



New South Wales

Industrial Relations Amendment (Administrator) Regulation 2024

under the

Industrial Relations Act 1996

His Excellency the Lieutenant-Governor, with the advice of the Executive Council, has made the following regulation under the *Industrial Relations Act 1996*.

SOPHIE COTSIS, MP
Minister for Industrial Relations

Explanatory note

The object of this regulation is to amend the *Industrial Relations Act 1996*, Schedule 6 to make changes to the schedule that are necessary for the purpose of ensuring consistency with the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth as amended by the *Fair Work (Registered Organisations) Amendment (Administration) Act 2024* of the Commonwealth. The amendments made by the regulation are Henry VIII provisions as they amend the *Industrial Relations Act 1996*, Schedule 6.

This regulation is made under the *Industrial Relations Act 1996*, including Schedule 6, clause 17(2)(b)(i).

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1 Name of regulation

This regulation is the *Industrial Relations Amendment (Administrator) Regulation 2024*.

2 Commencement

This regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Industrial Relations Act 1996 No 17

[1] Schedule 6 Administrator for CFMEU, C & G Division

Insert in alphabetical order in clause 1—
removed person—see clause 1A.

[2] Schedule 6, clause 1A

Insert after clause 1—

1A Meaning of “removed person”

A person is a *removed person* if—

- (a) any of the following events happen as a result of an administration scheme—
 - (i) the person is removed, however described and including by having the person’s office vacated, as an office holder,
 - (ii) the person is suspended as an office holder,
 - (iii) the person’s role as an office holder otherwise ends,
 - (iv) the person’s employment, as a person employed by the CFMEU, C & G Division or its branches, is terminated or otherwise comes to an end or is suspended, and
- (b) if the event involves suspension—the suspension has not ended.

[3] Schedule 6, clause 2(2)

Omit “clause 6(2)”. Insert instead “clause 6”.

[4] Schedule 6, clause 3(2)

Omit “Without limiting subclause (1)(a), the administration scheme may provide”.
Insert instead “The administration scheme must provide”.

[5] Schedule 6, clause 3(2A)

Insert after clause 3(2)—

- (2A) The administration scheme may provide for other matters the Minister considers appropriate.

[6] Schedule 6, clause 5(1A)

Insert after clause 5(1)—

- (1A) The administrator may, in exercising the administrator’s functions, undertake investigations into past practices of the CFMEU, C & G Division and its branches.

[7] Schedule 6, clause 6

Omit the clause. Insert instead—

6 Variation or revocation of administration orders

- (1) The Minister must, by order published in the Gazette, vary or revoke an administration order if—
 - (a) the administrator requests the variation or revocation, and

- (b) the Minister is satisfied the variation or revocation is in the public interest having regard to the objects of this Act.
- (2) The Minister must not vary an administration order to end the administration for a branch, or revoke an administration order, within 3 years after the administration scheme starts unless the administrator gives the Minister written notice that the CFMEU, C & G Division is functioning lawfully and effectively.

[8] Schedule 6, clause 7A

Insert after clause 7—

7A Complaints procedure

- (1) The administrator must, as soon as practicable after being appointed, establish a complaints procedure to allow for complaints about conduct—
 - (a) that is, or is alleged to be, improper, unlawful or criminal, and
 - (b) that is, or is alleged to be, engaged in by any person who is or has been—
 - (i) an officer or employee of the CFMEU (NSW) or any of its branches, divisions or parts working in the CFMEU, C & G Division or any of its branches, or
 - (ii) a member of the CFMEU, C & G Division or any of its branches.
- (2) The administrator must take reasonable steps to—
 - (a) publicise the complaints procedure to members of the CFMEU, C & G Division, and
 - (b) make the complaints procedure publicly available.
- (3) The procedure must allow for the making of complaints to the following persons (each a *complaint recipient*)—
 - (a) the administrator,
 - (b) a person authorised in writing by the administrator to receive complaints.
- (4) A complaint recipient must not disclose the identity of a complainant to a person who is not a complaint recipient.
- (5) A complaint recipient may refer a complaint to a law enforcement agency or the Secretary of the Premier's Department for investigation.
- (6) If a complaint is referred to the Secretary of the Premier's Department, the Secretary must—
 - (a) consider the complaint, and
 - (b) as soon as practicable after the complaint is referred to the Secretary, advise the complaint recipient in writing whether the Secretary intends to investigate the complaint, and
 - (c) if the Secretary investigates the complaint—
 - (i) report progress and results of the investigation to the complaint recipient at intervals of no more than 90 days until the investigation is complete, and
 - (ii) advise the complaint recipient when the investigation is completed.

