

CONCURRENCE COPY

INDUSTRIAL ARBITRATION (AMENDMENT) BILL, 1983

EXPLANATORY NOTE

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

The following Bills are cognate with this Bill:—

Annual Holidays (Amendment) Bill, 1983;

Long Service Leave (Amendment) Bill, 1983;

Long Service Leave (Metalliferous Mining Industry) Amendment Bill, 1983.

The object of this Bill is to amend the Industrial Arbitration Act, 1940 ("the Act"), so as—

- (a) to provide a simplified procedure before industrial magistrates in respect of certain claims for the recovery of unpaid wages, annual holiday payments and long service leave payments and, in particular—
 - (i) to enable a person who makes such a claim to elect to have the matter dealt with in accordance with the proposed simplified procedures;
 - (ii) to limit the amount that an industrial magistrate may order to be paid in respect of any such claim to \$2,000 or such other amount as may be prescribed by the regulations;
 - (iii) to require an industrial magistrate to attempt conciliation between the parties to any such claim;
 - (iv) to empower an industrial magistrate to amend an application made in respect of any such claim;
 - (v) to provide that an industrial magistrate is not bound by the rules of evidence in proceedings in respect of any such claim;
 - (vi) to limit the right of a party to be represented in proceedings in respect of any such claim and, in particular, to limit the right to be represented by a barrister, solicitor or other paid advocate; and
 - (vii) to provide that an appeal to the Industrial Commission of New South Wales from an order of an industrial magistrate in respect of any such claim shall not be instituted without the leave of that Commission,

(Schedule 1 (1));

- (b) to extend from 18 months to 6 years the minimum period during which time-sheets and pay-sheets relating to employees, and other records relating to certain bailors and principal contractors, are required to be kept available for inspection (Schedule 1 (2));
 - (c) to ensure that the power of a court to amend an application or information under the Act which does not cite the correct award, agreement or determination under the Act may be exercised where an earlier or later award, agreement or determination is referred to in the application or information (Schedule 1 (3));
 - (d) to make further provision with respect to the powers of inspectors to inspect the time-sheets and pay-sheets relating to employees and other records relating to certain bailors and principal contractors and, in particular, to empower inspectors or specially authorised public servants to obtain by post a copy of any such records and certain other information in order to investigate claims for unpaid wages and other payments (Schedule 1 (4) and (5));
 - (e) to increase the penalty that may be imposed for a breach of the regulations under the Act from \$20 to \$500 (Schedule 1 (6)); and
 - (f) to make other provisions of a minor, ancillary or consequential nature.
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INDUSTRIAL ARBITRATION (AMENDMENT) BILL, 1983

No. , 1983.

A BILL FOR

An Act to amend the Industrial Arbitration Act, 1940, with respect to the investigation of claims for unpaid wages, the procedure before industrial magistrates on certain claims for unpaid wages and other payments, and in other respects.

[MR HILLS—21 *September*, 1983.]

See also Annual Holidays (Amendment) Bill, 1983; Long Service Leave (Amendment) Bill, 1983; Long Service Leave (Metalliferous Mining Industry) Amendment Bill, 1983.

Industrial Arbitration (Amendment).

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 (Amendment) Act, 1983".

Amendment of Act No. 2, 1940.

2. The Industrial Arbitration Act, 1940, is amended in the manner set forth in Schedule 1.

Transitional provision.

3. The amendment made by this Act to section 96 (1) of the Industrial Arbitration Act, 1940, does not apply to records in which the last entry was made earlier than 18 months before the date of assent to this Act.

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SCHEDULE 1.

(Sec. 2.)

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940.

(1) Section 92D—

After section 92C, insert:—

20

Small claims before industrial magistrates.

92D. (1) In this section—

“agent”, in respect of any proceedings, includes a person who takes the proceedings in the name and on behalf of another person;

Industrial Arbitration (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—*continued.*

“order” means an order—

- (a) under section 92 (2) or 92B;
- 5 (b) under section 13 of the Annual Holidays Act, 1944;
- (c) under section 12 of the Long Service Leave Act, 1955; or
- (d) under section 12 of the Long Service Leave (Metalliferous Mining Industry) Act, 1963;

10 “prescribed application” means an application for an order in which the applicant makes an election under subsection (2).

(2) A person who makes an application to an industrial magistrate for an order may, in the application, elect to have the application dealt with in accordance with the provisions of this section.

