

CONCURRENCE COPY

INDUSTRIAL ARBITRATION (CONTRACTS OF CARRIAGE) AMENDMENT BILL, 1983

EXPLANATORY NOTE

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

The objects of this Bill are—

- (a) to amend the definitions of "Carrier" and "Principal contractor", and the explanation of references to contracts of carriage, in the Industrial Arbitration Act, 1940 ("the Act") as a consequence of other amendments proposed by the Bill (Schedule 1 (1), (2));
 - (b) to ensure that the exclusion of a common carrier from the operation of the Act with respect to contracts of carriage is not used to further avoidance schemes (Schedule 1 (3) (a));
 - (c) to ensure that the exclusion from the operation of the Act in certain circumstances of a contract of carriage that is one of a number of contracts of carriage executed with the same motor lorry is not used to further avoidance schemes (Schedule 1 (3) (b)); and
 - (d) to complete the effect of the amendments referred to in paragraphs (b) and (c)—
 - (i) by deeming to be the principal contractor under a contract of carriage a person who would otherwise have entered into the contract as agent of the carrier; and
 - (ii) by deeming the person referred to in subparagraph (i) to be the person for whom the carrier so referred to held himself or herself out as willing to transport the load the subject of the contract (Schedule 1 (4)).
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**INDUSTRIAL ARBITRATION (CONTRACTS OF CARRIAGE)
AMENDMENT BILL, 1983**

No. , 1983.

A BILL FOR

An Act to amend the Industrial Arbitration Act, 1940, with respect to its operation in relation to contracts of carriage.

[MR HILLS—23 *November*, 1983.]

Industrial Arbitration (Contracts of Carriage) 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 (Contracts of Carriage) 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.

SCHEDULE 1.

(Sec. 2.)

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940.

(1) (a) Section 5 (1), definition of "Carrier"—

15 Omit the definition, insert instead:—

"Carrier" means the person who, under a contract of carriage, agrees to transport the load to which the contract relates.

(b) Section 5 (1), definition of "Principal contractor"—

Omit the definition, insert instead:—

20 "Principal contractor" means—

(a) a person deemed by subsection (3D) to be a principal contractor; or

(b) except as provided by subsection (3D)—the person for whom the carrier under a contract of carriage agrees to transport the load to which the contract relates.

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Industrial Arbitration (Contracts of Carriage) Amendment.

SCHEDULE 1—*continued.*

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

(2) Section 5 (3A)—

5 Omit “made between a principal contractor and a carrier who transports”, insert instead “for the transportation of”.

(3) (a) Section 5 (3B) (a)—

Omit the paragraph, insert instead:—

10 (a) that is, where the carrier is a common carrier, made in the ordinary course of the business of the carrier as a common carrier;

(b) Section 5 (3B) (b)—

After “contractors”, insert “, none of whom is a principal contractor by virtue of subsection (3D),”.

(4) Section 5 (3D), (3E)—

15 After section 5 (3C), insert:—

(3D) Where—

- 20 (a) a contract of carriage is made by the acceptance by an agent of the carrier of an offer to enter into the contract not directed specifically to that carrier;
- (b) the agent accepted the offer in the course of a business of acting as agent for the receipt and acceptance, on behalf of 2 or more prospective carriers, of offers to enter into contracts of carriage; and

Industrial Arbitration (Contracts of Carriage) Amendment.

SCHEDULE 1—*continued.*

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

(c) the agent has a discretion in the selection of the prospective carrier on whose behalf an offer received in the course of that business will be accepted by the agent,

5 the agent shall, for the purposes of this Act, be deemed to be the principal contractor under the contract to the exclusion of the offeror.

10 (3E) For the purposes of subsection (3B) (a), the carrier under a contract of carriage made as referred to in subsection (3D) shall be deemed to have held himself or herself out as ready to transport the load to which the contract relates for the person deemed by subsection (3D) to be the principal contractor and not to have held himself or herself out as ready to transport the load for the offeror so referred to.

BY AUTHORITY

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

**INDUSTRIAL ARBITRATION (CONTRACTS OF
CARRIAGE) AMENDMENT ACT, 1983, No. 168**

New South Wales



ANNO TRICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 168, 1983.

An Act to amend the Industrial Arbitration Act, 1940, with respect to its operation in relation to contracts of carriage. [Assented to, 31st December, 1983.]

Industrial Arbitration (Contracts of Carriage) 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 (Contracts of Carriage) 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.

SCHEDULE 1.

(Sec. 2.)

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940.

(1) (a) Section 5 (1), definition of "Carrier"—

Omit the definition, insert instead:—

"Carrier" means the person who, under a contract of carriage, agrees to transport the load to which the contract relates.

(b) Section 5 (1), definition of "Principal contractor"—

Omit the definition, insert instead:—

"Principal contractor" means—

- (a) a person deemed by subsection (3D) to be a principal contractor; or
- (b) except as provided by subsection (3D)—the person for whom the carrier under a contract of carriage agrees to transport the load to which the contract relates.

Industrial Arbitration (Contracts of Carriage) Amendment.

SCHEDULE 1—*continued.*

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

(2) Section 5 (3A)—

Omit “made between a principal contractor and a carrier who transports”, insert instead “for the transportation of”.

(3) (a) Section 5 (3B) (a)—

Omit the paragraph, insert instead:—

- (a) that is, where the carrier is a common carrier, made in the ordinary course of the business of the carrier as a common carrier;

(b) Section 5 (3B) (b)—

After “contractors”, insert “, none of whom is a principal contractor by virtue of subsection (3D),”.

(4) Section 5 (3D), (3E)—

After section 5 (3C), insert:—

(3D) Where—

- (a) a contract of carriage is made by the acceptance by an agent of the carrier of an offer to enter into the contract not directed specifically to that carrier;
- (b) the agent accepted the offer in the course of a business of acting as agent for the receipt and acceptance, on behalf of 2 or more prospective carriers, of offers to enter into contracts of carriage; and

Industrial Arbitration (Contracts of Carriage) Amendment.

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

(c) the agent has a discretion in the selection of the prospective carrier on whose behalf an offer received in the course of that business will be accepted by the agent, the agent shall, for the purposes of this Act, be deemed to be the principal contractor under the contract to the exclusion of the offeror.

(3E) For the purposes of subsection (3B) (a), the carrier under a contract of carriage made as referred to in subsection (3D) shall be deemed to have held himself or herself out as ready to transport the load to which the contract relates for the person deemed by subsection (3D) to be the principal contractor and not to have held himself or herself out as ready to transport the load for the offeror so referred to.

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

L. W. STREET,
By Deputation from
His Excellency the Governor.

Government House,
Sydney, 31st December, 1983.