

[Act 2002 No 32]



New South Wales

## Industrial Relations Amendment (Unfair Contracts) Bill 2002

### Explanatory note

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

#### Overview of Bill

Part 9 of Chapter 2 of the *Industrial Relations Act 1996* gives the Industrial Relations Commission in Court Session the power by order to set aside, or vary, any contract whereby a person performs work in any industry if the Commission finds that the contract is unfair (an *unfair contract order*). The Commission is also given the power to make orders for the payment of money in connection with a contract it has set aside or varied.

The object of this Bill is to amend the *Industrial Relations Act 1996*:

- (a) to prevent an application being made to set aside or vary a contract of employment by the making of an unfair contract order if the remuneration package paid or receivable under the contract during the 12 months preceding the application (or, if paid or receivable for a shorter period, that would have

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

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been paid or receivable if converted to an annual basis) exceeds \$200,000 (or a greater indexed amount), and

- (b) to prevent an application being made to set aside or vary a contract between partners in a partnership by the making of an unfair contract order, and
- (c) to require the Commission to take into account whether or not an applicant (or person on behalf of whom an application is made) took any action to mitigate loss in assessing the amount of money payable in connection with a contract that is set aside or varied by an unfair contract order, and
- (d) to require an application for an unfair contract order in relation to a contract that has been terminated to be made within a period of 12 months after termination.

## 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.

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

## Schedule 1 Amendments

### Limits on contracts in respect of which unfair contract orders can be made

Section 106 (1) of the Principal Act confers jurisdiction on the Industrial Relations Commission to make unfair contract orders.

**Schedule 1 [2]** inserts proposed section 108A into the Principal Act.

Proposed section 108A gives effect to the amendments described in paragraph (a) and (b) of the Overview.

Proposed section 108A prevents an application, or order, being made to set aside or vary a contract of employment if the remuneration package paid or receivable under the contract in the 12 months preceding the application (or, if paid or receivable for a shorter period, that would have been paid or receivable if converted to an annual basis) exceeds \$200,000 (or a greater indexed amount).

### Mitigation of loss

**Schedule 1 [1]** inserts proposed section 106 (6) into the Principal Act.

Proposed section 106 (6) gives effect to the amendment described in paragraph (c) of the Overview.

**Limitation period for applications with respect to terminated contracts**

**Schedule 1 [2]** also inserts proposed section 108B into the Principal Act to give effect to the amendment described in paragraph (d) of the Overview.

**Savings and transitional provisions**

**Schedule 1 [3]** amends clause 2 of Schedule 4 to the Principal Act to enable the making of savings and transitional regulations consequent on the enactment of the proposed Act.