



New South Wales

Industrial Relations Amendment (Consequential Provisions) Bill 2010

Explanatory note

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

Overview of Bill

The object of this Bill is to make miscellaneous amendments to the *Industrial Relations Act 1996* (**the principal Act**) as a consequence of the enactment of the *Industrial Relations (Commonwealth Powers) Act 2009* which referred certain matters relating to workplace relations to the Commonwealth Parliament.

In particular, the Bill:

- (a) amends the principal Act to update existing references to Commonwealth workplace relations legislation, including the *Fair Work Act 2009* of the Commonwealth (the **Commonwealth Fair Work Act**), and
- (b) facilitates the transition, to the State industrial relations system, of federal industrial instruments relating to specified State or local government employers declared not to be national system employers.

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.

Schedule 1 Amendment of Industrial Relations Act 1996 No 17

Schedule 1 [1] provides that federal industrial instruments relating to specified State or local government employers that are declared by the Minister not to be national system employers under the Commonwealth Fair Work Act will be established as either State awards or enterprise agreements under the principal Act. The Industrial Relations Commission of NSW will have power to vary such awards or agreements or provide exemptions where necessary.

Schedule 1 [4] makes an amendment consequential on the enactment of the Commonwealth Fair Work Act to provide that decisions of the Minimum Wage Panel and a Full Bench of Fair Work Australia (instead of the now defunct Australian Industrial Relations Commission) will be decisions that the Industrial Relations Commission of NSW must adopt and apply to State awards, unless the Commission is satisfied that the decision is not consistent with the objects of the principal Act or that there are other good reasons for not doing so.

Schedule 1 [10] makes it clear that the Industrial Relations Commission of NSW may exercise certain dispute resolution functions in respect of federal enterprise agreements known as preserved State agreements, which were continued under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* of the Commonwealth.

Schedule 1 [2], [3], [5]–[9] and [11]–[15] make amendments by way of statute law revision to update references to Commonwealth workplace relations legislation, as referred to in the Overview above.

Schedule 2 Amendment of Long Service Leave Act 1955 No 38

Schedule 2 makes a statute law revision amendment to the *Long Service Leave Act 1955* to update a reference to a definition of an award.

First print



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Industrial Relations Amendment (Consequential Provisions) Bill 2010

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New South Wales

Industrial Relations Amendment (Consequential Provisions) Bill 2010

No. , 2010

A Bill for

An Act to amend the *Industrial Relations Act 1996* as a consequence of the enactment of the *Industrial Relations (Commonwealth Powers) Act 2009*; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Industrial Relations Amendment (Consequential Provisions) Act 2010</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6

Schedule 1 **Amendment of Industrial Relations Act 1996 No 17**

[1] **Section 9A Employers declared not to be national system employers**

Insert after section 9A (2):

- (3) If an eligible employer is declared not to be a national system employer, an industrial instrument (the *transitional State instrument*) is, on the declaration, taken to be established under this Act with the same terms and provisions of any federal industrial instrument that applied to the employees of that employer immediately before the declaration, subject to this section and to any modifications as are necessary or as may be prescribed by the regulations.
- (4) Subject to subsection (5), the transitional State instrument is, depending on the nature of the corresponding federal industrial instrument, taken to be either an award or an enterprise agreement under this Act.
- (5) The Commission may, on the application of the Minister or any party to the transitional State instrument:
 - (a) make a determination as to whether the instrument is to be taken to be an award or an enterprise agreement under this Act, and
 - (b) vary or revoke any term or provision of the instrument if the Commission is satisfied that it is fair and reasonable to do so in the circumstances, and
 - (c) exempt a party to the instrument from any provision of this Act if the Commission is satisfied that it is fair and reasonable to do so in the circumstances.
- (6) If the transitional State instrument provides for any matter, including remuneration or conditions of employment, that does not meet the requirements set out in Division 2 of Part 1 of Chapter 2, the instrument is taken to be modified to the extent necessary to meet those requirements (but only in the case where the instrument is taken to be an award under this Act).
- (7) The transitional State instrument applies (unless earlier rescinded or terminated in accordance with this Act) for a nominal term that ends on the earlier of the following dates, and after that date, applies until rescinded or terminated in accordance with this Act:
 - (a) the end of the day that is 2 years after the relevant eligible employer was declared not to be a national system employer,

