

FIRST PRINT

**INDUSTRIAL RELATIONS (PROTECTION FOR EMPLOYEES
OF SUBCONTRACTORS) 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 ("the Principal Act") so as:

- (a) to make the directors and persons concerned in the management of a corporation personally liable for amounts outstanding under orders under section 151 of that Act (orders for the recovery of wages under awards and enterprise agreements) that are not complied with during the time allowed for compliance; and
 - (b) to make the directors and persons concerned in the management of a corporation personally liable for unpaid wages under awards, enterprise agreements and contracts of employment where the corporation is wound up before an order can be made under section 151 or 153 for the recovery of those wages; and
 - (c) to prevent a person who employs a contractor from avoiding liability towards the contractor's employees by relying on written statements (made by the contractor for the purposes of section 154 of that Act) that the person knows, or ought reasonably to suspect, to be false or misleading; and
 - (d) to increase the penalty for making false or misleading statements in a written statement furnished under section 154 of that Act; and
 - (e) to make the directors and persons concerned in the management of a corporation personally liable for any offence committed by the corporation that arises out of the furnishing of false or misleading written statements under section 154 of that Act.
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Industrial Relations (Protection for Employees of Subcontractors) Amendment 1993

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 to the Industrial Relations Act 1991.

SCHEDULE 1—AMENDMENTS

Schedule 1 (1) amends section 151 of the Principal Act so as to make the directors and persons concerned in the management of a corporation personally liable for amounts outstanding under orders under section 151 of that Act (orders for the recovery of wages under awards and enterprise agreements) that are not complied with during the time allowed for compliance.

Schedule 1 (2) inserts a new section 153A into the Principal Act. The new section makes the directors and persons concerned in the management of a corporation personally liable for unpaid wages under awards, enterprise agreements and contracts of employment where the corporation is wound up before an order can be made under section 151 or 153 for the recovery of those wages.

Schedule 1 (3) amends section 154 of the Principal Act so as:

- (a) to prevent a person who employs a contractor from avoiding the person's liability under that Act with respect to the wages owed to the contractor's employees by relying on written statements (made by the contractor for the purposes of section 154 of that Act) that the person knows, or ought reasonably to suspect, to be false or misleading; and
- (b) to increase, from 20 penalty units to 1,000 penalty units (in the case of a corporation) and 100 penalty units (in any other case), the penalty for making false or misleading statements in a written statement furnished under section 154 of that Act.

Schedule 1 (4) inserts a new section 154A into the Principal Act. The new section makes the directors and persons concerned in the management of a corporation personally liable for any offence committed by the corporation (in its capacity as a contractor) that arises out of the furnishing of false or misleading written statements under section 154 of that Act.

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TABLE OF PROVISIONS

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SCHEDULE 1—AMENDMENTS

**INDUSTRIAL RELATIONS (PROTECTION FOR EMPLOYEES
OF SUBCONTRACTORS) AMENDMENT BILL 1993**

NEW SOUTH WALES



No. , 1993

A BILL FOR

An Act to amend the Industrial Relations Act 1991 for the protection of employees of subcontractors; and for other purposes.

*Industrial Relations (Protection for Employees of Subcontractors) Amendment 1993***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Industrial Relations (Protection for Employees of Subcontractors) Amendment Bill 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 151 (Recovery of wages due under awards, agreements or permits):

After section 151 (6), insert:

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(7) An order against an employer that is a corporation may provide that any person who:

(a) is a director of the corporation; or

(b) is a person concerned in the management of the corporation,

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is personally liable for any amount outstanding under the order in the event that the corporation does not comply with the order within the time allowed by the order.

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(8) If an order that makes provision as referred to in subsection (7) is made against 2 or more persons, each of those persons is jointly and severally liable under the order.

(2) Section 153A:

After section 153, insert:

Liability of directors etc. where company wound up

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153A. (1) If an employer that is a corporation is wound up prior to an order being made under section 151 or 153 with

SCHEDULE 1—AMENDMENTS—*continued*

respect to a liability referred to in that section, a Local Court or the Industrial Court may make against any person who, when the liability arose:

- (a) was a director of the corporation; or 5
- (b) was a person concerned in the management of the corporation,

any order that could have been made against the corporation under those sections had the corporation not been wound up.

(2) An application for an order under this section may be made: 10

- (a) by any person for whose benefit an order could have been made under section 151 or 153 had the corporation not been wound up; and
- (b) whether or not the person has applied for an order against the corporation under section 151 or 153. 15

(3) Section 154 (**Wages payable to employees of contractors**):

- (a) In section 154 (1), after “written statement”, insert “in the prescribed form and”.
- (b) In section 154 (2), after “makes or signs”, insert “, or knowingly receives and acts upon,”. 20
- (c) From section 154 (2), omit “Maximum penalty: 20 penalty units.”, insert instead “Maximum penalty: 1,000 penalty units (in the case of a corporation) and 100 penalty units (in any other case).” 25
- (d) After section 154 (3), insert:

(4) A written statement referred to in subsection (1) is of no effect if the person by whom it is received as so referred to is aware, or ought reasonably to suspect, that the information contained in the statement is false or misleading in a material particular. 30

(5) In this section, “wages” includes all wages and entitlements recoverable under this Part, all entitlements under any award and all interest or other money that has, in accordance with this or any other Act or law, accrued in relation to those wages and entitlements. 35

SCHEDULE 1—AMENDMENTS—*continued*

(4) Section 154A:

Personal liability of directors etc. for false or misleading statements

5 154A. (1) If a corporation contravenes section 154 (2),
each person who:

(a) is a director of the corporation; or

(b) is concerned in the management of the corporation,
10 is to be treated as having contravened that subsection if the
person knowingly authorised or permitted the contravention.

(2) A person may, under this section, be proceeded against
and convicted for a contravention of section 154 (2) whether
or not the corporation has been proceeded against or
convicted for a contravention of that subsection.

15 (3) Nothing in this section affects any liability imposed on
a corporation for an offence committed by the corporation
against section 154 (2).
