

FIRST PRINT

**INDUSTRIAL RELATIONS (SICK LEAVE) AMENDMENT  
BILL 1992**

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 to prohibit awards of the Industrial Relations Commission, enterprise agreements, former industrial agreements and related public sector agreements from authorising the cashing-in of accumulated sick leave on the termination of employment or at any other time. Under some existing awards and agreements covering certain local government and other areas of employment, provision is made for an employee to be paid on termination or periodically the salary equivalent of sick leave accumulated but untaken (or some specified portion of that accumulated leave).

The Bill preserves the entitlements of existing employees under the provisions of such awards and agreements. In future, existing employees will not be entitled under those provisions to accumulate additional sick leave for cashing-in purposes. The existing accumulated sick leave available for cashing-in purposes on termination is to be reduced by the number of days that the existing employee is absent in future on sick leave. Furthermore, existing employees will not be entitled in future to cash-in accumulated sick leave before termination of employment.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a date to be appointed by proclamation.

Clause 3 amends the Industrial Relations Act 1991 to give effect to the object mentioned above.

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FIRST PRINT

**INDUSTRIAL RELATIONS (SICK LEAVE) AMENDMENT  
BILL 1992**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
  2. Commencement
  3. Amendment of Industrial Relations Act 1991 No. 34
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**INDUSTRIAL RELATIONS (SICK LEAVE) AMENDMENT  
BILL 1992**

NEW SOUTH WALES



No.           , 1992

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**A BILL FOR**

An Act to amend the Industrial Relations Act 1991 with respect to the  
cashing-in of accumulated sick leave.

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*Industrial Relations (Sick Leave) Amendment 1992*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Industrial Relations (Sick Leave) Amendment Act 1992.

**5 Commencement**

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

**Amendment of Industrial Relations Act 1991 No. 34**

3. The Industrial Relations Act 1991 is amended by inserting after section 99 the following section:

**10 Prohibition on cashing-in of accumulated sick leave**

99A. (1) An award or agreement must not allow or require an employee to cash-in the employee's accumulated sick leave.

15 (2) Accumulated sick leave is cashed-in if the leave is not taken and a payment is made by the employer to or on behalf of the employee of the amount of salary for the period of accumulated leave or of any other amount calculated by reference to that period.

20 (3) This section applies whenever the accumulated sick leave is to be cashed-in, including on termination of employment (whether by resignation, retirement, death or otherwise) or during the period of employment.

(4) A provision of an award or agreement, whether made, filed or registered before or after the commencement of this section, does not have any effect to the extent that the provision contravenes this section.

25 (5) However, this section does not affect the cashing-in of accumulated sick leave under an existing provision on termination of employment, but the maximum number of days (or other periods) of that leave that may be cashed-in is to be calculated as follows:

30 Step 1: Calculate the number of days (or other periods) of accumulated sick leave, as at the commencement of this section, that the employee could have cashed-in if his or her employment had been terminated immediately before that commencement.

35 Step 2: Deduct from the number of days (or other periods) calculated under step 1, the number of days (or other similar periods) of sick leave actually taken by the employee since the commencement of this section.



*Industrial Relations (Sick Leave) Amendment 1992*

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The resulting balance (if any) is the maximum number of days (or other periods) of accumulated sick leave that may be cashed-in.

(6) An existing provision may be duly repealed or varied, but not so as to increase the number of days (or other periods) of accumulated sick leave that may be cashed-in. 5

(7) This section does not affect any payment made or due to an employee before the commencement of this section.

(8) In this section:

