



New South Wales

Industrial Relations Amendment (Industrial Organisations) Bill 2012

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* as follows:

- (a) to enable the Minister to appoint an administrator for a State industrial organisation if there is an ongoing investigation into or evidence of gross misconduct by its officers and proper administrative arrangements need to be put in place,
- (b) to enable the Industrial Relations Commission (the **Commission**) to make orders approving schemes to enable a State industrial organisation to work more effectively, hold elections or to do other things if the organisation ceases to function effectively, its officers engage in gross misconduct or an office is vacant and cannot be filled,
- (c) to enable the Industrial Registrar to arrange for elections for a State industrial organisation where all of its offices are vacant due to action against an associated federal organisation,
- (d) to require the Industrial Registrar to notify the Director-General of the Department of Finance and Services of instances of misconduct by officers of State industrial organisations,

- (e) to confer on inspectors powers to investigate misconduct offences by officers of State industrial organisations,
- (f) to extend to 5 years the limitation period for prosecutions for misconduct offences by officers of State industrial organisations,
- (g) to enact other provisions of a consequential or savings or transitional nature.

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

Actions in cases of dysfunction, misconduct or vacancy in offices

Schedule 1 [3] inserts proposed Division 11 of Part 4 of Chapter 5.

Proposed section 290B enables the Minister, by order, to appoint an administrator for a State industrial organisation if the Minister has reason to believe that there is an ongoing investigation into alleged gross misconduct by officers of the organisation, or an investigation has found evidence of such gross misconduct, and that the appointment will enable proper administrative arrangements to be put in place. The administrator will have (subject to the order of appointment) the function of the conduct and management of the affairs of the organisation for a period of up to 6 months. Proposed section 290C confers jurisdiction on the Supreme Court to review an order made by the Minister appointing an administrator.

Proposed section 290D enables the Commission, on the application of the Minister, a State industrial organisation or any person having a sufficient interest, to make declarations that an organisation has ceased to exist or function effectively, has officers who are alleged to or have engaged in gross misconduct, or that an office in the organisation is vacant and cannot be effectively filled. On making such a declaration, the Commission may approve a scheme for the organisation (which may include the appointment of an administrator) to enable those matters to be remedied.

Proposed section 290E enables an administrator to require officers or employees, or former officers or employees, of State industrial organisations to provide relevant documents to an administrator and to provide other information or assistance that an administrator reasonably requires. It will be an offence to fail, without reasonable excuse, to comply with such a requirement.

Proposed section 290F excludes an administrator, the State and the Minister from liability for acts or omissions of an administrator appointed for a State industrial organisation.

Proposed section 290G confers power on the Industrial Registrar, on application by the Minister or a person having a sufficient interest, to make arrangements for the election of officers of a State industrial organisation where the officers held office by virtue of appointment as officers of an affiliated federal industrial organisation and those officers' positions are vacant and the State industrial organisation's rules do not provide an effective means to fill them.

Proposed section 290H makes it clear that the provisions of the proposed Division will apply to certain State industrial organisations with federal links. It also makes it clear that an administrator appointed under the proposed Division may be an administrator appointed to an associated organisation under Commonwealth legislation.

Proposed section 290I validates elections of officers held under the proposed Division that may contravene the rules of the State industrial organisation concerned.

Schedule 1 [1] makes an amendment consequential on the insertion of proposed sections 290B, 290D and 290G.

Schedule 1 [2] imposes a duty on the Industrial Registrar to notify the Director-General of the Department of Finance and Services of any matter that the Industrial Registrar reasonably suspects concerns conduct that constitutes or may constitute a misconduct offence by an officer of a State industrial organisation.

Investigation and prosecution of offences

Schedule 1 [4] enables an inspector who enters premises to investigate possible contraventions of the industrial relations legislation or an industrial instrument by an employer to seize anything that the inspector reasonably considers to be evidence of a contravention.

