

Passed by both Houses



New South Wales

Industrial Relations Amendment (Administrator) Bill 2024

Contents

		Page
	1 Name of Act	2
	2 Commencement	2
Schedule 1	Amendment of Industrial Relations Act 1996 No 17	3

I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2024



New South Wales

Industrial Relations Amendment (Administrator) Bill 2024

Act No _____, 2024

An Act to amend the *Industrial Relations Act 1996* in relation to an administration scheme for a particular employee organisation; and for the appointment of an administrator for the administration of the employee organisation; and for related purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

1 Name of Act

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

2 Commencement

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

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

Schedule 6

Insert after Schedule 5—

Schedule 6 **Administrator for CFMEU, C & G Division**

1 **Definitions**

In this schedule—

administration order—see clause 3(1).

administration scheme—see clause 3(1)(a).

administrator means a person appointed by an administration order as the administrator of the CFMEU, C & G Division.

CFMEU means the organisation of employees that is—

- (a) registered under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth, and
- (b) known as the Construction, Forestry and Maritime Employees Union (CFMEU).

CFMEU, C & G Division means the Construction and General Division of the CFMEU (NSW).

CFMEU (NSW) means the organisation of employees that is registered under this Act with the registration number EE70.

office holders, of the CFMEU (NSW), includes persons who hold office on any of the following bodies—

- (a) the State Executive of the CFMEU (NSW),
- (b) the CFMEU, C & G Divisional Council,
- (c) the CFMEU, C & G Divisional Committee of Management.

2 **Administration of CFMEU, C & G Division**

- (1) The CFMEU, C & G Division is placed under administration on the later of the following days—
 - (a) the day an administration order commences,
 - (b) the day an administrator is appointed.
- (2) The administration ends on the earlier of the following—
 - (a) the fifth anniversary of the day the administration started,
 - (b) the day the administration is revoked by an order made under clause 6(2).

3 **Minister must appoint administrator of CFMEU, C & G Division**

- (1) The Minister must, by order (an **administration order**)—
 - (a) establish a scheme (an **administration scheme**) for the administration of the CFMEU, C & G Division if the Minister is satisfied the establishment of the administration scheme is in the public interest, having regard to—
 - (i) the objects of this Act, and
 - (ii) any other matters the Minister considers relevant, and

- (b) appoint an administrator to exercise functions under this schedule for the administration of the CFMEU, C & G Division.
- (2) Without limiting subclause (1)(a), the administration scheme may provide for the following—
- (a) the powers of the administrator in relation to the scheme, including in relation to the matters mentioned in paragraphs (b)–(m),
 - (b) declarations that offices of office holders of the CFMEU, C & G Division or the CFMEU (NSW) are vacant,
 - (c) the suspension, with or without remuneration, or removal from office of office holders of the CFMEU (NSW), including offices held on an ex-officio basis because the office holders hold office in the CFMEU,
 - (d) the taking of disciplinary action, including the expulsion of members and the disqualification of office holders of the CFMEU (NSW) for up to 5 years,
 - (e) the termination of the employment of employees of the CFMEU, C & G Division or its branches,
 - (f) the reconstitution of the CFMEU, C & G Division,
 - (g) the filling of offices or positions of office holders of the CFMEU (NSW), including the holding and conduct of elections for offices,
 - (h) the effective functioning of the CFMEU, C & G Division,
 - (i) the alteration of the rules of the CFMEU (NSW) or the CFMEU, C & G Division,
 - (j) the engagement of assistant administrators, consultants and other persons to assist the administrator in exercising the administrator's functions,
 - (k) delegation by the administrator of the administrator's functions,
 - (l) requirements in relation to reporting about the administration,
 - (m) the obligation of the administrator to cooperate with any inquiry by a law enforcement agency or a regulator into—
 - (i) the CFMEU (NSW) or the CFMEU, C & G Division, or
 - (ii) officers or employees, or former officers or employees, of the CFMEU (NSW) or the CFMEU, C & G Division,
 - (n) matters that are ancillary or incidental to the matters mentioned in paragraphs (a)–(m).
- (3) To avoid doubt, the administration scheme may provide for the taking of disciplinary action in circumstances not provided for in the rules of the CFMEU (NSW) or the CFMEU, C & G Division.
- (4) Subject to this schedule, the administration order may also provide for the following—
- (a) the period of the administrator's appointment,
 - (b) the terms of the administrator's appointment, including the remuneration the Minister determines to be appropriate,
 - (c) the functions to be exercised by the administrator.
- (5) The date specified in an administration order on which an administrator's appointment ends must not be more than 5 years after the date on which the appointment starts.
- (6) The Minister may, by order published in the Gazette—

- (a) terminate the appointment of the administrator, and
- (b) appoint another person as the administrator.

4 When administration order takes effect

- (1) An administration order takes effect on—
 - (a) the day the order is published in the Gazette, or
 - (b) if a later day is specified in the order—the later day.
- (2) The Minister is not required to give notice to any person or body, including the CFMEU, C & G Division or the CFMEU (NSW), or any office holder of the CFMEU, C & G Division or the CFMEU (NSW), before—
 - (a) making an administration order, or
 - (b) varying or revoking an administration order.

