

First print



New South Wales

# Industrial Relations Amendment Bill 1996

## Explanatory note

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

### Overview of Bill

The object of this Bill is to amend the *Industrial Relations Act 1996* so as:

- (a) to apply to contract agreements made with a group of carriers under that Act similar provisions that apply to enterprise agreements made with employees under that Act, and
  - (b) to validate amalgamations of industrial organisations under the *Industrial Relations Act 1991*, and to validate any such amalgamations under the *Industrial Relations Act 1996* unless proceedings are brought within 6 months after the amalgamation.
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## 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 a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Industrial Relations Act 1996* set out in Schedules 1 and 2.

### **Schedule 1 Amendments relating to contract agreements**

**Schedule 1 [1]** requires a contract agreement to identify the parties to the agreement and the class of contracts to which it applies. A similar requirement applies to enterprise agreements.

**Schedule 1 [2]** makes provision, similar to that applying to enterprise agreements, relating to the approval by the Industrial Relations Commission of contract agreements. The Commission is required to reject a contract agreement that unfairly excludes some of the carriers who ought reasonably to be included because of the organisational and operational relationship between them and the carriers covered by the proposed contract agreement. In addition, the Commission is required to follow the principles for approval of enterprise agreements.

**Schedule 1 [3]** applies similar special requirements relating to contract agreements entered into with groups of carriers as apply to enterprise agreements entered into with employees, namely:

- (a) notification to the Industrial Registrar of a proposed contract agreement before or at the time that formal negotiations are undertaken with the carriers, and
- (b) advice to prescribed persons or bodies by the Industrial Registrar of the proposed contract agreement, and
- (c) approval of the proposed contract agreement by at least 65% of the carriers in a secret ballot, and
- (d) a comparison report prepared by the Industrial Registrar of the conditions of engagement of the carriers under relevant contract determinations of the Commission that are to be replaced by the proposed contract agreement.

**Schedule 1 [4]** makes provision, similar to that applying to enterprise agreements made with employees, that any termination of a contract agreement must be approved in a secret ballot by at least 65% of the carriers bound by the agreement.

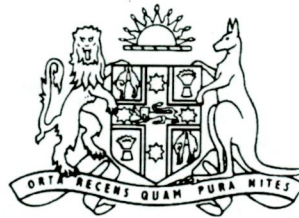
**Schedule 1 [5]** enables the making of savings and transitional regulations as a consequence of the enactment of the proposed Act.

## **Schedule 2      Amendments relating to amalgamations**

The Schedule inserts provisions relating to challenges to the amalgamation of industrial organisations of employees or employers. The Schedule validates any amalgamation under the *Industrial Relations Act 1996* or under the former *Industrial Relations Act 1991*. However, the Schedule preserves the right of a person to challenge, in the Industrial Relations Commission, an amalgamation under the *Industrial Relations Act 1996* within 6 months after the registration of the amalgamated organisation under that Act.



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New South Wales

# Industrial Relations Amendment Bill 1996

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New South Wales

# Industrial Relations Amendment Bill 1996

No. , 1996

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## **A Bill for**

An Act to amend the *Industrial Relations Act 1996* with respect to contract agreements and amalgamations of industrial organisations.

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

**1 Name of Act**

This Act is the *Industrial Relations Amendment Act 1996*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation. 5

**3 Amendment of Industrial Relations Act 1996 No 17**

The *Industrial Relations Act 1996* is amended as set out in Schedules 1 and 2.



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## **Schedule 1 Amendments relating to contract agreements**

(Section 3)

### **[1] Section 322 Agreements concerning contract conditions**

Insert after section 322 (4):

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- (4A) An agreement under this section must identify the parties to the agreement and describe the class of contracts to which it relates. In particular, an agreement under subsection (3) must identify each member of the group of carriers that enters into the agreement.

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### **[2] Section 325 Approval of contract agreement by Commission**

Insert at the end of section 325:

- (2) This subsection applies to a contract agreement that applies to contracts of carriage entered into by some but not all of the carriers engaged by the principal contractor or contractors bound by the agreement, unless those carriers comprise a distinct geographical, operational or organisational unit. The Commission is not to approve such a contract agreement if it is satisfied that:

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- (a) the contract agreement fails to cover other carriers engaged by the principal contractor or contractors who would reasonably be expected to be covered, given the nature of the work performed under the contracts to which the agreement applies and the organisational and operational relationships between the carriers bound by the agreement and those other carriers, and

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- (b) it is unfair not to cover the carriers excluded from the contract agreement.

