



New South Wales

Industrial Relations Amendment (Administrator) Bill 2024

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Industrial Relations Act 1996* (*the Act*) to provide for the administration of the Construction and General Division of the CFMEU (NSW) (the *CFMEU, C & G Division*), including the establishment of an administration scheme and the appointment of an administrator.

Outline of provisions

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.

Schedule 1 **Amendment of Industrial Relations Act 1996 No 17**

Schedule 1 inserts proposed Schedule 6 into the Act, which provides that the CFMEU, C & G Division is placed under administration on the later of—

- (a) the day on which an order made by the Minister under the proposed schedule commences, or
- (b) the day on which an administrator is appointed.

The proposed schedule inserts definitions for the proposed schedule. *CFMEU (NSW)* means the organisation of employees that is registered under the Act with the registration number EE70. *CFMEU, C & G Division* means the Construction and General Division of the CFMEU (NSW).

The Minister for Industrial Relations (the *Minister*) must, by order (an *administration order*)—

- (a) establish a scheme (an *administration scheme*) for the administration of the CFMEU, C & G Division, and
- (b) appoint an administrator to exercise functions under the proposed schedule for the administration of the CFMEU, C & G Division.

The administration scheme may, among other things, provide for the powers of the administrator in relation to the scheme, the effective functioning of the CFMEU, C & G Division, and the taking of disciplinary action, including the expulsion of members and the disqualification of office holders for up to 5 years.

The Minister may, by order, do the following—

- (a) vary an administration scheme or terms of an administrator's appointment,
- (b) revoke the appointment of an administrator or an administration order.

The proposed schedule sets out the functions of the administrator. Subject to an administration order, an administrator has the following functions—

- (a) the administration of the CFMEU, C & G Division,
- (b) the functions of certain office holders and bodies, including the State Executive of the CFMEU (NSW) and the Divisional Council,
- (c) the control of funds, property and other assets of the CFMEU, C & G Division and the CFMEU (NSW), including the control of certain funds, property and assets transferred or otherwise moved before the administrator was appointed.

The administrator, in exercising functions, must be satisfied the administrator is acting in the best interest of the members of the CFMEU, C & G Division and have regard to the objects of the CFMEU (NSW).

The administrator may bring proceedings in the name of the CFMEU, C & G Division for the recovery of funds, the imposition of penalties or the awarding of compensation. The administration scheme, the administration order and any action taken under the administration scheme have effect despite the rules of the CFMEU (NSW), CFMEU, C & G Division or another branch, division or part of the CFMEU.

The proposed schedule also provides for the following—

- (a) the period of an administrator's appointment,
- (b) that the CFMEU (NSW) is to pay for the expenses of the administrator's conduct of the affairs of the CFMEU, C & G Division or the CFMEU (NSW),
- (c) the Act, section 290B, which provides for the Industrial Relations Commission of New South Wales to make a declaration of dysfunction and an interim appointment of an administrator, does not apply to an administrator exercising functions under the proposed schedule,
- (d) the administrator may require certain persons to give the administrator documents that the administrator reasonably requires to exercise the administrator's functions, or give the administrator other information or assistance the administrator reasonably requires, and a failure to comply with the requirement is an offence, unless the person has a reasonable excuse,
- (e) a person commits an offence if, without reasonable excuse, the person engaged or engages in conduct on or after 17 July 2024 that prevents another person or body taking action under the administration scheme or the administrator from effectively administering the administration scheme,
- (f) the power of the Industrial Relations Commission to make an order requiring a person to take action or stop taking action that prevents the administrator from effectively

administering the administration scheme or that contravenes the requirement to produce documents or provide other assistance to the administrator.

- (g) under the Act, section 290D, an administrator exercising functions under the proposed schedule is not subject to any action, liability, claim or demand,
- (h) the certification by the Industrial Registrar of any alteration of the rules of the CFMEU (NSW) or the CFMEU, C & G Division by the administrator before the alteration can take effect,
- (i) the power to make regulations,
- (j) the repeal of provisions of the proposed schedule after 5 years, or the day the administration scheme expires.



New South Wales

Industrial Relations Amendment (Administrator) Bill 2024

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This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Legislative Assembly

Clerk of the Legislative Assembly



New South Wales

Industrial Relations Amendment (Administrator) Bill 2024

No. , 2024

A Bill for

An Act to amend the *Industrial Relations Act 1996* in relation to an administration scheme for a particular employee organisation; and for the appointment of an administrator for the administration of the employee organisation; and for related purposes.

