

**INDUSTRIAL ARBITRATION (FURTHER AMENDMENT)
BILL, 1985**

EXPLANATORY NOTE

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

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

- (a) to enable the Industrial Commission to prohibit a person in respect of whom it has made an order or award under section 88F (1) of the Act from entering, or inducing any other person to enter, specified contracts, arrangements or collateral arrangements (Schedule 1 (1) (a)—proposed section 88F (2A) and (2B));
- (b) to specify the persons by whom an application may be made for certain orders and awards under section 88F of the Act (Schedule 1 (1) (a)—proposed section 88F (2C));
- (c) to enable the Industrial Commission in court session to make orders as to costs in respect of appeal proceedings before it that have arisen from proceedings under section 88F of the Act (Schedule 1 (1) (b)— proposed section 88F (3) (b)); and
- (d) to provide for the regulation of certain contracts relating to—
 - (i) building work;
 - (ii) door-to-door handbill delivery work; and
 - (iii) door-to-door sales work,

so as to ensure that persons actually carrying out those kinds of work receive proper remuneration pursuant to such contracts (Schedule 1 (2)—proposed section 88FA).

The Bill also contains a saving provision (clause 3).

**INDUSTRIAL ARBITRATION (FURTHER AMENDMENT)
BILL, 1985**

No. , 1985.

A BILL FOR

An Act to amend the Industrial Arbitration Act, 1940, with respect to harsh
and unconscionable contracts; and for other purposes.

Industrial Arbitration (Further Amendment) 1985

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 (Further Amendment) Act, 1985".

Amendment of Act No. 2, 1940.

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

Saving of certain proceedings.

3. Any proceedings commenced under section 88F of the Industrial Arbitration Act, 1940, before the date of assent to this Act may be continued and determined as if section 88F (2C) of that Act, as amended by this Act, had not been enacted.

SCHEDULE 1.

(Sec. 2.)

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940.

(1) (a) Section 88F (2A)—(2C)—

20 After section 88F (2), insert:—

 (2A) The commission, when making an order or award pursuant to subsection (1) or at any time thereafter, may make such further order as may appear to the commission to be appropriate for the purpose of prohibiting (either absolutely or otherwise than in accordance with specified conditions)—

25

(a) any party to the contract, arrangement or collateral arrangement; or

*Industrial Arbitration (Further Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—*continued.*

- (b) any other person who is (in any way considered relevant by the commission) associated with any such party,
- 5 from—
- (c) entering into any specified kind of contract, arrangement or collateral arrangement whereby a person performs work in an industry; or
- 10 (d) doing any act (whether by way of newspaper advertising or otherwise) which may reasonably be construed as being intended to induce other persons to enter into any such contract, arrangement or collateral arrangement.
- (2B) An order under subsection (2A) shall identify the person or persons upon whom it is binding and shall take effect in
- 15 respect of any such person—
- (a) upon service on that person of a copy of the order; or
- (b) upon publication of the order in a daily newspaper circulating generally throughout New South Wales,
- whichever first occurs.
- 20 (2C) An order or award may be made pursuant to subsection (1), and an order may be made pursuant to subsection (2A), on the application of—
- 25 (a) in the case of an order or award under subsection (1)—
any party to the contract, arrangement or collateral arrangement;
- (b) in the case of an order under subsection (2A)—
- (i) any party to the contract, arrangement or collateral arrangement; or
- 30 (ii) any person who, but for the making of an order or award pursuant to subsection (1), would be a party to the contract, arrangement or collateral arrangement;

*Industrial Arbitration (Further Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—*continued.*

5 (c) the secretary of an industrial union of employers whose members employ persons working in the industry to which the contract, arrangement or collateral arrangement relates;

10 (d) the secretary of an industrial union of employees whose members are employed in the industry to which the contract, arrangement or collateral arrangement relates; or

(e) the Minister,
and not otherwise.

(b) Section 88F (3)—

Omit the subsection, insert instead:—

15 (3) Without affecting the operation of any other provision of this Act—

(a) the commission may make such order as to the payment of costs, in any proceedings under this section, as may appear to it to be just; and

20 (b) the commission in court session may make such order as to the payment of costs, in any proceedings before it which arise by way of appeal from proceedings under this section, as may appear to it to be just,

and may assess the amount of the costs.

25 (2) Section 88FA—

After section 88F, insert:—

Regulation of certain contracts.

30 88FA. (1) Subject to subsection (2), this section applies to any contract (other than a contract to which section 88B applies) under or in pursuance of which—

*Industrial Arbitration (Further Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—*continued.*

- (a) building work;
 (b) door-to-door handbill delivery work; or
 5 (c) door-to-door sales work,
 is carried out or performed.

