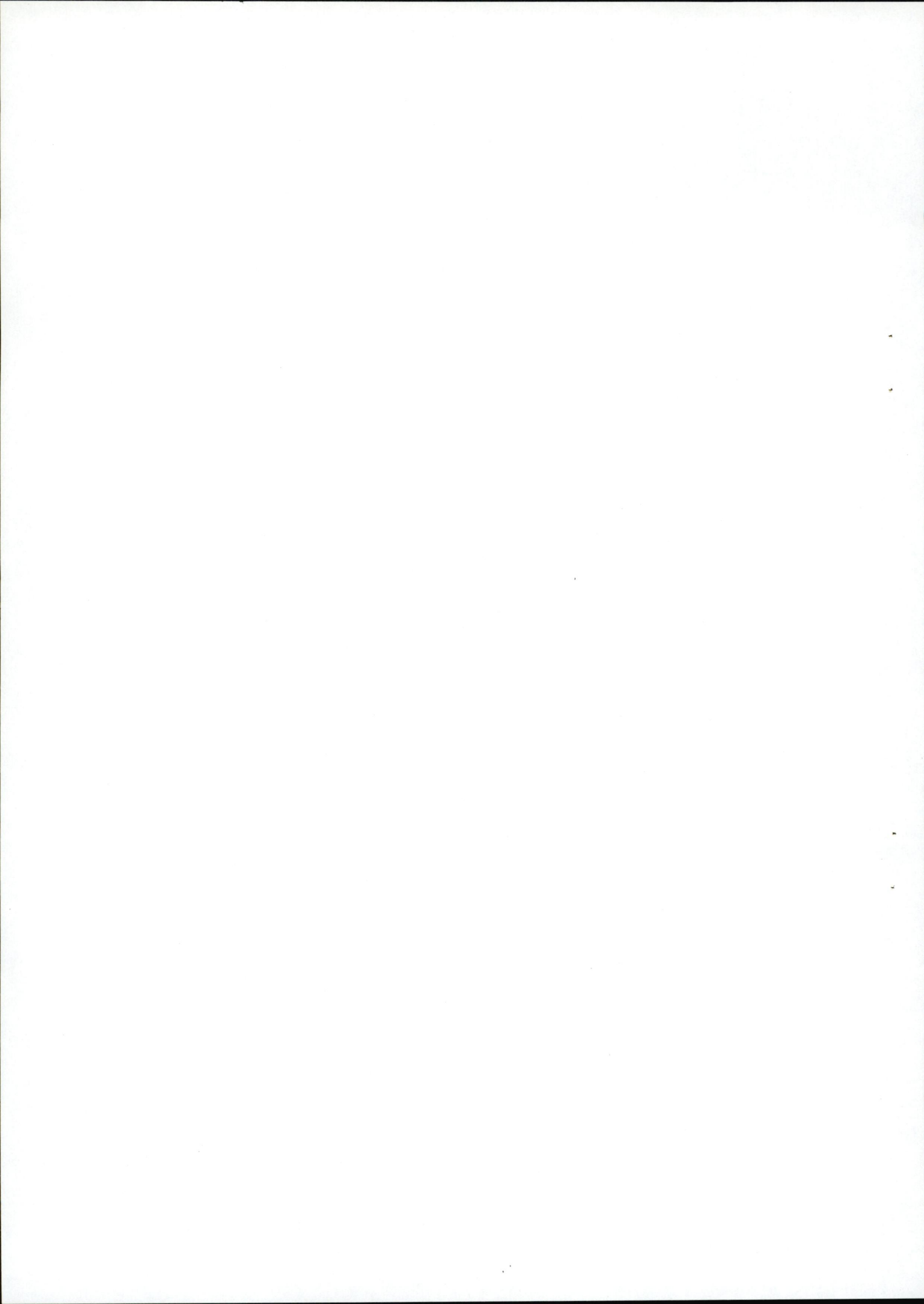
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TABLE OF PROVISIONS

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2. Commencement
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SCHEDULE 1—AMENDMENTS



**INDUSTRIAL RELATIONS (CONTRACTS OF CARRIAGE)
AMENDMENT BILL 1993**

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No. , 1993

A BILL FOR

An Act to amend the Industrial Relations Act 1991 to make provision for the payment of compensation in respect of the termination of certain contracts of carriage; and for other purposes.

Industrial Relations (Contracts of Carriage) Amendment 1993

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Industrial Relations (Contracts of Carriage) Amendment Act 1993.

5 Commencement

2. This Act commences on the date of assent.

Amendment of Industrial Relations Act 1991 No. 34

3. The Industrial Relations Act 1991 is amended as set out in Schedule 1.

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SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 660 (**Definitions**):

Insert in alphabetical order:

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“**contract carrier**” means a person who is engaged in the transportation of any load, other than passengers, under a contract of carriage;

(2) Chapter 6, Part 5A (sections 697A–697I):

After section 697, insert:

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**PART 5A —COMPENSATION FOR TERMINATION
OF CERTAIN CONTRACTS OF CARRIAGE**

Right to compensation

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697A. (1) A contract carrier whose contract of carriage is terminated by the principal contractor has a right to be paid compensation by the principal contractor in accordance with this Part.