The LEGISLATIVE COUNCIL has this day agreed to this Bill with/without amendment.

Legislative Council

Clerk of the Parliaments

Tabling copy

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Industrial Relations Amendment (Administrator) Act 2024*.

3

2 Commencement

4

This Act commences on a day or days to be appointed by proclamation.

5

Schedule 1 Amendment of Industrial Relations Act 1996 No 17 1
2

Schedule 6 3
Insert after Schedule 5— 4

Schedule 6 Administrator for CFMEU, C & G Division 5

1 Definitions 6

In this schedule— 7

administration order—see clause 3(1). 8

administration scheme—see clause 3(1)(a). 9

administrator means a person appointed by an administration order as the administrator of the CFMEU, C & G Division. 10
11

CFMEU means the organisation of employees that is— 12

(a) registered under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth, and 13
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(b) known as the Construction, Forestry and Maritime Employees Union (CFMEU). 15
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CFMEU, C & G Division means the Construction and General Division of the CFMEU (NSW). 17
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CFMEU (NSW) means the organisation of employees that is registered under this Act with the registration number EE70. 19
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office holders, of the CFMEU (NSW), includes persons who hold office on any of the following bodies— 21
22

(a) the State Executive of the CFMEU (NSW), 23

(b) the CFMEU, C & G Division Branch Council, 24

(c) the CFMEU, C & G Division Branch Committee of Management. 25

2 Administration of CFMEU, C & G Division 26

(1) The CFMEU, C & G Division is placed under administration on the later of the following days— 27
28

(a) the day an administration order commences, 29

(b) the day an administrator is appointed. 30

(2) The administration ends on the earlier of the following— 31

(a) the fifth anniversary of the day the administration started, 32

(b) the day the administration is revoked by an order made under clause 6(2). 33
34

3 Minister must appoint administrator of CFMEU, C & G Division 35

(1) The Minister must, by order (an *administration order*)— 36

(a) establish a scheme (an *administration scheme*) for the administration of the CFMEU, C & G Division if the Minister is satisfied the establishment of the administration scheme is in the public interest, having regard to— 37
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(i) the objects of this Act, and 41

(ii) any other matters the Minister considers relevant, and 42

- (b) appoint an administrator to exercise functions under this schedule for the administration of the CFMEU, C & G Division. 1
2
- (2) Without limiting subclause (1)(a), the administration scheme may provide for the following— 3
4
 - (a) the powers of the administrator in relation to the scheme, including in relation to the matters mentioned in paragraphs (b)–(m), 5
6
 - (b) declarations that offices of office holders of the CFMEU, C & G Division are vacant, 7
8
 - (c) the suspension, with or without remuneration, or removal from office of office holders of the CFMEU (NSW), including offices held on an ex-officio basis because the office holders hold office in the CFMEU, 9
10
11
 - (d) the taking of disciplinary action, including the expulsion of members and the disqualification of office holders of the CFMEU (NSW) for up to 5 years, 12
13
14
 - (e) the termination of the employment of employees of the CFMEU, C & G Division or its branches, 15
16
 - (f) the reconstitution of the CFMEU, C & G Division, 17
 - (g) the filling of offices or positions of office holders of the CFMEU (NSW), including the holding and conduct of elections for offices, 18
19
 - (h) the effective functioning of the CFMEU, C & G Division, 20
 - (i) the alteration of the rules of the CFMEU (NSW) or the CFMEU, C & G Division, 21
22
 - (j) the engagement of assistant administrators, consultants and other persons to assist the administrator in exercising the administrator’s functions, 23
24
25
 - (k) delegation by the administrator of the administrator’s functions, 26
 - (l) requirements in relation to reporting about the administration, 27
 - (m) the obligation of the administrator to cooperate with any inquiry by a law enforcement agency or a regulator into— 28
29
 - (i) the CFMEU (NSW) or the CFMEU, C & G Division, or 30
 - (ii) officers or employees, or former officers or employees, of the CFMEU (NSW) or the CFMEU, C & G Division, 31
32
 - (n) matters that are ancillary or incidental to the matters mentioned in paragraphs (a)–(m). 33
34
- (3) To avoid doubt, the administration scheme may provide for the taking of disciplinary action in circumstances not provided for in the rules of the CFMEU (NSW) or the CFMEU, C & G Division. 35
36
37
- (4) Subject to this schedule, the administration order may also provide for the following— 38
39
 - (a) the period of the administrator’s appointment, 40
 - (b) the terms of the administrator’s appointment, including the remuneration the Minister determines to be appropriate, 41
42
 - (c) the functions to be exercised by the administrator. 43
- (5) The date specified in an administration order on which an administrator’s appointment ends must not be more than 5 years after the date on which the appointment starts. 44
45
46
- (6) The Minister may, by order published in the Gazette— 47

