

# INDUSTRIAL ARBITRATION (AMENDMENT) BILL 1986

NEW SOUTH WALES



## EXPLANATORY NOTE

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

The following Bills are cognate with this Bill:

Annual Holidays (Industrial Arbitration) Amendment Bill 1986;

Long Service Leave (Industrial Arbitration) Amendment Bill 1986;

Long Service Leave (Metalliferous Mining Industry) (Industrial Arbitration) Amendment Bill 1986.

The object of this Bill is to make various amendments to the Industrial Arbitration Act 1940—

- (a) to allow certain ancillary orders to be made by a conciliation commissioner, committee or tribunal in compulsory conference proceedings (as well as by an industrial magistrate);
- (b) to enable an award to commence after publication in the Government Gazette or the New South Wales Industrial Gazette of a notice containing particulars of the award (thereby avoiding the necessity of gazetting the award);
- (c) to extend the way in which evidence of awards can be given;
- (d) to enable money payable in relation to a matter associated with an employee's employment to be recovered in the same way as wages or salary;
- (e) to increase the monetary limit for matters dealt with as small claims before industrial magistrates;

- (f) to give legislative recognition to the position of Chief Industrial Magistrate;  
and
  - (g) for other purposes.
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Clause 1 specifies the short title of the proposed Act.

Clause 2 is a formal provision that gives effect to the Schedule of amendments to the Principal Act.

Clause 3 applies section 88 (Date of award) of the Principal Act, as amended by the proposed Act, to awards made before the commencement of the proposed Act but not yet published. Section 88, as amended, will enable a notice containing particulars of the award to be published in the Government Gazette or the New South Wales Industrial Gazette. The clause also prevents an order for payment of an amount exceeding \$2,000 from being made by an industrial magistrate in respect of certain applications made before the commencement of the proposed Act.

Schedule 1 (1) inserts into the Principal Act proposed section 25AA (Ancillary orders in compulsory conferences) which enables an application to be made to, and orders to be made by, a conciliation commissioner, committee or tribunal at a compulsory conference in respect of certain matters, including an order for the payment of holiday pay or long service leave, which may presently be made only in separate proceedings before an industrial magistrate. Restrictions as to the amount of any payment under such an order and as to the imposition of penalties are to be imposed in the same way as on an industrial magistrate.

Schedule 1 (2) provides for an award to become operative and enforceable 14 days after publication in the Government Gazette or the New South Wales Industrial Gazette of the award or of a notice containing certain details of the award, whichever is the earlier. Where the notice is published in the Government Gazette or the New South Wales Industrial Gazette before the award, the award will not be operative and enforceable unless copies of the award are available at a place referred to in the notice. Presently the whole award has to be published: the purpose of the amendment is to eliminate any delays in an award becoming operative and enforceable.

Schedule 1 (3) extends the provisions of the Principal Act as to the documents which may be produced as evidence of awards and contract determinations under the Principal Act.

Schedule 1 (4) enables persons who are covered under an award or industrial agreement and who also receive remuneration under a contract associated with their employment to recover that remuneration by an application to an industrial magistrate.

Schedule 1 (5) enables wages and salary to be paid into building society and credit union accounts.

Schedule 1 (6) increases the amount of money which may be directed to be paid by an industrial magistrate in small claims matters from \$2,000 to \$5,000. It also allows agents, other than barristers, solicitors or advocates, to represent parties as of right before industrial magistrates in small claims matters. A barrister, solicitor or advocate may represent a party where the industrial magistrate so approves.

Schedule 1 (7) increases the penalty for breach of an award, industrial agreement, contract determination or registered agreement from \$1,000 to \$2,000.

Schedule 1 (8) provides for the enforcement of certain orders made by a conciliation commissioner, committee or tribunal at a compulsory conference.