(2) This section does not apply to any contract referred to in subsection (1)—

- 10 (a) to the extent to which the contract is a contract under or in pursuance of which the work is carried out or performed by persons in their capacity as employees; or
 (b) unless at least one of the parties to the contract (not being a person by whom the work is actually carried out) is a person
 15 who carries on the business of carrying out or performing, or arranging for the carrying out or performance of, that kind of work.

(3) On the application of the secretary of an industrial union of employees whose members are employed in the industry or calling in connection with which—

- 20 (a) building work;
 (b) door-to-door handbill delivery work; or
 (c) door-to-door sales work,

25 is carried out or performed, the commission may, by order, prescribe the minimum rate at which a person shall be remunerated in relation to the carrying out or performance of that kind of work (otherwise than in the capacity of an employee) under or in pursuance of a contract to which this section applies.

30 (4) An order under this section may be made only if the commission is satisfied (whether as a consequence of proceedings before it under section 88F or otherwise) that work of the kind to which the proposed order relates is being, or is likely to be, carried out or performed under or in pursuance of a contract that—

*Industrial Arbitration (Further Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—*continued.*

(a) is unfair;

(b) is harsh or unconscionable; or

5 (c) is against the public interest (as referred to in section 88F).

10 (5) Before making an order under this section, the commission shall require the applicant for the order to cause notice of the application to be served on such persons or bodies as, in the opinion of the commission, have an interest in the matters to which the proposed order relates, and shall allow those persons or bodies to appear and to be heard in relation to the making of the order.

15 (6) An order under this section shall take effect on the expiration of 28 days after the day on which it is published in the Gazette or, where a later day is specified in the order in that regard, on that later day.

(7) Where an order is in force under this section in relation to—

(a) building work;

(b) door-to-door handbill delivery work; or

(c) door-to-door sales work,

20 any contract to which this section applies (being a contract under or in pursuance of which any such work is, or is agreed to be, carried out or performed) shall be deemed to incorporate the provisions of the order that relate to that work.

25 (8) In the event of an inconsistency between a provision of an order in force under this section and a provision of a contract referred to in subsection (7), the provision of the order shall, to the extent of the inconsistency, prevail.

30 (9) The commission may, on its own motion or on the application of the secretary of an industrial union of employees whose members are employed in the industry or calling concerned, vary or revoke an order under this section.

(10) In this section—

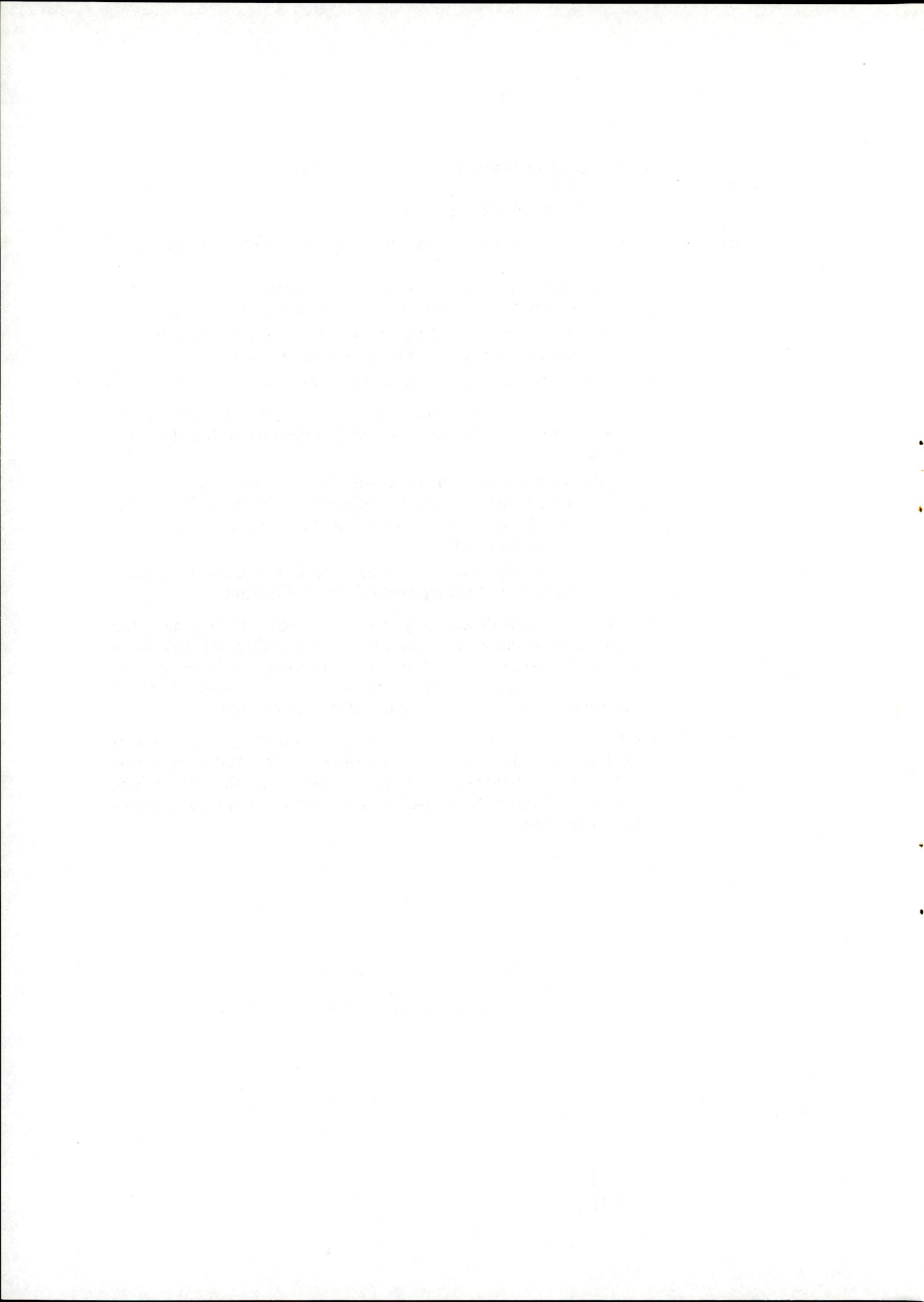
“building work” means work carried out for the purpose of—