(b)	the end of the day that is the expiry date of the corresponding federal industrial instrument.	1 2
(8)	The regulations may make provision for or with respect to the application of this Act to transitional State instruments.	3 4
(9)	In this section:	5
	<i>federal industrial instrument</i> means:	6
(a)	a fair work instrument under the <i>Fair Work Act 2009</i> of the Commonwealth, or	7 8
(b)	a Division 2B State instrument under Schedule 3A to the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> of the Commonwealth, or	9 10 11
(c)	an instrument given continuing effect under Schedule 3 to the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> of the Commonwealth, other than the following:	12 13 14 15
(i)	an Australian workplace agreement,	16
(ii)	a pre-reform Australian workplace agreement,	17
(iii)	an individual transitional employment agreement.	18
[2]	Section 28A Definitions	19
	Omit the definition of <i>Federal award</i> . Insert instead:	20
	<i>Federal award</i> means:	21
(a)	a modern award within the meaning of the <i>Fair Work Act 2009</i> of the Commonwealth, or	22 23
(b)	a Division 2B State award under Schedule 3A to the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> of the Commonwealth.	24 25 26
[3]	Section 41 Enterprise agreements prevail over State awards	27
	Omit the note at the end of the section.	28
[4]	Section 48	29
	Omit the section. Insert instead:	30
	48 What is a National decision?	31
	A <i>National decision</i> is a decision of the Minimum Wage Panel or a Full Bench of Fair Work Australia that generally affects, or is likely to generally affect, the conditions of employment of employees in New South Wales who are subject to the jurisdiction of that panel or body.	32 33 34 35 36

[5] Section 83 Application of Part	1
Omit “the Australian Industrial Relations Commission” from section 83 (1A) (a).	2 3
Insert instead “Fair Work Australia”.	4
[6] Section 83 (1A) (b)	5
Omit “ <i>Workplace Relations Act 1996</i> ”. Insert instead “ <i>Fair Work Act 2009</i> ”.	6
[7] Section 83 (5), definition of “Federal award”	7
Omit the definition. Insert instead:	8
<i>Federal award</i> means:	9
(a) a modern award within the meaning of the <i>Fair Work Act 2009</i> of the Commonwealth, or	10 11
(b) a Division 2B State award under Schedule 3A to the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> of the Commonwealth.	12 13 14
[8] Section 83 (5), definition of “industrial instrument”	15
Omit “or other Federal industrial instrument”.	16
[9] Section 146B Commission may exercise certain dispute resolution functions under federal enterprise agreements	17 18
Omit the note at the end of section 146B (1).	19
[10] Section 146B (8), definition of “federal enterprise agreement”	20
Omit the definition. Insert instead:	21
<i>federal enterprise agreement</i> means:	22
(a) an enterprise agreement, or	23
(b) a preserved State agreement (but only if the nominal term of the agreement has not yet expired),	24 25
within the meaning of the federal Act (and includes any workplace agreement within the meaning of the former <i>Workplace Relations Act 1996</i> of the Commonwealth that continues in force under the law of the Commonwealth).	26 27 28 29
[11] Sections 217 (4), 239 (3), 281 and 290	30
Omit “ <i>Workplace Relations Act 1996</i> ” wherever occurring.	31
Insert instead “ <i>Fair Work (Registered Organisations) Act 2009</i> ”.	32

[12] Section 249 Regulations	1
Omit section 249 (2). Insert instead:	2
(2) Any such regulations may deal with any of the matters dealt with in Chapter 7 of the <i>Fair Work (Registered Organisations) Act 2009</i> of the Commonwealth in connection with the election of officers of organisations registered under that Act. The regulations may adopt the provisions of that Chapter, with or without modification.	3 4 5 6 7 8
[13] Section 282 Regulations	9
Omit section 282 (2). Insert instead:	10
(2) Any such regulations may deal with any of the matters dealt with in Chapter 8 of the <i>Fair Work (Registered Organisations) Act 2009</i> of the Commonwealth in connection with the accounts and audit of organisations registered under that Act. The regulations may adopt the provisions of that Chapter, with or without modification.	11 12 13 14 15 16
[14] Section 283 Regulations	17
Omit section 283 (2). Insert instead:	18
(2) Any such regulations may deal with any of the matters dealt with in Chapter 3 of the <i>Fair Work (Registered Organisations) Act 2009</i> of the Commonwealth in connection with the amalgamation of organisations registered under that Act. The regulations may adopt the provisions of that Chapter, with or without modification.	19 20 21 22 23 24
[15] Dictionary	25
Omit the definition of <i>Australian Industrial Relations Commission</i> .	26
Insert instead in alphabetical order:	27
<i>Fair Work Australia</i> means Fair Work Australia established under the <i>Fair Work Act 2009</i> of the Commonwealth, and includes any successor to that body.	28 29 30
<i>Minimum Wage Panel</i> means the Minimum Wage Panel constituted under the <i>Fair Work Act 2009</i> of the Commonwealth, and includes any successor to that panel.	31 32 33

**Schedule 2 Amendment of Long Service Leave Act
 1955 No 38**

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Section 4 Long service leave

Omit paragraph (b) from the definition of *Award* in section 4 (13) (a).

Insert instead:

- (b) a modern award in force under the *Fair Work Act 2009* of the Commonwealth, and
- (c) a Division 2B State award under Schedule 3A to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* of the Commonwealth.