

**INDUSTRIAL ARBITRATION (ENTERPRISE AGREEMENTS)
AMENDMENT BILL 1990***

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Industrial Arbitration Act 1940 so as:

- (a) to enable the registration and enforcement of enterprise agreements made between an employer carrying on a business, undertaking or project (an “enterprise”) and one or more industrial unions, each of at least 65% of the individuals employed or intending to be employed in one or more trades or occupations in the enterprise, or a works committee, which agreements will fix conditions of employment for the employees bound by them; and
- (b) to provide for the selection of works committees by persons employed or intending to be employed in an enterprise, which committees will be able to represent the employees or intending employees who selected their members in negotiating, making, varying or terminating an enterprise agreement; and
- (c) to provide for the appointment of a Commissioner for Enterprise Agreements to keep under review the provisions of that Act relating to enterprise agreements and to provide advice relating to enterprise agreements; and
- (d) to make other provisions of a minor or consequential nature.

The proposed Act will also amend certain other Acts consequentially.

The intention is to facilitate a new approach to industrial relations under which appropriate conditions of employment may be negotiated for each particular enterprise between the employer and persons employed in the enterprise (or industrial unions or works committees acting on their behalf), rather than on an industry-wide basis.

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

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a proclaimed day or proclaimed days.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Industrial Arbitration Act 1940.

Clause 4 is a formal provision that gives effect to the Schedule of consequential amendments to other Acts.

SCHEDULE 1 — AMENDMENT OF THE INDUSTRIAL ARBITRATION ACT 1940

PART 1 — AMENDMENT PROVIDING FOR ENTERPRISE AGREEMENTS

The amendment made by this Schedule inserts a new Part 1C into the Industrial Arbitration Act. The proposed provisions of that Part may be summarised as follows:

PART 1C - ENTERPRISE AGREEMENTS

Division 1 - Definitions

Section 13A (Definitions) defines the terms "enterprise", "enterprise employer" and "registered" for the purposes of the proposed Part. It is made clear that businesses conducted by holding companies and subsidiary companies may be treated, for the purposes of the proposed Part, as a single enterprise or separate enterprises.

Division 2—Enterprise agreements

Section 13B (Purpose of an enterprise agreement) explains that an enterprise agreement is an agreement made to fix conditions of employment for persons employed in a single enterprise in any number of trades or occupations.

Section 13C (Effect of a registered enterprise agreement) declares that a registered enterprise agreement will be enforceable as if it were an award. Provisions of such an agreement will prevail over any award made under the Industrial Arbitration Act or any industrial agreement or order of the Industrial Commission. Intervention by the Commission or by a Conciliation Commissioner or Committee in relation to a condition of employment fixed by such an agreement may occur only with the consent of the parties to the agreement.

Section 13C (Parties to an enterprise agreement) provides that the parties to an enterprise agreement are to be the employer carrying on the enterprise and any one or more industrial unions or a works committee representing employees engaged or intending to be engaged in the enterprise or (as individual parties) each of not less than 65% of the employees or prospective employees in one or more trades or occupations.

Section 13E (Content of an enterprise agreement) specifies that an enterprise agreement must:

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- * identify the parties to the agreement, the enterprise and the trades or occupations to which it relates
- * fix conditions of employment
- * identify any award or industrial agreement that fixes other conditions of employment for employees bound by the agreement
- * set out procedures to be followed to avoid grievances, and to settle any grievances, between the parties to the agreement
- * declare that the agreement was not entered into under duress.

Such an agreement will apply only to conditions of employment at places at which the enterprise was or was intended to be, or could have reasonably been expected to be, carried on when the agreement was made, unless the agreement provides otherwise.

Section 13F (Formal considerations) requires an enterprise agreement to be in writing and signed by or on behalf of each party to it.

Section 13G (Term of enterprise agreement) provides that an enterprise agreement, unless it is an amending agreement, is to have a nominal term of not less than 12 months nor more than 3 years. It can be terminated at any time if all parties agree. Should agreement to terminate not be reached, it can be terminated at the end of its nominal term or at any time afterwards, but only if one of the parties gives at least 3 months' notice to each

Section 13H (Variation of enterprise agreement) permits the variation of an enterprise agreement at any time by mutual consent of the parties to it.

The Commission may vary an enterprise agreement to remove ambiguity or uncertainty, or to make a change the Commission considers necessary to avoid a substantial risk of death or personal injury.

Section 13I (Approval for registration of enterprise agreement) requires the Commission to approve an enterprise agreement lodged for registration if satisfied:

- * that the agreement is not contrary to the public interest
- * that the agreement is not unfair, harsh or unconscionable
- * that the agreement was not entered into under duress
- * that the agreement complies with all other requirements of proposed Division 3

An agreement that does not comply with the Commission's wage fixation principles is not necessarily contrary to the public interest.

Before approving an agreement, the Commission may take into account the views of the Labor Council of New South Wales or of any major peak organisation for employers operating in the State and must take into account any submission made by the Commissioner for Enterprise Agreements (to be appointed under proposed Division 4).

Section 13J (Registration of enterprise agreement required) requires the Industrial Registrar to register each enterprise agreement approved by the Commission for registration. Such an agreement is binding only if registered.

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Section 13K (Persons bound by enterprise agreement) provides that an enterprise agreement binds not only the parties to it, but all persons employed in the enterprise who are employed in a trade or occupation to which the agreement relates. Successors to the enterprise employer (such as purchasers of the enterprise) are also bound.