- (7) If the complaint is investigated by a law enforcement agency, the complaint recipient must use the complainant's best endeavours to obtain reports about the progress of the investigation from time to time and disclose the reports to the complainant.
- (8) If, because of a want of jurisdiction, neither the Secretary of the Premier's Department nor a law enforcement agency investigates a complaint under this clause, the complaint recipient must—
 - (a) investigate the complaint, and
 - (b) keep the complainant informed of the progress of the investigation, and
 - (c) notify the complainant of the results of the investigation.
- (9) The complaint recipient is not required to take any action referred to in subclause (8) if the complaint recipient considers the complaint to be frivolous or vexatious.
- (10) The complaint recipient is not required to disclose reports to the complainant, or otherwise keep the complainant informed of the progress of an investigation, under subclause (7) or (8) if the complaint recipient reasonably believes the disclosure may jeopardise the investigation.

[9] Schedule 6, clauses 10A and 10B

Insert after clause 10—

10A Restriction on persons removed from office being officers or employees

- (1) A removed person must not—
 - (a) stand for election for an office in an industrial organisation, or
 - (b) be employed or engaged by an industrial organisation.Maximum civil penalty—1,700 penalty units.
- (2) Subclause (1) does not apply if the removed person holds a certificate granted by the Industrial Registrar under clause 10B.

10B Certificate to hold office

- (1) The Industrial Registrar may, on application by a removed person, grant the removed person a certificate to hold office in an industrial organisation.
- (2) The Industrial Registrar may grant the certificate if satisfied the removed person is a fit and proper person to hold office in an industrial organisation.
- (3) In deciding whether a person is a fit and proper person to hold office in an industrial organisation, the Industrial Registrar must have regard to the following matters—
 - (a) the reasons the removed person was removed from office,
 - (b) whether the removed person has ever been convicted of an offence against a law of the State or the Commonwealth, another State or Territory or a foreign country involving—
 - (i) fraud or dishonesty, or
 - (ii) intentional use of violence against another person, or
 - (iii) intentional damage or destruction of property,
 - (c) the general character of the removed person,
 - (d) the fitness of the removed person to be involved in the management of the industrial organisation.

- (4) The Industrial Registrar may also have regard to other matters the Industrial Registrar considers relevant.
- (5) The Industrial Registrar must not grant the certificate—
 - (a) if the removed person has been disqualified under an administration scheme and the period of the disqualification has not ended, or
 - (b) at any time the removed person is otherwise not eligible to be a candidate for election, or to be elected or appointed, to an office in an industrial organisation under this Act or another Act of the State or the Commonwealth.

[10] Schedule 6, clause 13(1)(a)

Omit “6(2)”. Insert instead “6”.

[11] Schedule 6, clause 16A

Insert after clause 16—

16A Reporting by administrator

- (1) An administrator must give the Minister a report about the operation of the administration scheme—
 - (a) no later than 6 months after the administration scheme starts, and
 - (b) at the end of each subsequent 6-month period until the administration scheme ends.
- (2) The report must include—
 - (a) a statement outlining the administrator’s activities under this schedule during the preceding 6 months, and
 - (b) a statement listing any transactions that occurred during the preceding 6 months involving the CFMEU (NSW) or the CFMEU, C & G Division if, in the administrator’s opinion, the transactions may be unlawful, and
 - (c) a copy of a general purpose financial report that is relevant to the CFMEU (NSW) for the preceding 6 months, and
 - (d) a copy of any other financial records of the CFMEU (NSW) or any of its branches that the administrator considers appropriate to include in the report.
- (3) The Minister must table a copy of a report received under subclause (1) in each House of Parliament within 15 sitting days of the House after the Minister receives the report.