

# INDUSTRIAL ARBITRATION (INDUSTRIAL TRIBUNALS) AMENDMENT BILL 1986

NEW SOUTH WALES



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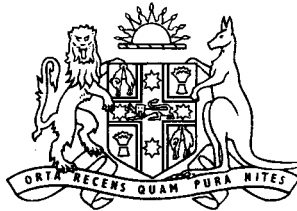
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**INDUSTRIAL ARBITRATION (INDUSTRIAL TRIBUNALS)  
AMENDMENT BILL 1986**

NEW SOUTH WALES



No.       , 1986

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**A BILL FOR**

An Act to amend the Industrial Arbitration Act 1940 to facilitate regional administration of the jurisdiction of the Industrial Commission of New South Wales, to enable the appointment of a Vice-President of the Commission, to make further provision concerning the constitution of the Commission in court session, and for other purposes; and to amend the Statutory and Other Offices Remuneration Act 1975.

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

**5 Short title**

1. This Act may be cited as the "Industrial Arbitration (Industrial Tribunals) Amendment Act 1986".

**Commencement**

2. (1) Except as provided by subsection (2), this Act shall commence  
10 on the date of assent to this Act.

(2) Schedules 1, 2, 4 and 6 (2) (and sections 4 and 5 in their application to those provisions) shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

**15 Principal Act**

3. The Industrial Arbitration Act 1940 is referred to in this Act as the Principal Act.

**Amendment of Act No. 2, 1940**

4. The Principal Act is amended in the manner set forth in Schedules  
20 1-5.

**Amendment of Act No. 4, 1976**

5. The Statutory and Other Offices Remuneration Act 1975 is amended in the manner set forth in Schedule 6.

**Savings and transitional provisions**

25 6. Schedule 7 has effect.

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## SCHEDULE 1

(Sec. 4)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
REGIONALISATION5 (1) Section 5 (**Interpretation**)—

Section 5 (1), definitions of “Regional matter”, “Regional member”—

After the definition of “Public vehicle”, insert:

10 “Regional matter” means a matter notified in any office of the registry in respect of which a regional member is of the opinion that the matter is one of significance only for the region in relation to which the member is appointed.

15 “Regional member” means a member of the commission the terms of whose appointment (whether contained in the same instrument as, or a separate instrument from, the instrument by which the person was appointed as a member) provide that the member, in addition to any other jurisdiction of the commission which the member may exercise, may exercise the commission’s jurisdiction in relation to a prescribed region of the State specified in the instrument.

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(2) Section 14 (**Industrial commission**)—

## (a) Section 14 (1)—

After “twelve persons”, insert “, or, if a higher number of persons is prescribed, the higher number of persons,”.

## 25 (b) Section 14 (1B)—

After section 14 (1A), insert:

30 (1B) The instrument of appointment of a member of the commission, or a separate instrument, may provide that the member, in addition to any other jurisdiction of the commission which the member may exercise, may exercise the commission’s jurisdiction in relation to a prescribed region of the State specified in the instrument.

## (c) Section 14 (8) (a)—

35 After “commission” where sixthly occurring, insert “(not being regional matters)”.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
REGIONALISATION—*continued*

(d) Section 14 (8) (a)—

After “thereof.”, insert:

5 A regional member, in addition to any matters allocated to the member by the President, shall have and may exercise, to the exclusion of any other member of the commission (except when such a member is one of the persons comprising the commission in court session), the jurisdiction, powers and authorities of the commission under this Act in respect of any regional matters.

(e) Section 14 (10A)—

10 After section 14 (10), insert:

(10A) The registrar shall establish an office of the registry for each region prescribed for the purposes of subsection (1B).

(3) Section 15 (**Conciliation commissioners**)—

Section 15 (1A) (c)—

15 Omit the paragraph, insert instead:

(c) Subject to subsection (1C), it shall be the duty of—

- (i) the regional member, in the case of regional matters, to allocate the work of the conciliation commissioners and of the special commissioners in relation to those matters; and
- 20 (ii) the Vice-President, in any other case, to determine the committees and tribunals of which each conciliation commissioner is to be the chairman either generally or for the purpose of the hearing of a particular application and to allocate the work of those conciliation commissioners
- 25 and of the special commissioners.

*Industrial Arbitration (Industrial Tribunals) Amendment 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
REGIONALISATION—*continued*(4) Section 25A (**Notice of industrial disputes to be given to registrar**)—

Section 25A (3)—

After section 25A (2), insert:

- 5 (3) A notification for the purposes of this section may be given to the registrar at an office of the registry established under section 14 (10A).

## SCHEDULE 2

(Sec. 4)

10 AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
VICE-PRESIDENT OF THE INDUSTRIAL COMMISSION(1) Section 14 (**Industrial commission**)—

(a) Section 14 (1A) (a)—

Omit “and”.

(b) Section 14 (1A) (a1)—

15 After section 14 (1A) (a), insert:

- (a1) one shall be appointed as Vice-President of the commission, whether by the same instrument as, or by a separate instrument from, the instrument of appointment as a member; and

20 (c) Section 14 (2A)—

After “commission” where firstly occurring, insert “or Vice-President of the commission”.

