



New South Wales

Industrial Relations Amendment (Non-operative Awards) 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 amend the *Industrial Relations Act 1996* (*the principal Act*) to protect certain awards that have no current application to any employers or employees. This Bill provides that such awards cannot be rescinded and may only be amended to give effect to National or State decisions.

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 [13] inserts a definition of *non-operative award* into the Dictionary to the principal Act. *Non-operative award* is defined as an award that is declared, under

section 19, 20 or 20A of the principal Act, to be an award that does not have any current application to any employer or employee.

Schedule 1 [8] inserts proposed section 20A. The proposed section provides that the Commission may, if satisfied that an award does not currently apply to any employer or employee, make a declaration to that effect. The proposed section also provides that the Industrial Registrar is to keep a register of non-operative awards. **Schedule 1 [6] and [7]** make similar amendments that allow for a declaration that an award does not currently apply to any employee or employer as a result of a review of awards under section 19 of the principal Act or as a result of the consolidation of awards under section 20 of that Act.

Schedule 1 [1] amends section 17 of the principal Act to provide that a non-operative award may not be varied or rescinded under that section. However, **Schedule 1 [10]** amends section 52 of the principal Act to provide that the Commission is to vary non-operative awards to give effect to certain National or State decisions that generally affect, or are likely to generally affect, the conditions of employment of employees in New South Wales.

Schedule 1 [11] amends Schedule 4 to the principal Act to enable the making of regulations containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [12] provides that an award that was in force on the date that this Bill was introduced into the Legislative Assembly may be declared to be a non-operative award, and that any purported rescission or variation of such an award between that date and the date of assent to the proposed Act, is of no effect.

Schedule 1 [2]–[5] and [9] make consequential amendments.

First print



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Industrial Relations Amendment (Non-operative Awards) Bill 2010

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New South Wales

Industrial Relations Amendment (Non-operative Awards) Bill 2010

No. , 2010

A Bill for

An Act to amend the *Industrial Relations Act 1996* to protect non-operative awards;
and for other purposes.

The Legislature of New South Wales enacts:

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1 Name of Act

2

This Act is the *Industrial Relations Amendment (Non-operative Awards) Act 2010*.

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2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Industrial Relations Act	1
	1996 No 17	2
[1]	Section 17 Variation or rescission of award (other than non-operative award)	3
	Insert “(other than a non-operative award) under this section” after “award” in section 17 (1).	4
		5
		6
[2]	Section 17 (1), note	7
	Insert at the end of section 17 (1):	8
	Note. A non-operative award may be varied under section 52.	9
[3]	Section 17 (3)	10
	Insert “(other than a non-operative award)” after “An award”.	11
[4]	Section 17 (4)	12
	Insert “(other than a non-operative award)” after “award”.	13
[5]	Section 19 Review of awards	14
	Omit “rescind obsolete awards” from section 19 (2).	15
	Insert instead “determine whether or not an award has any current application to any employer or employee”.	16
		17
[6]	Section 19 (6)	18
	Omit the subsection. Insert instead:	19
	(6) The Commission is to:	20
	(a) make such changes to awards as it considers necessary as a result of a review, or	21
		22
	(b) in the case of an award that the Commission determines does not have any current application to any employer or employee—make a declaration to that effect, or	23
		24
		25
	(c) in the case of a non-operative award that the Commission determines has current application to an employer or employee—declare that the award is no longer a non-operative award.	26
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[7] Section 20 Consolidation of awards	1
Omit section 20 (2). Insert instead:	2
(2) The Commission may, in connection with the consolidation of awards, declare that an award does not have any current application to any employer or employee.	3 4 5
[8] Section 20A	6
Insert after section 20:	7
20A Non-operative awards	8
(1) The Commission may:	9
(a) if the Commission is satisfied that an award does not have any current application to any employer or employee—make a declaration to that effect, or	10 11 12
(b) if the Commission is satisfied that a non-operative award has current application to an employer or employee—declare that the award is no longer a non-operative award.	13 14 15
(2) Section 11 applies to any such declaration as if it were an award.	16
(3) The Industrial Registrar is to keep a register of non-operative awards.	17 18
(4) A copy of the register is to be published by the Industrial Registrar on the NSW industrial relations website.	19 20
[9] Section 52 Variation of awards and other orders on adoption of National decisions or making of State decisions	21 22
Insert “(other than non-operative awards)” after “awards”.	23
[10] Section 52 (2)	24
Omit the note to section 52. Insert instead:	25
(2) When adopting the principles or provisions of a National decision or making a State decision, the Commission is to vary non-operative awards to the extent necessary to give effect to the decision.	26 27 28 29
[11] Schedule 4 Savings, transitional and other provisions	30
Insert at the end of clause 2 (1):	31
<i>Industrial Relations Amendment (Non-operative Awards) Act 2010</i>	32 33

[12] Schedule 4	1
Insert at the end of the Schedule with appropriate Part and clause numbering:	2
Part Provisions consequent on enactment of Industrial Relations Amendment (Non-operative Awards) Act 2010	3 4 5
Non-operative awards	6
(1) This clause applies to an award that:	7
(a) was in force on the date of introduction, and	8
(b) was varied or rescinded during the period commencing on the date of introduction and ending immediately before the commencement of the 2010 amending Act.	9 10 11
(2) On or after the commencement of the 2010 amending Act, the Commission may make a declaration under section 20A in relation to an award to which this clause applies as if the award had not been rescinded or varied.	12 13 14 15
(3) If the Commission makes a declaration under section 20A (1) (a) in relation to such an award, the award continues in force as if the variation or rescission referred to in subclause (1) (b) had not occurred.	16 17 18 19
(4) In this clause:	20
<i>date of introduction</i> means the date on which the Bill for the 2010 amending Act was introduced into the Legislative Assembly.	21 22 23
<i>the 2010 amending Act</i> means the <i>Industrial Relations Amendment (Non-operative Awards) Act 2010</i> .	24 25

[13] Dictionary

Insert in alphabetical order:

non-operative award means an award that is declared, under section 19, 20 or 20A, to be an award that does not have any current application to any employer or employee.

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