(3) An industrial magistrate shall not make an order in respect of a prescribed application for the payment of an amount that exceeds—

- 20 (a) except as provided by paragraph (b)—\$2,000; or
- (b) where some other amount is prescribed for the purposes of this section—that other amount.

(4) An industrial magistrate shall not make an order in respect of a prescribed application until the industrial magistrate has brought, or has used his or her best endeavours to bring, the parties to the application for the order to a settlement acceptable to those parties and, if such a settlement is made, the industrial magistrate shall make an order that, to the extent authorised by this Act, gives effect to the terms of the settlement.

Industrial Arbitration (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—*continued.*

5 (5) An industrial magistrate may, at any stage of proceedings in respect of a prescribed application, make such amendment of the application as the industrial magistrate thinks fit either at the request or with the approval of the applicant but, if it appears to the industrial magistrate that any other party to the proceedings has not had sufficient notice of the amendment, the industrial magistrate shall adjourn the proceedings to such time and place as the industrial
10 magistrate thinks fit.

(6) An industrial magistrate is not, in respect of a prescribed application, bound by the rules and practice as to evidence but may inform himself or herself of any matter in such manner as the industrial magistrate thinks fit.

15 (7) A party to proceedings before an industrial magistrate in respect of a prescribed application shall not be entitled to be represented by an agent unless it appears to the industrial magistrate that an agent should be permitted to represent that party as a matter of necessity and the industrial magistrate so approves.

20 (8) Subsection (7) does not prevent—

(a) an officer within the meaning of the Companies (New South Wales) Code of a corporation from representing the corporation; or

25 (b) where a corporation that is a body corporate constituted under the Strata Titles Act, 1973, is a party to proceedings before an industrial magistrate—the proprietor or, if there is more than one proprietor, one of the proprietors constituting the corporation, from representing the corporation.

30 (9) An industrial magistrate shall not, pursuant to subsection (7), approve of a party to any proceedings being represented by an agent who practises as a barrister or solicitor or as an advocate for fee or reward unless—

(a) all parties to the proceedings agree; and

Industrial Arbitration (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—*continued.*

5 (b) the industrial magistrate is satisfied that the parties, **other**
than the party who applies for approval of an agent, **or**
any of them will not be thereby unfairly disadvantaged.

(10) Where, apart from this subsection, it appears to **an**
industrial magistrate that an agent should be permitted to represent
a party to any proceedings, the industrial magistrate—

10 (a) shall not approve of the proposed agent being permitted to
do so pursuant to subsection (7) unless the industrial
magistrate is satisfied that the proposed agent has sufficient
personal knowledge of the issue in dispute to enable **the**
proposed agent to represent the party effectively **and is**
vested with sufficient authority to bind the party; and

15 (b) may grant the approval subject to such conditions as **the**
industrial magistrate considers reasonable to ensure **that**
any other party to the proceedings is not unfairly **disad-**
vantaged by the agent appearing in the proceedings **and,**
where the industrial magistrate does so, the entitlement **of**
20 the agent to represent the party shall be subject to **com-**
pliance with those conditions.

(11) Contravention of any provision of subsections (7)—
25 (10) shall not invalidate any proceedings before an industrial
magistrate in which the contravention occurs or any order **made**
therein.

(12) Notwithstanding anything to the contrary in **this or**
any other Act, an appeal to the commission from an order **made in**
respect of a prescribed application may not be instituted without **the**
leave of the commission.

30 (13) Notwithstanding sections 92 (2) and 92B (7), **an**
industrial magistrate shall not, in proceedings in respect of a
prescribed application, impose any penalty which the industrial
magistrate might have imposed in proceedings for a penalty **under**
section 93 or 96.

Industrial Arbitration (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—*continued.*

(2) (a) Section 96 (1)—

Omit “eighteen months”, insert instead “at least 6 years”.

5 (b) Section 96 (2A)—

After “commission”, insert “for a period of at least 6 years after the last entry therein”.

(c) Section 96 (4)—

10 Omit “the date on which the offence was committed”, insert instead “the act or omission alleged to constitute the offence”.

(3) Section 96A (1)—

After “bound”, insert “or some previous or later such award, determination or agreement”.

(4) (a) Section 127 (1) (b)—

15 Omit “for his examination and may examine”, insert instead “, at such time and place as the inspector may specify, for his examination”.