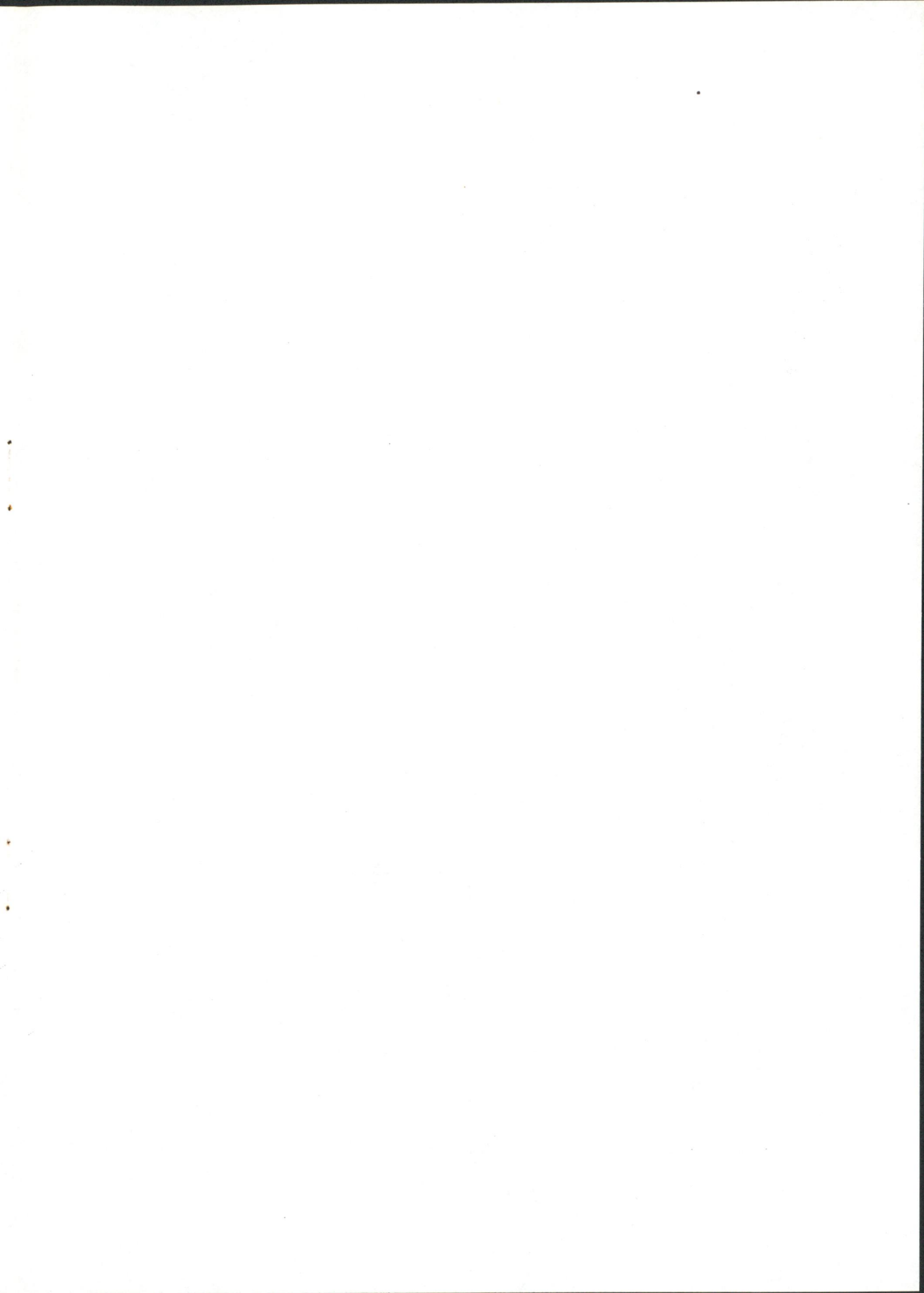
*Industrial Arbitration (Further Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—*continued.*