Schedule 1 [5] confers powers on inspectors to enter and inspect premises of State industrial organisations, to require records to be produced and information to be provided and to question officers or employees or former officers or employees of industrial organisations in relation to contraventions of the provisions relating to misconduct by officers of such organisations. Inspectors may also seize anything that is reasonably considered to be evidence of a contravention.

Schedule 1 [6] enables an inspector who enters premises under a search warrant to seize anything that the inspector reasonably considers to be evidence of a contravention of the industrial relations legislation or an industrial instrument.

Schedule 1 [8] extends the limitation period for prosecution of misconduct offences by officers of State industrial organisations to 5 years. **Schedule 1 [7]** makes a consequential amendment.

Savings and transitional provisions

Schedule 1 [9] enables regulations containing savings and transitional provisions to be made consequent on the enactment of the proposed Act.

Schedule 1 [10] inserts provisions enabling actions to be taken under provisions inserted by the proposed Act in relation to matters that occurred before its

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commencement and applying the new limitation period for offences, and the additional investigation powers of inspectors, to offences committed before the commencement of the proposed Act.

First print



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New South Wales

Industrial Relations Amendment (Industrial Organisations) Bill 2012

No. , 2012

A Bill for

An Act to amend the *Industrial Relations Act 1996* with respect to the appointment of administrators of State industrial organisations and the investigation and prosecution of misconduct offences by officers of those organisations; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Industrial Relations Amendment (Industrial Organisations) Act 2012</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6

Schedule 1	Amendment of Industrial Relations Act 1996 No 17	1
		2
[1]	Section 257 Functions and powers of Commission at inquiry	3
	Insert at the end of the section:	4
	Note. A new election may also be arranged by the Industrial Registrar in the circumstances specified in section 290G or may occur under arrangements made under section 290B or 290D.	5 6 7
[2]	Section 270A	8
	Insert after section 270:	9
	270A Notification of allegations of misconduct	10
	The Industrial Registrar is under a duty to notify the Director-General of the Department of Finance and Services of any matter that the Industrial Registrar suspects on reasonable grounds concerns conduct that constitutes or may constitute an offence under this Division.	11 12 13 14 15
[3]	Chapter 5, Part 4, Division 11	16
	Insert after Division 10 of Part 4 of Chapter 5:	17
	Division 11 Powers relating to cases of dysfunction, misconduct or vacancy in offices in State organisations	18 19 20
	290B Appointment of administrator by Minister in cases of gross misconduct	21 22
	(1) Appointment of administrator	23
	The Minister may, by order published in the Gazette, appoint an administrator to conduct the affairs of a State organisation if the Minister has reason to believe that:	24 25 26
	(a) there is an ongoing investigation into alleged gross misconduct by a collective body of the organisation or one or more officers of the organisation or that an investigation has found that there is evidence of such alleged gross misconduct, and	27 28 29 30 31
	(b) the appointment of the administrator will enable proper administrative arrangements to be put in place.	32 33
	(2) Without limiting subsection (1), <i>gross misconduct</i> includes any conduct that may constitute a serious offence within the meaning of Division 6 of this Part.	34 35 36

