

FIRST PRINT

**INDUSTRIAL RELATIONS (PUBLIC VEHICLES AND
CARRIERS) 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 so as:

- (a) to extend the category of motor vehicles that may be covered by contracts of carriage under Chapter 6 (Public Vehicles and Carriers) of that Act from motor lorries to motor vehicles generally, including motor cars and motor cycles, thereby applying registered agreements and contract determinations of the Industrial Relations Commission to the conditions of engagement of the drivers of those vehicles; and
- (b) to exclude from the operation of registered agreements and contract determinations contracts of carriage that relate to the delivery of meals by couriers to homes or other premises for consumption; and
- (c) to extend the provisions of that Act relating to voluntary unionism:
 - (i) to preclude the insertion in new registered agreements and contract determinations under Chapter 6, and the enforcement in existing registered agreements and contract determinations, of terms conferring preference of engagement under contracts of bailment or carriage for members of associations of contract drivers and contract carriers; and
 - (ii) to make it an offence for a person to be victimised by a bailor of public vehicles, principal contractor or registered association of employing contractors, contract drivers or contract carriers for a variety of reasons including that the person is or is not a member of an association of contract drivers or contract carriers.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a proclaimed day or days.

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Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Industrial Relations Act 1991.

Schedule 1 (1) inserts a definition of "motor vehicle" for the purposes of Chapter 6 and the amendment made by Schedule 1 (2) (a). "Motor vehicle" is defined as having the same meaning as in the Traffic Act 1909. (The definition of "motor vehicle" in that Act includes motor cars, motor cycles and other vehicles propelled by volatile spirit, steam, gas, oil or electricity, and trailers.)

Schedule 1 (2) (a) and (c) deals with extension of the category of motor vehicles that may be covered by contracts of carriage under Chapter 6. References to "motor lorry" are replaced with references to "motor vehicle" in the provision defining a contract of carriage. However, a transitional provision stipulates that, despite this amendment, registered agreements and contract determinations made before the commencement of the transitional provision will continue to apply only to motor lorries until they are varied to apply to other motor vehicles.

Schedule 1 (2) (b) provides that the definition of "contract of carriage" is not to include a contract with respect to the delivery of meals by couriers thereby excluding such contracts from the operation of registered agreements and contract determinations under Chapter 6.

Schedule 1 (3) provides that a registered agreement or contract determination under Chapter 6 cannot confer preference of engagement under contracts of bailment or carriage for members of associations of contract drivers or contract carriers.

This item also creates an offence for a bailor of public vehicles, principal contractor or registered association of employing contractors, contract drivers or contract carriers to victimise a person on a number of grounds. These include that the person is or is not a member of an association of contract drivers or contract carriers, has refused to engage in industrial action, has claimed the benefit of a registered agreement or contract determination to which the person is entitled or has informed any person that a breach of a registered agreement or contract determination has been committed by a bailor of public vehicles or principal contractor.

Victimisation is defined to include, in the case of a bailor of public vehicles or principal contractor, terminating or threatening to terminate a person's engagement under a contract of bailment or carriage, injuring a person in his or her engagement or refusing to engage a person. In the case of an association, victimisation includes inciting a bailor of public vehicles or principal contractor to victimise a person or taking industrial action against a bailor of public vehicles or principal contractor with the intent to coerce the bailor or principal contractor to victimise the person.

The maximum penalty for the offence is 100 penalty units (currently, \$10,000). Proceedings for the offence can only be brought in the Industrial Court and may be taken by the secretary of an association of contract drivers or contract carriers or an elected representative of bailees of public vehicles or carriers or by any person who has the Minister's consent.

A person who has been subjected to victimisation (whether or not proceedings for an offence have been brought) may apply to the Industrial Court for relief. The Industrial Court may, among other things, declare a contract of bailment or carriage void, vary a contract of bailment or carriage or direct a bailor of public vehicles, principal contractor or association to pay any amount lost by the person as the result of the victimisation or to pay damages to the person. The Industrial Court may also award costs.

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The provisions dealing with victimisation do not apply to conduct occurring before their commencement.

The proposed provisions dealing with preference and victimisation are in similar terms to sections 480–482 of the Principal Act that deal with preference for unionists and victimisation in employment.

Schedule 1 (4) makes an amendment that is consequential on the amendment made by Schedule 1 (1).

