



New South Wales

Industrial Relations (Child Employment) Bill 2006

Explanatory note

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

The following Bills are cognate with this Bill:

- (a) the *Industrial Relations Further Amendment Bill 2006*,
- (b) the *Workers Compensation Amendment (Permanent Impairment Benefits) Bill 2006*.

Overview of Bill

The *Workplace Relations Act 1996* of the Commonwealth (the **federal Act**), as amended by the *Workplace Relations Amendment (Work Choices) Act 2005* of the Commonwealth (the **federal Work Choices Act**), purports, among other things, to regulate employment relationships between trading, financial or foreign corporations (**constitutional corporations**) and their employees.

Section 16 (1) of the federal Act also purports to exclude the operation of certain State laws (including the *Industrial Relations Act 1996* of New South Wales) in its application to such employment relationships. However, section 16 (2) (c), when read with section 16 (3) (e), makes it clear that the federal Act is not intended to apply to the exclusion of State laws dealing with “child labour”. Although the term **child** is not defined in the federal Act or the *Acts Interpretation Act 1901* of the

Commonwealth, the term is customarily understood to mean a person who is under the age of 18 years.

The objects of this Bill are:

- (a) to require employers that are constitutional corporations not bound by State industrial instruments to provide certain minimum conditions of employment to children that they employ under federal workplace agreements or other arrangements entered into on or after 27 March 2006 (being the date when the principal provisions of the federal Work Choices Act commenced), and
- (b) to continue the application of the unfair dismissal provisions that are currently contained in the *Industrial Relations Act 1996* to the dismissal by constitutional corporations of children that they employ.

Outline of provisions

Part 1 Preliminary

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 (other than Part 2) on the date of assent to the proposed Act. The provisions of Part 2 will commence on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act. For instance, a *child* is defined to mean a person who is under the age of 18 years.

Part 2 Minimum conditions of employment for children

Division 1 Conditions of employment

Clause 4 requires an employer of a child to whose employment the proposed section applies to ensure that:

- (a) the child is provided with the same conditions of employment as the minimum conditions of employment for the child, or
- (b) if the conditions of employment provided to the child are different to the minimum conditions of employment for the child—the conditions of employment provided to the child do not, on balance, result in a net detriment to the child when compared to the minimum conditions of employment.

The proposed section provides that it applies to the employment of a child by an employer (an *affected employer*) if:

- (a) the child is employed under an agreement or other arrangement entered into on or after 27 March 2006, and
- (b) the employer of the child is a constitutional corporation that is not bound by a State industrial instrument with respect to the employment of the child, and

- (c) a State award is in force that covers employees performing similar work to that performed by the child (a *comparable State award*) and that award does not bind the employer in respect of the employment of the child.

The *minimum conditions of employment* for a child are:

- (a) the conditions of employment for employees performing similar work to that performed by the child for which provision is made from time to time in the comparable State award, and
- (b) such other conditions of employment for which the industrial relations legislation (within the meaning of the *Industrial Relations Act 1996*) makes provision that would have applied to the employment of the child if the employer of the child were bound by the comparable State award.

Clause 5 requires the Full Bench of the Industrial Relations Commission (the *Commission*) to set principles (the *no net detriment principles*) to be followed by an industrial court in determining whether or not an affected employer of a child has provided the child with conditions of employment that, on balance, result in a net detriment to the child when compared to the minimum conditions of employment for the child.

Clause 6 makes it an offence for an affected employer of any child not to cause a copy of a relevant comparable State award (or the latest official reprint of the award) to be exhibited in a conspicuous place at the premises at which the employer's child employees are employed. The maximum penalty for the offence will be 10 penalty units (currently, \$1,100).

Clause 7 requires an affected employer to ensure that certain records are kept in respect of the employment of children for whom the employer is an affected employer. A failure to keep such records as are required by the proposed section will be an offence. The maximum penalty for such an offence will be 20 penalty units (currently, \$2,200).

Division 2 Compliance notices

Clause 8 enables an inspector under the *Industrial Relations Act 1996* to issue a notice (a *compliance notice*) to an affected employer of a child requiring the employer to remedy a contravention of proposed section 4, or any matters occasioning such a contravention, within the period specified in the notice.