Schedule 1 (9) inserts proposed section 126A (Chief Industrial Magistrate) which gives legislative recognition to the position of Chief Industrial Magistrate. The proposed section also provides for the appointment of an acting Chief Industrial Magistrate during the absence or illness of the Chief Industrial Magistrate.

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# INDUSTRIAL ARBITRATION (AMENDMENT) BILL 1986

NEW SOUTH WALES



## TABLE OF PROVISIONS

1. Short title
2. Amendment of Act No. 2, 1940
3. Transitional provisions

SCHEDULE 1—AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940

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# INDUSTRIAL ARBITRATION (AMENDMENT) BILL 1986

NEW SOUTH WALES



No.           , 1986

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## A BILL FOR

An Act to amend the Industrial Arbitration Act 1940 with respect to the making of certain ancillary orders in compulsory conference proceedings, the recovery of certain money other than wages or salary and the office of Chief Industrial Magistrate; and for other purposes.

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See also Annual Holidays (Industrial Arbitration) Amendment Bill 1986; Long Service Leave (Industrial Arbitration) Amendment Bill 1986; Long Service Leave (Metalliferous Mining Industry) (Industrial Arbitration) Amendment Bill 1986.

*Industrial Arbitration (Amendment) 1986*

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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 (Amendment) Act 1986".

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

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

**Transitional provisions**

3. (1) Section 88 of the Industrial Arbitration Act 1940, as amended by this Act, applies to and in respect of an award made before the date of assent to this Act (being an award that had not taken effect as at that date) in the same way as it applies to and in respect of an award made after that date.

(2) The amendment made by this Act to section 92D (3) (a) of the Industrial Arbitration Act 1940 does not apply to a prescribed application made under section 92D of that Act before the date of assent to this Act.

**AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940**

(1) Section 25AA—

After section 25, insert:



SCHEDULE 1—*continued*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940—  
*continued***Ancillary orders in compulsory conferences**

5 25AA. (1) A person summoned to attend a compulsory conference under section 25 may, at any time during the conference, make an application orally or in writing to the conciliation commissioner, committee or tribunal before whom or which the conference is being held for an order—

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

in respect of a matter arising out of or related to the question, dispute or difficulty the subject of the conference.

15 (2) The application shall be dealt with in accordance with the provisions of section 92D as if—

- (a) the applicant had elected to have the application dealt with in accordance with the provisions of that section; and
- 20 (b) a reference in that section to an industrial magistrate included a reference to the conciliation commissioner, committee or tribunal before whom or which the compulsory conference is being held.

25 (3) A commissioner, committee or tribunal to whom or which an application is made may, if of the opinion that it is appropriate to do so, instead remit the application to an industrial magistrate to be dealt with by the industrial magistrate.

(4) An application for an order which is remitted to an industrial magistrate under this section shall be deemed to have been made to the magistrate in accordance with the provision or provisions of the Act authorising the order to be made.

*Industrial Arbitration (Amendment) 1986*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940—  
*continued*

(2) Section 88 (**Date of award**)—

(a) Section 88—

Omit “award until fourteen days after publication in the Gazette.”, insert instead:

5           award—

(a) until 14 days after publication in the Gazette of the award or of a notice relating to the award, whichever is the earlier; and

10           (b) if a notice relating to the award is published in the Gazette before the award—unless copies of the award are available at a place referred to in the notice.

(b) Section 88 (2)—

At the end of section 88, insert:

15           (2) A notice published in the Gazette relating to an award shall contain the following particulars:

(a) the name and number of the award;

(b) the date the award was made;

(c) the date from which the award is to take effect; and

20           (d) the address of the place or places from which a copy of the award may be obtained.

(3) Section 90 (**Copy of Gazette to be evidence**)—

(a) Section 90—

Omit “award, contract determination,”.