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TABLE OF PROVISIONS

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SCHEDULE 1—AMENDMENTS

**INDUSTRIAL RELATIONS (PUBLIC VEHICLES AND
CARRIERS) AMENDMENT BILL 1993**

NEW SOUTH WALES



No. , 1993

A BILL FOR

An Act to amend the Industrial Relations Act 1991 to make further provision with respect to public vehicles and carriers; and for other purposes.

Industrial Relations (Public Vehicles and Carriers) Amendment 1993

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Industrial Relations (Public Vehicles and Carriers) Amendment Act 1993.

5 Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Industrial Relations Act 1991 No. 34

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

SCHEDULE 1—AMENDMENTS

(Sec. 3)

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

Insert in alphabetical order:

15 **“motor vehicle”** has the same meaning as in the Traffic Act 1909;

(2) Section 663 (**Contract of carriage—meaning**):

(a) Omit “motor lorry” wherever occurring, insert instead “motor vehicle”.

20 (b) At the end of section 663 (2) (h), insert:

 ; or

 (i) for the delivery of meals by couriers to homes or other premises for consumption.

(c) After section 663 (4), insert:

25 (5) Registered agreements and contract determinations made before the commencement of this subsection (as inserted by the Industrial Relations (Public Vehicles and Carriers) Amendment Act 1993) apply, until such time as they are varied, only to motor lorries.

Industrial Relations (Public Vehicles and Carriers) Amendment 1993SCHEDULE 1—AMENDMENTS—*continued*

(3) Part 2A:

After Part 2, insert:

**PART 2A—VOLUNTARY MEMBERSHIP OF
ASSOCIATIONS OF CONTRACT DRIVERS AND
CONTRACT CARRIERS**

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Definitions

674A. In this Part:

“**association**” means an association registered under Part 2;

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“**engagement**” means the engagement of a bailee by a bailor under a contract of bailment or the engagement of a carrier by a principal contractor under a contract of carriage;

“**industrial action**” has the same meaning as in the definition of that term in section 4 (1), except that a reference in that definition:

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(a) to an agreement is to be read as a reference to a registered agreement; and

(b) to employment is to be read as a reference to engagement; and

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(c) to an employer is to be read as a reference to a bailor of public vehicles or principal contractor; and

(d) to employees is to be read as a reference to bailees of public vehicles or carriers.

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No preference for association members in registered agreements or contract determinations

674B. (1) A registered agreement or contract determination cannot confer a right of preference of engagement in favour of a member of an association of contract drivers or contract carriers over a person who is not a member of such an association.

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(2) This section applies to registered agreements or contract determinations whether made before or after the commencement of this section and so applies despite any provision made before the commencement of this section in a registered agreement or contract determination.

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Industrial Relations (Public Vehicles and Carriers) Amendment 1993

SCHEDULE 1—AMENDMENTS—*continued*

(3) Nothing in this section limits or in any way affects any law relating to preference of engagement to persons who have served as members of the Naval, Military or Air Forces of the Commonwealth.

Victimisation: offence

674C. (1) A bailor of public vehicles, a principal contractor or an association must not victimise a person because:

- (a) the person does not belong to an association of contract drivers or contract carriers; or
- (b) the person has refused to engage in industrial action; or
- (c) the person is a member of an association of contract drivers or contract carriers or is an officer or delegate of an association of contract drivers or contract carriers or is otherwise an elected representative of bailees of public vehicles or carriers; or
- (d) the person is a member of a Contract Regulation Committee; or
- (e) the person claims the benefit of a registered agreement or contract determination to which the person is entitled; or
- (f) the person has informed any person that a breach or a suspected breach of a registered agreement or contract determination has been committed by the bailor or principal contractor; or
- (g) the person has appeared as a witness, or has given evidence, in any matter in which the Commission has jurisdiction to make a contract determination under Part 4 or in any industrial matter; or
- (h) the person has engaged in, or contemplates engaging in, any public or political activity (not being an activity that interferes with the performance by the person of the contract of bailment or carriage to which the person is a party); or
- (i) the person has engaged in, or contemplates engaging in, the performance of duties as a member of an association of contract drivers or contract carriers in

Industrial Relations (Public Vehicles and Carriers) Amendment 1993SCHEDULE 1—AMENDMENTS—*continued*