Industrial Relations Amendment (Industrial Organisations) Bill 2012

Schedule 1 Amendment of Industrial Relations Act 1996 No 17

- (3) An administrator for an organisation has, during the term of office of the administrator and to the exclusion of any other person, the function of the conduct and management of the affairs of the organisation or such of those functions as may be specified in the order. 1
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- (4) An order appointing an administrator must specify the following: 6
- (a) the name of the administrator, 7
 - (b) any limitations on the person's functions as administrator, 8
 - (c) the date on which the appointment takes effect, 9
 - (d) the term of the appointment (being for a period of up to 6 months), 10
11
 - (e) any other conditions of the appointment, 12
 - (f) any ancillary or other matter the Minister thinks appropriate. 13
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- (5) An administrator ceases to hold office: 15
- (a) on the expiry of the term for which the administrator is appointed, or 16
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 - (b) on termination of the administrator's appointment by order of the Minister published in the Gazette, 18
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- whichever occurs first. 20
- (6) **Office holders cease to hold office** 21
- If an administrator is appointed for an organisation, any officers of the organisation cease to hold office on the appointment taking effect. 22
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- (7) An administrator may, subject to the order appointing the administrator, make arrangements for elections for officers of the organisation. The Industrial Registrar may, at the request of the administrator, modify the rules of the organisation to the extent necessary to allow an election to be held. 25
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- (8) **Expenses of administration** 30
- An administrator is entitled to be paid such remuneration as is determined by the Minister from the funds of the organisation. 31
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Any other expenses of and incidental to the conduct of the affairs of the organisation by the administrator are payable from the funds of the organisation. 33
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(9)	Reports of administration	1
	On receipt of a request by the Minister, an administrator must prepare and give to the Minister a report showing how the administration is being carried out.	2 3 4
(10)	Extension of administration	5
	The Minister may, by order published in the Gazette, extend the term of an administrator's appointment if satisfied that the special circumstances of the case require an extended administration period.	6 7 8 9
(11)	Order and administration to have effect despite rules	10
	An order of the Minister under this section, and any action taken by an administrator or other person in accordance with the order, has effect despite anything in the rules of the organisation or a branch of the organisation.	11 12 13 14
290C	Review by Supreme Court	15
(1)	A former officer of a State organisation the subject of an order by the Minister under this Division, or any other person having a sufficient interest, may apply to the Supreme Court for a review of the decision by the Minister to make the order.	16 17 18 19
(2)	The Supreme Court may affirm or set aside the order made by the Minister or may also or instead make any order that the Minister may make under this Division.	20 21 22
(3)	An order by the Supreme Court under this section is taken to be an order of the Minister.	23 24
290D	Commission may order reconstitution of organisation or branch etc	25 26
(1)	Declaration by Commission of dysfunction, misconduct or vacancy in offices	27 28
	The Minister, a State organisation or any other person having a sufficient interest in relation to an organisation may apply to the Commission for any of the following declarations:	29 30 31
	(a) a declaration that the organisation or a part of the organisation, including:	32 33
	(i) a branch or part of a branch of the organisation, or	34
	(ii) a collective body of the organisation or a branch of the organisation,	35 36
	has ceased to exist or function effectively and there are no effective means under the rules of the organisation or	37 38

	branch by which it can be reconstituted or enabled to function effectively,	1 2
(b)	a declaration that a collective body of the organisation or one or more officers of the organisation are alleged to have engaged, or have engaged, in gross misconduct in relation to the carrying out of their functions or in relation to the organisation,	3 4 5 6 7
(c)	a declaration that an office or position in the organisation or a branch of the organisation is vacant and there is no effective means under the rules of the organisation or branch to fill the office or position.	8 9 10 11
(2)	Without limiting subsection (1), <i>gross misconduct</i> includes any conduct that may constitute a serious offence within the meaning of Division 6 of this Part.	12 13 14
(3)	Order for scheme and administrator by Commission	15
	If the Commission makes a declaration under this section, the Commission may, by order, approve a scheme for the taking of action by the organisation, a collective body of the organisation or a branch of the organisation, or by an officer or officers of the organisation or a branch of the organisation:	16 17 18 19 20
(a)	for the reconstitution of the branch, the part of the branch or the collective body, or	21 22
(b)	to enable the organisation, branch, the part of the branch or the collective body to function effectively, or	23 24
(c)	for the filling of the office or position.	25
	A scheme may include the appointment of an administrator for the organisation.	26 27
(4)	If an order is made under this section, the Commission may give any ancillary or consequential directions it considers appropriate.	28 29
(5)	Limits on order-making power	30
	The Commission must not make an order under this section unless the Commission is satisfied that the order would not do substantial injustice to the organisation or any member of the organisation.	31 32 33 34
(6)	The Commission must not approve a scheme involving provision for an election for an office unless the scheme provides for the election to be held by a direct voting system or a collegiate electoral system.	35 36 37 38

