

[Act 2000 No 67]



New South Wales

Industrial Relations Amendment Bill 2000

Explanatory note

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

Overview of Bill

The object of this Bill is to make a number of miscellaneous amendments to the *Industrial Relations Act 1996*, including the following:

- (a) to empower the Industrial Relations Commission to declare any class of persons (working as contractors but not under a contract of employment) to be employees for the purposes of the *Industrial Relations Act 1996* if it considers they would be more appropriately regarded as employees,
- (b) to enable the parties to a project award or an award relating to a single employer (or to two or more associated employers) to agree to the award commencing retrospectively from any earlier date than the date of the commencement of proceedings for (or that give rise to) the award,
- (c) to clarify the application of the “no net detriment” test in relation to the

* Amended in committee—see table at end of volume.

- approval of enterprise agreements that apply to employees to whom a Federal award applies or to employees to whom no award (State or Federal) applies,
- (d) to dispense with the requirement that the minimum term for which an enterprise agreement can be made to apply is 12 months,
 - (e) to extend to casual employees who work on a regular and systematic basis the entitlement to 12 months' unpaid maternity, paternity or adoption leave,
 - (f) to enable some employees covered by a Federal award to bring unfair dismissal claims before the Industrial Relations Commission of New South Wales,
 - (g) to extend the period of 6 months during which an injured worker cannot be dismissed because he or she is unfit for work to any longer period of accident pay to which the injured employee is entitled under an industrial instrument,
 - (h) to enable an employee, for whom the employer is required to make superannuation contributions to a fund designated by an industrial instrument, to revoke any nomination of the employee under section 124 of a different fund to which the contributions are to be paid,
 - (i) to dispense with the requirement that an employer must obtain the permission of the Industrial Registrar to keep employee records at a place other than the workplace,
 - (j) to confer a right of appeal to the Full Bench of the Commission against a decision of an Industrial Magistrate to dismiss proceedings for a civil penalty for a breach of an industrial instrument in addition to the existing right of appeal against a decision to impose such a penalty,
 - (k) to provide that in proceedings to enforce rights against victimisation there is to be a rebuttable presumption that any detrimental action taken against an employee was victimisation,
 - (l) to reduce the notice required to be given by an authorised industrial officer who wishes to enter premises to investigate industrial law breaches from 48 hours to 24 hours, but to allow a further period of 24 hours for a person to produce any records not kept on the premises,
 - (m) to provide that a non-judicial member of the Commission may only be removed from office in the same way as a judicial member, that is, by the Governor on the address of both Houses of Parliament.

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 a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Industrial Relations Act 1996* set out in Schedule 1.

Schedule 1 contains the amendments mentioned above. The amendments are explained in detail in the explanatory note relating to the amendment concerned set out in the Schedule.