- respect of a matter affecting the industry in which the person is engaged or in other duties as a member of a Contract Regulation Committee (not being duties that interfere with the performance by the person of the contract of bailment or carriage to which the person is a party). 5
- Maximum penalty: 100 penalty units.
- (2) A bailor of public vehicles or principal contractor victimises a person if the bailor or principal contractor: 10
- (a) terminates or threatens to terminate the engagement of the person by the bailor or principal contractor; or
 - (b) alters or threatens to alter the circumstances of the person's engagement by the bailor or principal contractor to the person's prejudice; or 15
 - (c) otherwise injures or threatens to injure the person in his or her engagement by the bailor or principal contractor; or
 - (d) refuses to engage the person.
- (3) An association victimises a person if the association: 20
- (a) advises, encourages or incites a bailor of public vehicles or principal contractor to victimise the person; or
 - (b) takes, or threatens to take, industrial action or any other action against a bailor of public vehicles or principal contractor with the intent to coerce the bailor or principal contractor to victimise the person; or 25
 - (c) takes, or threatens to take, action having the effect, directly or indirectly, of injuring the person in his or her engagement. 30
- (4) For the purposes of this section, anything done:
- (a) by the committee of management of an association; or
 - (b) by an officer, employee or agent of an association acting in that capacity; or
 - (c) by a member or a group of members of an association acting under the rules of the association; or 35

Industrial Relations (Public Vehicles and Carriers) Amendment 1993

SCHEDULE 1—AMENDMENTS—*continued*

5 (d) by a member of an association, who performs the function of dealing with a bailor of public vehicles or principal contractor on behalf of the member and other members of the association of contract drivers or contract carriers, acting in that capacity,

is taken to have been done by the association concerned.

10 (5) In any proceedings for an offence under this section or for an order under section 674D in which it is necessary to prove that this section has been contravened, the defendant has the onus of proving that the defendant was not motivated by the reason alleged if all matters necessary to prove the contravention alleged (other than the reason for the defendant's action) are proved.

15 (6) Proceedings for an offence under this section must be taken before the Industrial Court and may be taken only:

- 20 (a) if the person alleged to have been victimised is a bailee of a public vehicle—by the secretary of any association of contract drivers; or
- (b) if the person alleged to have been victimised is a carrier—by the secretary of any association of contract carriers; or
- 25 (c) if the person is alleged to have been victimised because the person was an elected representative of bailees of public vehicles or carriers—by the elected representative,

or, in any case, by a person authorised by the Minister.

30 (7) If the Industrial Court convicts a person of an offence under this section, the Industrial Court may also make any order that it could have made if the person who was victimised had applied for an order under section 674D.

Victimisation: damages and other remedies

35 674D. (1) For the purposes of this section, a person is victimised if the person is the subject of a contravention of section 674C by a bailor of public vehicles, principal contractor or association, whether or not proceedings have been brought for an offence under that section in respect of the contravention.

Industrial Relations (Public Vehicles and Carriers) Amendment 1993

SCHEDULE 1—AMENDMENTS—*continued*

(2) A person who alleges that he or she has been victimised may apply to the Industrial Court for an order under this section.

(3) If the Industrial Court decides, on the balance of probabilities, that a person who makes such an application has been victimised, the Industrial Court may make an order in terms of such one or more of the following as the Industrial Court considers appropriate with respect to the kind of victimisation concerned: 5
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(a) declaring void, in whole or in part, a contract of bailment or carriage;

(b) varying, in whole or in part, any provision of a contract of bailment or carriage;

(c) directing the bailor or principal contractor concerned not to alter the circumstances of the person's engagement or to otherwise injure the person in his or her engagement or to cease making such threats, or both; 15

(d) directing payment to the person, within a specified time, by the bailor, principal contractor or association concerned, of an amount that does not exceed the amount that the person would otherwise have received under the contract of bailment or carriage; 20

(e) directing payment to the person, within a specified time, by the bailor, principal contractor or association concerned, of other damages in such sum as appears to the Industrial Court to be appropriate to compensate the person for other loss suffered by the person. 25

(4) In any proceedings under this section, the Industrial Court may make such order for the payment of costs as appears to it to be just and may assess the amount of the costs. 30

Part not to apply to conduct occurring before its commencement 35

674E. This Part (except section 674B) does not apply to conduct that occurred before the commencement of this Part.

Industrial Relations (Public Vehicles and Carriers) Amendment 1993

SCHEDULE 1—AMENDMENTS—*continued*

(4) Section 700 (**Evasion of Chapter**):

From section 700 (1), omit “motor lorry”, insert instead
“motor vehicle”.