*Industrial Arbitration (Amendment) 1986*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940—  
*continued*

(b) Section 90 (2)—

At the end of section 90, insert:

- 5 (2) Evidence of any award or contract determination made under the authority of this Act or the Apprenticeship Act 1981 or any of the repealed Acts may be given—
- (a) in the case of a contract determination—by the production of a copy of the contract determination printed by the Government Printer or by the authority of the registrar; or
- 10 (b) in the case of an award—by the production—
- (i) of a copy of the award printed by the Government Printer or by the authority of the registrar;
- (ii) of a copy of the award certified by the registrar to be a true copy; or
- 15 (iii) of a copy of the Gazette in which the award was published.

(4) Section 92 (**Recovery of wages, etc.**)—

Section 92 (2F)–(2I)—

After section 92 (2E), insert:

- 20 (2F) A person who is employed as referred to in subsection (1) and who has entered into a contract with his or her employer fixing a price, rate or amount to be paid in relation to any matter associated with that employment (other than a price, rate or amount referred to in subsection (1)) may apply, in the manner
- 25 prescribed for the purposes of subsection (2), to an industrial magistrate for an order directing the employer to pay the full amount of any balance due to the employee in respect of the price, rate or amount fixed by the contract.

*Industrial Arbitration (Amendment) 1986*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940—  
*continued*

(2G) An application under subsection (2F) shall not be made in respect of any money payable under a contract where the money became due—

- 5 (a) before the commencement of the Industrial Arbitration (Amendment) Act 1986; or
- (b) subject to paragraph (a)—earlier than 6 years before the date of the application.

10 (2H) In any proceedings under subsection (2F), an industrial magistrate may make any order the industrial magistrate thinks just, may award costs to either party and may assess the amount of those costs.

(2I) An application under subsection (2F) may be made in the same proceedings as an application under subsection (2) or in separate proceedings.

- 15 (5) Section 92A (**Certain payments may be made by cheque**)—

Section 92A (6)—

After “account”, insert “, or an account held with a permanent building society or a credit union”.

- (6) Section 92D (**Small claims before industrial magistrates**)—

- 20 (a) Section 92D (1), definition of “order”—

From paragraph (a), omit “section 92 (2)”, insert instead “section 92 (2) or (2F)”.

- (b) Section 92D (3) (a)—

Omit “\$2,000”, insert instead “\$5,000”.

*Industrial Arbitration (Amendment) 1986*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940—  
*continued*

(c) Section 92D (7)—

Omit the subsection, insert instead:

5 (7) A party to proceedings before an industrial magistrate in respect of a prescribed application may be represented by an agent, but is not entitled to be represented by an agent who practises as a barrister or solicitor or as an advocate for fee or reward unless the industrial magistrate so approves.

(d) Section 92D (10)—

10 After “agent” where firstly occurring, insert “who practises as a barrister or solicitor or as an advocate for fee or reward”.

(e) Section 92D (10) (a)—

Omit the paragraph.

(7) Section 93 (**Penalty for breach of award, etc.**)—

Section 93 (1)—

15 Omit “\$1,000”, insert instead “\$2,000”.

(8) Section 119 (**Enforcement of orders**)—

Section 119 (1)—

Omit “subsection (2) of section 88F, section 92”, insert instead “section 25AA, 88F (2), 92”.

20 (9) Section 126A—

After section 126, insert:

**Chief Industrial Magistrate**

25 126A. (1) The Governor may, by the same instrument as that by which a person is appointed as an industrial magistrate or by a different instrument, appoint the person as Chief Industrial Magistrate.