**“award or agreement”** means award, enterprise agreement or former industrial agreement, and includes: 10

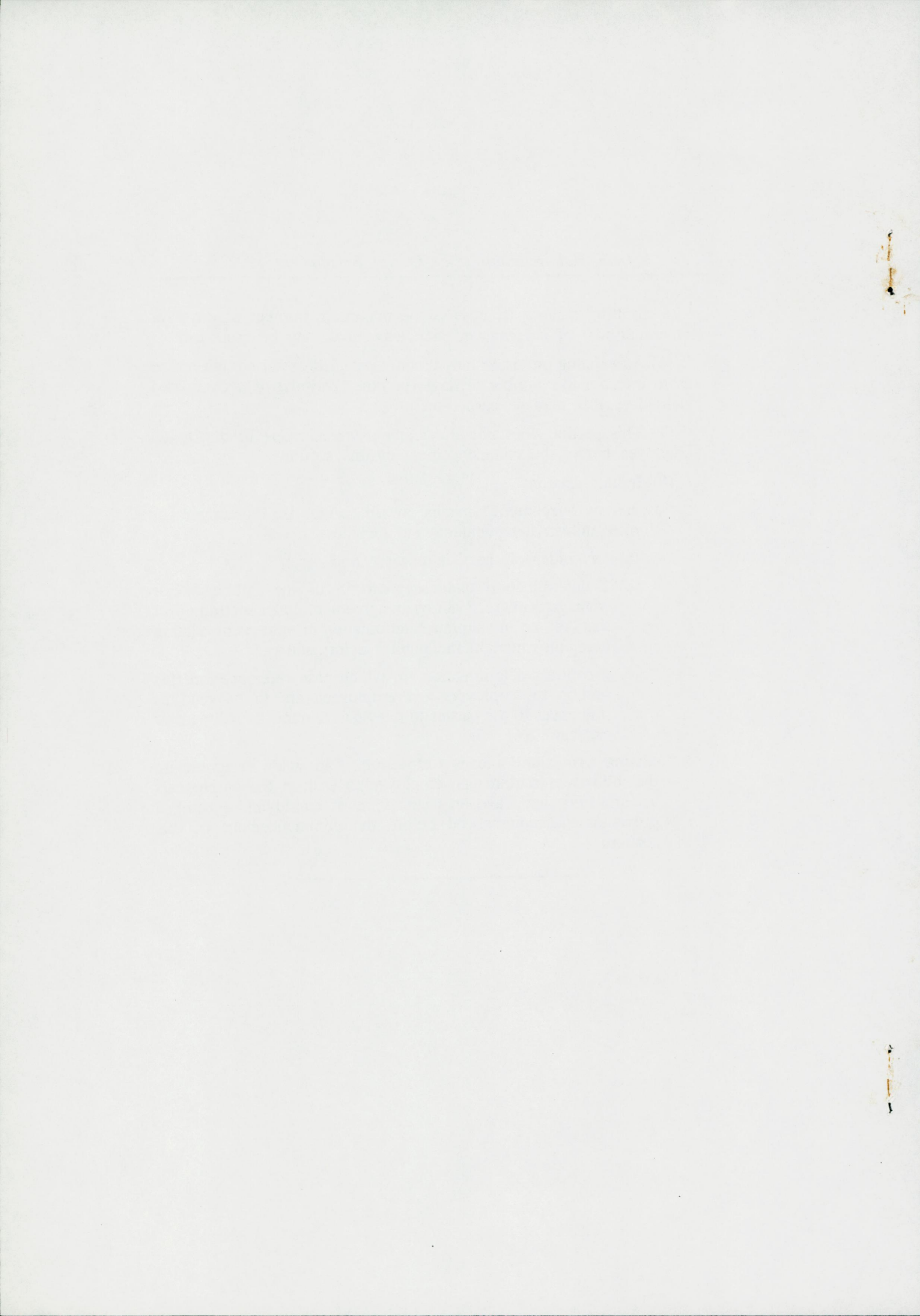
(a) any order of the Commission; and

(b) a determination under section 63 of the Public Sector Management Act 1988 or an agreement under section 64 of that Act, or any similar determination or agreement relating to employment in the public sector; and 15

(c) a contract determination (in which case references in this section to employers and employees are to be read as references to the parties to relevant contracts of bailment or carriage);

**“existing provision”** means a provision of an award or agreement that allows or requires an employee to cash-in the employee’s accumulated sick leave on termination of employment, being a provision that commenced before the commencement of this section. 20