Clause 9 enables a compliance notice to include directions as to the measures to be taken to remedy a contravention of proposed section 4, or the matters occasioning such a contravention, to which the notice relates.

Clause 10 enables a compliance notice to be withdrawn by the inspector who issued it or by another inspector if that other inspector is authorised to do so by the Director-General of the Department of Commerce.

Clause 11 makes it an offence for an affected employer to refuse or fail, without reasonable excuse, to comply with a requirement imposed by a compliance notice

issued to the employer. The maximum penalty for the offence will be 100 penalty units (currently, \$11,000).

Clause 12 enables a person who has been issued with a compliance notice to appeal the notice to the Industrial Court of New South Wales. On any such appeal, the Court may confirm the notice, vary it or revoke the notice. It may also impose a civil penalty under proposed section 15 if it confirms the notice.

Clause 13 provides that the revocation or withdrawal of a compliance notice does not prevent the issue of another compliance notice.

Clause 14 provides that the issue, variation, revocation or withdrawal of a compliance notice does not affect any proceedings for an offence against the proposed Act or for the recovery of a civil penalty in connection with any matter in respect of which the notice was issued.

Division 3 Civil penalty

Clause 15 enables an industrial court to order an employer to pay a civil penalty not exceeding \$10,000 if it is satisfied that the employer is an affected employer who has contravened proposed section 4. An *industrial court* is defined in proposed section 3 to mean:

- (a) the Industrial Court of New South Wales, or
- (b) if (but only if) the no net detriment principles have been set and published under proposed section 5—a Local Court constituted specially for the purposes of the proposed Act by an Industrial Magistrate sitting alone.

Division 4 Applied enforcement provisions

Clause 16 incorporates into the proposed Act by reference certain modified provisions of the *Industrial Relations Act 1996* in order to make provision for the enforcement of the provisions of Part 2 of the proposed Act.

Part 3 Unfair dismissal of children by constitutional corporations

Clause 17 incorporates into the proposed Act by reference the provisions of Part 6 (Unfair dismissals) of Chapter 2 of the *Industrial Relations Act 1996* and applies those incorporated provisions (and other related provisions), with certain minor modifications, to any dismissal by a constitutional corporation of a child from employment by the corporation on or after the day on which the Bill for the proposed Act was first introduced into Parliament.

Part 4 Miscellaneous

Clause 18 provides that the proposed Act binds the Crown.

Clause 19 makes it clear that the provisions of the proposed Act are in addition to, and do not derogate from, the provisions of certain State industrial laws with respect

to the employment of children to the extent that the provisions of those laws would apply to such employment apart from the proposed Act.

Clause 20 makes provision for the giving and service of notices and other documents under the proposed Act.

Clause 21 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 22 is a formal provision that gives effect to the savings, transitional and other provisions set out in Schedule 1.

Clause 23 makes a consequential amendment to section 382 of the *Industrial Relations Act 1996* to ensure that Industrial Magistrates may exercise jurisdiction conferred on them by the proposed Act.

Clause 24 provides for the review of the proposed Act in 5 years from the date of assent to the proposed Act.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act. In particular, it enables the Governor to make regulations with respect to savings or transitional matters consequent on the enactment of the proposed Act.

Industrial Relations (Child Employment) Bill 2006

Explanatory note

Explanatory note page 6



New South Wales

Industrial Relations (Child Employment) Bill 2006

Contents

	Page
Part 1	Preliminary
1	Name of Act 2
2	Commencement 2
3	Definitions 2
Part 2	Minimum conditions of employment for children
Division 1	Conditions of employment
4	Employer to ensure at least minimum conditions provided 4
5	Full Bench of Commission to set no net detriment principles 5
6	Exhibition of comparable State awards in workplace 6
7	Record-keeping requirements 6

