This PUBLIC BILL *originated in the* LEGISLATIVE ASSEMBLY, and, *having this day passed, is now ready for presentation to the* LEGISLATIVE COUNCIL *for its concurrence.*

Clerk of the Legislative Assembly.

Legislative Assembly Chamber,
Sydney, *March,* 1978.

New South Wales

ANNO VICESIMO SEPTIMO

ELIZABETHÆ II REGINÆ

* *

Act No. , 1978.

An Act to amend the Industrial Arbitration Act, 1940, so as to clarify the powers under that Act to make awards with respect to the dismissal or proposed dismissal of employees.

43102D 422—A

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 **1.** This Act may be cited as the "Industrial Arbitration (Reinstatement Awards) Amendment Act, 1978". Short title.

2. The Industrial Arbitration Act, 1940, is amended— Amendment of Act No. 2, 1940.

(a) by inserting in section 20 (1D) after the word "Act" where firstly occurring the matter "(section 20A excepted)"; Sec. 20. (Original jurisdiction.)

10

(b) by inserting after section 20 the following section :— Sec. 20A.

20A. (1) The power conferred by this Act to make an award determining an industrial matter includes the power to make an award— Awards relating to dismissal of employees.

15

(a) in the case where an employer has dismissed an employee, directing the employer—

(i) to reinstate the dismissed employee in his old position or in a position not less advantageous to the employee than that held by him prior to his dismissal; and

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(ii) if the body or person making the award thinks fit, to reimburse the dismissed employee for all or part of the wages lost by him by reason of his dismissal; or

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(b) in the case where an employer has indicated that he proposes to dismiss an employee, directing the employer to refrain from implementing that proposal,

5 and, in either case, to include in the award—

(c) such provisions for determining any dispute or question with respect to the promotion or regression of the dismissed employee or the employee proposed to be dismissed, as the 10 case may be; and

(d) such terms and conditions,

as the body or person making the award thinks fit.

(2) The references in subsection (1) to the dismissal or proposed dismissal of an employee are, in 15 relation to a person employed under the Public Service Act, 1902, references to the termination or proposed termination of the employment of that person under section 44, 56, or 61 of that Act or as referred to in section 65 of that Act, including the termination or 20 proposed termination of the employment of that person under section 56 or 61 of that Act pursuant to a direction that he resign or be allowed to resign.

(3) Subsection (1) has effect notwithstanding any provisions relating to conditions of, termination of, 25 or dismissal from, employment contained in any other Act or in any regulations or by-laws made under any other Act and notwithstanding anything contained in any contract of service or award that relates, or at any time related, to the dismissed employee or the employee 30 proposed to be dismissed, as the case may be.

(4) Nothing in this Act authorises the making of an award containing provisions referred to in subsection (1) (a), (b), (c) or (d)—

(a) if—

(i) under the provisions of any other Act or of any regulations or by-laws made under any other Act, an order or direction may be made awarding any redress to the dismissed employee in respect of his dismissal or to the employee proposed to be dismissed in respect of his proposed dismissal or requiring an inquiry to be held relating to the dismissal or proposed dismissal of the employee; and

(ii) the dismissed employee or the employee proposed to be dismissed has not lodged with the registrar an instrument in writing refusing the benefit of the provisions referred to in subparagraph (i); or

(b) if proceedings under the provisions referred to in paragraph (a) (i) have been commenced by the dismissed employee or the employee proposed to be dismissed.

(5) Where the regulations so provide, an instrument referred to in subsection (4) (a) (ii) shall be in or to the effect of the prescribed form.

(6) An instrument referred to in subsection (4) (a) (ii)—

(a) has no effect if it is lodged with the registrar after the dismissed employee or the employee proposed to be dismissed has commenced proceedings under the provisions referred to in subsection (4) (a) (i); and

(b) may not, after it has been so lodged, be revoked or withdrawn.