(b) Section 127 (1A) (b)—

20 After “produce”, insert “, at such time and place as the inspector may specify,”.

(c) Section 127 (2A), (2B), (2C)—

After section 127 (2), insert:—

25 (2A) Where an employee claims that an employer has not paid the full amount of any payment due to the employee (being an amount in respect of which an application may be made under section 92 (2)), an inspector may, by notice

Industrial Arbitration (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—*continued.*

5 in writing served personally or by post, require the employer to deliver or to send by post to the inspector, within such time and to such place as are specified in the notice—

(a) a copy of such specified part of the time-sheets and pay-sheets required to be kept under this Act; and

(b) such other information of a specified kind relating to the payment so due to the employee,

10 as the inspector considers necessary in order to investigate the claim.

(2B) Where a bailee under a contract of bailment of a public vehicle or a carrier under a contract of carriage claims that the bailor under the contract of bailment or principal contractor under the contract of carriage has not paid the full amount due to the bailee or carrier under the contract, an inspector may, by notice in writing served personally or by post, require the bailor or principal contractor to deliver or to send by post to the inspector, within such time and to such place as are specified in the notice—

20 (a) a copy of such specified part of the records of the bailor or principal contractor referred to in section 96 (2A); and

25 (b) such other information of a specified kind relating to the amount so due to the bailee or carrier,

as the inspector considers necessary in order to investigate the claim.

(2C) A public servant authorised in that behalf by the Under Secretary may exercise the powers conferred on an inspector by subsections (2A) and (2B).

30 (d) Section 127 (3)—

After “inspector”, insert “or public servant authorised under subsection (2C)”.

Industrial Arbitration (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—*continued.*

(e) Section 127 (3)—

After “records”, insert “or to deliver or send any information”.

5 (5) Section 127A (1)—

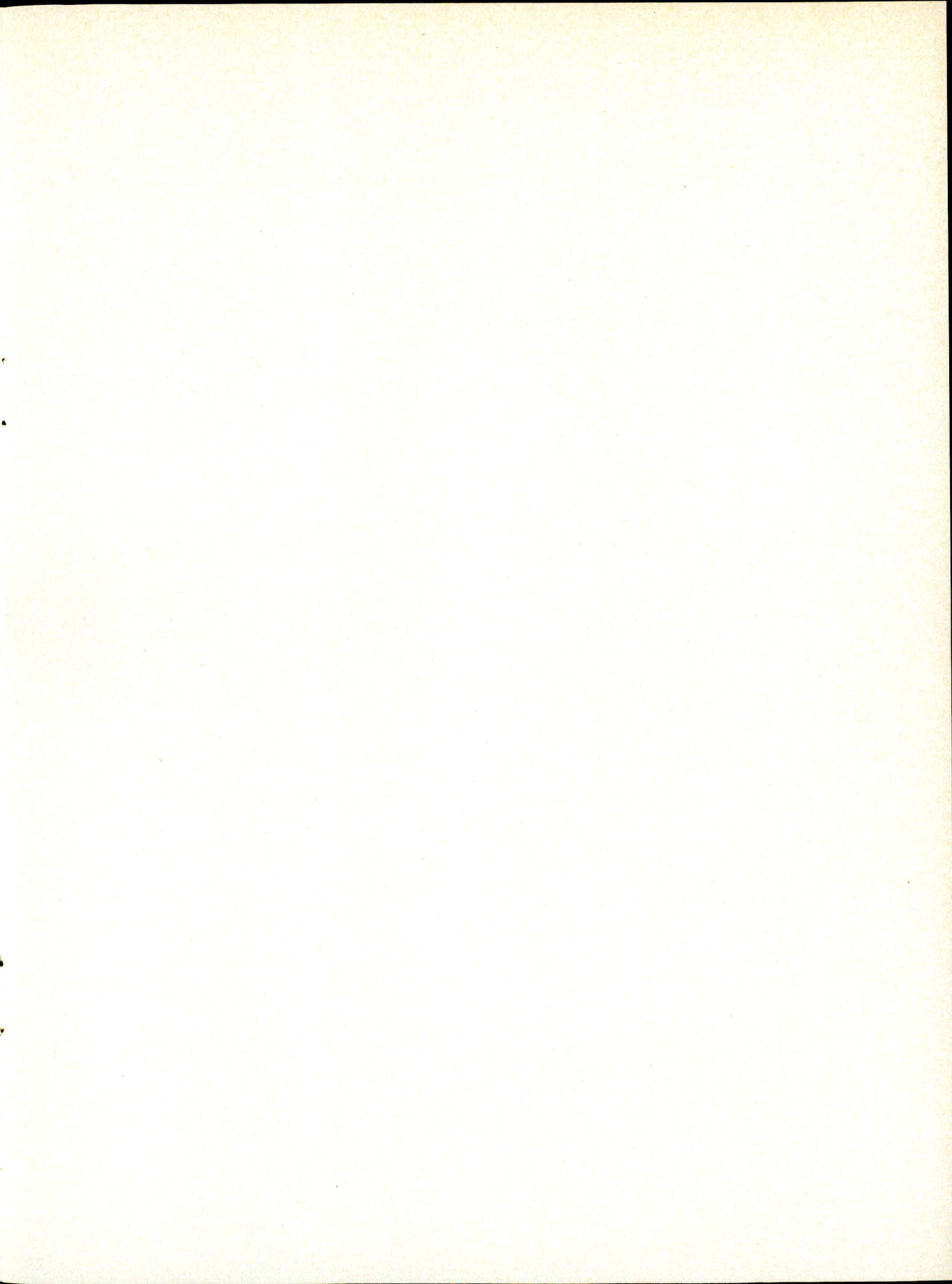
After “appointed under this Act”, insert “or a public servant authorised under section 127 (2c)”.