	Page
Division 2 Compliance notices	
8 Issue of compliance notices	7
9 Compliance notices may include directions	8
10 Withdrawal of compliance notices	8
11 Offence: refusal or failure to comply with compliance notice	9
12 Appeal to Industrial Court of New South Wales	9
13 Revocation or withdrawal of compliance notice does not prevent issue of another notice	9
14 Proceedings for offences or civil penalties not affected by compliance notices	9
Division 3 Civil penalty	
15 Civil penalty for contravention of section 4	10
Division 4 Applied enforcement provisions	
16 Applied provisions of Industrial Relations Act 1996	11
Part 3 Unfair dismissal of children by constitutional corporations	
17 Unfair dismissal of children employed by constitutional corporations	13
Part 4 Miscellaneous	
18 Act to bind Crown	15
19 Relationship with other legislation	15
20 Giving of notices and other documents	15
21 Regulations	16
22 Savings, transitional and other provisions	16
23 Consequential amendment of Industrial Relations Act 1996 No 17	16
24 Review of Act	16
Schedule 1 Savings, transitional and other provisions	17



New South Wales

Industrial Relations (Child Employment) Bill 2006

No. , 2006

A Bill for

An Act to make provision with respect to the employment of certain children by trading, financial or foreign corporations; to make a consequential amendment to the *Industrial Relations Act 1996*; and for other purposes.

See also the *Industrial Relations Further Amendment Bill 2006* and *Workers Compensation Amendment (Permanent Impairment Benefits) Bill 2006*.

The Legislature of New South Wales enacts: 1

Part 1 Preliminary 2

1 Name of Act 3

This Act is the *Industrial Relations (Child Employment) Act 2006*. 4

2 Commencement 5

(1) This Act commences on the date of assent to this Act, except as provided by subsection (2). 6
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(2) The provisions of Part 2 commence on a day or days to be appointed by proclamation. 8
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3 Definitions 10

(1) In this Act: 11

ABN means an Australian Business Number registered under the *A New Tax System (Australian Business Number) Act 1999* of the Commonwealth. 12
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ACN has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth. 15
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affected employer, in relation to a child, means an employer of a child to whose employment section 4 applies. 17
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child means any person who is under the age of 18 years. 19

Commission means the Industrial Relations Commission of New South Wales. 20
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compliance notice means a compliance notice issued under Division 2 of Part 2. 22
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conditions of employment has the same meaning as it has in the *Industrial Relations Act 1996*. 24
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constitutional corporation means a corporation to which paragraph 51 (xx) of the Commonwealth Constitution applies. 26
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Note. Paragraph 51 (xx) of the Commonwealth Constitution confers power on the Commonwealth Parliament to make laws with respect to foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth. 28
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contravene includes fail to comply with. 32

dismissal, in relation to an employee, has the same meaning as it has in Part 6 of Chapter 2 of the *Industrial Relations Act 1996*. 33
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employ means employ an employee within the meaning of the *Industrial Relations Act 1996*. 35
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employer has the same meaning as it has in the <i>Industrial Relations Act 1996</i> .	1
exercise a function includes perform a duty.	2
function includes a power, authority or duty.	3
industrial court means:	4
(a) the Industrial Court of New South Wales, or	5
(b) if (but only if) the no net detriment principles have been set and published under section 5—a Local Court constituted specially for the purposes of this Act by an Industrial Magistrate sitting alone.	6
industrial organisation has the same meaning as it has in the <i>Industrial Relations Act 1996</i> .	7
Industrial Registrar has the same meaning as it has in the <i>Industrial Relations Act 1996</i> .	8
industrial relations legislation has the same meaning as it has in the <i>Industrial Relations Act 1996</i> .	9
inspector means an inspector appointed for the purposes of the <i>Industrial Relations Act 1996</i> .	10
introduction day means the day on which the Bill for this Act was first introduced into Parliament.	11
minimum conditions of employment for a child—see section 4 (3).	12
modification includes addition, exception, omission or substitution.	13
no net detriment principles —see section 5.	14
premises has the same meaning as it has in the <i>Industrial Relations Act 1996</i> .	15
State award has the same meaning as it has in section 28A of the <i>Industrial Relations Act 1996</i> .	16
State industrial instrument means an industrial instrument within the meaning of the <i>Industrial Relations Act 1996</i> .	17
(2) Notes included in this Act do not form part of this Act.	18
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Part 2	Minimum conditions of employment for children	1
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Division 1	Conditions of employment	3
4	Employer to ensure at least minimum conditions provided	4
(1)	This section applies to the employment of a child by an employer if:	5
(a)	the child is employed under an agreement or other arrangement entered into on or after 27 March 2006, and	6
		7
(b)	the employer of the child is a constitutional corporation that is not bound by a State industrial instrument with respect to the employment of the child, and	8
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		10
(c)	a State award is in force that covers employees performing similar work to that performed by the child (<i>a comparable State award</i>) and that award does not bind the employer in respect of the employment of the child.	11
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(2)	An employer of a child to whose employment this section applies (an <i>affected employer</i>) must ensure that:	15
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(a)	the child is provided with the same conditions of employment as the minimum conditions of employment for the child, or	17
		18
(b)	if the conditions of employment provided to the child are different to the minimum conditions of employment for the child—the conditions of employment provided to the child do not, on balance, result in a net detriment to the child when compared to the minimum conditions of employment.	19
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	Note. A contravention of this section by an affected employer of a child may expose the employer to a civil penalty under section 15.	24
		25
(3)	The <i>minimum conditions of employment</i> for a child are:	26
(a)	the conditions of employment for employees performing similar work to that performed by the child for which provision is made from time to time in the comparable State award, and	27
		28
		29
(b)	such other conditions of employment for which the industrial relations legislation makes provision that would have applied to the employment of the child if the employer of the child were bound by the comparable State award.	30
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- (4) In determining whether or not an affected employer of a child has provided the child with conditions of employment that, on balance, result in a net detriment to the child when compared to the minimum conditions of employment for the child, an industrial court is to take into account the following matters:
- (a) the no net detriment principles set by the Commission from time to time,
 - (b) any other matter that the court considers relevant.
- (5) For the avoidance of doubt, nothing in this section requires an affected employer of a child to provide a condition of employment to the child if the employer is already required to provide the same condition by or under another law of the State.

