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GOVT--Government

LEGISLATIVE ASSEMBLY

Industrial Relations Amendment (Administrator) Bill 2024

First print

Proposed amendments

No. 1 **Definition of relevant officer**

Page 3, Schedule 1, proposed clause 1, definition of *office holders*, lines 24 and 25. Omit all words on the lines. Insert instead—

- (b) the CFMEU, C & G Divisional Council,
- (c) the CFMEU, C & G Divisional Committee of Management.

No. 2 **Administration scheme—declaration that offices of officers holders are vacant**

Page 4, Schedule 1, proposed clause 3(2)(b), lines 7 and 8. Insert “or the CFMEU (NSW)” after “CFMEU, C & G Division”.

No. 3 **Functions of administrator**

Page 5, Schedule 1, proposed clause 5(1). Insert after line 19—

- (c1) promoting compliance by the CFMEU, C & G Division with the laws, including workplace laws, of the State and the Commonwealth,
- (c2) ensuring officers and employees of the CFMEU, C & G Division have complied, and continue to comply, with the obligations of this Act and, if the officers and employees have not complied, as far as reasonably practicable ensure the officers and employees are held accountable for the non-compliance,

No. 4 **Variation and revocation of administration scheme**

Page 6, Schedule 1, proposed clause 6. Insert after line 7—

- (3) In deciding whether to vary or revoke an administration scheme, the Minister must consider whether the variation or revocation of the administration scheme is in the public interest, having regard to—
 - (a) the objects of this Act, and
 - (b) any other matters the Minister considers relevant.

No. 5 **Civil penalty for failure to assist administrator**

Page 6, Schedule 1, proposed clause 9(2), penalty, line 28. Omit all words on the line. Insert instead—

Maximum civil penalty—1700 penalty units.

No. 6 **Penalties for anti-avoidance conduct**

Page 7, Schedule 1, proposed clause 11(1), penalty, line 6. Omit all words on the line. Insert instead—

Maximum civil penalty—1,700 penalty units.

Maximum criminal penalty—imprisonment for 2 years or 8,535 penalty units.

No. 7 **Civil penalty provisions—consequential amendment**

Page 7, Schedule 1, proposed clause 14(2), lines 26–30. Omit all words on the lines. Insert instead—

- (2) The Commission may make an order requiring the person to take action to comply with the clause or to stop taking action that contravenes the clause.

No. 8 **Civil penalty for failure to assist administrator or anti-avoidance conduct**

Page 8, Schedule 1. Insert after line 14—

15A Proceedings for contravention of civil penalty provision

- (1) This section applies to a contravention of clause 9(2) or 11(1) (a *civil penalty provision*).
- (2) The industrial court may, on the application of an authorised official, order a person to pay a monetary penalty if the Court is satisfied the person contravened a civil penalty provision.
- (3) The monetary penalty must not be more than the amount specified at the end of the civil penalty provision following the words “Maximum civil penalty”.
- (4) Proceedings for a penalty under this clause may be brought within 6 years after the date on which the contravention is alleged to have occurred.
- (5) The rules of evidence apply to proceedings under this clause.
- (6) The standard of proof that applies to proceedings under this clause is proof on the balance of probabilities.
- (7) Section 357(6) and (7) apply in relation to a contravention of a civil penalty provision and proceedings under this clause in the same way as the subsections apply to a contravention of an industrial instrument and proceedings for a civil penalty for the contravention.
- (8) Criminal proceedings may be commenced against a person for conduct that is substantially the same conduct constituting a contravention of clause 11(1) regardless of whether the industrial court makes an order under this clause.
- (9) However, the industrial court must not make an order under this clause for a contravention of a civil penalty provision if the person the subject of the proceedings has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.
- (10) A person who is involved in a contravention of a civil penalty provision is taken to have contravened the provision.
- (11) In this clause—
- authorised official* means—
- (a) an inspector or other person authorised under this Act to institute proceedings for offences, or
- (b) the administrator.
- industrial court* has the same meaning as in Chapter 7, Part 1.
- involved*, in a contravention of a civil penalty provision, means a person has—
- (a) aided, abetted, counselled or procured the contravention, or
- (b) induced the contravention, whether by threats, promises or otherwise, or

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- (c) been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention, or
 - (d) conspired with others to effect the contravention.