- (3) The Commission is to follow the principles for approval set under section 33 (Principles for approval of enterprise agreements), with any necessary modifications, when deciding whether to approve a

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contract agreement, unless satisfied that any departure from those principles would not prejudice the interests of any of the parties to the agreement.

**[3] Section 325A**

Insert after section 325: 5

**325A Special requirements relating to contract agreements to which groups of carriers are parties**

- (1) A contract agreement to which a group of carriers is a party is not to be approved unless the requirements of this section have been complied with. 10
- (2) Before or at the time the principal contractor, or association of principal contractors, first undertakes formal negotiations with a group of carriers for the purposes of a contract agreement, the principal contractor or association is to advise the Industrial Registrar in writing of the following: 15
  - (a) that a contract agreement is proposed or under negotiation,
  - (b) the contract determinations or contract agreements that then apply to the carriers. 20
- (3) The Industrial Registrar is to advise such persons or bodies as are prescribed by the regulations of the proposed contract agreement.
- (4) The contract agreement must be approved in a secret ballot by not less than 65% of the carriers who enter into the agreement. 25
- (5) The Industrial Registrar must, after the contract agreement is lodged for approval, prepare a report for the Commission comparing the conditions of engagement under the agreement and the conditions of engagement that would otherwise apply to the carriers under relevant contract determinations. 30

- (6) Section 37 applies to secret ballots under this Part in the same way as it applies to secret ballots under Part 2 of Chapter 2. Section 344 extends to that application of section 37.

**[4] Section 330 Termination of contract agreement**

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Insert after section 330 (3):

- (3A) In the case of a contract agreement to which a group of carriers is a party, the proposed termination of the agreement by the carriers must be approved in a secret ballot by not less than 65% of the carriers covered by the agreement at the time the ballot is conducted.

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**[5] Schedule 4 Savings, transitional and other provisions**

Insert at the end of clause 2 (1) of Part 1:

*Industrial Relations Amendment Act 1996*

## Schedule 2 Amendments relating to amalgamations

(Section 3)

### [1] Section 284 Definitions

Omit “means nullity and” from the definition of *invalidity*. 5  
Insert instead “includes nullity and, without limiting the generality of the foregoing.”.

### [2] Section 290A

Insert after section 290:

#### 290A Amalgamations 10

(1) In this section:

*amalgamation* means the amalgamation of any State organisations under this Part or the amalgamation of any organisations (including recognised organisations) under Chapter 5 of the *Industrial Relations Act 1991*, including: 15

- (a) the registration of the amalgamated organisation under this Chapter or under Chapter 5 of that Act, and
- (b) the cancellation of the registration under this Chapter, or under Chapter 5 of that Act, of the organisations that are amalgamated. 20

*relevant date* means:

- (a) in the case of the amalgamation of any State organisations under this Part—the date that is 6 months after the registration under this Chapter of the amalgamated organisation, or 25

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- (b) in the case of the amalgamation of organisations (including recognised organisations) under Chapter 5 of the *Industrial Relations Act 1991*—the date on which this section commences.
- (2) On the relevant date: 5
- (a) an amalgamation (or purported amalgamation), and
- (b) anything done (or purporting to have been done) for the purposes of, or in connection with, an amalgamation or on which the validity of an amalgamation depends, 10
- are, to the extent of any invalidity, validated and are taken always to have been valid.
- (3) If: 15
- (a) any State organisations are amalgamated under this Act after the commencement of this Act, and
- (b) proceedings are taken under this Act before the date that is 6 months after the registration under this Chapter of the amalgamated organisation to challenge that amalgamation, 20
- the operation of this section is subject to the determination of the Commission in those proceedings.
- (4) This section applies to any proceedings under this or any other Act or law of any court or tribunal, whether taken before or after the commencement of this section or whether pending on that commencement, and has effect despite any determination in those proceedings. 25

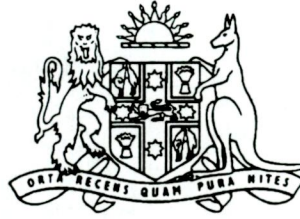
Industrial Relations Amendment Bill 1996

Schedule 2 Amendments relating to amalgamations

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- (5) Anything validated by this section may not be reviewed, quashed or called into question by any court or tribunal (including by way of order in the nature of prohibition, certiorari or mandamus, or by injunction or declaration or otherwise).