5 Full Bench of Commission to set no net detriment principles

- (1) A Full Bench of the Commission is required to set principles (the *no net detriment principles*) to be followed by an industrial court in determining whether or not an affected employer of a child has provided the child with conditions of employment that, on balance, result in a net detriment to the child when compared to the minimum conditions of employment for the child.
- (2) In determining those principles, the Full Bench of the Commission is to have regard, in particular, to the following:
- (a) evidence about the kinds of occupations and industries in which children are employed,
 - (b) the State awards that apply to those occupations and industries,
 - (c) any industrial relations legislation that may apply generally to the employment of children,
 - (d) any provisions of any such State awards or industrial relations legislation that operate to provide conditions of employment that are particularly important for ensuring the well-being of children who are employed,
 - (e) the provision of any other laws of the State that may be relevant to the employment of children or to their well-being while employed (for example, laws dealing with occupational safety, education or child protection).

- (3) Without limiting subsection (1) or (2), the Full Bench of the Commission may determine that a particular condition or conditions of employment of the kind referred to in subsection (2) (d) is or are of such importance for ensuring the well-being of children who are employed that a failure to provide that condition or those conditions will of itself result in a net detriment to the child when compared to the minimum conditions of employment for the child. 1
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- (4) A Full Bench of the Commission is to review the no net detriment principles at least once every 3 years. 8
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- (5) The no net detriment principles may be set or reviewed on the application of the Minister or on the Commission's own initiative. 10
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- (6) Industrial organisations are entitled to be notified of any proceedings of a Full Bench under this section and to make submissions on the setting or review of the no net detriment principles. 12
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- (7) The Industrial Registrar is to publish the no net detriment principles: 15
- (a) if Part 11 (NSW industrial relations website) of Chapter 4 (as inserted by the *Industrial Relations Further Amendment Act 2006*) has not commenced—in the Industrial Gazette, or 16
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- (b) if that Part has commenced—on the NSW industrial relations website. 19
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- (8) The initial no net detriment principles are to be set and published under this section within 6 months after the commencement of this section. 21
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6 Exhibition of comparable State awards in workplace 23

An affected employer of any child must cause a copy of the comparable State award (or the latest official reprint of the award) that is applicable for the purposes of section 4 to the employment of the child at any premises to be exhibited in a conspicuous place at those premises. 24
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Maximum penalty: 10 penalty units. 28

Note. Part 6 of Chapter 7 of the *Industrial Relations Act 1996* (as applied to and for the purposes of this Part by section 16) makes provision with respect to the bringing of criminal and other legal proceedings. 29
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7 Record-keeping requirements 32