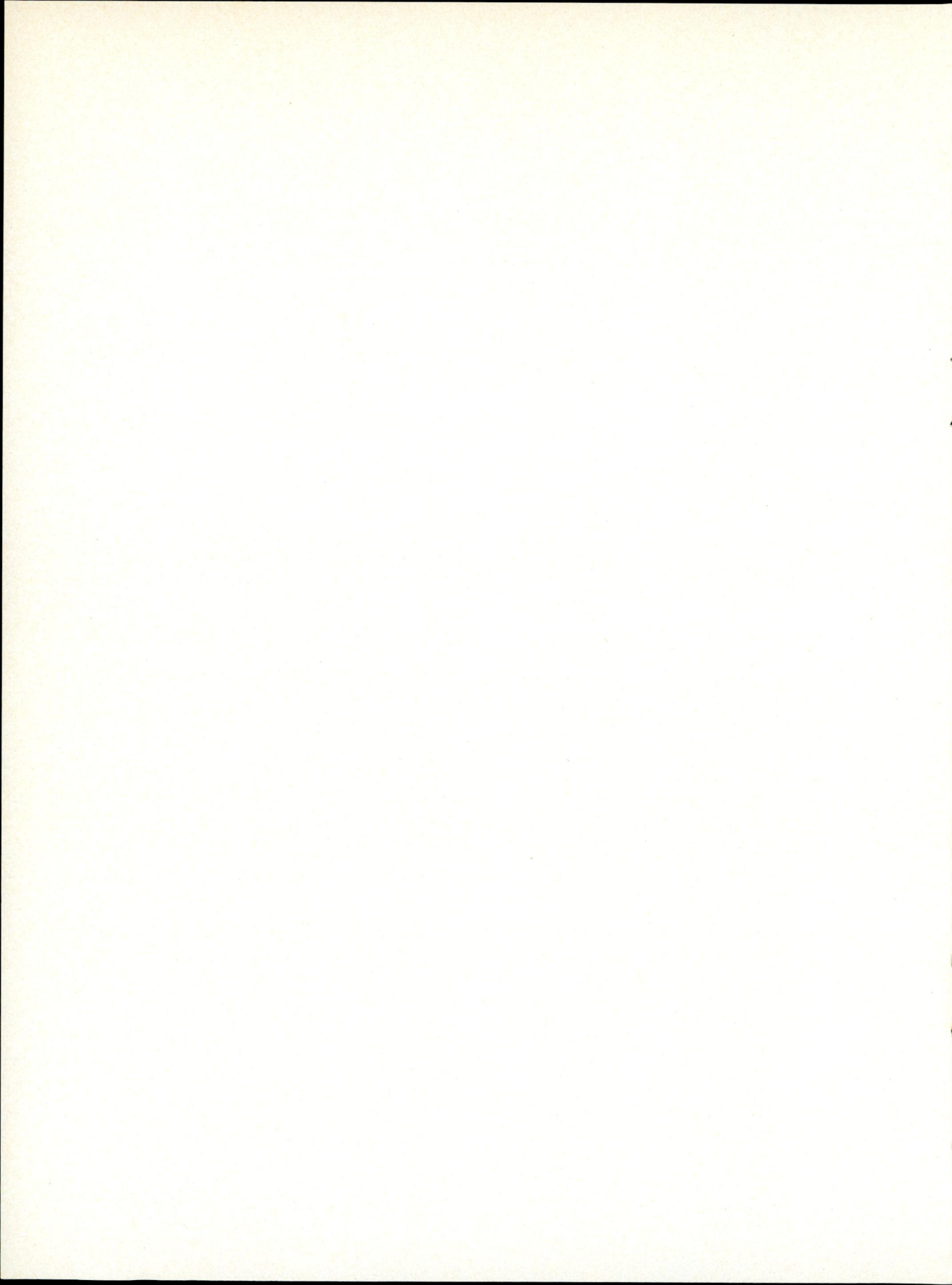
(6) Section 130 (1) (k)—

Omit “twenty dollars”, insert instead “\$500”.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1983





**INDUSTRIAL ARBITRATION (AMENDMENT) ACT, 1983,
No. 98**

New South Wales



ANNO TRICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 98, 1983.

An Act to amend the Industrial Arbitration Act, 1940, with respect to the investigation of claims for unpaid wages, the procedure before industrial magistrates on certain claims for unpaid wages and other payments, and in other respects. [Assented to, 9th November, 1983.]

See also Annual Holidays (Amendment) Act, 1983; Long Service Leave (Amendment) Act, 1983; Long Service Leave (Metalliferous Mining Industry) Amendment Act, 1983.

Industrial Arbitration (Amendment).

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:—

Short title.

1. This Act may be cited as the "Industrial Arbitration (Amendment) Act, 1983".

Amendment of Act No. 2, 1940.

2. The Industrial Arbitration Act, 1940, is amended in the manner set forth in Schedule 1.

Transitional provision.

3. The amendment made by this Act to section 96 (1) of the Industrial Arbitration Act, 1940, does not apply to records in which the last entry was made earlier than 18 months before the date of assent to this Act.

SCHEDULE 1.

(Sec. 2.)

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940.

(1) Section 92D—

After section 92C, insert:—

Small claims before industrial magistrates.

92D. (1) In this section—

“agent”, in respect of any proceedings, includes a person who takes the proceedings in the name and on behalf of another person;

Industrial Arbitration (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—*continued.*

“order” means an order—

- (a) under section 92 (2) or 92B;
- (b) under section 13 of the Annual Holidays Act, 1944;
- (c) under section 12 of the Long Service Leave Act, 1955; or
- (d) under section 12 of the Long Service Leave (Metalliferous Mining Industry) Act, 1963;

“prescribed application” means an application for an order in which the applicant makes an election under subsection (2).

(2) A person who makes an application to an industrial magistrate for an order may, in the application, elect to have the application dealt with in accordance with the provisions of this section.