(a)	terminate the appointment of the administrator, and	1
(b)	appoint another person as the administrator.	2
4	When administration order takes effect	3
(1)	An administration order takes effect on—	4
(a)	the day the order is published in the Gazette, or	5
(b)	if a later day is specified in the order—the later day.	6
(2)	The Minister is not required to give notice to any person or body, including the CFMEU, C & G Division or the CFMEU (NSW), or any office holder of the CFMEU, C & G Division or the CFMEU (NSW), before—	7
(a)	making an administration order, or	10
(b)	varying or revoking an administration order.	11
5	Functions of administrator	12
(1)	Subject to the administration order, an administrator has the following functions under this schedule—	13
(a)	the administration of the CFMEU, C & G Division,	15
(b)	the functions of the State Executive of the CFMEU (NSW),	16
(c)	the functions of the Divisional Council and officers and bodies of the CFMEU, C & G Division under the rules of the CFMEU, C & G Division,	17
(d)	the control of funds, property and other assets of the CFMEU, C & G Division and the CFMEU (NSW), including—	20
(i)	the power to dispose of property and other assets of the CFMEU, C & G Division and the CFMEU (NSW), and	22
(ii)	the control of funds, property and other assets transferred or otherwise moved from the CFMEU, C & G Division to the CFMEU (NSW) before the administrator was appointed.	24
(2)	The administrator must, in exercising the administrator’s functions in relation to the CFMEU, C & G Division—	27
(a)	be satisfied the administrator is acting in the best interests of the members of the CFMEU, C & G Division, and	29
(b)	have regard to the objects of the CFMEU (NSW), as defined in the rules of the CFMEU (NSW) at the commencement of this schedule, so far as the objects and rules are lawful.	31
(3)	An administrator may bring proceedings in the name of the CFMEU (NSW) or the CFMEU, C & G Division for—	34
(a)	the recovery of funds, property or other assets of the CFMEU (NSW) or the CFMEU, C & G Division, including funds, property or other assets transferred or otherwise moved to the CFMEU (NSW), the CFMEU or another organisation registered under the <i>Fair Work (Registered Organisations) Act 2009</i> of the Commonwealth, and	36
(b)	the imposition of penalties and the awarding of compensation under this Act or another Act.	37
6	Variation and revocation of administration order	43
(1)	The Minister may, at any time by order published in the Gazette, vary an administration order, including to vary—	44

(a)	the administration scheme established by the order, or	1
(b)	the terms of the administrator's appointment.	2
(2)	The Minister may, at any time by order published in the Gazette, revoke—	3
(a)	the appointment of an administrator, or	4
(b)	an administration order if the Minister is satisfied the administration scheme is no longer necessary because the CFMEU, C & G Division is able to function effectively without being under administration.	5 6 7
7	Expenses of administrator	8
	Subject to the administration order, the expenses of, and incidental to, the conduct of the affairs of the CFMEU (NSW) or the CFMEU, C & G Division by an administrator, including the administrator's remuneration as specified in the administration order, are payable by the CFMEU (NSW).	9 10 11 12
8	Section 290B does not apply to administrator exercising functions under schedule	13 14
	Section 290B does not apply in relation to an administrator exercising functions under this schedule.	15 16
9	Provision of assistance to administrator	17
(1)	For the purpose of exercising the administrator's functions under this schedule, the administrator may, by written notice given to a relevant person, require the relevant person to do either or both of the following—	18 19 20
(a)	give to the administrator documents in the relevant person's possession, custody, power or control that the administrator reasonably requires to exercise the functions,	21 22 23
(b)	give the administrator any other information or assistance the administrator reasonably requires to exercise the functions.	24 25
(2)	A relevant person to whom a notice is given under subclause (1) must comply with the notice unless the relevant person has a reasonable excuse. Maximum penalty—100 penalty units.	26 27 28
(3)	In this clause— relevant person means—	29 30
(a)	an officer or employee, or former officer or employee, of the CFMEU (NSW) or the CFMEU, C & G Division,	31 32
(b)	an agent or former agent of the CFMEU (NSW) or the CFMEU, C & G Division,	33 34
(c)	a person that provides or formerly provided services, under a contract or agreement to the CFMEU (NSW) or the CFMEU, C & G Division,	35 36
(d)	a person prescribed by the regulations.	37
10	Application of liability provisions	38
	Section 290D applies to an administrator exercising functions under this schedule in the same way as the provisions apply to an administrator exercising functions under Chapter 5, Part 4, Division 11.	39 40 41
11	Anti-avoidance provision	42
(1)	A person commits an offence if, without reasonable excuse—	43
(a)	the person engages in conduct or a course of conduct, and	44