- (1) For each child for whom an employer is an affected employer, the employer is to ensure that records are kept of the following matters: 33
34
- (a) the name of the employer, 35
- (b) the ACN (if any) and ABN of the employer, 36
- (c) the name of the child, 37
- (d) the date of birth of the child as provided to the employer, 38

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| (e) | the date on which the child's employment began, | 1 |
| (f) | whether the child's employment is full-time or part-time, | 2 |
| (g) | whether the child's employment is permanent, temporary or casual, | 3
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| (h) | any remuneration paid to the child, | 5 |
| (i) | the days on which the child works for the employer (including the starting and finishing times and the total number of hours worked on each day), | 6
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| (j) | if the child's employment is terminated—the date on which the child's employment is terminated, | 9
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| (k) | such other matters concerning the employment of the child as may be prescribed by the regulations. | 11
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| (2) | The records are to be kept in the manner and form prescribed by the regulations. | 13
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| (3) | The employer must ensure that the records are kept for a period of at least 6 years. | 15
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| (4) | The regulations may make provision for or with respect to the transfer of any such records, or copies of any such records, to the successor of an employer. | 17
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| (5) | A person who contravenes this section or the regulations under this section is guilty of an offence. | 20
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| | Maximum penalty: 20 penalty units. | 22 |
| | Note. The following provisions of the <i>Industrial Relations Act 1996</i> (as applied to and for the purposes of this Part by section 16) should be noted: | 23
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| (a) | Section 385 (as applied) enables an inspector to require an employer to produce records required to be kept under this section to the inspector for examination. | 25
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| (b) | Section 387 (as applied) makes it an offence to fail, without reasonable excuse, to comply with a requirement of an inspector. | 28
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| (c) | Part 6 of Chapter 7 (as applied) makes provision with respect to the bringing of criminal and other legal proceedings. | 30
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Division 2 Compliance notices 32

8 Issue of compliance notices 33

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|-----|---|----|
| (1) | If an inspector is of the opinion that an affected employer of a child: | 34 |
| (a) | is contravening section 4, or | 35 |

(b)	has contravened section 4 in circumstances that make it likely that the contravention will continue or be repeated,	1
	the inspector may issue to the employer a notice (in the form, if any, prescribed by the regulations) requiring the employer to remedy the contravention or the matters occasioning it within the period specified in the notice.	2
(2)	The period within which an affected employer of a child is required by a compliance notice to remedy a contravention or the matters occasioning the contravention must be at least a period of 14 days after the issue of the notice.	3
(3)	However, an inspector may specify a period that is less than 14 days after the issue of the compliance notice if satisfied that it is reasonably practicable for the employer to comply with the requirements imposed by the notice by the end of that period.	4
(4)	A compliance notice must:	5
(a)	state that the inspector is of the opinion referred to in subsection (1), and	6
(b)	state the reasons for that opinion, and	7
(c)	include information about appeal rights under this Division against the notice.	8
9	Compliance notices may include directions	9
(1)	An inspector may include in a compliance notice directions as to the measures to be taken to remedy any contravention or matter to which the notice relates or to otherwise comply with the notice.	10
(2)	Without limiting subsection (1), any such direction may offer the person to whom it is issued a choice of ways in which to remedy the contravention or matter or to comply with the notice.	11
10	Withdrawal of compliance notices	12
(1)	A compliance notice may be withdrawn at any time by the inspector who issued the notice (or by another inspector authorised to do so, whether in the particular case or generally for the purposes of this section, by the Director-General of the Department of Commerce) if the inspector is satisfied that the notice was issued in error or is incorrect in some respect.	13
(2)	The withdrawal has effect when notice of the withdrawal is given to the person to whom the notice was issued.	14