(7)	Notice of applications or orders	1
	The Commission may determine:	2
(a)	what notice is to be given to other persons of the intention to make an application or an order under this section, and	3 4
(b)	whether and how the notice should be given or served and whether it should be advertised in any newspaper.	5 6
(8)	Orders and directions to have effect despite rules of organisation	7 8
	An order or direction of the Commission under this section, and any action taken by an administrator or other person in accordance with the order or direction, has effect despite anything in the rules of the organisation or a branch of the organisation.	9 10 11 12 13
(9)	No proceedings or order if Ministerial administration order made	14 15
	If an order appointing an administrator is made under section 290B:	16 17
(a)	any proceedings for a declaration and order may no longer be continued, and	18 19
(b)	no order may be made under this section while the administration has effect.	20 21
290E	Provision of assistance to administrator	22
(1)	An administrator appointed under this Division may, for the purpose of exercising the administrator's functions, by notice in writing to an officer or employee or former officer or employee of an organisation, require that person to do the following:	23 24 25 26
(a)	produce to the administrator documents in the person's possession that the administrator reasonably requires to exercise those functions,	27 28 29
(b)	provide such other information or assistance as the administrator reasonably requires for the purposes of the exercise of those functions.	30 31 32
(2)	An officer or employee or former officer or employee of an organisation must not, without reasonable excuse, fail to comply with a requirement made by an administrator under this section. Maximum penalty: 100 penalty units.	33 34 35 36

290F	Liability relating to administration	1
(1)	Any matter or thing done or omitted to be done by an administrator appointed under this Division for a State organisation, or a person acting under the direction of the administrator, does not, if the matter or thing was done or omitted in good faith for the purpose of executing this or any other Act, subject the administrator or person so acting personally to any action, liability, claim or demand.	2 3 4 5 6 7 8
(2)	Neither the State nor the Minister is liable for anything done or omitted to be done by or on behalf of an administrator appointed for a State organisation under this Division, whether or not the administrator is so liable.	9 10 11 12
290G	Power of Industrial Registrar to initiate elections	13
(1)	The Industrial Registrar may, on application by the Minister or a person having a sufficient interest in relation to a State organisation, make arrangements for an election to be held for the election of officers of a State organisation if the Industrial Registrar is satisfied that:	14 15 16 17 18
(a)	the rules of the State organisation with respect to the election of officers provide for the officers elected to offices in the State branch of a Federal organisation to be taken to be validly elected to the corresponding offices in the State organisation, and	19 20 21 22 23
(b)	those offices are vacant and there are no effective means under the rules of the organisation to fill the offices.	24 25
(2)	The Industrial Registrar may, for the purposes of this section, make an order modifying the operation of the rules of the State organisation to the extent necessary to enable an election to be held.	26 27 28 29
(3)	If an order appointing an administrator is made under section 290B:	30 31
(a)	any application under this section is terminated on the order being made, and	32 33
(b)	no arrangements may be made under this section while the administration has effect.	34 35
290H	Application to organisations with federal links	36
(1)	To avoid doubt, action may be taken under section 290B or 290D in relation to persons who are taken to be elected to corresponding offices in a State organisation under section 239 or in the event of a vacancy in any such office.	37 38 39 40

