



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.