11	Offence: refusal or failure to comply with compliance notice	1
	An affected employer who, without reasonable excuse, refuses or fails to comply with a requirement imposed by a compliance notice issued to the employer is guilty of an offence.	2 3 4
	Maximum penalty: 100 penalty units.	5
	Note. Part 6 of Chapter 7 of the <i>Industrial Relations Act 1996</i> (as applied to and for the purposes of this Part by section 16) makes provision with respect to the bringing of criminal and other legal proceedings.	6 7 8
12	Appeal to Industrial Court of New South Wales	9
(1)	A person to whom a compliance notice is issued may appeal against the notice to the Industrial Court of New South Wales.	10 11
(2)	An appeal to the Industrial Court under this section does not operate to stay the notice the subject of the appeal except as otherwise ordered by the Court.	12 13 14
(3)	The Industrial Court may, on the appeal, confirm the notice, vary it or revoke it.	15 16
(4)	If the Industrial Court confirms a compliance notice, the Court may also in the same proceedings determine any application made under section 15 for a civil penalty in respect of the contravention of section 4 to which the notice relates.	17 18 19 20
(5)	Regulations may be made for or with respect to appeals under this section, including the time and manner in which such an appeal is to be made.	21 22 23
(6)	Without limiting subsection (5), the regulations may apply (whether with or without modification) provisions of the <i>Industrial Relations Act 1996</i> and the regulations under that Act for or with respect to appeals under this section.	24 25 26 27
13	Revocation or withdrawal of compliance notice does not prevent issue of another notice	28 29
	The revocation or withdrawal of a compliance notice does not prevent the issue of another compliance notice.	30 31
14	Proceedings for offences or civil penalties not affected by compliance notices	32 33
	The issue, variation, revocation or withdrawal of a compliance notice does not affect any proceedings for an offence against this Act or for the recovery of a civil penalty in connection with any matter in respect of which the notice was issued.	34 35 36 37

Division 3	Civil penalty	1
15	Civil penalty for contravention of section 4	2
(1)	If an industrial court is satisfied that an affected employer of a child has contravened section 4, it may order the employer to pay a pecuniary penalty not exceeding \$10,000 (<i>a civil penalty</i>).	3 4 5
(2)	Proceedings for a civil penalty may be instituted by an inspector. Note. A civil penalty may also be sought in proceedings on an appeal under section 12. See section 12 (4).	6 7 8
(3)	Proceedings for a civil penalty may be instituted within 6 years after the contravention.	9 10
(4)	To avoid doubt, the rules of evidence apply to proceedings for a civil penalty.	11 12
(5)	Evidence given in proceedings for the recovery of money under Part 2 of Chapter 7 of the <i>Industrial Relations Act 1996</i> (as applied to and for the purposes of this Part by section 16) is not admissible in proceedings for a civil penalty.	13 14 15 16
(6)	In determining the amount of the pecuniary penalty that an affected employer of a child should be ordered to pay, the industrial court may take into account any of the following matters:	17 18 19
(a)	whether or not the employer has made a reasonable effort to provide the child with the minimum conditions of employment for the child,	20 21 22
(b)	whether or not the child understood and consented to the provision of the conditions of employment that the employer has actually provided to the child,	23 24 25
(c)	any other matter that the court considers relevant.	26
(7)	In any proceedings for a civil penalty, the industrial court may award costs to either party and assess the amount of those costs. Costs cannot be awarded against the prosecutor except in the circumstances in which costs can be awarded against the prosecutor in criminal proceedings.	27 28 29 30
(8)	The following provisions apply to contraventions of section 4 and to proceedings for a civil penalty for such a contravention in the same way as they apply to criminal proceedings for an offence against the <i>Industrial Relations Act 1996</i> :	31 32 33 34
(a)	Sections 400–403 of the <i>Industrial Relations Act 1996</i> (as applied to and for the purposes of this Part by section 16).	35 36
(b)	The provisions of any Act relating to the recovery of penalties imposed for an offence.	37 38

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- (c) Any provision of this or any other Act relating to criminal proceedings that is applied to this section by the regulations (whether with or without modification). 1
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Division 4 Applied enforcement provisions 4

