



New South Wales

# Industrial Relations Amendment Bill 2005

## Explanatory note

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

## Overview of Bill

The objects of this Bill are as follows:

- (a) to enable the Industrial Relations Commission in Court Session to be called the Industrial Court of New South Wales,
- (b) to reverse so much of the decision of the Court of Appeal of the Supreme Court in *Solution 6 Holdings Limited and Others v Industrial Relations Commission of NSW* [2004] NSWCA 200 which held that the industrial relations privative clause (section 179) did not prevent the exercise of the Supreme Court's supervisory jurisdiction in relation to proceedings or proposed proceedings before the Industrial Relations Commission if an application is made to the Supreme Court before the Industrial Relations Commission makes a decision in the proceedings,
- (c) to restrict the operation of that privative clause so that the Supreme Court's supervisory jurisdiction is available if a purported decision of the Industrial Relations Commission in Court Session (in dealing with unfair contracts or other matters) is alleged to be outside the jurisdiction of the Commission, but only after the exercise of any right of appeal to the Full Bench of the Commission,

- (d) to clarify so much of the decision of the Court of Appeal of the Supreme Court that limited the unfair contracts jurisdiction of the Industrial Relations Commission with respect to related conditions or collateral arrangements that are not work-related, so as to make it clear that the jurisdiction extends to any related conditions or collateral arrangements (such as superannuation arrangements, share option agreements or franchise agreements) so long as the contract to which they are related or collateral is a contract whereby a person performs work in an industry and the performance of work is a significant purpose of the contractual arrangements made by the parties,
- (e) to enable the Commission, in exceptional circumstances, to extend the time in which an application relating to an alleged unfair contract may be made.

## 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 that gives effect to the amendments to the *Industrial Relations Act 1996* (*the Principal Act*) set out in Schedule 1.

## Schedule 1 Amendments

**Schedule 1 [1]** amends section 106 of the Principal Act to give effect to the object outlined in paragraph (d) of the Overview above.

**Schedule 1 [2] and [3]** amend section 108B of the Principal Act to give effect to the object outlined in paragraph (e) of the Overview above.

**Schedule 1 [4]** inserts section 151A into the Principal Act to give effect to the object outlined in paragraph (a) of the Overview above.

**Schedule 1 [5]** substitutes section 179 of the Principal Act to give effect to the objects outlined in paragraphs (b) and (c) of the Overview above.

**Schedule 1 [6]** amends Schedule 4 to the Principal Act to enable regulations of a savings or transitional nature to be made consequent on the enactment of the proposed Act.

**Schedule 1 [7]** amends Schedule 4 to the Principal Act so as to apply the amendments made by Schedule 1 [1] to existing contracts and pending proceedings.

**Schedule 1 [8]** amends Schedule 4 to the Principal Act so as to apply the amendments made by Schedule 1 [5] to previous decisions of the Commission and to pending proceedings in any court or tribunal. However, the proposed Act will not affect the appeal proceedings pending in the High Court on the Solution 6 case.

First print



New South Wales

# Industrial Relations Amendment Bill 2005

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New South Wales

# Industrial Relations Amendment Bill 2005

No. , 2005

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## A Bill for

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.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Industrial Relations Amendment Act 2005</i> .	3
<b>2 Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation.	5
<b>3 Amendment of Industrial Relations Act 1996 No 17</b>	6
The <i>Industrial Relations Act 1996</i> is amended as set out in Schedule 1.	7

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<b>Schedule 1</b>	<b>Amendments</b>	1
	(Section 3)	2
<b>[1]</b>	<b>Section 106 Power of Commission to declare contracts void or varied</b>	3
	Insert after section 106 (2):	4
	(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:	5
	(a) the contract to which it is related or collateral is a contract whereby the person performs work in an industry, and	6
	(b) the performance of work is a significant purpose of the contractual arrangements made by the person.	7
<b>[2]</b>	<b>Section 108B Time for making application</b>	8
	Insert “, subject to subsection (3),” after “such application or” in section 108B (2).	9
<b>[3]</b>	<b>Section 108B (3)</b>	10
	Insert after section 108B (2):	11
	(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.	12
<b>[4]</b>	<b>Section 151A</b>	13
	Insert after section 151:	14
<b>151A</b>	<b>Name of Commission in Court Session to be the Industrial Court of New South Wales</b>	15
	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.	16
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<b>[5] Section 179</b>	1
Omit section 179. Insert instead:	2
<b>179 Finality of decisions</b>	3
(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.	4 5 6
(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.	7 8 9 10
(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.	11 12 13
(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:	14 15 16 17
(a) the Full Bench of the Commission in Court Session, or	18
(b) the Commission in Court Session if the Full Bench refuses to give leave to appeal the decision.	19 20
(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.	21 22 23 24
(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.	25 26 27
(7) In this section: <i>decision</i> includes any award or order.	28 29
<b>[6] Schedule 4 Savings, transitional and other provisions</b>	30
Insert at the end of clause 2 (1): <i>Industrial Relations Amendment Act 2005</i>	31 32



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<b>[7] Schedule 4</b>	1
Insert after clause 19A:	2
<b>19B Transitional provision relating to unfair contracts arising from 2005 amending Act</b>	3 4
Section 106 (2A), as inserted by the <i>Industrial Relations Amendment Act 2005</i> 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.	5 6 7 8 9 10 11
<b>[8] Schedule 4</b>	12
Insert after clause 31A:	13
<b>31B Finality of decisions</b>	14
The amendments made to section 179 by the <i>Industrial Relations Amendment Act 2005</i> 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.	15 16 17 18 19 20 21