

# Industrial Relations and Employment Alert

September 2006

## Industrial Relations Further Amendment Bill 2006

On 18 September 2006 the New South Wales government released an exposure draft *Industrial Relations Further Amendment Bill 2006* (the Draft Bill) for public comment. The Draft Bill proposes to legislate to enable the exercise of certain dispute resolution functions of the Industrial Relations Commission of NSW, as well as amend the *Occupational Health and Safety Act 2000* (NSW) and the *Workers Compensation Act 1987* (NSW) in relation to the protection of workers from dismissal. Employers have until 10 October 2006 to lodge public comments with the NSW government in relation to the Draft Bill.

The Draft Bill is a further response by the NSW government to the recent amendments to the federal *Workplace Relations Act 1996* (the Work Choices reforms). Most notably, the Draft Bill proposes to increase the dispute resolution functions able to be performed by the Industrial Relations Commission of NSW.

The Draft Bill also attempts to clarify and expand the protections afforded to dismissed employees under the *Occupational Health and Safety Act 2000* (NSW) and the *Workers Compensation Act 1987* (NSW)

Another provision proposed in the Draft Bill would enable cooperation between the NSW IRC and other State industrial tribunals. All of these proposed amendments would protect or expand the scope of the NSW IRC's functions from the limitations that result, or may result, from the Work Choices reforms. The proposed amendment relating to alternative dispute resolution functions appears to be designed to make the NSW IRC more attractive as a provider of alternative dispute resolution services.

Set out below are the key aspects of the Draft Bill.

### Alternative Dispute Resolution

This is a key change proposed by the Draft Bill as it removes a number of limitations set by the current "referral agreement" system put in place post-Work Choices under section 146A of the *Industrial Relations Act 1996* (NSW) (the IR Act). Under the proposed changes, a person may apply to the NSW IRC for the resolution of a dispute if:

- the parties to the dispute are bound by a federal workplace agreement; and
- the NSW IRC is authorised or permitted to conduct the dispute resolution process as set out in the dispute settling procedures in the agreement, or, in the absence of a dispute settling process, as set out in the federal model dispute resolution process.

Under the Draft Bill a person may apply to the NSW IRC in relation to "a matter or matters in dispute", which is in contrast to the scope of referral agreements under section 146A of the IR Act which is more limiting and must be "a dispute about any conditions of employment or industrial matter between an

industrial organisation of employees and one or more employers”.

The functions of the NSW IRC in relation to the resolution of such disputes would however be limited to those functions conferred or imposed on it under the federal workplace agreement concerned or the federal model dispute resolution process. This means the IR Act will not be the source of the NSW IRC’s dispute resolution functions in any application made under the Draft Bill. For example, no decision of the NSW IRC in a dispute resolution application will be binding on the parties unless the federal workplace agreement concerned, or the federal model dispute resolution process, operate to make the decision binding.

## Amendment to OH&S Act

This draft provision details the circumstances in which an employee unlawfully dismissed from employment under the *Occupational Health and Safety Act 2000* (NSW) can seek reinstatement through the Industrial Relations Court of NSW. It also expands and clarifies the remedies available to a dismissed employee, primarily giving the IR Court power to reinstate an unlawfully dismissed employee.

An application for reinstatement under the proposed new clause may be made regardless of whether the employer is convicted of an offence

under section 23 of the *Occupational Health and Safety Act 2000* (NSW).

## Amendment to Workers Compensation Act

The Draft Bill proposes to move existing unfair dismissal protections for injured workers into the *Workers Compensation Act 1987* (NSW). Existing unfair dismissal protections for injured workers provide for applications for reinstatement by injured workers who are dismissed due to being unfit for employment as a result of their injury (see sections 91 to 100 of the IR Act). This is a means of ensuring the unfair dismissal protections for injured workers are not excluded by the operation of the Work Choices reforms, which specifically allow the continued operation of State workers compensation laws.

## Cooperation between States

The enabling of cooperation between State industrial tribunals is also proposed by the Draft Bill, through an expansion of the NSW IRC’s powers to hear proceedings jointly with other State industrial tribunals, and exercise functions conferred by industrial laws of other States. This, again, expands the scope of the functions of the NSW IRC which have otherwise been restricted by the Work Choices reforms.

## Action points for employers

- Employers have until **10 October 2006** to lodge public comments with the NSW government in relation to the Draft Bill.

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