*Industrial Arbitration (Amendment) 1986*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940—  
*continued*

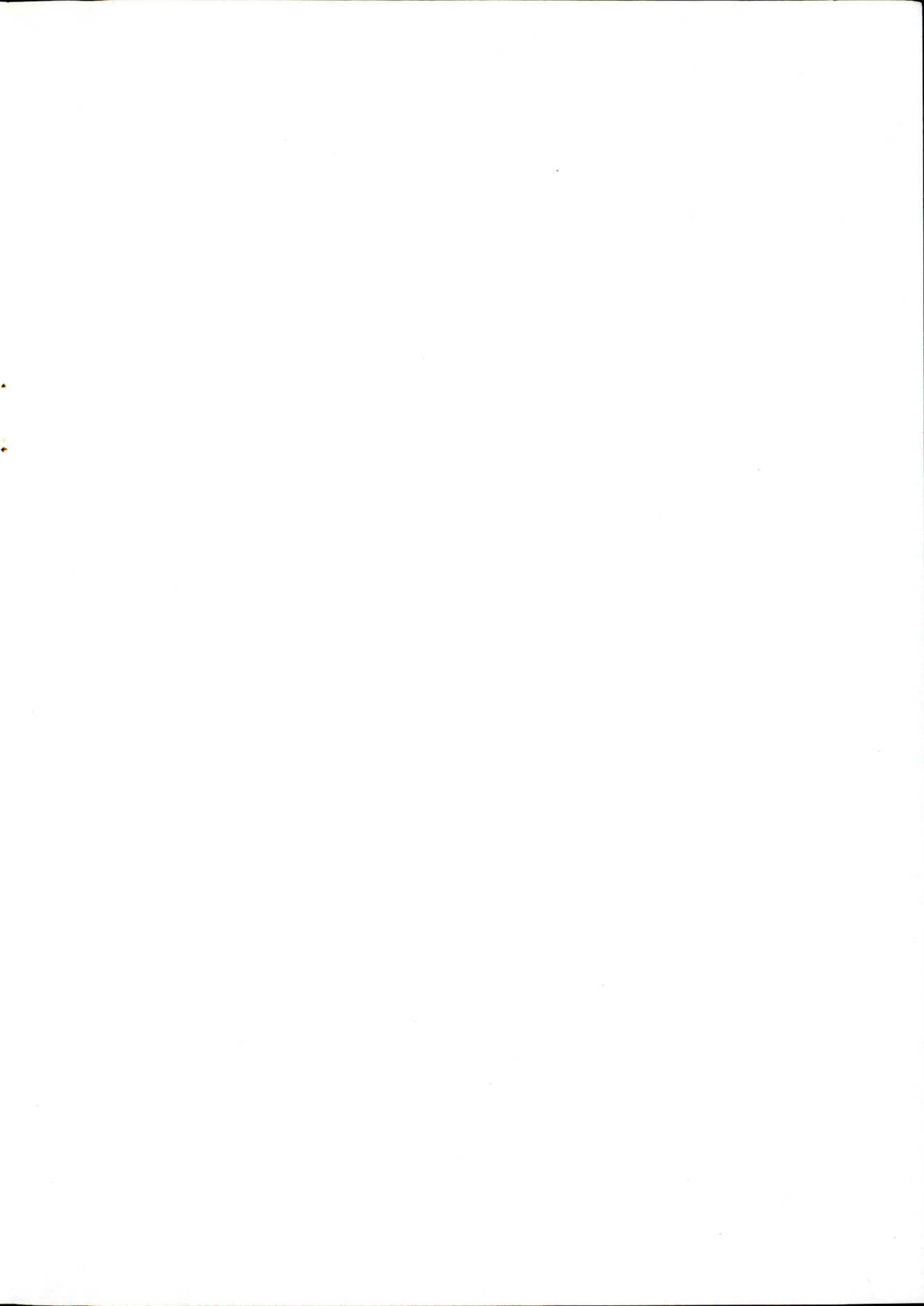
5 (2) The Governor may, from time to time, appoint an industrial magistrate to act as Chief Industrial Magistrate during the illness or absence of the Chief Industrial Magistrate, and the industrial magistrate, while so acting, shall have and may exercise and perform all the powers, authorities, duties and functions of the Chief Industrial Magistrate and shall be deemed to be the Chief Industrial Magistrate.

