

INDUSTRIAL RELATIONS AMENDMENT (ADMINISTRATOR) BILL 2024

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

The Bill is being introduced into Parliament against the background of multiple allegations of misconduct and corruption by various CFMEU officials and their association with criminal organisations and members of outlaw bkie gangs, including allegations of bikies working in site delegate positions. In New South Wales, two senior CFMEU officials have been charged with receiving a corrupt benefit contrary to the *Fair Work Act 2009*.

Union officials who act in this way not only erode the confidence of their members, but also undermine public confidence in their organisation and unions in general.

Objectives: What is the policy's objective couched in terms of the public interest?

The Bill seeks to amend the *Industrial Relations Act 1996* to place the Construction and General Division of the CFMEU (NSW) (CFMEU, C&G Division) under administration. Under the Bill the Minister for Industrial Relations is to establish a scheme for the administration of the CMFEU, C&G Division and appoint an administrator.

Unions have a vital social and labour market role, and the Bill aims to restore the confidence of union members and the broader public.

Under the Bill, the NSW Minister must by order, establish a scheme for the administration of the CFMEU Construction and General Division if satisfied it is in the public interest, having regard to the objects of the *Industrial Relations Act 1996* and any other matters the Minister considers relevant.

Options: What alternative policies and mechanisms were considered in advance of the bill?

The Government has also made an application under s290B of the *Industrial Relations Act 1996*. However, the Government is introducing legislation in addition to the application to provide certainty that an administrator will be appointed as quickly as possible. This approach reflects the seriousness with which the Government is treating the issue.

Sections 225-227 of the *Industrial Relations Act 1996* also provides that in certain circumstances an application can be made to the NSW Industrial Relations Commission for the cancellation of the registration of an industrial organisation.

Analysis: What were the pros/cons and benefits/costs of each option considered?

The Government is introducing legislation in addition to the application under s 290B of the *Industrial Relations Act 1996* to provide certainty that an administrator will be appointed as quickly as possible. It is likely the existing process under s290B of the Act would lead to a protracted hearing in the Industrial Court of NSW. In addition to the uncertainty of the outcome of any hearing, it is probable that any proceedings would not be finalised for weeks, if not months, if appeal proceedings are commenced.

Deregistration of the CFMEU NSW is not a desirable alternative because it would mean that it could continue to operate outside the system of legal obligations required by industrial law.

The Ministerial appointment of an administrator does not face these problems – the union remains a registered organisation, with rights and obligations.

The Bill strikes a reasonable balance between not interfering with the significant role and functions that unions perform as democratic organisations and stamping out corruption and gross misconduct when a union appears incapable of fixing it by themselves.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

If the Bill is passed by Parliament, the Minister for Industrial Relations must commence the process of appointing an administrator to the CFMEU, Construction and General Division. The administrator can be appointed for a period of up to five years.

The Minister may vary the administration scheme or the terms of the administrator's appointment at any time. The Minister for Industrial Relations may also revoke the appointment of an administrator or an administration scheme if it is no longer necessary because the CFMEU, Construction and General Division is able to function effectively without being under administration.

The Bill also has a sunset clause of the key provisions of the Bill that relate to the ability of the NSW Minister to appoint an administrator and establish a functioning administration scheme. This means that either on the fifth anniversary of the Schedule's commencement or the day the administrator's scheme expires, clauses 2 to 6 will be repealed.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

At a national level there have been multiple reported allegations broadcast of misconduct and corruption by various CFMEU officials, alleged association with criminal organisations and members of outlaw motorcycle clubs, including allegations of appointments to employment and representative positions on construction projects.

The Government recognises that unions are a fundamental component of the industrial relations system that exist to represent workers and advocate for fair pay, conditions and health and safety for its members.