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SECOND PRINT

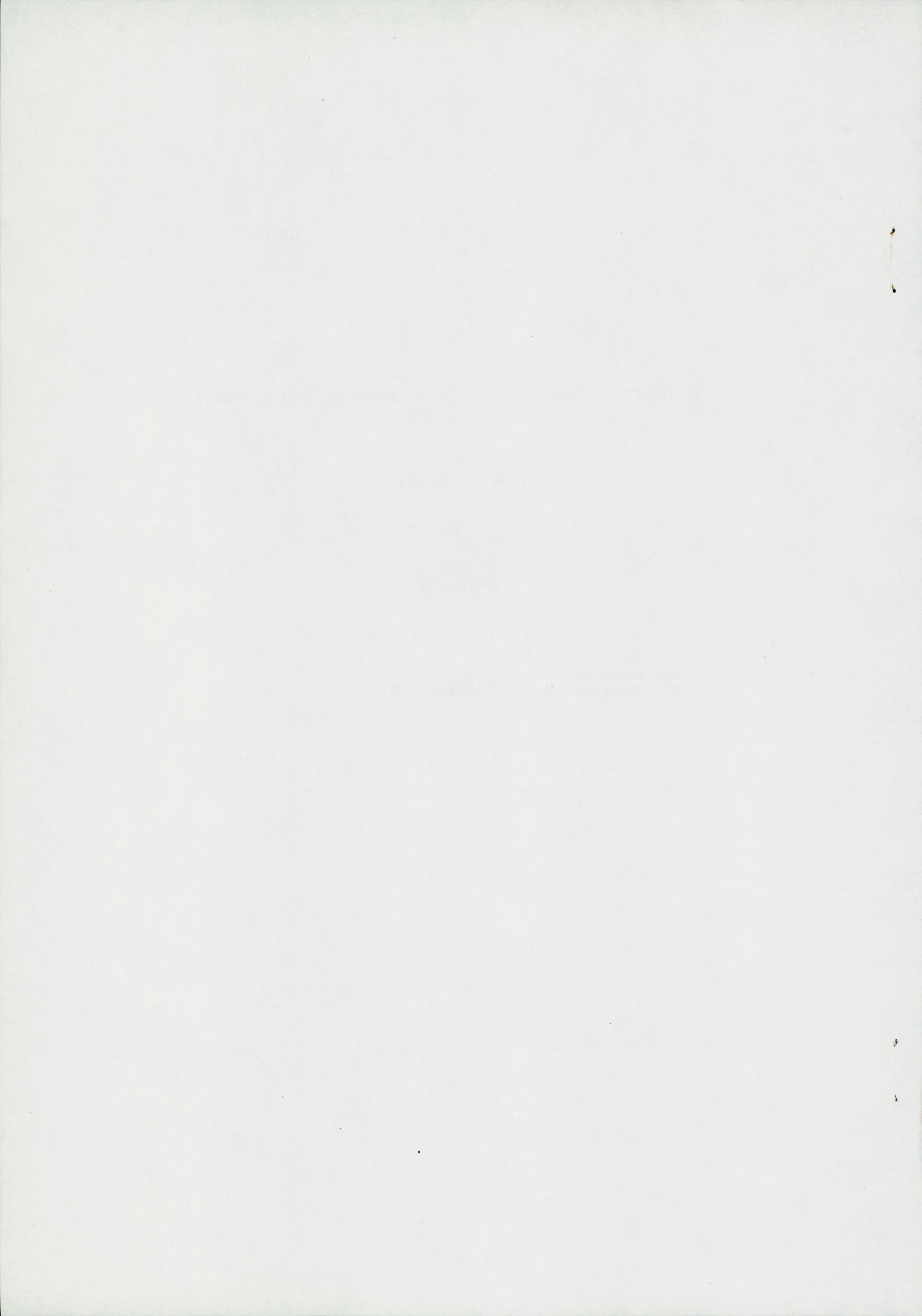
**INDUSTRIAL RELATIONS (SICK LEAVE) AMENDMENT  
BILL 1992**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
  2. Commencement
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*This PUBLIC BILL originated in the LEGISLATIVE COUNCIL and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.*

*Legislative Council*

*Clerk of the Parliaments*

NEW SOUTH WALES



Act No.           , 1992

An Act to amend the Industrial Relations Act 1991 with respect to the cashing-in of accumulated sick leave.



*Industrial Relations (Sick Leave) Amendment 1992*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Industrial Relations (Sick Leave) Amendment Act 1992.

**5 Commencement**

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

**Amendment of Industrial Relations Act 1991 No. 34**

3. The Industrial Relations Act 1991 is amended by inserting after section 99 the following section:

**10 Prohibition on cashing-in of accumulated sick leave**

99A. (1) An award must not allow or require an employee to cash-in the employee's accumulated sick leave.

(2) Accumulated sick leave is cashed-in if the leave is not taken and a payment is made by the employer to or on behalf of the employee of the amount of salary for the period of accumulated leave or of any other amount calculated by reference to that period.

(3) This section applies whenever the accumulated sick leave is to be cashed-in, including on termination of employment (whether by resignation, retirement, death or otherwise) or during the period of employment.

(4) A provision of an award, whether made, filed or registered before or after the commencement of this section, does not have any effect to the extent that the provision contravenes this section.

(5) However, this section does not affect the cashing-in of accumulated sick leave under an existing provision on termination of employment (whether by resignation, retirement, death or otherwise), but the maximum number of days (or other periods) of that leave that may be cashed-in is to be calculated as follows:

Step 1: Calculate the number of days (or other periods) of accumulated sick leave, as at the date of termination of employment, that the employee could cash-in in accordance with the existing provision as in force on that date.