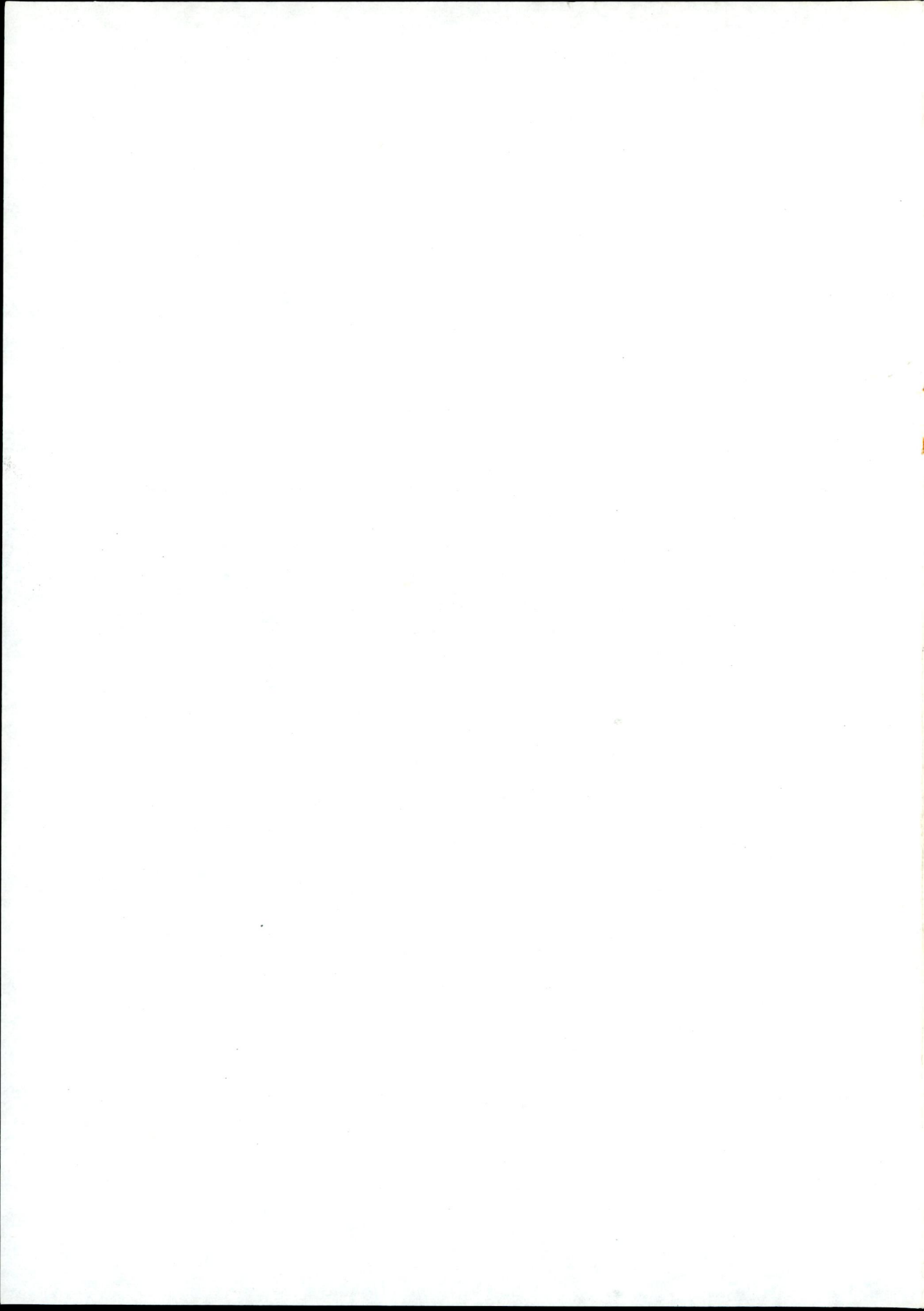
10 (3) The Chief Industrial Magistrate is entitled to be paid remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975.

