

c2024-132E  
OPP--Opposition

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LEGISLATIVE COUNCIL

**Industrial Relations Amendment (Administrator) Bill 2024**

Second print

Proposed amendments

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- No. 1 **Consequential amendment**  
Page 3, Schedule 1, line 3. Omit “Schedule 6”. Insert instead “Schedules 6–9”.
- No. 2 **Royal Commission to be established**  
Page 9, Schedule 1. Insert after line 38—

**Schedule 7 Royal Commission to inquire into CFMEU  
and related entities**

**Part 1 Preliminary**

**1 Definitions**

In this schedule—

*CFMEU* has the same meaning as in Schedule 6.

*criminal organisation* means—

- (a) a criminal organisation or declared organisation, within the meaning of the *Crimes (Criminal Organisations Control) Act 2012*, or a member of the organisation, or
- (b) another criminal enterprise or member of a criminal enterprise.

*Royal Commission* has the same meaning as in the *Royal Commissions Act 1923*.

**Part 2 Royal Commission to inquire into CFMEU**

**2 Royal Commission into CFMEU**

- (1) There is to be a Royal Commission to inquire into, and report to the Governor about, the CFMEU.
- (2) The letters patent for the Royal Commission are to be issued no later than 28 days after the commencement of the *Industrial Relations Amendment (Administrator) Act 2024*, Schedule 1.

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### 3 Matters into which Royal Commission is to inquire

The Royal Commission is to inquire into and report about the following matters—

- (a) whether conduct by the CFMEU, or any separate entities (*related entities*) established by the CFMEU or its officers, amounts to misconduct or the contravention of a law or a professional standard,
- (b) if conduct referred to in paragraph (a) does amount to misconduct or a contravention of a law or a professional standard—whether the conduct should be referred to a Commonwealth or State agency to determine whether criminal or other legal proceedings should be taken,
- (c) whether any bribe, secret commission or other unlawful payment or benefit arising from a contract or other arrangement or understanding between the CFMEU, or an officer of the CFMEU, and another party has been paid,
- (d) whether any arrangement or relationship exists between the CFMEU, or an officer of the CFMEU, and a criminal organisation or the organisation's members for the purpose of furthering the interests of the following—
  - (i) the CFMEU or related entities,
  - (ii) an officer of the CFMEU or a related entity,
  - (iii) a member of the CFMEU or a related entity,
  - (iv) the NSW Labor Party, including members of the Labor Party who are members of the Commonwealth or State Parliament, or councillors and candidates for election to the Commonwealth or State Parliament or councils,
  - (v) any other person or organisation,
- (e) the governance arrangements of the CFMEU and related entities, with particular regard to the following—
  - (i) the financial management of the CFMEU and related entities,
  - (ii) the adequacy of existing laws in relation to—
    - (A) the integrity of the financial management of the CFMEU and related entities, and
    - (B) the accountability of officers and members of the CFMEU about the use of funds or other assets in relation to related entities,
  - (iii) whether the related entities are used, or have been used, for an unlawful purpose,
  - (iv) the use of funds solicited in the names of related entities for the purpose of furthering the interests of—
    - (A) an officer of the CFMEU, or
    - (B) a member of the CFMEU, or
    - (C) the NSW Labor Party, including members of the Labor Party who are members of the Commonwealth or State Parliament, or councillors and candidates for election to the Commonwealth or State Parliament or councils, or
    - (D) any other person or organisation,
- (f) the adequacy of existing laws and policies relating to the matters in paragraphs (a)–(e) to identify, regulate and address misconduct or criminal activity in the CFMEU or related entities,
- (g) the ability and effectiveness of law enforcement agencies identifying, regulating and addressing misconduct or criminal activity by the CFMEU and related entities and whether any additional agency or body is required to fill any identified shortfall,

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- (h) any matter reasonably incidental to a matter mentioned in paragraph (a)–(g).

No. 3 **Industrial Court's additional powers in relation to relevant industrial organisations**

Page 9, Schedule 1. Insert after line 38—

## **Schedule 8 Industrial court's additional powers in relation to relevant industrial organisations**

### **1 Definitions**

In this schedule—

*CFMEU* has the same meaning as in Schedule 6.

*relevant industrial organisation* means—

- (a) the CFMEU, or
- (b) an industrial organisation of employees the subject of an administration scheme under Schedule 6 or 9.

### **2 Mandatory examination**

The industrial court must summon a person for examination about the relevant industrial organisation's affairs if—

- (a) an administrator applies for the summons, and
- (b) the industrial court is satisfied the person—
  - (i) has taken part or been concerned in affairs of the relevant industrial organisation and has been, or may have been, guilty of misconduct in relation to the relevant industrial organisation, or
  - (ii) may be able to give information about the affairs of the relevant industrial organisation.

### **3 Affidavit in support of application**

- (1) The administrator must file an affidavit that supports the application under clause 2 and complies with the rules of the industrial court.
- (2) The affidavit is not available for inspection except as ordered by the industrial court.

### **4 Content of summons**

- (1) A summons to a person under clause 2 must require the person to attend before the industrial court—
  - (a) at a specified reasonable place and at a specified reasonable time on a specified reasonable day, and
  - (b) to be examined on oath or affirmation about the relevant industrial organisation's affairs.
- (2) The summons may require the person to produce at the examination specified documents that—
  - (a) are in the person's possession, and
  - (b) relate to the relevant industrial organisation or the relevant industrial organisation's affairs.

