



New South Wales

Industrial Relations Amendment Bill 2006

Explanatory note

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

The *Public Sector Employment Legislation Amendment Bill 2006* is cognate with this Bill.

Overview of Bill

The object of this Bill is to amend the *Industrial Relations Act 1996* (the *principal Act*):

- (a) to enable the Industrial Relations Commission (the *Commission*) to resolve certain disputes in circumstances where the parties to the dispute have agreed in writing for the Commission to do so, and
- (b) to remove the requirement that a Full Bench of the Commission (other than in Court Session) be constituted with at least one of its members being a Commissioner, and
- (c) to confirm that the power of the President of the Commission to direct the business of the Commission includes the power to make a direction in relation to particular proceedings or classes of proceedings, and
- (d) to provide that certain awards made by the Commission to give effect to an agreement of the parties to such awards are to have effect as enterprise agreements under the principal Act.

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 the date of assent to the proposed Act.

Clause 3 is a formal provision that gives effect to the amendments to the principal Act set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [1] inserts section 146A in the principal Act. The new section will enable the Commission to resolve disputes where the parties to the dispute have agreed in writing (a *referral agreement*) for the Commission to do so if the dispute is:

- (a) a dispute about any conditions of employment or industrial matter between an industrial organisation of employees and one or more employers (or industrial organisations of employers), or
- (b) a dispute of the kind referred to in section 332 (2) or (3) of the principal Act or a dispute about a claim for compensation of the kind referred to in section 346 of that Act between:
 - (i) an industrial organisation of employees and one or more employers (or industrial organisations of employers), or
 - (ii) an association of contract carriers and one or more principal contractors (or associations of employing contractors), or
 - (iii) an association of contract drivers and one or more bailors (or associations of employing contractors).

The functions of the Commission in respect of any such dispute referred to the Commission by a referral agreement will be limited to the functions specified in the agreement. Also, the enforceability of any order, determination or other decision made by the Commission in exercise of such functions will be entirely dependant on whether the referral agreement itself makes it legally binding on the parties. Finally, no appeal will lie against a decision of the Commission under Part 7 of Chapter 4 of the principal Act unless the referral agreement provides that the decision may be appealed.

Schedule 1 [2] amends section 156 of the principal Act to remove the requirement that a Full Bench of the Commission (other than in Court Session) be constituted with at least one of its members being a Commissioner. Under the amended section, a Commissioner may (but need not) be included in a Full Bench.

Schedule 1 [3] amends section 159 of the principal Act to confirm that the power of the President of the Commission to direct the business of the Commission conferred by that section includes the power to make a direction in relation to particular proceedings or classes of proceedings.

Schedule 1 [4] amends clause 2 of Schedule 4 to the principal Act to enable the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [5] inserts a new Part 8A in Schedule 4 to the principal Act, which contains provisions of a savings or transitional nature.

The new Part will also contain a provision that treats certain awards made by the Commission with the agreement of the parties as enterprise agreements.

The provision will operate by reference to the beginning of the day (the *relevant time*) that occurs immediately before the day on which Part 2 of Schedule 4 (Transitional and other provisions) to the *Workplace Relations Amendment (Work Choices) Act 2005* of the Commonwealth commences.

The provision will apply only to an award in force immediately before the relevant time that has the following features:

- (a) the award applies to a group of employees that is constituted wholly or partly by employees of any constitutional corporation and in respect of which an enterprise agreement could have been made (as referred to in section 30 of the principal Act),
- (b) the parties to the award are limited to the kinds of persons or bodies that could have been parties to an enterprise agreement (as referred to in section 31 of the principal Act) in respect of those employees,
- (c) the award binds only the parties to the award and the employees for whom the award was made,
- (d) the award was made by the Commission so as to give effect to an agreement of the parties to the award.

However, the provision will create an enterprise agreement that supersedes the award only to the extent that the award applies to employees of a constitutional corporation. The award will continue to apply to any other kinds of employees (including employees that are employed by the Government in the service of the Crown).

For the purposes of the provision, a *constitutional corporation* is defined to mean a corporation to which paragraph 51 (xx) of the Commonwealth Constitution applies. That paragraph of the Commonwealth Constitution applies to foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth.

Examples of awards that give effect to an agreement of the parties include awards made by consent of the parties and awards that substantially give effect to conditions of employment agreed to, or jointly proposed to the Commission, by the parties.