(b)	as a result of the conduct or course of conduct—	1
(i)	another person or body is prevented from taking action under an administration scheme, or	2
(ii)	the administrator is prevented from effectively administering the administration scheme.	3
	Maximum penalty—100 penalty units.	4
(2)	This clause applies to conduct engaged in on or after 17 July 2024.	5
12	Interaction with rules	6
	The following have effect despite the rules of the CFMEU (NSW), the CFMEU, C & G Division or another branch, division or part of the CFMEU—	7
(a)	an administration scheme,	8
(b)	an action taken under an administration scheme,	9
(c)	an administration order.	10
13	Actions under scheme	11
(1)	Actions of the administrator, including actions mentioned in clause 3(2)(c) and (d), have effect—	12
(a)	regardless of the end of the administration scheme under clause 2(2) or 6(2), and	13
(b)	regardless of clause 17, and	14
(c)	despite any provision of this Act, the regulations or the rules of the CFMEU (NSW) or the CFMEU, C & G Division.	15
(2)	The regulations may prescribe the effect of actions taken under the administration scheme for the purposes of other laws.	16
14	Contravention of clauses 9 and 11	17
(1)	This clause applies if a person contravenes clause 9(2) or 11(1).	18
(2)	The Commission may make an order—	19
(a)	requiring the person to take action to comply with the clause or to stop taking action that contravenes the clause, or	20
(b)	imposing a pecuniary penalty on the person for the contravention of the clause.	21
15	Alteration of rules under administration scheme	22
(1)	This clause applies in relation to an alteration of the rules of the CFMEU (NSW) or the CFMEU, C & G Division made under an administration scheme.	23
(2)	The administrator must, within 35 days after the alteration is made, or a longer period determined by the Industrial Registrar, lodge with the Commission a notice setting out particulars of the alteration.	24
(3)	The notice must contain a declaration, signed by the administrator, that—	25
(a)	the alteration was made in accordance with the administration scheme, and	26
(b)	the particulars set out in the notice are true and correct to the best knowledge and belief of the administrator.	27

(4)	If particulars of the alteration are lodged with the Commission, the Industrial Registrar may, with the administrator's consent, amend the alteration for the purpose of correcting a typographical, clerical or formal error.	1 2 3
(5)	The alteration does not take effect unless—	4
(a)	particulars of the alteration have been lodged with the Commission as required by subclauses (2) and (3), and	5 6
(b)	the Industrial Registrar has certified that, in the Industrial Registrar's opinion, the alteration—	7 8
(i)	complies with, and is not contrary to, this Act, awards and enterprise agreements, and	9 10
(ii)	is not otherwise contrary to law, and	11
(iii)	has been made in accordance with the scheme.	12
(6)	If certified under subclause (5), the alteration takes effect on the day of certification.	13 14
16	Regulation-making power	15
(1)	The regulations may provide for—	16
(a)	matters in relation to administration orders, including the functions and remuneration of an administrator, and	17 18
(b)	matters relating to an administration scheme, including the matters referred to in clause 3(2).	19 20
(2)	Also, the regulations may amend this schedule to make any changes necessary or convenient for the administration of the CFMEU, C & G Division by an administrator, including—	21 22 23
(a)	in relation to the exercise of functions by an administrator, and	24
(b)	for the purpose of ensuring consistency with—	25
(i)	a Commonwealth Act under which an administrator is appointed for the CFMEU, or	26 27
(ii)	an instrument made under a Commonwealth Act referred to in subparagraph (i).	28 29
17	Repeal of clauses 2–6	30
	Clauses 2–6 are repealed at the end of the later of the following days—	31
(a)	the day that is the fifth anniversary of the commencement of this schedule,	32 33
(b)	the day the administration scheme expires.	34