(d) Section 14 (2F)—

25 Omit “is”, insert instead “and the Vice-President of the commission are”.

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SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
VICE-PRESIDENT OF THE INDUSTRIAL COMMISSION—*continued*

(e) Section 14 (6)—

After “President”, insert “and Vice-President”.

(f) Section 14 (9) (a)—

Omit “senior judicial member”, insert instead “Vice-President”.

5 (g) Section 14 (9) (a1)—

After section 14 (9) (a), insert:

10 (a1) In the case of the absence of the Vice-President or inability of the Vice-President to perform the duties of office, all the duties and powers of the Vice-President shall, during the absence or inability, devolve upon the senior judicial member of the commission.

(2) Section 15 (**Conciliation commissioners**)—

(a) Section 15 (1)—

15 Omit “the senior conciliation commissioner and another of them to be”.

(b) Section 15 (1A) (a)—

Omit “the senior conciliation commissioner and”.

(c) Section 15 (1A) (b)—

Omit the paragraph.

20 (d) Section 15 (3) (b)—

Omit “or as the senior conciliation commissioner, as the case may be,”.



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SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
VICE-PRESIDENT OF THE INDUSTRIAL COMMISSION—*continued*

(e) Section 15 (3A)—

Omit the subsection, insert instead:

5           (3A) Where the Minister, on the recommendation of the Vice-  
President made not earlier than 3 months before the day on which  
a conciliation commissioner would (but for an approval given  
under this subsection) cease to hold office under subsection (3),  
certifies that, in the Minister's opinion, it is desirable that the  
10       conciliation commissioner should continue in office, the Governor  
may from time to time approve of that conciliation commissioner  
continuing in office for such period, not exceeding 12 months in  
respect of any one approval, as may be specified in the approval.

(f) Section 15 (3B)—

Omit "or the senior conciliation commissioner".

(3) Section 28 (**Interpretation**)—

15       Section 28 (1) (b)—

Omit "senior conciliation commissioner", insert instead "Vice-  
President".

(4) Section 30B (**Jurisdiction of the commission**)—

Section 30B (1)—

20       Omit "opinion of the senior member present", insert instead  
"opinion of the Vice-President, or, if the Vice-President is not one  
of the persons comprising the commission in court session,  
according to the opinion of the senior member of the commission  
present".

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## SCHEDULE 3

(Sec. 4)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
HEARING OF CERTAIN APPEALS5 Section 14 (**Industrial commission**)—

## (1) Section 14 (8A) (a)—

Omit “and” where lastly occurring.

## (2) Section 14 (8A) (a1)—

After section 14 (8A) (a), insert:

10 (a1) subject to subsection (8B), the powers, jurisdiction and  
functions of the commission in relation to the hearing and  
determination of appeals; and

## (3) Section 14 (8B)—

After section 14 (8A), insert:

15 (8B) If, on the hearing of an appeal by a non-judicial member  
of the commission, a question of law arises for determination, the  
member shall refer the question to the President or a judicial  
member of the commission nominated by the President and shall  
20 not determine the question otherwise than in accordance with the  
determination of the question by the President or judicial  
member.

## SCHEDULE 4

(Sec. 4)

25 AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
CONSTITUTION OF THE COMMISSION IN COURT SESSION(1) Section 14 (**Industrial commission**)—

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Section 14 (7A), (7B)—

Omit section 14 (7A), insert instead:

5 (7A) The commission in court session (2 sittings of which may be held at the same time) shall, subject to subsection (8) (d), be constituted by not less than 3 persons chosen by the President who shall comprise—

(a) if it appears to the President that the matter to be determined by the commission in court session will involve solely a question of law—

- 10 (i) 2 or more judicial members of the commission; and  
 (ii) 1, but not more than 1, non-judicial member of the commission; or

(b) if it appears to the President that the matter to be determined by the commission in court session will not involve solely a question of law—

- 15 (i) 1 or more judicial members of the commission;  
 (ii) 1, but not more than 1, non-judicial member of the commission; and  
 (iii) 1, but not more than 1, conciliation commissioner.

20 (7B) For the purposes of a sitting of the commission in court session, the conciliation commissioner chosen by the President to constitute the commission in court session shall have the same powers, authorities and functions as a member of the commission.

(2) Section 30B (**Jurisdiction of the commission**)—

25 Section 30B (1)—

30 Omit “members comprising the commission in court session, if there is a majority, but if such members are equally divided in opinion, the question shall be decided according to the opinion of the President, or, if the President is not a member of” , insert instead “persons comprising the commission in court session, if there is a majority, but if those persons are equally divided in opinion, the question shall be decided according to the opinion of the President, or, if the President is not one of the persons comprising”.

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## SCHEDULE 5

(Sec. 4)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
RETAIL TRADE INDUSTRIAL TRIBUNAL

## 5 (1) Section 38Q—

Omit the section, insert instead:

**Deputy chairmen of the Tribunal**

10 38Q. (1) There shall be such number of deputy chairmen of the Tribunal (being members of the commission or conciliation commissioners) as the Governor may appoint.