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BY AUTHORITY

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







**INDUSTRIAL ARBITRATION (AMENDMENT) ACT 1986**  
**No. 7**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Amendment of Act No. 2, 1940
3. Transitional provisions

**SCHEDULE 1—AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940**

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THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

PHYSICS 354

LECTURE 1

LECTURE 2

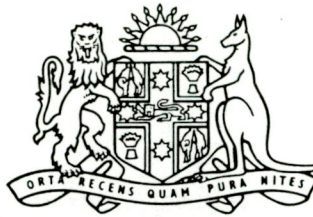
LECTURE 3

LECTURE 4

LECTURE 5

**INDUSTRIAL ARBITRATION (AMENDMENT) ACT 1986 No. 7**

NEW SOUTH WALES



**Act No. 7, 1986**

An Act to amend the Industrial Arbitration Act 1940 with respect to the making of certain ancillary orders in compulsory conference proceedings, the recovery of certain money other than wages or salary and the office of Chief Industrial Magistrate; and for other purposes.  
[Assented to 24 April 1986.]

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See also Annual Holidays (Industrial Arbitration) Amendment Act 1986; Long Service Leave (Industrial Arbitration) Amendment Act 1986; Long Service Leave (Metalliferous Mining Industry) (Industrial Arbitration) Amendment Act 1986.

*Industrial Arbitration (Amendment) 1986*

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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:

**Short title**

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

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

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

**Transitional provisions**

3. (1) Section 88 of the Industrial Arbitration Act 1940, as amended by this Act, applies to and in respect of an award made before the date of assent to this Act (being an award that had not taken effect as at that date) in the same way as it applies to and in respect of an award made after that date.

(2) The amendment made by this Act to section 92D (3) (a) of the Industrial Arbitration Act 1940 does not apply to a prescribed application made under section 92D of that Act 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 25AA—

After section 25, insert:

SCHEDULE 1—*continued*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940—  
*continued***Ancillary orders in compulsory conferences**

25AA. (1) A person summoned to attend a compulsory conference under section 25 may, at any time during the conference, make an application orally or in writing to the conciliation commissioner, committee or tribunal before whom or which the conference is being held for an order—

- (a) under section 92 (2) or (2F) 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,

in respect of a matter arising out of or related to the question, dispute or difficulty the subject of the conference.

(2) The application shall be dealt with in accordance with the provisions of section 92D as if—

- (a) the applicant had elected to have the application dealt with in accordance with the provisions of that section; and
- (b) a reference in that section to an industrial magistrate included a reference to the conciliation commissioner, committee or tribunal before whom or which the compulsory conference is being held.

(3) A commissioner, committee or tribunal to whom or which an application is made may, if of the opinion that it is appropriate to do so, instead remit the application to an industrial magistrate to be dealt with by the industrial magistrate.

(4) An application for an order which is remitted to an industrial magistrate under this section shall be deemed to have been made to the magistrate in accordance with the provision or provisions of the Act authorising the order to be made.

*Industrial Arbitration (Amendment) 1986*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940—  
*continued*

(2) Section 88 (**Date of award**)—

(a) Section 88—

Omit “award until fourteen days after publication in the Gazette.”, insert instead:

award—

- (a) until 14 days after publication in the Gazette of the award or of a notice relating to the award, whichever is the earlier; and
- (b) if a notice relating to the award is published in the Gazette before the award—unless copies of the award are available at a place referred to in the notice.

(b) Section 88 (2)—

At the end of section 88, insert:

(2) A notice published in the Gazette relating to an award shall contain the following particulars:

- (a) the name and number of the award;
- (b) the date the award was made;
- (c) the date from which the award is to take effect; and
- (d) the address of the place or places from which a copy of the award may be obtained.

(3) Section 90 (**Copy of Gazette to be evidence**)—

(a) Section 90—

Omit “award, contract determination,”.