(2)	To avoid doubt, action taken under this Division:	1
(a)	may relate to a State organisation associated with an organisation that is the subject of an application, or a declaration, under section 323 of the <i>Fair Work (Registered Organisations) Act 2009</i> of the Commonwealth, and	2 3 4 5 6
(b)	may provide for the appointment as an administrator of a person appointed as an administrator under any such declaration.	7 8 9
290I	Validation of elections	10
	If an election is held under section 290B, 290D or 290G, the election is not invalid merely because of a departure from the rules of the State organisation that was required to give effect to this Division.	11 12 13 14
[4]	Section 385 Inspectors' powers—employer breaches	15
	Insert after section 385 (3):	16
(4)	An inspector who enters premises under this section may seize anything that the inspector reasonably considers to be evidence of a contravention of the industrial relations legislation or an industrial instrument.	17 18 19 20
[5]	Sections 385A and 385B	21
	Insert after section 385:	22
385A	Inspectors' powers—misconduct offences	23
(1)	An inspector may exercise powers under this section only for the purpose of investigating possible contraventions of Division 5 of Part 4 of Chapter 5.	24 25 26
(2)	An inspector may, at any reasonable time:	27
(a)	inspect any premises that the inspector has reasonable grounds to suspect are the premises of an organisation to which Part 4 of Chapter 5 applies, and	28 29 30
(b)	require any such organisation to produce for the inspector's examination, at such time and place as the inspector may specify, any specified records required to be kept under the industrial relations legislation or the rules of the organisation or any other records that the inspector suspects may provide evidence of a possible contravention of Division 5 of Part 4 of Chapter 5, and	31 32 33 34 35 36 37

(c)	retain any such record for such period as may be necessary in order to take copies or extracts from it, and	1 2
(d)	require any such organisation or an officer or employee or former officer or employee of the organisation to deliver to the inspector, within such time and to such place as the inspector may specify, any specified information concerning the conduct or management of the organisation, and	3 4 5 6 7 8
(e)	question any officer or employee or former officer or employee of any such organisation concerning matters that may constitute a contravention of Division 5 of Part 4 of Chapter 5.	9 10 11 12
(3)	A requirement of an inspector under this section may be made personally or by notice in writing served by post.	13 14
(4)	An inspector who enters premises under this section may seize anything that the inspector reasonably considers to be evidence of a contravention of Division 5 of Part 4 of Chapter 5.	15 16 17
385B	Receipts for seized things	18
	An inspector must give a receipt for anything seized under this Part.	19 20
[6]	Section 388 Search warrant	21
	Insert at the end of section 388 (2) (b):	22
	, and	23
(c)	to seize anything that the inspector reasonably considers to be evidence of a contravention of the industrial relations legislation or an industrial instrument.	24 25 26
[7]	Section 398 Time for instituting proceedings	27
	Insert “or an offence referred to in subsection (2)” after “other than an offence under section 180”.	28 29
[8]	Section 398 (2)	30
	Insert at the end of section 398:	31
(2)	Proceedings for an offence against sections 267–269 may be commenced not later than 5 years after the offence was alleged to have been committed.	32 33 34

[9] Schedule 4 Savings, transitional and other provisions	1
Insert at the end of clause 2 (1):	2
<i>Industrial Relations Amendment (Industrial Organisations) Act 2012</i>	3
	4
[10] Schedule 4	5
Insert at the end of the Schedule with appropriate Part and clause numbering:	6
Part Provisions consequent on enactment of Industrial Relations Amendment (Industrial Organisations) Act 2012	7
	8
	9
Definition	10
In this Part:	11
<i>the amending Act</i> means the <i>Industrial Relations Amendment (Industrial Organisations) Act 2012</i> .	12
	13
Application of amendments	14
(1) Action may be taken under Division 11 of Part 4 of Chapter 5, as inserted by the amending Act, in relation to an act or omission that:	15
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(a) occurred before the commencement of that Division, or	18
(b) was the subject of an application or declaration of a kind referred to in section 290H that was made before the commencement of that Division.	19
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(2) Sections 385, 388 and 398, as amended by the amending Act, and sections 385A and 385B, as inserted by the amending Act, apply to offences committed before the commencement of the amending Act.	22
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