Section 13L (Register of enterprise agreements) requires the Registrar to keep a register of all registered enterprise agreements (including amending agreements) and of notices of termination and limits the kinds of persons who may, without payment of a fee, inspect, or obtain a copy of, a registered enterprise agreement held by the Registrar.

Section 13M (Notice to be given of working conditions) requires an enterprise employer to give employees and prospective employees of the enterprise access to a copy of any registered enterprise agreement fixing conditions of employment that are or would be applicable to them or to inform them about those conditions.

Section 13N (Restriction on duplication of special conditions) aims to prevent conditions of enterprise agreements from being duplicated in awards, orders or directions of the Commission, or of Conciliation Commissioners or Conciliation Committees.

Section 13O (Secret ballots under this Division) requires that any such secret ballot must be conducted by a person (other than the enterprise employer concerned) on behalf of the employees or intending employees entitled to vote. If irregularities are alleged, the Registrar may arrange for a further ballot and the Commission may make orders staying proceedings under the Division.

Division 3—Works committees

Section 13P (Nature of works committee) explains that such a committee is formed by employees or intending employees of an enterprise to represent them in matters concerning enterprise agreements.

Section 13Q (Decision to form works committee) provides for not less than 65% of the employees or intending employees of an enterprise who are or are to be employed in one or more trades or occupations to decide in a secret ballot that they will form a works committee and who will be the members of the committee.

Section 13R (Composition of work committee) limits the number of members of a works committee to 8 (or more, if the enterprise employer consents). Each member must be a person who would be bound by any enterprise agreement to which the committee was a party.

Section 13S (Term) provides for the dissolution of a works committee that does not enter into an enterprise agreement within 6 months of its formation. If a committee does enter into such an agreement, it is dissolved when the agreement is terminated.

Section 13T (Decisions and procedure) establishes that a works committee decision is that supported by a majority of votes of the members of the committee. A committee must elect a chairperson, who has (if necessary) a casting vote.

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Section 13U (Casual vacancy) allows the employees or intending employees concerned to elect a new member to fill a casual vacancy on a works committee. Pending such an election, the chairperson may appoint such an employee to fill the vacancy.

Section 13V (Dissolution) allows for the dissolution of a works committee at any time by the decision in a secret ballot of at least 65% of employees or intending employees who are or are to be employed in the trades or occupations for which the committee was formed. If a works committee is formed to replace the former committee within 30 days of the dissolution, the new committee will take its place as a party to an enterprise agreement entered into by the former committee. If no works committee takes the place of a former such committee, the enterprise agreement continues in force and continues to bind the employees represented by the former committee.

Section 13W (Representation before the Commission) provides for a works committee to be represented before the Commission by any member or, with the Commission's consent, by a barrister or solicitor.

Section 13X (Secret ballots under this Division) requires that any such secret ballot must be conducted by a person (other than the enterprise employer concerned) on behalf of the employees or intending employees entitled to vote.

Division 4 — Commissioner for Enterprise Agreements

Section 13Y (Appointment) declares that a Commissioner for Enterprise Agreements may be appointed under the Public Sector Management Act 1988.

Section 13Z (Functions) states the powers, authorities, duties and functions of the Commissioner which include:

- * ongoing review of the enterprise agreements provisions of the Industrial Arbitration Act
- * assisting and advising persons concerning enterprise agreements
- * promoting the use of enterprise agreements
- * provision of annual and other reports

PART 2—CONSEQUENTIAL AMENDMENTS

Definitions

The present definition of "agreement" in the Industrial Arbitration Act is substituted so as to include an enterprise agreement. Definitions of "enterprise agreement" and "works committee" are inserted. (Item (1)).

Enforcement of registered enterprise agreements

Although many of the provisions of the Industrial Arbitration Act that relate to industrial agreements are inappropriate to be applied to enterprise agreements, the scope of the following provisions of that Act applicable to industrial agreements is extended by specific amendments for the purpose of allowing the enforcement of enterprise agreements:

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- * section 92 (recovery of wages etc.)
 - * section 93 (penalty for breach of award etc.)
 - * section 95A (particulars of wages to be furnished to employees)
 - * section 96 (time-sheets and pay-sheets to be kept)
 - * section 96A (power to amend)
- (Items (17), (20), (22), (23) and (24)).

Statute law revision

Part 1 (**Preliminary**) of the Industrial Arbitration Act, as presently enacted, is to be divided so as to contain two new Parts, namely Part 1 A (ss. 6-10A relating to industrial unions) and Part 1B (ss. 11 and 13 relating to industrial agreements) (Items (2) and (3)).

Other consequential amendments

The other amendments made by Part 2 of Schedule 1 are consequential on the insertion of proposed Part 1C into the Industrial Arbitration Act.

SCHEDULE 2 — AMENDMENT OF OTHER ACTS

The following Acts are amended so as to make it clear that they apply to employees bound by enterprise agreements:

- * **Annual Holidays Act 1944**
- Long Service Leave Act 1955**
- Long Service Leave (Metalliferous Mining Industry) Act 1963**

The Employment Protection Act 1982 is amended so as to make it clear that it applies to those employees, but not so as to permit the Commission to vary or cancel an enterprise agreement.

The Essential Services Act 1988 is amended to make it clear that it applies to an essential service provided by an enterprise the subject of an enterprise agreement.

The Industrial and Commercial Training Act 1989 is amended to make it clear that requirements made by or under that Act have effect despite provisions of enterprise agreements.