(2) For the purposes of this Part, a contract carrier is taken to have entered into a contract of carriage with a principal contractor if the contract carrier has become a contract carrier under a contract of carriage as a result of:

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(a) the carrier’s rights having been assigned to the carrier by a previous contract carrier under the contract; or

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SCHEDULE 1—AMENDMENTS—*continued*

(b) the principal contractor's rights in the contract having been assigned to the principal contractor by a previous principal contractor under the contract,
in addition to any other way in which such a contract may be assigned or entered into. 5

Circumstances in which compensation is payable

697B. Compensation is payable under this Part if:

- (a) the contract carrier has paid for the goodwill associated with the contract of carriage ("**the goodwill**") or for an entitlement to work for the principal contractor under such a contract ("**the entitlement**"); and 10
- (b) either it is a general practice in the industry concerned for such payments to be made or the principal contractor knew or ought reasonably to have known that the contract carrier had in fact made such a payment. 15

Arbitration of claim

697C. (1) Any dispute concerning a contract carrier's right to compensation under this Part may be referred to arbitration under the Commercial Arbitration Act 1984, by either party to the contract of carriage, within 2 years after the contract is terminated. 20

(2) Such a dispute may not be referred to arbitration unless a claim for compensation has been lodged with the principal contractor setting out the loss suffered, or likely to be suffered, by the contract carrier as a result of the termination of the contract of carriage. 25

(3) Section 24 (**Specific performance**) of the Commercial Arbitration Act 1984 does not apply to the arbitration. 30

Constitution of arbitration panel

697D. (1) The arbitration panel is to consist of 3 members, of whom:

- (a) 1 is to be a person nominated by the registered association of employing contractors for the class of contract of carriage concerned or, if there is no such association, by the principal contractor; and 35

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SCHEDULE 1—AMENDMENTS—*continued*

5 (b) 1 is to be a person nominated by the registered association of contract carriers for the class of contract of carriage concerned or, if there is no such association, by the contract carrier; and

(c) 1 is to be a barrister nominated by the members referred to in paragraphs (a) and (b) or, if those members fail to agree on a nomination, by the Bar Association of New South Wales.

10 (2) The member referred to in subsection (1) (c) is to be the presiding member.

Matters to be taken into account by arbitration panel in deciding claim

15 697E. In determining whether compensation is payable and the amount of compensation (if any) to be paid, the arbitration panel is to have regard to the following matters:

(a) the amount paid by the contract carrier for the goodwill or entitlement associated with the contract of carriage;

20 (b) the loss suffered or likely to be suffered by the contract carrier as a consequence of the termination of the contract;

(c) any previous decision of a court or tribunal in respect of that loss;

25 (d) any amount that has been paid to the contract carrier, or to which the contract carrier is otherwise entitled, as compensation for that loss;

(e) the type of contract the claimant had with the principal contractor and the duration of the contract;

30 (f) the relationship between the contract carrier and the principal contractor;

(g) the likelihood of the contract carrier being able to use the motor lorry required by the contract of carriage for other types of work, and the availability of any such work;

35 (h) the resale value of the motor lorry;

(i) any other matters the panel considers relevant.

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SCHEDULE 1—AMENDMENTS—*continued*

Determination of amount of compensation if no agreement by arbitration panel

697F. If the arbitration panel determines that compensation is to be paid to a contract carrier but the members of the panel are unable to agree on the amount of compensation to be paid, the amount of compensation to be paid is to be calculated by ignoring the lowest determination and halving the sum of the other determinations. 5

Fees and expenses of arbitration panel 10

697G. Despite section 34 of the Commercial Arbitration Act 1984, the fees and expenses of the arbitration panel in respect of an arbitration under this Part are to be met by the principal contractor concerned in the arbitration.

Contracting out prohibited 15

697H. (1) The provisions of this Part have effect despite any stipulation to the contrary.

(2) No contract or agreement made or entered into before or after the commencement of this Part operates to annul, vary or exclude any of the provisions of this Part. 20

Application of Part

697I. This Part applies despite any other provision of this Act.

(3) Schedule 2 (**Savings, transitional and other provisions**):

(a) Omit clause 2 (1) and (2), insert: 25

(1) The regulations may make provision of a savings or transitional nature consequent on the enactment of the following Acts:

this Act;

the Industrial Relations (Contracts of Carriage) Amendment Act 1993. 30

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to the Act concerned or a later date.

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SCHEDULE 1—AMENDMENTS—*continued*

(b) After Part 3, insert:

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**PART 4—PROVISIONS CONSEQUENT ON THE
ENACTMENT OF THE INDUSTRIAL RELATIONS
(CONTRACTS OF CARRIAGE) AMENDMENT ACT
1993**

Transitional provision

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19. The amendments to this Act made by the Industrial Relations (Contracts of Carriage) Amendment Act 1993 apply to the termination of a contract of carriage that occurred no earlier than 5 years before the date on which that Act commenced as if the termination had occurred on that date.
