



New South Wales

Industrial Relations Amendment Act 1996 No 109

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New South Wales

Industrial Relations Amendment Act 1996 No 109

Act No 109, 1996

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

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:

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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.

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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).

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