16 Applied provisions of Industrial Relations Act 1996 5

- (1) The following provisions of the *Industrial Relations Act 1996* and the regulations made under that Act apply to and for the purposes of this Part (***the applied enforcement provisions***): 6
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- (a) section 162A (Transfer of certain proceedings to Industrial Magistrates), 9
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- (b) section 181 (2) (d), 11
- (c) section 197 (Appeals from Local Court), 12
- (d) Part 1 of Chapter 7 (Breach of industrial instruments), other than sections 357 and 361, 13
14
- (e) Part 2 of Chapter 7 (Recovery of remuneration and other amounts), other than section 380, 15
16
- (f) Part 4 of Chapter 7 (Inspectors and their powers), 17
- (g) Part 5 of Chapter 7 (Evidentiary provisions), 18
- (h) Part 6 of Chapter 7 (Criminal and other legal proceedings), 19
- (i) any other provision prescribed by the regulations. 20
- (2) Accordingly, the applied enforcement provisions have effect as if they formed part of this Act. 21
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- (3) For the purposes of the application of the applied enforcement provisions (but without limiting subsection (6)), a reference in the applied enforcement provisions: 23
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- (a) to this Act (that is, the *Industrial Relations Act 1996*) is to be read as a reference to this Part, and 26
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- (b) to the regulations is to be read as including a reference to the regulations under this Act made for the purposes of this Part, and 28
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- (c) to the industrial relations legislation is to be read as including a reference to this Part, and 30
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- (d) to an industrial court is to be read as a reference to an industrial court within the meaning of this Act, and 32
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- (e) to employment is to be read as a reference to employment of a child to which section 4 of this Act applies, and 34
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- (f) to an employer is to be read as a reference to an affected employer of a child, and 36
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- (g) to employees is to be read as a reference to children to whose employment section 4 of this Act applies, and 1
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- (h) to a civil penalty is to be read as a reference to a civil penalty imposed under section 15 of this Act, and 3
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- (i) to the recovery of money under Part 2 of Chapter 7 is to be read as a reference to the recovery of money under Part 2 of that Chapter (as applied to and for the purposes of this Part by this section), and 5
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- (j) to an industrial instrument is to be read as including a reference to section 4 to the extent that it requires an employer of a child to provide the minimum conditions of employment for the child or conditions of employment that do not, on balance, result in a net detriment to the child when compared with the minimum conditions of employment for the child, 9
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as the case requires. 15
- (4) Without limiting subsections (3) and (6), a reference in Part 2 of Chapter 7 (Recovery of remuneration and other amounts) of the *Industrial Relations Act 1996* (as applied to and for the purposes of this Part by this section) to an amount payable under an industrial instrument is to be read as a reference to an amount payable to a child under the minimum conditions of employment for the child in circumstances where the employer has contravened section 4. 16
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- (5) Section 153 (1) of the *Industrial Relations Act 1996* applies to proceedings under Part 1 or Part 2 of Chapter 7 of that Act (as applied to and for the purposes of this Part by this section) in the same way as it applies to proceedings under those Parts apart from this section. 23
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- (6) The applied enforcement provisions have effect subject to such modifications as are prescribed by this Part or the regulations. 27
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- (7) Nothing in this section authorises the Industrial Court of New South Wales to transfer any proceedings under this Act to a Local Court constituted by an Industrial Magistrate sitting alone unless the no net detriment principles have been set and published under section 5. 29
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- (8) Unless the regulations provide otherwise, nothing in this section prevents the application of provisions of the *Industrial Relations Act 1996* that would be applicable to a matter arising under this Part (including the exercise of a function conferred or imposed on the Commission by or under this Part) apart from this section. 33
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- Note.** For example, nothing in this section limits the application of the provisions of the *Industrial Relations Act 1996* dealing with the constitution of the Commission, its practice and procedure and appeals from its decisions. 38
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Part 3	Unfair dismissal of children by constitutional corporations	1
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17	Unfair dismissal of children employed by constitutional corporations	3
(1)	This section applies to any dismissal by a constitutional corporation, on or after the introduction day, of a child from employment by the corporation.	4 5 6
(2)	The following provisions of the <i>Industrial Relations Act 1996</i> and the regulations made under that Act apply to and for the purposes of any dismissal of a child from employment to which this section applies (<i>the applied unfair dismissal provisions</i>):	7 8 9 10
	(a) Part 6 (Unfair dismissals) of Chapter 2, other than section 83 (1A),	11 12
	(b) section 181 (2) (c) and (c1),	13
	(c) any other provision prescribed by the regulations.	14
(3)	Accordingly, the applied unfair dismissal provisions have effect as if they formed part of this Act.	15 16
(4)	For the purposes of the application of the applied unfair dismissal provisions (but without limiting subsection (6)), a reference in the applied unfair dismissal provisions:	17 18 19
	(a) to employment is to be read as a reference to employment of a child by a constitutional corporation, and	20 21
	(b) to an employer is to be read as a reference to an employer that is a constitutional corporation, and	22 23
	(c) to employees is to be read as a reference to children who are employed by a constitutional corporation, and	24 25
	(d) to proceedings under Part 6 of Chapter 2 is to be read as a reference to proceedings under Part 2 of that Chapter (as applied by this section to and for the purposes of any dismissal of a child from employment to which this section applies), and	26 27 28 29
	(e) to an industrial instrument is to be read as a reference to a State industrial instrument,	30 31
	as the case requires.	32
(5)	Section 153 (1) of the <i>Industrial Relations Act 1996</i> applies to proceedings under Part 6 of Chapter 2 of that Act (as applied by this section to and for the purposes of any dismissal of a child from employment to which this section applies) in the same way as it applies to proceedings under that Part apart from this section.	33 34 35 36 37