An enterprise agreement that results from the operation of the provision will have the same conditions of employment, bind the same parties and have the same nominal term as the award. The enterprise agreement will be able to be varied and terminated in the same way as any other enterprise agreement.

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The new Part also makes provision for a party to an award to apply to the Commission for a ruling as to whether the provision described above operates to treat the party's award as an enterprise agreement.

First print



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Industrial Relations Amendment Bill 2006

No. , 2006

A Bill for

An Act to amend the *Industrial Relations Act 1996* to make further provision with respect to the functions of the Industrial Relations Commission and certain awards made by agreement of the parties; and for other purposes.

See also *Public Sector Employment Legislation Amendment Bill 2006*

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Industrial Relations Amendment Act 2006</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5
3 Amendment of Industrial Relations Act 1996 No 17	6
The <i>Industrial Relations Act 1996</i> is amended as set out in Schedule 1.	7

Schedule 1	Amendments	1
	(Section 3)	2
[1] Section 146A		3
Insert after section 146:		4
146A Commission may exercise certain functions conferred on it by agreement		5 6
(1) This section applies to any of the following kinds of dispute if the parties to the dispute have agreed in writing (the <i>referral agreement</i>) that the dispute (or disputes of a class to which the dispute belongs) be resolved by the Commission:		7 8 9 10
(a) a dispute about any conditions of employment or industrial matter between an industrial organisation of employees and one or more employers (or industrial organisations of employers),		11 12 13 14
(b) a dispute of the kind referred to in section 332 (2) or (3) or a dispute about a claim for compensation of the kind referred to in section 346 between:		15 16 17
(i) an industrial organisation of employees and one or more employers (or industrial organisations of employers), or		18 19 20
(ii) an association of contract carriers and one or more principal contractors (or associations of employing contractors), or		21 22 23
(iii) an association of contract drivers and one or more bailors (or associations of employing contractors).		24 25
(2) A party to a dispute to which this section applies may apply to the Commission for the exercise by the Commission of such functions with respect to the resolution of the dispute as may be specified in the referral agreement.		26 27 28 29
(3) On any such application, the Commission has and may exercise such functions with respect to the resolution of the dispute as may be specified in the referral agreement.		30 31 32
(4) Without limiting subsections (2) and (3), the functions of the Commission with respect to the resolution of a dispute to which this section applies that may be specified in a referral agreement include the following:		33 34 35 36
(a) the conciliation of the dispute,		37
(b) the arbitration of the dispute,		38

(c)	the granting of a remedy or other relief of the kind provided by Part 6, 7 or 9 of Chapter 2,	1 2
(d)	the granting of a remedy or other relief of the kind provided by Part 7 of Chapter 6,	3 4
(e)	the determination of any other issue or question arising in the dispute.	5 6
(5)	The regulations may make provision for or with respect to the application of the provisions of this Act (with such modifications, if any, as may be prescribed by the regulations) to the exercise of functions conferred on the Commission by referral agreements.	7 8 9 10
(6)	Subject to any regulations made for the purposes of subsection (5), the Commission is to be constituted by:	11 12
(a)	except as provided by paragraph (b)—a single member of the Commission, or	13 14
(b)	if the function to be exercised is a function of the kind referred to in section 153 (1)—the Commission in Court Session.	15 16 17
(7)	Subject to this Act and any regulations made for the purposes of subsection (5) (and without limiting the generality of section 185), rules of the Commission may be made for or with respect to the practice and procedure of the Commission in the exercise of functions conferred on it by referral agreements.	18 19 20 21 22
(8)	Nothing in this section makes any order, determination or other decision of the Commission in respect of a dispute binding on the parties to the dispute unless the referral agreement operates (apart from this section) to make any such order, determination or decision binding on the parties.	23 24 25 26 27
(9)	Despite the provisions of Part 7 (Appeals and references to Commission) of Chapter 4, a party to a dispute in respect of which the Commission has made a decision in exercise of a function conferred by a referral agreement may not appeal against the decision under that Part unless the agreement provides that the party may appeal such a decision.	28 29 30 31 32 33
(10)	The functions conferred on the Commission by or under this section are in addition to, and do not derogate from, any other function of the Commission.	34 35 36
(11)	In this section: <i>association of contract carriers, association of contract drivers, association of employing contractors, bailor and principal</i>	37 38 39