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New South Wales

# Industrial Relations Amendment Act 1996 No 109

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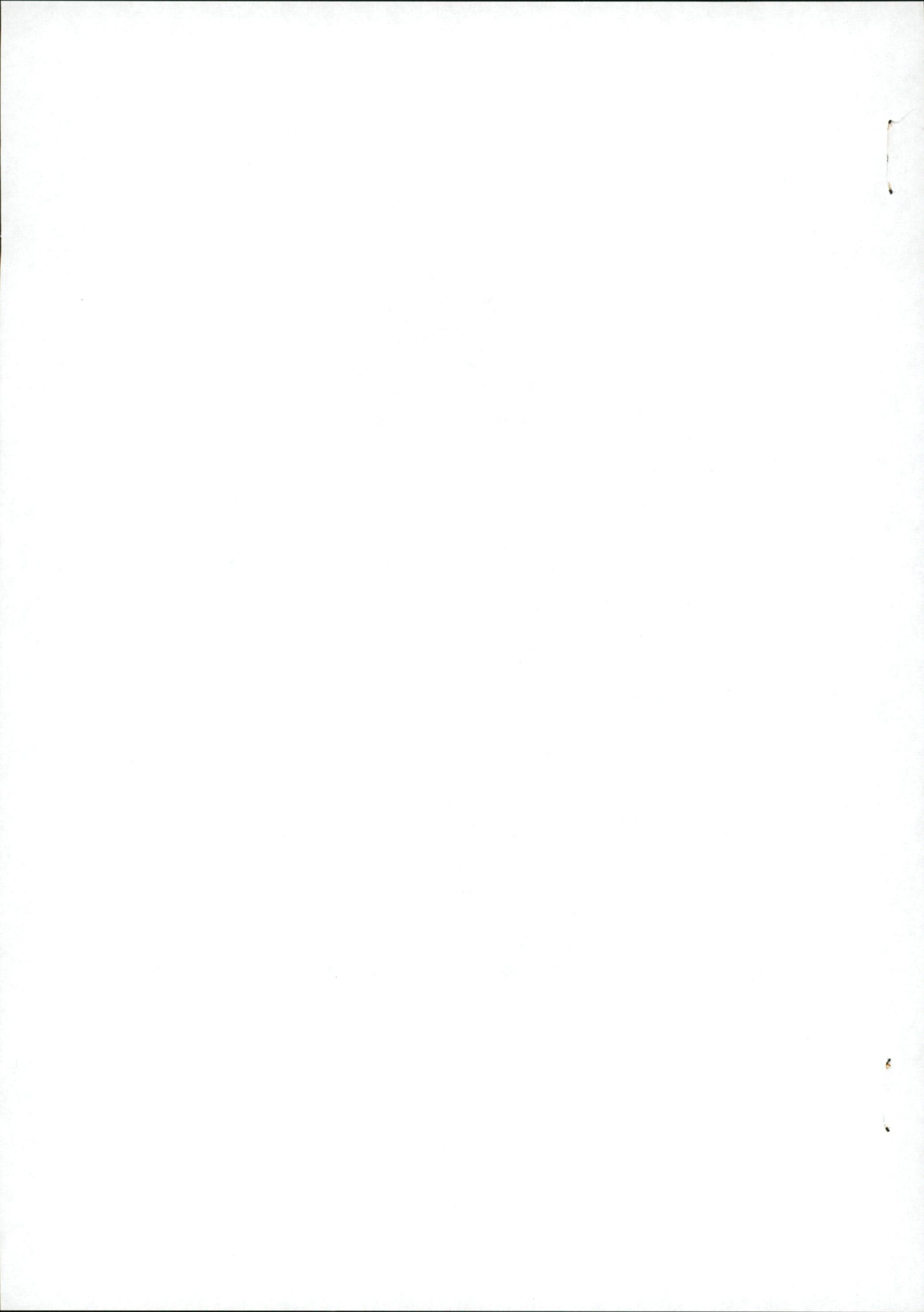
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New South Wales

# Industrial Relations Amendment Act 1996 No 109

Act No 109, 1996

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An Act to amend the *Industrial Relations Act 1996* with respect to contract agreements and amalgamations of industrial organisations. [Assented to 2 December 1996]

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

**1 Name of Act**

This Act is the *Industrial Relations Amendment Act 1996*.

**2 Commencement**

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

**3 Amendment of Industrial Relations Act 1996 No 17**

The *Industrial Relations Act 1996* is amended as set out in Schedules 1 and 2.

## **Schedule 1 Amendments relating to contract agreements**

(Section 3)

### **[1] Section 322 Agreements concerning contract conditions**

Insert after section 322 (4):

- (4A) An agreement under this section must identify the parties to the agreement and describe the class of contracts to which it relates. In particular, an agreement under subsection (3) must identify each member of the group of carriers that enters into the agreement.

