

Passed by both Houses



New South Wales

Industrial Relations Amendment Bill 2005

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*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, , 2005*



New South Wales

Industrial Relations Amendment Bill 2005

Act No , 2005

An Act to amend the *Industrial Relations Act 1996* to clarify the unfair contracts jurisdiction of the Industrial Relations Commission, to limit the exclusion of the Commission in Court Session from the supervisory jurisdiction of the Supreme Court, to authorise the Commission in Court Session to be called the Industrial Court of New South Wales and for other purposes.

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

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Industrial Relations Amendment Act 2005*.

2 Commencement

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

3 Amendment of Industrial Relations Act 1996 No 17

The *Industrial Relations Act 1996* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 106 Power of Commission to declare contracts void or varied

Insert after section 106 (2):

- (2A) A contract that is a related condition or collateral arrangement may be declared void or varied even though it does not relate to the performance by a person of work in an industry, so long as:
- (a) the contract to which it is related or collateral is a contract whereby the person performs work in an industry, and
 - (b) the performance of work is a significant purpose of the contractual arrangements made by the person.

[2] Section 108B Time for making application

Insert “, subject to subsection (3),” after “such application or” in section 108B (2).

[3] Section 108B (3)

Insert after section 108B (2):

- (3) The Commission may accept an application made within 3 months after the time prescribed by subsection (1) if the applicant satisfies the Commission that there are exceptional circumstances justifying the making of the late application.

[4] Section 151A

Insert after section 151:

151A Name of Commission in Court Session to be the Industrial Court of New South Wales

The name of the Commission in Court Session is to be the Industrial Court of New South Wales, and a reference in this Act (or any other Act, statutory instrument or document) to the Commission in Court Session (whether enacted or made before or after the commencement of this section) is taken to include a reference to the Industrial Court of New South Wales.

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Schedule 1 Amendments

[5] Section 179

Omit section 179. Insert instead:

179 Finality of decisions

- (1) A decision of the Commission (however constituted) is final and may not be appealed against, reviewed, quashed or called into question by any court or tribunal.
- (2) Proceedings of the Commission (however constituted) may not be prevented from being brought, prevented from being continued, terminated or called into question by any court or tribunal.
- (3) This section extends to proceedings brought in a court or tribunal in respect of a decision or proceedings of the Commission on an issue of fact or law.
- (4) This section extends to proceedings brought in a court or tribunal in respect of a purported decision of the Commission on an issue of the jurisdiction of the Commission, but does not extend to any such purported decision of:
 - (a) the Full Bench of the Commission in Court Session, or
 - (b) the Commission in Court Session if the Full Bench refuses to give leave to appeal the decision.
- (5) This section extends to proceedings brought in a court or tribunal for any relief or remedy, whether by order in the nature of prohibition, certiorari or mandamus, by injunction or declaration or otherwise.
- (6) This section is subject to the exercise of a right of appeal to a Full Bench of the Commission conferred by this or any other Act or law.
- (7) In this section:
decision includes any award or order.

[6] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

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[7] Schedule 4

Insert after clause 19A:

19B Transitional provision relating to unfair contracts arising from 2005 amending Act

Section 106 (2A), as inserted by the *Industrial Relations Amendment Act 2005* applies to a contract made before the commencement of that provision and to proceedings pending in the Commission at that commencement that have not been finally determined by the Commission. However, section 106 (2A) does not apply to any proceedings pending in any other court or tribunal on that commencement.

[8] Schedule 4

Insert after clause 31A:

31B Finality of decisions

The amendments made to section 179 by the *Industrial Relations Amendment Act 2005* apply to decisions and proceedings of the Commission made or instituted before the commencement of the amendments, and to proceedings pending in any State court or tribunal (other than the Commission) on that commencement. However, those amendments do not affect any order or decision made by any such court or tribunal before that commencement.