5 Functions of administrator

- (1) Subject to the administration order, an administrator has the following functions under this schedule—
 - (a) the administration of the CFMEU, C & G Division,
 - (b) the functions of the State Executive of the CFMEU (NSW),
 - (c) the functions of the Divisional Council and officers and bodies of the CFMEU, C & G Division under the rules of the CFMEU, C & G Division,
 - (d) promoting compliance by the CFMEU, C & G Division with the laws, including workplace laws, of the State and the Commonwealth,
 - (e) ensuring officers and employees of the CFMEU, C & G Division have complied, and continue to comply, with the obligations of this Act and, if the officers and employees have not complied, as far as reasonably practicable ensure the officers and employees are held accountable for the non-compliance,
 - (f) the control of funds, property and other assets of the CFMEU, C & G Division and the CFMEU (NSW), including—
 - (i) the power to dispose of property and other assets of the CFMEU, C & G Division and the CFMEU (NSW), and
 - (ii) the control of funds, property and other assets transferred or otherwise moved from the CFMEU, C & G Division to the CFMEU (NSW) before the administrator was appointed.
- (2) The administrator must, in exercising the administrator's functions in relation to the CFMEU, C & G Division—
 - (a) be satisfied the administrator is acting in the best interests of the members of the CFMEU, C & G Division, and
 - (b) have regard to the objects of the CFMEU (NSW), as defined in the rules of the CFMEU (NSW) at the commencement of this schedule, so far as the objects and rules are lawful.
- (3) An administrator may bring proceedings in the name of the CFMEU (NSW) or the CFMEU, C & G Division for—
 - (a) the recovery of funds, property or other assets of the CFMEU (NSW) or the CFMEU, C & G Division, including funds, property or other assets transferred or otherwise moved to the CFMEU (NSW), the CFMEU or

another organisation registered under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth, and

- (b) the imposition of penalties and the awarding of compensation under this Act or another Act.

6 Variation and revocation of administration order

- (1) The Minister may, at any time by order published in the Gazette, vary an administration order, including to vary—
 - (a) the administration scheme established by the order, or
 - (b) the terms of the administrator’s appointment.
- (2) The Minister may, at any time by order published in the Gazette, revoke—
 - (a) the appointment of an administrator, or
 - (b) an administration order if the Minister is satisfied the administration scheme is no longer necessary because the CFMEU, C & G Division is able to function effectively without being under administration.
- (3) In deciding whether to vary or revoke an administration scheme, the Minister must consider whether the variation or revocation of the administration scheme is in the public interest, having regard to—
 - (a) the objects of this Act, and
 - (b) any other matters the Minister considers relevant.

7 Expenses of administrator

Subject to the administration order, the expenses of, and incidental to, the conduct of the affairs of the CFMEU (NSW) or the CFMEU, C & G Division by an administrator, including the administrator’s remuneration as specified in the administration order, are payable by the CFMEU (NSW).

8 Section 290B does not apply to administrator exercising functions under schedule

Section 290B does not apply in relation to an administrator exercising functions under this schedule.

9 Provision of assistance to administrator

- (1) For the purpose of exercising the administrator’s functions under this schedule, the administrator may, by written notice given to a relevant person, require the relevant person to do either or both of the following—
 - (a) give to the administrator documents in the relevant person’s possession, custody, power or control that the administrator reasonably requires to exercise the functions,
 - (b) give the administrator any other information or assistance the administrator reasonably requires to exercise the functions.
- (2) A relevant person to whom a notice is given under subclause (1) must comply with the notice unless the relevant person has a reasonable excuse.
Maximum civil penalty—1700 penalty units.
- (3) In this clause—
relevant person means—
 - (a) an officer or employee, or former officer or employee, of the CFMEU (NSW) or the CFMEU, C & G Division,

- (b) an agent or former agent of the CFMEU (NSW) or the CFMEU, C & G Division,
- (c) a person that provides or formerly provided services, under a contract or agreement to the CFMEU (NSW) or the CFMEU, C & G Division,
- (d) a person prescribed by the regulations.

10 Application of liability provisions

Section 290D applies to an administrator exercising functions under this schedule in the same way as the provisions apply to an administrator exercising functions under Chapter 5, Part 4, Division 11.

11 Anti-avoidance provision

- (1) A person commits an offence if, without reasonable excuse—
 - (a) the person engages in conduct or a course of conduct, and
 - (b) as a result of the conduct or course of conduct—
 - (i) another person or body is prevented from taking action under an administration scheme, or
 - (ii) the administrator is prevented from effectively administering the administration scheme.

Maximum civil penalty—1,700 penalty units.

Maximum criminal penalty—imprisonment for 2 years or 8,535 penalty units.

- (2) This clause applies to conduct engaged in on or after 17 July 2024.