### **[2] Section 325 Approval of contract agreement by Commission**

Insert at the end of section 325:

- (2) This subsection applies to a contract agreement that applies to contracts of carriage entered into by some but not all of the carriers engaged by the principal contractor or contractors bound by the agreement, unless those carriers comprise a distinct geographical, operational or organisational unit. The Commission is not to approve such a contract agreement if it is satisfied that:
- (a) the contract agreement fails to cover other carriers engaged by the principal contractor or contractors who would reasonably be expected to be covered, given the nature of the work performed under the contracts to which the agreement applies and the organisational and operational relationships between the carriers bound by the agreement and those other carriers, and
  - (b) it is unfair not to cover the carriers excluded from the contract agreement.
- (3) The Commission is to follow the principles for approval set under section 33 (Principles for approval of enterprise agreements), with any necessary modifications, when deciding whether to approve a

contract agreement, unless satisfied that any departure from those principles would not prejudice the interests of any of the parties to the agreement.

**[3] Section 325A**

Insert after section 325:

**325A Special requirements relating to contract agreements to which groups of carriers are parties**

- (1) A contract agreement to which a group of carriers is a party is not to be approved unless the requirements of this section have been complied with.
- (2) Before or at the time the principal contractor, or association of principal contractors, first undertakes formal negotiations with a group of carriers for the purposes of a contract agreement, the principal contractor or association is to advise the Industrial Registrar in writing of the following:
  - (a) that a contract agreement is proposed or under negotiation,
  - (b) the contract determinations or contract agreements that then apply to the carriers.
- (3) The Industrial Registrar is to advise such persons or bodies as are prescribed by the regulations of the proposed contract agreement.
- (4) The contract agreement must be approved in a secret ballot by not less than 65% of the carriers who enter into the agreement.
- (5) The Industrial Registrar must, after the contract agreement is lodged for approval, prepare a report for the Commission comparing the conditions of engagement under the agreement and the conditions of engagement that would otherwise apply to the carriers under relevant contract determinations.

- (6) Section 37 applies to secret ballots under this Part in the same way as it applies to secret ballots under Part 2 of Chapter 2. Section 344 extends to that application of section 37.

**[4] Section 330 Termination of contract agreement**

Insert after section 330 (3):

- (3A) In the case of a contract agreement to which a group of carriers is a party, the proposed termination of the agreement by the carriers must be approved in a secret ballot by not less than 65% of the carriers covered by the agreement at the time the ballot is conducted.

**[5] Schedule 4 Savings, transitional and other provisions**

Insert at the end of clause 2 (1) of Part 1:

*Industrial Relations Amendment Act 1996*

## Schedule 2 Amendments relating to amalgamations

(Section 3)

### [1] Section 284 Definitions

Omit “means nullity and” from the definition of *invalidity*.  
Insert instead “includes nullity and, without limiting the generality of the foregoing,”.

### [2] Section 290A

Insert after section 290:

#### 290A Amalgamations

(1) In this section:

*amalgamation* means the amalgamation of any State organisations under this Part or the amalgamation of any organisations (including recognised organisations) under Chapter 5 of the *Industrial Relations Act 1991*, including:

- (a) the registration of the amalgamated organisation under this Chapter or under Chapter 5 of that Act, and
- (b) the cancellation of the registration under this Chapter, or under Chapter 5 of that Act, of the organisations that are amalgamated.

*relevant date* means:

- (a) in the case of the amalgamation of any State organisations under this Part—the date that is 6 months after the registration under this Chapter of the amalgamated organisation, or

(b) in the case of the amalgamation of organisations (including recognised organisations) under Chapter 5 of the *Industrial Relations Act 1991*—the date on which this section commences.

(2) On the relevant date:

(a) an amalgamation (or purported amalgamation), and

(b) anything done (or purporting to have been done) for the purposes of, or in connection with, an amalgamation or on which the validity of an amalgamation depends,

are, to the extent of any invalidity, validated and are taken always to have been valid.

(3) If:

(a) any State organisations are amalgamated under this Act after the commencement of this Act, and

(b) proceedings are taken under this Act before the date that is 6 months after the registration under this Chapter of the amalgamated organisation to challenge that amalgamation,

the operation of this section is subject to the determination of the Commission in those proceedings.

(4) This section applies to any proceedings under this or any other Act or law of any court or tribunal, whether taken before or after the commencement of this section or whether pending on that commencement, and has effect despite any determination in those proceedings.

- (5) Anything validated by this section may not be reviewed, quashed or called into question by any court or tribunal (including by way of order in the nature of prohibition, certiorari or mandamus, or by injunction or declaration or otherwise).

[Minister's second reading speech made in—  
Legislative Council on 24 October 1996  
Legislative Assembly on 30 October 1996]

BY AUTHORITY