	<i>contractor</i> have the same meanings as they have for the purposes of Chapter 6.	1 2
	<i>modification</i> includes addition, exception, omission or substitution.	3 4
[2]	Section 156 Full Bench of Commission	5
	Omit “and at least one Commissioner” from section 156 (2).	6
[3]	Section 159 Arrangement of business	7
	Insert after section 159 (1):	8
	(1A) Without limiting subsection (1), a direction given under that subsection may be limited to particular proceedings (or particular classes of proceedings) specified in the direction.	9 10 11
[4]	Schedule 4 Savings, transitional and other provisions	12
	Insert at the end of clause 2 (1):	13
	<i>Industrial Relations Amendment Act 2006</i>	14
[5]	Schedule 4, Part 8A	15
	Insert after Part 8:	16
	Part 8A Provisions consequent on enactment of Industrial Relations Amendment Act 2006	17 18
44A	Definitions	19
	In this Part:	20
	<i>amending Act</i> means the <i>Industrial Relations Amendment Act 2006</i> .	21 22
	<i>constitutional corporation</i> means a corporation to which paragraph 51 (xx) of the Commonwealth Constitution applies.	23 24
	<i>relevant time</i> means the beginning of the day that occurs immediately before the day on which Part 2 of Schedule 4 to the <i>Workplace Relations Amendment (Work Choices) Act 2005</i> of the Commonwealth commences.	25 26 27 28
44B	Application of section 146A	29
	Section 146A, as inserted by Schedule 1 [1] to the amending Act, extends to agreements of the kind referred to in section 146A (1) entered into before the commencement of that section.	30 31 32

44C	Certain agreed awards to have effect as enterprise agreements	1
(1)	This clause applies to an award that was in force immediately before the relevant time:	2
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(a)	that applies to a group of employees that is constituted wholly or partly by employees of any constitutional corporation and in respect of which an enterprise agreement could have been made (as referred to in section 30), and	4
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(b)	the parties to which are limited to the kinds of persons or bodies that could have been parties to an enterprise agreement (as referred to in section 31) in respect of those employees, and	9
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(c)	that binds only the parties to the award and the employees for whom the award was made, and	13
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(d)	that was made by the Commission so as to give effect to an agreement of the parties to the award.	15
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(2)	Without limiting subclause (1) (d), an award was made so as to give effect to an agreement of the parties if:	17
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(a)	the award was made with the consent of the parties, or	19
(b)	the award substantially gives effect to conditions of employment agreed to, or jointly proposed to the Commission, by the parties.	20
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(3)	On and from the relevant time:	23
(a)	an award to which this clause applies ceases to have effect as an award, but only to the extent to which it applies to employees of a constitutional corporation (the <i>relevant award</i>), and	24
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(b)	an enterprise agreement (with the features referred to in subclause (4) (a)–(d)) has effect instead of the relevant award in respect of those employees even though the formalities under Part 2 of Chapter 2 for the making of an enterprise agreement may not have been complied with.	28
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(4)	Part 2 of Chapter 2 applies to any enterprise agreement given effect to by subclause (3) (b) in the same way as that Part applies to any other enterprise agreement, subject to the following:	33
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(a)	the agreement is taken to have been duly made and to have been duly approved by the Commission at the relevant time,	36
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| (b) the agreement binds the same employees of a constitutional corporation and parties as the relevant award, | 1
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| (c) the conditions of employment for which the agreement provides are taken to be the same conditions of employment for which the relevant award provided, | 4
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| (d) the agreement has a nominal term commencing at the relevant time and ending at the same time as the nominal term of the relevant award, | 7
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| (e) the provisions of section 45 (Register and publication of enterprise agreements) apply to the agreement as if the agreement were approved at the relevant time, | 10
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| (f) such modifications of that Part as may be prescribed by the regulations. | 13
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| (5) Nothing in this clause affects the continued operation of any award to the extent to which the award applies to employees that are employed by the Government in the service of the Crown. | 15
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| (6) In this clause:
<i>modification</i> includes addition, exception, omission or substitution. | 18
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| 44D Applications to Commission concerning effect of clause 44C | 21 |
| Subject to any rules of the Commission, any party to an award may apply to the Commission (whether before or after the relevant time) for an order determining any of the following issues: | 22
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| (a) whether or not the award is an award to which clause 44C applies, | 26
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| (b) the extent to which an enterprise agreement has effect instead of an award to which clause 44C applies. | 28
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