(7) Any provisions referred to in subsection (4) (a) (i) do not apply in respect of the dismissal or proposed dismissal of an employee after he has lodged with the registrar an effective instrument referred to in subsection (4) (a) (ii) relating to that dismissal or proposed dismissal.

(8) The foregoing provisions of this section (subsection (4) excepted) do not limit, and are not limited by, any other provisions of this Act.

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1978

INDUSTRIAL ARBITRATION (REINSTATEMENT AWARDS) AMENDMENT BILL, 1978

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are—

(a) to clarify the powers of industrial tribunals constituted under the Industrial Arbitration Act, 1940, so as to ensure that they may make an award directing the reinstatement of a dismissed employee and reimbursement of the whole or any part of his lost wages or direct an employer not to dismiss an employee and, in any such award, include such provisions determining any dispute or question with respect to the promotion or regression of the employee, or such terms and conditions, as they think fit;

(b) to give an employee who has the means to redress his dismissal or proposed dismissal under another Act the choice of proceeding under that other Act or the Industrial Arbitration Act, 1940; and

(c) to make other provisions of a minor or consequential nature.

43102D 422—

INDUSTRIAL ARBITRATION (REINSTATEMENT AWARDS) AMENDMENT BILL, 1978

No. , 1978.

A BILL FOR

An Act to amend the Industrial Arbitration Act, 1940, so as to clarify the powers under that Act to make awards with respect to the dismissal or proposed dismissal of employees.

[MR HILLS—2 *March,* 1978.]

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(b) by inserting after section 20 the following section :— Sec. 20A.

20A. (1) The power conferred by this Act to make an award determining an industrial matter includes the power to make an award— Awards relating to dismissal of employees.

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(i) to reinstate the dismissed employee in his old position or in a position not less advantageous to the employee than that held by him prior to his dismissal; and

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(ii) if the body or person making the award thinks fit, to reimburse the dismissed employee for all or part of the wages lost by him by reason of his dismissal; or

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(b) in the case where an employer has indicated that he proposes to dismiss an employee, directing the employer to refrain from implementing that proposal,

5 and, in either case, to include in the award—

(c) such provisions for determining any dispute or question with respect to the promotion or regression of the dismissed employee or the employee proposed to be dismissed, as the

10 case may be; and

(d) such terms and conditions,

as the body or person making the award thinks fit.

(2) Subsection (1) has effect notwithstanding any provisions relating to conditions of, termination of,

15 dismissal from, or suspension from, employment contained in any other Act or in any regulations or by-laws made under any other Act and notwithstanding anything contained in any contract of service or award that relates, or at any time related, to the dismissed

20 employee or the employee proposed to be dismissed, as the case may be.

(3) Nothing in this Act authorises the making of an award containing provisions referred to in subsection (1) (a), (b), (c) or (d)—

25 (a) if—

(i) under the provisions of any other Act or of any regulations or by-laws made under any other Act, an order or direction may be made awarding any

30 redress to the dismissed employee in respect of his dismissal or to the employee proposed to be dismissed in respect of his proposed dismissal; and

(ii) the dismissed employee or the employee proposed to be dismissed has not lodged with the registrar an instrument in writing refusing the benefit of the provisions referred to in subparagraph (i); or

(b) if proceedings under the provisions referred to in paragraph (a) (i) have been commenced and have not been withdrawn.

(4) Where the regulations so provide, an instrument referred to in subsection (3) (a) (ii) shall be in or to the effect of the prescribed form.

(5) An instrument referred to in subsection (3) (a) (ii) may not, after it has been lodged with the registrar, be revoked or withdrawn.

(6) Any provisions referred to in subsection (3) (a) (i) do not apply in respect of the dismissal or proposed dismissal of an employee after he has lodged with the registrar an instrument referred to in subsection (3) (a) (ii) relating to that dismissal or proposed dismissal.

(7) The foregoing provisions of this section (subsection (3) excepted) do not limit, and are not limited by, any other provisions of this Act.

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PROOF

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