(3) An industrial magistrate shall not make an order in respect of a prescribed application for the payment of an amount that exceeds—

- (a) except as provided by paragraph (b)—\$2,000; or
- (b) where some other amount is prescribed for the purposes of this section—that other amount.

(4) An industrial magistrate shall not make an order in respect of a prescribed application until the industrial magistrate has brought, or has used his or her best endeavours to bring, the parties to the application for the order to a settlement acceptable to those parties and, if such a settlement is made, the industrial magistrate shall make an order that, to the extent authorised by this Act, gives effect to the terms of the settlement.

Industrial Arbitration (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—*continued.*

(5) An industrial magistrate may, at any stage of proceedings in respect of a prescribed application, make such amendment of the application as the industrial magistrate thinks fit either at the request or with the approval of the applicant but, if it appears to the industrial magistrate that any other party to the proceedings has not had sufficient notice of the amendment, the industrial magistrate shall adjourn the proceedings to such time and place as the industrial magistrate thinks fit.

(6) An industrial magistrate is not, in respect of a prescribed application, bound by the rules and practice as to evidence but may inform himself or herself of any matter in such manner as the industrial magistrate thinks fit.

(7) A party to proceedings before an industrial magistrate in respect of a prescribed application shall not be entitled to be represented by an agent unless it appears to the industrial magistrate that an agent should be permitted to represent that party as a matter of necessity and the industrial magistrate so approves.

(8) Subsection (7) does not prevent—

- (a) an officer within the meaning of the Companies (New South Wales) Code of a corporation from representing the corporation; or
- (b) where a corporation that is a body corporate constituted under the Strata Titles Act, 1973, is a party to proceedings before an industrial magistrate—the proprietor or, if there is more than one proprietor, one of the proprietors constituting the corporation, from representing the corporation.

