



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.