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**depa**  
**Att Ian Robertson**

**By email**

Dear Ian

**Re Depa proposed amendments to Industrial Relations Act and Local Government Act**

1. As I promised, here are the proposed amendments to the NSW *Industrial Relations Act* to allow arbitration of disputes and to the *Local Government Act* to allow for arbitration of Senior staff matters.
2. I also enclose a brief explanation in case you want to provide it to others.

The power to arbitrate under the NSW *Industrial Relations Act*

3. Section 136(1)(a) allows the Commission to make orders in arbitration. Section (1) (d) of the Act only allows the commission in arbitration to make any other kind of order it is authorised to make.
4. In *Public Service Association and Professional Officers' Association Amalgamated Union of NSW South Wales v Secretary for Industrial Relations* [2018] NSWIRComm 1061 at [80], the Full Bench dealt with s 136(1)(a) when stating that:

*Classic examples of such directions would be that a named individual be required to attend a compulsory conference or that certain persons meet and confer about specified matters. Another example is a direction that specified persons take all reasonable steps to ensure compliance with a dispute order or orders made pursuant to s 136(1)(c).*

5. That case makes clear that there is no general power to arbitrate under the NSW *Industrial Relations Act*.
6. I recommend that s 136 Arbitration of dispute be amended as follows:

(1) *The Commission may, in arbitration proceedings, do any one or more of the following--*

- (a) *make a recommendation or give a direction to the parties to the industrial dispute,*
- (b) *make or vary an award under Part 1 of Chapter 2,*
- (c) *make a dispute order under Part 2,*
- (d) *make any other kind of order ~~it is authorised to make (including an order made on an interim basis)~~ or direction necessary to resolve the dispute.*

(2) *Any such action may be taken by the Commission on its own initiative or on application by any person authorised to notify the Commission of the industrial dispute.*

**Note :** *Examples of other kinds of orders the Commission may make are orders for secret ballots [\(section 172\)](#), a demarcation order under Part 6 of Chapter 5 and stand-down orders [\(section 126\)](#).*

#### The power to deduct wages under the NSW Industrial Relations Act

7. Section 118 of the *Industrial Relations Act* provides that employers can deduct amounts from wages payable to employees.

#### ***Employees to be paid in full***

- (1) ***[Payment in full]*** *Payment of remuneration to an employee is to be made in full without any deduction for goods, board or lodging or any other services supplied by the employer in payment (or part payment) of remuneration.*
- (2) ***(2) [Deductions]*** *However, an employer can deduct and pay on behalf of an employee from any remuneration payable to the employee:*
  - (a) *any payments principally for the benefit of the employee that are authorised in writing by the employee to be deducted and paid, or*
  - (b) *any payments that are authorised by an industrial instrument to be deducted and paid.*

8. The section is difficult to understand but probably means that an employer is not prohibited from deducting amounts for services provided by others (such as training institutions). It may also mean that the employer is entitled to deduct any payment that is principally for the benefit of the employee and authorised in writing. There is no requirement for the deduction to be reasonable.

9. I would recommend that the equivalent clause from the *Fair Work Act* be inserted in its stead. Section 325 states that:

- (1) An employer must not directly or indirectly require an employee to spend, or pay to the employer or another person, an amount of the employee's money or the whole or any part of an amount payable to the employee in relation to the performance of work, if:***
  - (a) the requirement is unreasonable in the circumstances; and*
  - (b) for a payment — the payment is directly or indirectly for the benefit of the employer or a party related to the employer.*

#### Amendments to allow for arbitration of Senior Officer matters

10. The *Local Government Act 1983*, prevents any arbitration or judicial determination as to the employment or dismissal of senior officers and general managers of local government councils. That means that they may be dismissed without any ability to gain protection from a court or tribunal. It has become a significant corruption issue where general managers and senior offices can be leaned upon to support corrupt proposals or face dismissal.

*Local Government Act 1993*

**Delete 340 Industrial arbitration excluded**

~~(1) In this section, a reference to the employment of the general manager or another senior staff member is a reference to—~~

~~(a) the appointment of, or failure to appoint, a person to the vacant position of general manager or to another vacant senior staff position, or~~

~~(b) the removal, retirement, termination of employment or other cessation of office of the general manager or another senior staff member, or~~

~~(c) the remuneration or conditions of employment of the general manager or another senior staff member.~~

~~(2) The employment of the general manager or another senior staff member, or any matter, question or dispute relating to any such employment, is not an industrial matter for the purposes of the *Industrial Relations Act 1996*.~~

~~(3) Subsection (2) applies whether or not any person has been appointed to the vacant position of general manager or another vacant senior staff position.~~

~~(4) No award, agreement, contract determination or order made or taken to have been made or continued in force under the *Industrial Relations Act 1996*, whether made before or after the commencement of this section, has effect in relation to the employment of senior staff members.~~

~~(5) No proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, lie in respect of the appointment of or failure to appoint a person to the position of general manager or to another senior staff position, the entitlement or non-entitlement of a person to be so appointed or the validity or invalidity of any such appointment.~~

Yours sincerely



**Ian Latham**

**29 May 2023**