(9) An industrial magistrate shall not, pursuant to subsection (7), approve of a party to any proceedings being represented by an agent who practises as a barrister or solicitor or as an advocate for fee or reward unless—

- (a) all parties to the proceedings agree; and

Industrial Arbitration (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—*continued.*

- (b) the industrial magistrate is satisfied that the parties, other than the party who applies for approval of an agent, or any of them will not be thereby unfairly disadvantaged.

(10) Where, apart from this subsection, it appears to an industrial magistrate that an agent should be permitted to represent a party to any proceedings, the industrial magistrate—

- (a) shall not approve of the proposed agent being permitted to do so pursuant to subsection (7) unless the industrial magistrate is satisfied that the proposed agent has sufficient personal knowledge of the issue in dispute to enable the proposed agent to represent the party effectively and is vested with sufficient authority to bind the party; and
- (b) may grant the approval subject to such conditions as the industrial magistrate considers reasonable to ensure that any other party to the proceedings is not unfairly disadvantaged by the agent appearing in the proceedings and, where the industrial magistrate does so, the entitlement of the agent to represent the party shall be subject to compliance with those conditions.

(11) Contravention of any provision of subsections (7)–(10) shall not invalidate any proceedings before an industrial magistrate in which the contravention occurs or any order made therein.

(12) Notwithstanding anything to the contrary in this or any other Act, an appeal to the commission from an order made in respect of a prescribed application may not be instituted without the leave of the commission.

(13) Notwithstanding sections 92 (2) and 92B (7), an industrial magistrate shall not, in proceedings in respect of a prescribed application, impose any penalty which the industrial magistrate might have imposed in proceedings for a penalty under section 93 or 96.

Industrial Arbitration (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—*continued.*

(2) (a) Section 96 (1)—

Omit “eighteen months”, insert instead “at least 6 years”.

(b) Section 96 (2A)—

After “commission”, insert “for a period of at least 6 years after the last entry therein”.

(c) Section 96 (4)—

Omit “the date on which the offence was committed”, insert instead “the act or omission alleged to constitute the offence”.

(3) Section 96A (1)—

After “bound”, insert “or some previous or later such award, determination or agreement”.

(4) (a) Section 127 (1) (b)—

Omit “for his examination and may examine”, insert instead “, at such time and place as the inspector may specify, for his examination”.

(b) Section 127 (1A) (b)—

After “produce”, insert “, at such time and place as the inspector may specify,”.

(c) Section 127 (2A), (2B), (2C)—

After section 127 (2), insert:—

(2A) Where an employee claims that an employer has not paid the full amount of any payment due to the employee (being an amount in respect of which an application may be made under section 92 (2)), an inspector may, by notice

Industrial Arbitration (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—*continued.*

in writing served personally or by post, require the employer to deliver or to send by post to the inspector, within such time and to such place as are specified in the notice—

- (a) a copy of such specified part of the time-sheets and pay-sheets required to be kept under this Act; and
- (b) such other information of a specified kind relating to the payment so due to the employee,

as the inspector considers necessary in order to investigate the claim.

(2B) Where a bailee under a contract of bailment of a public vehicle or a carrier under a contract of carriage claims that the bailor under the contract of bailment or principal contractor under the contract of carriage has not paid the full amount due to the bailee or carrier under the contract, an inspector may, by notice in writing served personally or by post, require the bailor or principal contractor to deliver or to send by post to the inspector, within such time and to such place as are specified in the notice—

- (a) a copy of such specified part of the records of the bailor or principal contractor referred to in section 96 (2A); and
- (b) such other information of a specified kind relating to the amount so due to the bailee or carrier,

as the inspector considers necessary in order to investigate the claim.

(2C) A public servant authorised in that behalf by the Under Secretary may exercise the powers conferred on an inspector by subsections (2A) and (2B).

(d) Section 127 (3)—

After “inspector”, insert “or public servant authorised under subsection (2C)”.

Industrial Arbitration (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—*continued.*

(e) Section 127 (3)—

After “records”, insert “or to deliver or send any information”.

(5) Section 127A (1)—

After “appointed under this Act”, insert “or a public servant authorised under section 127 (2c)”.

(6) Section 130 (1) (k)—

Omit “twenty dollars”, insert instead “\$500”.

In the name and on behalf of Her Majesty I assent to this Act.

J. A. ROWLAND,
Governor.

Government House,
Sydney, 9th November, 1983.