### **5 Court may give directions about examination**

- (1) The industrial court may give one or more of the following—
  - (a) a direction about the matters to be inquired into at an examination,

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- (b) a direction about the procedure to be followed at an examination,
  - (c) a direction about who may be present at an examination while the examination is being held in private,
  - (d) a direction that a person be excluded from an examination, even while the examination is being held in public,
  - (e) a direction about access to records of the examination,
  - (f) a direction prohibiting publication or communication of information about the examination, including questions asked, and answers given, at the examination,
  - (g) a direction that a document that relates to the examination and was created at the examination be destroyed.
- (2) The industrial court may give a direction under subclause (1)(e), (f) or (g) in relation to all or part of an examination even if the examination, or that part, was held in public.
  - (3) A person must not contravene a direction under subclause (1).

## **6 Conduct of examination**

- (1) An examination must be held in public except to the extent the industrial court considers that, because of special circumstances, it is desirable to hold the examination in private.
- (2) The industrial court may put, or allow to be put, to a person being examined the questions about the relevant industrial organisation or any of the relevant industrial organisation's affairs the industrial court thinks appropriate.
- (3) A person who is summoned under clause 2 to attend before the industrial court must not intentionally or recklessly—
  - (a) fail to attend as required by the summons, or
  - (b) fail to attend from day to day until the conclusion of the examination.
- (4) Subclause (3) does not apply to the extent the person has a reasonable excuse.
- (5) A person who attends before the industrial court for examination must not—
  - (a) without reasonable excuse, refuse or fail to take an oath or make an affirmation, or
  - (b) without reasonable excuse, refuse or fail to answer a question the industrial court directs the person to answer, or
  - (c) make a statement that is false or misleading in a material particular, or
  - (d) without reasonable excuse, refuse or fail to produce documents the summons requires the person to produce.
- (6) The industrial court may direct a person to produce, at an examination of the person or another person, documents that are in the first person's possession and relevant to matters to which the examination relates or will relate.
- (7) A person may comply with subclause (6) by causing the documents to be produced at the examination.
- (8) A person must not refuse, or intentionally or recklessly fail, to comply with a direction under subclause (6).
- (9) Subclause (8) does not apply to the extent the person has a reasonable excuse.
- (10) A person is not excused from answering a question put to the person at an examination on the ground the answer might tend to incriminate the person or make the person liable to a penalty.
- (11) An answer given by an individual to a question at an examination is not admissible in evidence against the person in a criminal proceeding or a

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proceeding for the imposition of a penalty, other than a proceeding under this clause or another proceeding in relation to giving a false answer under this clause, if—

- (a) before answering the question put to the person, the person claims the answer might tend to incriminate the person or make the person liable to a penalty, and
  - (b) the answer might in fact tend to incriminate the person or make the person liable for a penalty.
- (12) The industrial court may order the questions put to a person and the answers given by the person at an examination be recorded in writing and may require the person to sign the written record.
- (13) Subject to subclause (11), a written record of an examination signed by a person, or a transcript of an examination of a person that is authenticated in accordance with the rules of the industrial court, may be used in evidence in legal proceedings against the person.
- (14) A written record made under subclause (12) must be open for inspection—
- (a) without fee, by the administrator, and
  - (b) by another person on payment of the prescribed fee.

No. 4 **Administrator for organisations of employees**

Page 9, Schedule 1. Insert after line 38—

## **Schedule 9 Administrators for other employee organisations**

### **1 Definitions**

In this schedule—

*administration order*—see clause 2.

*administration scheme*—see clause 2(a).

*administrator* means a person appointed by an administration order as the administrator of an industrial organisation of employees.

### **2 Minister must appoint administrator of industrial organisation of employees in certain circumstances**

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

- (a) establish a scheme (an *administration scheme*) for the administration of an industrial organisation of employees if the Minister is satisfied—
  - (i) there is an ongoing investigation into alleged gross misconduct by officers of the organisation, or
  - (ii) an investigation has found evidence of gross misconduct by officers of the organisation, and
- (b) appoint an administrator to exercise functions in accordance with clause 4 for the administration of the industrial organisation of employees.

**Note**— clause 4 applies Schedule 6, clause 5, which provides for the functions of an administrator.

### **3 Administration of industrial organisation of employees**

- (1) If the Minister makes an administration order under clause 2 in relation to an industrial organisation of employees, the organisation is placed under administration on the later of the following days—
  - (a) the day the administration order commences,

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- (b) the day an administrator is appointed.
- (2) The administration ends on the earlier of the following—
- (a) the fifth anniversary of the day the administration started,
  - (b) the day the order is revoked by the Minister in accordance with Schedule 6, clause 6(2) as applied by this schedule, clause 4.

#### **4 Application of Schedule 6**

If the Minister makes an administration order in relation to an industrial organisation of employees, Schedule 6, clauses 3(2)–(6) and 4–17 apply to the administration of the industrial organisation under this schedule—

- (a) as if a reference to an administration order were a reference to the administration order under this schedule, and
- (b) as if a reference to an administrator were a reference to the administrator under this schedule, and
- (c) as if a reference to the CFMEU, C & G Division, the CFMEU (NSW) or the CFMEU were a reference to the industrial organisation and any branch, division or part of the industrial organisation, and
- (d) as if a reference to office holders of the CFMEU (NSW) were a reference to office holders of the industrial organisation, and
- (e) as if a reference to employees of the CFMEU, C & G Division and its branches were a reference to the industrial organisation and its branches, and
- (f) as if a reference to the rules of the CFMEU, C & G Division or the CFMEU (NSW) were a reference to the rules of the industrial organisation or any branch, division or part of the industrial organisation, and
- (g) with any other modifications necessary for the application of Schedule 6 to the administration of the industrial organisation, and
- (h) with any other modifications specified by the Minister by order published in the Gazette.

#### **5 Disallowance of administration order**

The *Interpretation Act 1987*, sections 40 and 41 apply to an administration order in the same way the sections apply to a statutory rule.