*Industrial Arbitration (Amendment) 1986*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940—  
*continued*

(b) Section 90 (2)—

At the end of section 90, insert:

(2) Evidence of any award or contract determination made under the authority of this Act or the Apprenticeship Act 1981 or any of the repealed Acts may be given—

(a) in the case of a contract determination—by the production of a copy of the contract determination printed by the Government Printer or by the authority of the registrar; or

(b) in the case of an award—by the production—

(i) of a copy of the award printed by the Government Printer or by the authority of the registrar;

(ii) of a copy of the award certified by the registrar to be a true copy; or

(iii) of a copy of the Gazette in which the award was published.

(4) Section 92 (**Recovery of wages, etc.**)—

Section 92 (2F)–(2I)—

After section 92 (2E), insert:

(2F) A person who is employed as referred to in subsection (1) and who has entered into a contract with his or her employer fixing a price, rate or amount to be paid in relation to any matter associated with that employment (other than a price, rate or amount referred to in subsection (1)) may apply, in the manner prescribed for the purposes of subsection (2), to an industrial magistrate for an order directing the employer to pay the full amount of any balance due to the employee in respect of the price, rate or amount fixed by the contract.

*Industrial Arbitration (Amendment) 1986*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940—  
*continued*

(2G) An application under subsection (2F) shall not be made in respect of any money payable under a contract where the money became due—

- (a) before the commencement of the Industrial Arbitration (Amendment) Act 1986; or
- (b) subject to paragraph (a)—earlier than 6 years before the date of the application.

(2H) In any proceedings under subsection (2F), an industrial magistrate may make any order the industrial magistrate thinks just, may award costs to either party and may assess the amount of those costs.

(2I) An application under subsection (2F) may be made in the same proceedings as an application under subsection (2) or in separate proceedings.

(5) Section 92A (**Certain payments may be made by cheque**)—

Section 92A (6)—

After “account”, insert “, or an account held with a permanent building society or a credit union”.

(6) Section 92D (**Small claims before industrial magistrates**)—

(a) Section 92D (1), definition of “order”—

From paragraph (a), omit “section 92 (2)”, insert instead “section 92 (2) or (2F)”.

(b) Section 92D (3) (a)—

Omit “\$2,000”, insert instead “\$5,000”.



*Industrial Arbitration (Amendment) 1986*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940—  
*continued*

(c) Section 92D (7)—

Omit the subsection, insert instead:

(7) A party to proceedings before an industrial magistrate in respect of a prescribed application may be represented by an agent, but is not entitled to be represented by an agent who practises as a barrister or solicitor or as an advocate for fee or reward unless the industrial magistrate so approves.

(d) Section 92D (10)—

After “agent” where firstly occurring, insert “who practises as a barrister or solicitor or as an advocate for fee or reward”.

(e) Section 92D (10) (a)—

Omit the paragraph.

(7) Section 93 (**Penalty for breach of award, etc.**)—

Section 93 (1)—

Omit “\$1,000”, insert instead “\$2,000”.

(8) Section 119 (**Enforcement of orders**)—

Section 119 (1)—

Omit “subsection (2) of section 88F, section 92”, insert instead “section 25AA, 88F (2), 92”.

(9) Section 126A—

After section 126, insert:

**Chief Industrial Magistrate**

126A. (1) The Governor may, by the same instrument as that by which a person is appointed as an industrial magistrate or by a different instrument, appoint the person as Chief Industrial Magistrate.

*Industrial Arbitration (Amendment) 1986*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940—  
*continued*

(2) The Governor may, from time to time, appoint an industrial magistrate to act as Chief Industrial Magistrate during the illness or absence of the Chief Industrial Magistrate, and the industrial magistrate, while so acting, shall have and may exercise and perform all the powers, authorities, duties and functions of the Chief Industrial Magistrate and shall be deemed to be the Chief Industrial Magistrate.

(3) The Chief Industrial Magistrate is entitled to be paid remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975.



