

Passed by both Houses



New South Wales

Industrial Relations Amendment (Industrial Organisations) Bill 2012

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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, , 2012*



New South Wales

Industrial Relations Amendment (Industrial Organisations) Bill 2012

Act No , 2012

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.

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

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Industrial Relations Amendment (Industrial Organisations) Act 2012*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Industrial Relations Act 1996 No 17

[1] Section 257 Functions and powers of Commission at inquiry

Insert at the end of the section:

Note. A new election may also be arranged by the Industrial Registrar in the circumstances specified in section 290E or may occur under arrangements made under Division 11 of Part 4 of Chapter 5.

[2] Section 270A

Insert after section 270:

270A Notification of allegations of misconduct

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.

[3] Chapter 5, Part 4, Division 11

Insert after Division 10 of Part 4 of Chapter 5:

Division 11 Powers relating to cases of dysfunction, misconduct or vacancy in offices in State organisations

290B Commission may order reconstitution of organisation or branch etc

(1) Declaration by Commission of dysfunction, misconduct or vacancy in offices

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:

- (a) a declaration that the organisation or a part of the organisation, including:
 - (i) a branch or part of a branch of the organisation, or
 - (ii) a collective body of the organisation or a branch of the organisation,

has ceased to exist or function effectively and there are no effective means under the rules of the organisation or branch by which it can be reconstituted or enabled to function effectively,

- (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,
 - (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.
- (2) Without limiting subsection (1), ***gross misconduct*** includes any conduct that may constitute a serious offence within the meaning of Division 6 of this Part.
- (3) **Interim appointment of administrator**

If an application is made under this section, the Commission may, by order made no later than 3 months after the commencement of this section, appoint an administrator for the organisation the subject of the application if it is of the opinion that:

 - (a) it is likely that the basis for a declaration under this section will be established by the application, and
 - (b) it is in the interests of members of the organisation or in the interests of justice that an administrator be appointed pending the determination of the application.
- (4) If the Commission fails to make an order under subsection (3) in relation to the appointment of an administrator for the organisation within 28 days of an application for a declaration under subsection (1), the Minister may exercise the functions of the Commission under this section with respect to the appointment of an administrator if the Minister is of the opinion that:
 - (a) it is likely that the basis for a declaration will be established by the application for the declaration or if a declaration has been made by the Commission, and
 - (b) it is in the interests of the members of the organisation or in the interests of justice that an administrator be appointed pending the approval of a scheme under this section.

To avoid doubt, a decision of the Minister under this section may be subject to judicial review by the Supreme Court.

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- (5) An administrator appointed under subsection (3) or (4) 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.
- (6) An administrator appointed under subsection (3) or (4) holds office until the application under this section is determined or for such shorter term as the Commission may, by order, specify.
- (7) If an administrator is appointed under subsection (3) or (4), any office holders of the organisation are suspended from office for the term of the administration.

(8) **Order for scheme and administrator by Commission**

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:

- (a) for the reconstitution of the branch, the part of the branch or the collective body, or
- (b) to enable the organisation, branch, the part of the branch or the collective body to function effectively, or
- (c) for the filling of the office or position.

A scheme may include the appointment of an administrator for the organisation.

- (9) If an order is made under this section, the Commission may give any ancillary or consequential directions it considers appropriate.
- (10) Despite any other provision of this section, in any order made under this section the Commission may direct that specified officers are to remain as officers of the organisation or a branch of the organisation for the purposes of giving effect to any scheme or other action taken under this section or of enabling the organisation to function effectively.
- (11) **Limits on order-making power**
- 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.

(12) 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.

(13) **Notice of applications or orders**

The Commission may determine:

- (a) what notice is to be given to other persons of the intention to make an application or an order under this section, and
- (b) whether and how the notice should be given or served and whether it should be advertised in any newspaper.

(14) **Orders and directions to have effect despite rules of organisation**

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.

290C Provision of assistance to administrator

(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:

- (a) produce to the administrator documents in the person's possession that the administrator reasonably requires to exercise those functions,
- (b) provide such other information or assistance as the administrator reasonably requires for the purposes of the exercise of those functions.

(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.

290D Liability relating to administration

(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) 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.

290E Power of Industrial Registrar to initiate elections

- (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:
- (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
 - (b) those offices are vacant and there are no effective means under the rules of the organisation to fill the offices.
- (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.

290F Application to organisations with federal links

- (1) To avoid doubt, action may be taken under this Division 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.
- (2) To avoid doubt, action taken under this Division:
- (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 *Fair Work (Registered Organisations) Act 2009* of the Commonwealth, and
 - (b) may provide for the appointment as an administrator of a person appointed as an administrator under any such declaration.

290G Validation of elections

If an election is held under this Division, 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.

[4] Section 385 Inspectors' powers—employer breaches

Insert after section 385 (3):

- (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.

[5] Sections 385A and 385B

Insert after section 385:

385A Inspectors' powers—misconduct offences

- (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.
- (2) An inspector may, at any reasonable time:
- (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
 - (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
 - (c) retain any such record for such period as may be necessary in order to take copies or extracts from it, and
 - (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

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- (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.
 - (3) A requirement of an inspector under this section may be made personally or by notice in writing served by post.
 - (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.

385B Receipts for seized things

An inspector must give a receipt for anything seized under this Part.

[6] Section 388 Search warrant

Insert at the end of section 388 (2) (b):

, and

- (c) to seize anything that the inspector reasonably considers to be evidence of a contravention of the industrial relations legislation or an industrial instrument.

[7] Section 398 Time for instituting proceedings

Insert “or an offence referred to in subsection (2)” after “other than an offence under section 180”.

[8] Section 398 (2)

Insert at the end of section 398:

- (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.

[9] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Industrial Relations Amendment (Industrial Organisations) Act 2012

[10] Schedule 4

Insert at the end of the Schedule with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of
Industrial Relations Amendment (Industrial
Organisations) Act 2012**

Definition

In this Part:

the amending Act means the *Industrial Relations Amendment (Industrial Organisations) Act 2012*.

Application of amendments

- (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:
 - (a) occurred before the commencement of that Division, or
 - (b) was the subject of an application or declaration of a kind referred to in section 290F that was made before the commencement of that Division.
- (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.