Clause 17 Industrial Relations (Child Employment) Bill 2006

Part 3 Unfair dismissal of children by constitutional corporations

- (6) The applied unfair dismissal provisions have effect subject to such modifications as are prescribed by this Part or the regulations. 1
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- (7) Unless the regulations provide otherwise, nothing in this section prevents the application of provisions of the *Industrial Relations Act 1996* that would be applicable to a matter arising under this Part (including the exercise of a function conferred or imposed on the Commission by or under this Part) apart from this section. 3
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- Note.** For example, nothing in this section limits the application of the provisions of the *Industrial Relations Act 1996* dealing with the constitution of the Commission, its practice and procedure and appeals from its decisions. 8
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Part 4	Miscellaneous	1
18	Act to bind Crown	2
	This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.	3 4 5
19	Relationship with other legislation	6
	The provisions of this Act are in addition to, and do not derogate from, the provisions of the following legislation with respect to the employment of children to the extent that the provisions of such legislation would apply to such employment apart from this Act:	7 8 9 10
	(a) the industrial relations legislation,	11
	(b) the <i>Industrial Relations (Ethical Clothing Trades) Act 2001</i> ,	12
	(c) the <i>Children and Young Persons (Care and Protection) Act 1998</i> ,	13
	(d) the <i>Apprenticeship and Traineeship Act 2001</i> ,	14
	(e) a statutory rule made under an Act referred to in paragraph (b), (c) or (d),	15 16
	(f) any other Act or statutory rule prescribed by the regulations.	17
20	Giving of notices and other documents	18
(1)	For the purposes of this Act, a notice or other document may be given to a person (or a notice or other document may be served on a person):	19 20
	(a) in the case of a natural person:	21
	(i) by delivering it to the person personally, or	22
	(ii) by sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or	23 24 25 26 27
	(iii) by sending it by facsimile transmission to the facsimile number of the person, or	28 29
	(b) in the case of a body corporate:	30
	(i) by leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or	31 32 33 34 35
	(ii) by sending it by facsimile transmission to the facsimile number of the body corporate.	36 37

Clause 21 Industrial Relations (Child Employment) Bill 2006

Part 4 Miscellaneous

(2)	Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.	1 2 3
21	Regulations	4
	The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	5 6 7 8
22	Savings, transitional and other provisions	9
	Schedule 1 has effect.	10
23	Consequential amendment of Industrial Relations Act 1996 No 17	11
	The <i>Industrial Relations Act 1996</i> is amended by inserting “ <i>Industrial Relations (Child Employment) Act 2006</i> ” after “ <i>Essential Services Act 1988</i> ” in section 382 (1).	12 13 14
24	Review of Act	15
(1)	The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.	16 17 18
(2)	The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.	19 20
(3)	A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.	21 22

Schedule 1	Savings, transitional and other provisions	1
		2
	(Section 22)	3
Part 1	General	4
1	Regulations	5
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: this Act	6 7 8
(2)	Any such provision may, if the regulations so provide, take effect from:	9
(a)	the introduction day (in the case of this Act), or	10
(b)	the date of assent to the Act concerned (in the case of any other Act), or a later date.	11 12 13
(3)	To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:	14 15 16
(a)	to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	17 18 19
(b)	to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	20 21 22