- 5 (a) constructing, altering or adding to, renovating, decorating or painting any building or structure;
- (b) excavating or filling the site on which any building or structure is proposed to be constructed; or
- (c) demolishing any building or structure,
- 10 and includes work which the regulations declare to be building work for the purposes of this definition, but does not include—
- (d) work carried out otherwise than on the site on which a building or structure is being, or is proposed to be, constructed or on which a building or structure is being demolished; or
- 15 (e) work which the regulations declare not to be building work for the purposes of this definition;
- 20 “door-to-door handbill delivery work” includes work which the regulations declare to be door-to-door handbill delivery work for the purposes of this definition, but does not include work which the regulations declare not to be door-to-door handbill delivery work for the purposes of this definition;
- 25 “door-to-door sales work” includes work which the regulations declare to be door-to-door sales work for the purposes of this definition, but does not include work which the regulations declare not to be door-to-door sales work for the purposes of this definition.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1985







**INDUSTRIAL ARBITRATION (FURTHER AMENDMENT)
ACT, 1985, No. 62**

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

* * * * *

Act No. 62, 1985.

An Act to amend the Industrial Arbitration Act, 1940, with respect to harsh and unconscionable contracts; and for other purposes. [Assented to, 15th May, 1985.]

Industrial Arbitration (Further Amendment) 1985

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 (Further Amendment) Act, 1985".

Amendment of Act No. 2, 1940.

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

Saving of certain proceedings.

3. Any proceedings commenced under section 88F of the Industrial Arbitration Act, 1940, before the date of assent to this Act may be continued and determined as if section 88F (2C) of that Act, as amended by this Act, had not been enacted.

SCHEDULE 1.

(Sec. 2.)

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940.

(1) (a) Section 88F (2A)—(2C)—

After section 88F (2), insert:—

(2A) The commission, when making an order or award pursuant to subsection (1) or at any time thereafter, may make such further order as may appear to the commission to be appropriate for the purpose of prohibiting (either absolutely or otherwise than in accordance with specified conditions)—

(a) any party to the contract, arrangement or collateral arrangement; or

Industrial Arbitration (Further Amendment) 1985

SCHEDULE 1—*continued.*

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

- (b) any other person who is (in any way considered relevant by the commission) associated with any such party,
from—
 - (c) entering into any specified kind of contract, arrangement or collateral arrangement whereby a person performs work in an industry; or
 - (d) doing any act (whether by way of newspaper advertising or otherwise) which may reasonably be construed as being intended to induce other persons to enter into any such contract, arrangement or collateral arrangement.

(2B) An order under subsection (2A) shall identify the person or persons upon whom it is binding and shall take effect in respect of any such person—

- (a) upon service on that person of a copy of the order; or
 - (b) upon publication of the order in a daily newspaper circulating generally throughout New South Wales,
- whichever first occurs.

(2C) An order or award may be made pursuant to subsection (1), and an order may be made pursuant to subsection (2A), on the application of—

- (a) in the case of an order or award under subsection (1)—
any party to the contract, arrangement or collateral arrangement;
- (b) in the case of an order under subsection (2A)—
 - (i) any party to the contract, arrangement or collateral arrangement; or
 - (ii) any person who, but for the making of an order or award pursuant to subsection (1), would be a party to the contract, arrangement or collateral arrangement;

Industrial Arbitration (Further Amendment) 1985

SCHEDULE 1—*continued.*

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

- (c) the secretary of an industrial union of employers whose members employ persons working in the industry to which the contract, arrangement or collateral arrangement relates;
- (d) the secretary of an industrial union of employees whose members are employed in the industry to which the contract, arrangement or collateral arrangement relates; or
- (e) the Minister,

and not otherwise.