Step 2: Calculate the number of days (or other periods) of accumulated sick leave, as at the commencement of this section, that the employee could have cashed-in if his or her employment had been terminated immediately before that commencement.



*Industrial Relations (Sick Leave) Amendment 1992*

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The maximum number of days (or other periods) of accumulated leave that may be cashed-in is the lesser of the numbers calculated under step 1 and step 2.

(6) An existing provision may be duly repealed or varied, but not so as to increase the number of days (or other periods) of accumulated sick leave that may be cashed-in. 5

(7) This section does not affect any payment made or due to an employee before the commencement of this section.

(8) In this section:

“award” includes: 10

(a) a former industrial agreement; and

(b) any order of the Commission; and

(c) a determination under section 63 of the Public Sector Management Act 1988 or an agreement under section 64 of that Act, or any similar determination or agreement relating to employment in the public sector; and 15

(d) a contract determination (in which case references in this section to employers and employees are to be read as references to the parties to relevant contracts of bailment or carriage); 20

“existing provision” means a provision of an award that allows or requires an employee to cash-in the employee’s accumulated sick leave on termination of employment (whether by resignation, retirement, death or otherwise), being a provision that commenced before the commencement of this section. 25

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**INDUSTRIAL RELATIONS (SICK LEAVE) AMENDMENT ACT  
1992 No. 87**

**NEW SOUTH WALES**



**TABLE OF PROVISIONS**

1. Short title
  2. Commencement
  3. Amendment of Industrial Relations Act 1991 No. 34
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**INDUSTRIAL RELATIONS (SICK LEAVE) AMENDMENT ACT  
1992 No. 87**

**NEW SOUTH WALES**



**Act No. 87, 1992**

**An Act to amend the Industrial Relations Act 1991 with respect to the cashing-in of accumulated sick leave. [Assented to 2 December 1992]**

*Industrial Relations (Sick Leave) Amendment Act 1992 No. 87*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Industrial Relations (Sick Leave) Amendment Act 1992.

**Commencement**

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

**Amendment of Industrial Relations Act 1991 No. 34**

3. The Industrial Relations Act 1991 is amended by inserting after section 99 the following section:

**Prohibition on cashing-in of accumulated sick leave**

99A. (1) An award must not allow or require an employee to cash-in the employee's accumulated sick leave.

(2) Accumulated sick leave is cashed-in if the leave is not taken and a payment is made by the employer to or on behalf of the employee of the amount of salary for the period of accumulated leave or of any other amount calculated by reference to that period.

(3) This section applies whenever the accumulated sick leave is to be cashed-in, including on termination of employment (whether by resignation, retirement, death or otherwise) or during the period of employment.

(4) A provision of an award, whether made, filed or registered before or after the commencement of this section, does not have any effect to the extent that the provision contravenes this section.

(5) However, this section does not affect the cashing-in of accumulated sick leave under an existing provision on termination of employment (whether by resignation, retirement, death or otherwise), but the maximum number of days (or other periods) of that leave that may be cashed-in is to be calculated as follows:

Step 1: Calculate the number of days (or other periods) of accumulated sick leave, as at the date of termination of employment, that the employee could cash-in in accordance with the existing provision as in force on that date.

Step 2: Calculate the number of days (or other periods) of accumulated sick leave, as at the commencement of this section, that the employee could have cashed-in if his or her employment had been terminated immediately before that commencement.



*Industrial Relations (Sick Leave) Amendment Act 1992 No. 87*

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The maximum number of days (or other periods) of accumulated leave that may be cashed-in is the lesser of the numbers calculated under step 1 and step 2.

(6) An existing provision may be duly repealed or varied, but not so as to increase the number of days (or other periods) of accumulated sick leave that may be cashed-in.

(7) This section does not affect any payment made or due to an employee before the commencement of this section.

(8) In this section:

“award” includes:

- (a) a former industrial agreement; and
- (b) any order of the Commission; and
- (c) a determination under section 63 of the Public Sector Management Act 1988 or an agreement under section 64 of that Act, or any similar determination or agreement relating to employment in the public sector; and
- (d) a contract determination (in which case references in this section to employers and employees are to be read as references to the parties to relevant contracts of bailment or carriage);

“existing provision” means a provision of an award that allows or requires an employee to cash-in the employee’s accumulated sick leave on termination of employment (whether by resignation, retirement, death or otherwise), being a provision that commenced before the commencement of this section.

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[Minister’s second reading speech made in—  
*Legislative Council on 24 September 1992*  
*Legislative Assembly on 29 October 1992*]