

# CONCURRENCE COPY

## **INDUSTRIAL ARBITRATION (COMPLEMENTARY INDUSTRIAL RELATIONS SYSTEM) AMENDMENT BILL, 1983**

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### **EXPLANATORY NOTE**

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

The objects of this Bill are—

- (a) to enable the conduct of joint proceedings of the Industrial Commission of New South Wales ("the State Commission") and the Australian Conciliation and Arbitration Commission ("the Federal Commission") with respect to industrial disputes (Schedule 1 (4)—proposed section 38J);
- (b) to enable the State Commission to refer the whole or any part of an industrial dispute over which the State Commission has jurisdiction to the Federal Commission for determination by the Federal Commission (Schedule 1 (4)—proposed section 38K);
- (c) to enable conferences to be held between the State Commission and the Federal Commission to secure co-ordination between their respective determinations and in relation to the exercise of the powers under proposed section 38J (Schedule 1 (4)—proposed section 38L);
- (d) to enable the State Commission to determine the whole or any part of an industrial dispute over which the Federal Commission has jurisdiction and which is referred to the State Commission by the Federal Commission (Schedule 1 (4)—proposed section 38M);
- (e) to make amendments to the Industrial Arbitration Act, 1940, by way of statute law revision (Schedule 1 (1) (a), (2) and (3)); and
- (f) to make other provisions of a minor, consequential or ancillary nature.



**INDUSTRIAL ARBITRATION (COMPLEMENTARY  
INDUSTRIAL RELATIONS SYSTEM) AMENDMENT  
BILL, 1983**

No.           , 1983.

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**A BILL FOR**

An Act to amend the Industrial Arbitration Act, 1940, to enable the conduct of joint proceedings of the Industrial Commission of New South Wales and the Australian Conciliation and Arbitration Commission and the reference of industrial matters from one commission to the other.

[MR HILLS—17 *March*, 1983.]

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*Industrial Arbitration (Complementary Industrial Relations System)  
Amendment.*

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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 (Complementary Industrial Relations System) Amendment Act, 1983".

**Commencement.**

**2. (1)** Sections 1 and 2 shall commence on the date of assent to this Act.

**10 (2)** Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

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

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

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SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940.

(1) (a) Section 2—

**20** From the matter relating to Division 1 of Part III, omit "23B", insert instead "23A".

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*Industrial Arbitration (Complementary Industrial Relations System)  
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SCHEDULE 1—*continued.*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—*continued.*

## (b) Section 2—

After the matter relating to Division 5 of Part III, insert:—

5                   DIVISION 6.—*Arrangements with Australian Conciliation  
and Arbitration Commission—ss. 38H–38M.*

## (2) Section 4 (2) (b)—

Omit “the Schedule hereto”, insert instead “Schedule 1”.

## (3) Section 38A, definition of “joint sitting”—

10               Omit “Deputy President”, insert instead “Presidential Member”.

## (4) Part III, Division 6—

After Division 5, insert:—

                  DIVISION 6.—*Arrangements with Australian Conciliation and  
Arbitration Commission.*

15               **Application of Division.**

                  38H. (1) Except as provided by subsection (2), this Division  
applies to and in respect of an industrial matter arising before, on or  
after the date of commencement of this Division.

20               (2) Nothing in this Division applies to or in respect of an oil  
industry industrial matter within the meaning of section 38A.

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SCHEDULE 1—*continued.*

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

**Interpretation: Pt. III, Div. 6.**

5 38I. (1) In this Division, “Federal Commission” means the Australian Conciliation and Arbitration Commission.

(2) A reference in this Division to—

(a) the commission includes a reference to a conciliation commissioner sitting alone; and

10 (b) the Federal Commission includes a reference to a member of the Federal Commission.

**Joint proceedings.**

15 38J. (1) If in the opinion of the President of the commission it is appropriate to do so, the commission (other than the commission in court session) may, notwithstanding anything in this Act, exercise, in the presence of—

(a) the Federal Commission;

(b) the parties to an industrial dispute in relation to which the Federal Commission is exercising power; and

(c) any witness summoned by the Federal Commission,

20 any of the powers of the commission that are exercisable by it (other than any of the powers of the commission under section 30B) in relation to an industrial matter.

25 (2) Where the commission is exercising, as provided by subsection (1), in relation to an industrial matter, any of the powers of the commission that are exercisable by it, it may, without limiting the generality of sections 83 and 83A, have regard to any evidence given, in its presence and in the presence of the parties to the industrial matter, to the Federal Commission, being evidence that is relevant to the exercise of those powers.

30 (3) Nothing in this section shall be taken to prevent the commission from exercising powers in relation to an industrial matter in the presence of any person other than the Federal Commission or a person referred to in subsection (1) (b) or (c).

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*Industrial Arbitration (Complementary Industrial Relations System)  
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SCHEDULE 1—*continued.*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—*continued.***Reference of industrial matters to Federal Commission for determination under this Act.**

5           38K. (1) The President of the commission may, where in his opinion it is appropriate to do so, request the President of the Federal Commission to nominate a member of the Federal Commission to deal with the whole or any part of an industrial matter which has arisen or is threatened or impending.

10           (2) Where, in accordance with a request under subsection (1), the President of the Federal Commission nominates a member of the Federal Commission, the President of the commission may refer the whole or part of the industrial matter in respect of which the request was made to the member to be investigated and to be dealt with under this Act by conciliation, by arbitration or by conciliation and, if necessary, by arbitration, and may, at any time before a determination is made by the member in relation to the industrial matter, revoke the reference.

15           (3) For the purposes of investigating and dealing with the whole or part of an industrial matter that has been referred to him under subsection (2), the member of the Federal Commission may exercise all the powers of the commission under this Act (otherwise than as the commission in court session) and in the exercise of those powers shall be deemed to be the commission.

20           (4) Without limiting subsection (3), a determination made by a member of the Federal Commission in relation to an industrial matter referred to him under subsection (2) shall, for the purposes of this Act, be deemed to be an award made by the commission under this Act, but section 24 (9) applies in relation to such a determination as if paragraph (c) of that subsection were omitted.

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**Conference with Federal Commission.**

38L. (1) Where it appears to the President of the commission to be desirable, in relation to an industrial matter, that a conference should be held with the Federal Commission, he may, if the Federal

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*Industrial Arbitration (Complementary Industrial Relations System)  
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SCHEDULE 1—*continued.*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—*continued.*

5 Commission is willing, confer with the Federal Commission, or arrange for a Deputy President of the commission to confer with the Federal Commission, with a view to securing co-ordination between any awards made or to be made under this Act or any agreements registered under this Act and any orders, awards, decisions or determinations made or given or to be made or given by the Federal Commission.

10 (2) Where it appears to the President of the commission to be desirable, he may confer with the Federal Commission in relation to the exercise, or the proposed exercise, of the powers of the commission under section 38J.

**Exercise of powers conferred under Commonwealth Act.**

15 38M. (1) Subject to this Act and the regulations, the commission may exercise the powers conferred on it by or under such of the provisions as may be prescribed of the Conciliation and Arbitration Act 1904 of the Parliament of the Commonwealth, as amended by subsequent Acts of that Parliament, or of any other prescribed enactment.

20 (2) A determination made by the commission in exercise of the powers referred to in subsection (1) shall, for the purposes of this Act, be deemed not to have been made by the commission under this Act.