(2) During the illness or absence of the chairman, or during a vacancy in the office of chairman, and on such occasions as the chairman, from time to time, directs—

- 15 (a) the deputy chairman nominated by the chairman; or  
 (b) where no such nomination has been made, the most senior deputy chairman available,

shall act in the office of the chairman and shall, while so acting, be deemed to be the chairman.

20 (3) A deputy chairman shall, as directed by the Tribunal, assist the Tribunal in the exercise of its powers, authorities, duties and functions.

25 (4) For the purpose of determining the seniority of deputy chairmen, seniority among deputy chairmen who are members of the commission shall be determined in accordance with section 14, seniority among deputy chairmen who are conciliation commissioners shall be determined in accordance with section 15, and members of the commission shall be senior to conciliation commissioners.

(2) Section 38T (**Jurisdiction in retail trade industry**)—

## 30 (a) Section 38T (1)—

Omit “the commission in court session,”.

*Industrial Arbitration (Industrial Tribunals) Amendment 1986*SCHEDULE 5—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
RETAIL TRADE INDUSTRIAL TRIBUNAL—*continued*

## (b) Section 38T (2), (3)—

Omit the subsections, insert instead:

5 (2) An order, award, ruling or decision made by the Tribunal in the course of exercising the jurisdiction or powers referred to in subsection (1) shall, for the purposes of section 14 (8) (b) and any other provision of this Act, be deemed to be an order, award, ruling or decision of a member of the commission sitting alone.

(3) Schedule 5 (**Provisions relating to the Tribunal**)—

## (a) Clause 3 (a)—

10 Before “deputy”, insert “a”.

## (b) Clause 4 (1)—

Before “deputy” where firstly occurring, insert “a”.

## SCHEDULE 6

(Sec. 5)

15 AMENDMENTS TO THE STATUTORY AND OTHER OFFICES  
REMUNERATION ACT 1975(1) Schedule 1 (**Public offices**)—

After “President of the Industrial Commission of New South Wales.”, insert:

20 Vice-President of the Industrial Commission of New South Wales.

(2) Schedule 2 (**Public offices**)—

(a) From Part 1, omit “Senior Conciliation Commissioner (under the Industrial Arbitration Act, 1940).”.

25 (b) From the matter in Part 1 relating to a Conciliation Commissioner (under the Industrial Arbitration Act, 1940), omit “, other than the Senior Conciliation Commissioner”.

*Industrial Arbitration (Industrial Tribunals) Amendment 1986*SCHEDULE 6—*continued*AMENDMENTS TO THE STATUTORY AND OTHER OFFICES  
REMUNERATION ACT 1975—*continued*(3) Schedule 4 (**Excluded offices**)—

After “Member of the Industrial Commission of New South Wales”, insert “, other than the President or Vice-President”.

## SCHEDULE 7

5

(Sec. 6)

## SAVINGS AND TRANSITIONAL PROVISIONS

**Interpretation**

1. Expressions used in this Schedule have the same meanings as they have in the Principal Act, as amended by this Act.

**10 Construction of certain references**

2. (1) If Schedule 1 commences before Schedule 2, the reference in section 15 (1A) (c) (ii) of the Principal Act, as amended by this Act, to the Vice-President of the commission shall, until the date of commencement of Schedule 2, be construed as if it were a reference to the senior conciliation commissioner.

15 (2) If Schedule 2 commences before Schedule 1, the reference in section 15 (1A) (c) of the Principal Act, as in force before the date of commencement of Schedule 1, to the senior conciliation commissioner shall be construed as if it were a reference to the Vice-President of the commission.

**Acts, etc., of senior conciliation commissioner**

20 3. Anything done or omitted under the Principal Act by the senior conciliation commissioner before the date of commencement of Schedule 2 shall, to such extent (if any) as may be necessary, be deemed to have been done or omitted by the Vice-President of the commission.

**Approvals under s. 15 (3A) of the Principal Act**

25 4. An approval under section 15 (3A) of the Principal Act, as in force before the date of commencement of Schedule 2, in respect of a period of office which had not expired before that date shall be deemed to have been given under section 15 (3A) of the Principal Act, as amended by this Act.

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SCHEDULE 7—*continued*SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Constitution of commission in court session**

5. A sitting of the commission in court session constituted before the date of commencement of Schedule 4 shall, in relation to any matter which had not been finally determined before that date, continue until the final determination of the matter as if that Schedule had not been enacted.

**Deputy chairman of Retail Trade Industrial Tribunal**

6. The person who, immediately before the date of assent to this Act, held office as deputy chairman of the Retail Trade Industrial Tribunal shall, notwithstanding the repeal and re-enactment of section 38Q of the Principal Act by this Act, continue to hold office as a deputy chairman of the Tribunal after that date, subject to the Principal Act, as amended by this Act.

**Appeals from decisions of the Retail Trade Industrial Tribunal**

7. Section 38T of the Principal Act, as amended by this Act, shall not apply to an order, award, ruling or decision made by the Retail Trade Industrial Tribunal before the date of assent to this Act.

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1986