12 Interaction with rules

The following have effect despite the rules of the CFMEU (NSW), the CFMEU, C & G Division or another branch, division or part of the CFMEU—

- (a) an administration scheme,
- (b) an action taken under an administration scheme,
- (c) an administration order.

13 Actions under scheme

- (1) Actions of the administrator, including actions mentioned in clause 3(2)(c) and (d), have effect—
 - (a) regardless of the end of the administration scheme under clause 2(2) or 6(2), and
 - (b) regardless of clause 18, and
 - (c) despite any provision of this Act, the regulations or the rules of the CFMEU (NSW) or the CFMEU, C & G Division.
- (2) The regulations may prescribe the effect of actions taken under the administration scheme for the purposes of other laws.

14 Contravention of clauses 9 and 11

- (1) This clause applies if a person contravenes clause 9(2) or 11(1).
- (2) The Commission may make an order requiring the person to take action to comply with the clause or to stop taking action that contravenes the clause.

15 Alteration of rules under administration scheme

- (1) This clause applies in relation to an alteration of the rules of the CFMEU (NSW) or the CFMEU, C & G Division made under an administration scheme.
- (2) The administrator must, within 35 days after the alteration is made, or a longer period determined by the Industrial Registrar, lodge with the Commission a notice setting out particulars of the alteration.
- (3) The notice must contain a declaration, signed by the administrator, that—
 - (a) the alteration was made in accordance with the administration scheme, and
 - (b) the particulars set out in the notice are true and correct to the best knowledge and belief of the administrator.
- (4) If particulars of the alteration are lodged with the Commission, the Industrial Registrar may, with the administrator's consent, amend the alteration for the purpose of correcting a typographical, clerical or formal error.
- (5) The alteration does not take effect unless—
 - (a) particulars of the alteration have been lodged with the Commission as required by subclauses (2) and (3), and
 - (b) the Industrial Registrar has certified that, in the Industrial Registrar's opinion, the alteration—
 - (i) complies with, and is not contrary to, this Act, awards and enterprise agreements, and
 - (ii) is not otherwise contrary to law, and
 - (iii) has been made in accordance with the scheme.
- (6) If certified under subclause (5), the alteration takes effect on the day of certification.

16 Proceedings for contravention of civil penalty provision

- (1) This section applies to a contravention of clause 9(2) or 11(1) (a *civil penalty provision*).
- (2) The industrial court may, on the application of an authorised official, order a person to pay a monetary penalty if the Court is satisfied the person contravened a civil penalty provision.
- (3) The monetary penalty must not be more than the amount specified at the end of the civil penalty provision following the words "Maximum civil penalty".
- (4) Proceedings for a penalty under this clause may be brought within 6 years after the date on which the contravention is alleged to have occurred.
- (5) The rules of evidence apply to proceedings under this clause.
- (6) The standard of proof that applies to proceedings under this clause is proof on the balance of probabilities.
- (7) Section 357(6) and (7) apply in relation to a contravention of a civil penalty provision and proceedings under this clause in the same way as the subsections apply to a contravention of an industrial instrument and proceedings for a civil penalty for the contravention.
- (8) Criminal proceedings may be commenced against a person for conduct that is substantially the same conduct constituting a contravention of clause 11(1) regardless of whether the industrial court makes an order under this clause.

- (9) However, the industrial court must not make an order under this clause for a contravention of a civil penalty provision if the person the subject of the proceedings has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.
- (10) A person who is involved in a contravention of a civil penalty provision is taken to have contravened the provision.
- (11) In this clause—
authorised official means—
(a) an inspector or other person authorised under this Act to institute proceedings for offences, or
(b) the administrator.
industrial court has the same meaning as in Chapter 7, Part 1.
involved, in a contravention of a civil penalty provision, means a person has—
(a) aided, abetted, counselled or procured the contravention, or
(b) induced the contravention, whether by threats, promises or otherwise, or
(c) been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention, or
(d) conspired with others to effect the contravention.

17 Regulation-making power

- (1) The regulations may provide for—
(a) matters in relation to administration orders, including the functions and remuneration of an administrator, and
(b) matters relating to an administration scheme, including the matters referred to in clause 3(2).
- (2) Also, the regulations may amend this schedule to make any changes necessary or convenient for the administration of the CFMEU, C & G Division by an administrator, including—
(a) in relation to the exercise of functions by an administrator, and
(b) for the purpose of ensuring consistency with—
(i) a Commonwealth Act under which an administrator is appointed for the CFMEU, or
(ii) an instrument made under a Commonwealth Act referred to in subparagraph (i).

18 Repeal of certain provisions

- (1) Clauses 2–6 are repealed at the end of the later of the following days—
(a) the day that is the fifth anniversary of the commencement of this schedule,
(b) the day the administration scheme expires.
- (2) Clause 9(3), definition of **relevant person**, paragraph (d) and clause 17 are repealed at the end of the day that is 2 years after the commencement of clause 17.

- (3) Despite subclause (2), a regulation made under this schedule and in force immediately before the repeal of clause 17 continues in force until clauses 2–6 are repealed.