(b) Section 88F (3)—

Omit the subsection, insert instead:—

(3) Without affecting the operation of any other provision of this Act—

- (a) the commission may make such order as to the payment of costs, in any proceedings under this section, as may appear to it to be just; and
- (b) the commission in court session may make such order as to the payment of costs, in any proceedings before it which arise by way of appeal from proceedings under this section, as may appear to it to be just,

and may assess the amount of the costs.

(2) Section 88FA—

After section 88F, insert:—

Regulation of certain contracts.

88FA. (1) Subject to subsection (2), this section applies to any contract (other than a contract to which section 88B applies) under or in pursuance of which—

Industrial Arbitration (Further Amendment) 1985

SCHEDULE 1—*continued.*

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

- (a) building work;
- (b) door-to-door handbill delivery work; or
- (c) door-to-door sales work,

is carried out or performed.

(2) This section does not apply to any contract referred to in subsection (1)—

- (a) to the extent to which the contract is a contract under or in pursuance of which the work is carried out or performed by persons in their capacity as employees; or
- (b) unless at least one of the parties to the contract (not being a person by whom the work is actually carried out) is a person who carries on the business of carrying out or performing, or arranging for the carrying out or performance of, that kind of work.

(3) On the application of the secretary of an industrial union of employees whose members are employed in the industry or calling in connection with which—

- (a) building work;
- (b) door-to-door handbill delivery work; or
- (c) door-to-door sales work,

is carried out or performed, the commission may, by order, prescribe the minimum rate at which a person shall be remunerated in relation to the carrying out or performance of that kind of work (otherwise than in the capacity of an employee) under or in pursuance of a contract to which this section applies.

(4) An order under this section may be made only if the commission is satisfied (whether as a consequence of proceedings before it under section 88F or otherwise) that work of the kind to which the proposed order relates is being, or is likely to be, carried out or performed under or in pursuance of a contract that—

Industrial Arbitration (Further Amendment) 1985

SCHEDULE 1—*continued.*

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

- (a) is unfair;
- (b) is harsh or unconscionable; or
- (c) is against the public interest (as referred to in section 88F).

(5) Before making an order under this section, the commission shall require the applicant for the order to cause notice of the application to be served on such persons or bodies as, in the opinion of the commission, have an interest in the matters to which the proposed order relates, and shall allow those persons or bodies to appear and to be heard in relation to the making of the order.

(6) An order under this section shall take effect on the expiration of 28 days after the day on which it is published in the Gazette or, where a later day is specified in the order in that regard, on that later day.

- (7) Where an order is in force under this section in relation to—
- (a) building work;
 - (b) door-to-door handbill delivery work; or
 - (c) door-to-door sales work,

any contract to which this section applies (being a contract under or in pursuance of which any such work is, or is agreed to be, carried out or performed) shall be deemed to incorporate the provisions of the order that relate to that work.

(8) In the event of an inconsistency between a provision of an order in force under this section and a provision of a contract referred to in subsection (7), the provision of the order shall, to the extent of the inconsistency, prevail.

(9) The commission may, on its own motion or on the application of the secretary of an industrial union of employees whose members are employed in the industry or calling concerned, vary or revoke an order under this section.

- (10) In this section—

“building work” means work carried out for the purpose of—

*Industrial Arbitration (Further Amendment) 1985*SCHEDULE 1—*continued.*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—*continued.*

- (a) constructing, altering or adding to, renovating, decorating or painting any building or structure;
- (b) excavating or filling the site on which any building or structure is proposed to be constructed; or
- (c) demolishing any building or structure,

and includes work which the regulations declare to be building work for the purposes of this definition, but does not include—

- (d) work carried out otherwise than on the site on which a building or structure is being, or is proposed to be, constructed or on which a building or structure is being demolished; or
- (e) work which the regulations declare not to be building work for the purposes of this definition;

“door-to-door handbill delivery work” includes work which the regulations declare to be door-to-door handbill delivery work for the purposes of this definition, but does not include work which the regulations declare not to be door-to-door handbill delivery work for the purposes of this definition;

“door-to-door sales work” includes work which the regulations declare to be door-to-door sales work for the purposes of this definition, but does not include work which the regulations declare not to be door-to-door sales work for the purposes of this definition.

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

J. A. ROWLAND,
Governor.

Government House,
Sydney, 15th May, 1985.

