

FIRST PRINT

**INDUSTRIAL ARBITRATION (FURTHER 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:

Long Service Leave (Amendment) Bill 1986;

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

The object of this Bill is to amend the Industrial Arbitration Act 1940—

- (a) to limit the duration and provide for the review of exemptions, in respect of awards, granted to employers under section 87 or 88c of that Act;
- (b) to provide that decisions of the Retail Trade Industrial Tribunal are not to be the subject of any appeal or review; and
- (c) to make express provision for the making of reports by the Tribunal on matters referred to it by the Minister.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the several provisions of the proposed Act. Of the amendments proposed to be made—

- (a) those relating to exemptions are to commence on a day to be appointed by the Governor-in-Council; and
- (b) those relating to the Retail Trade Industrial Tribunal are to commence on the date of assent to the proposed Act.

Clause 3 is a formal provision which gives effect to the Schedules of amendments.

Clause 4 provides that the amendments relating to the Retail Trade Industrial Tribunal do not apply to orders, awards, rulings or decisions made before the commencement of the amendments.

Schedule 1 (1) specifies the circumstances in which the Industrial Commission or a conciliation committee may grant an exemption under section 87 of the Principal Act (proposed section 87A).

Schedule 1 (1) also provides a framework for controlling exemptions granted under the Principal Act—

- (a) by limiting the duration of exemptions granted after the commencement of the proposed amendment to 3 years (or a shorter period specified by the Industrial Commission or conciliation committee);
- (b) by empowering the Industrial Commission or conciliation committee to extend the period of an exemption so granted by periods each not exceeding 3 years; and
- (c) by enabling the Industrial Commission to review any exemption in certain specified circumstances and to confirm, vary or revoke the exemption,

(proposed section 87B).

Schedule 1 (2) extends the power of the Industrial Registrar (subject to appeal) to declare certain documents obsolete, so as to include industrial agreements and exemptions under the Principal Act, and parts of all documents subject to that power.

Schedule 2 (1) (a) and (b) amend section 38T (1) of the Principal Act so that all the functions of the Industrial Commission, including its functions exercised in court session, in relation to the retail trade industry are exercisable only by the Retail Trade Industrial Tribunal.

Schedule 2 (1) (c) provides that no appeal lies from a decision of the Retail Trade Industrial Tribunal.

Schedule 2 (2) makes express provision for the making of reports by the Retail Trade Industrial Tribunal on matters referred to it by the Minister.

INDUSTRIAL ARBITRATION (FURTHER AMENDMENT) BILL 1986

NEW SOUTH WALES

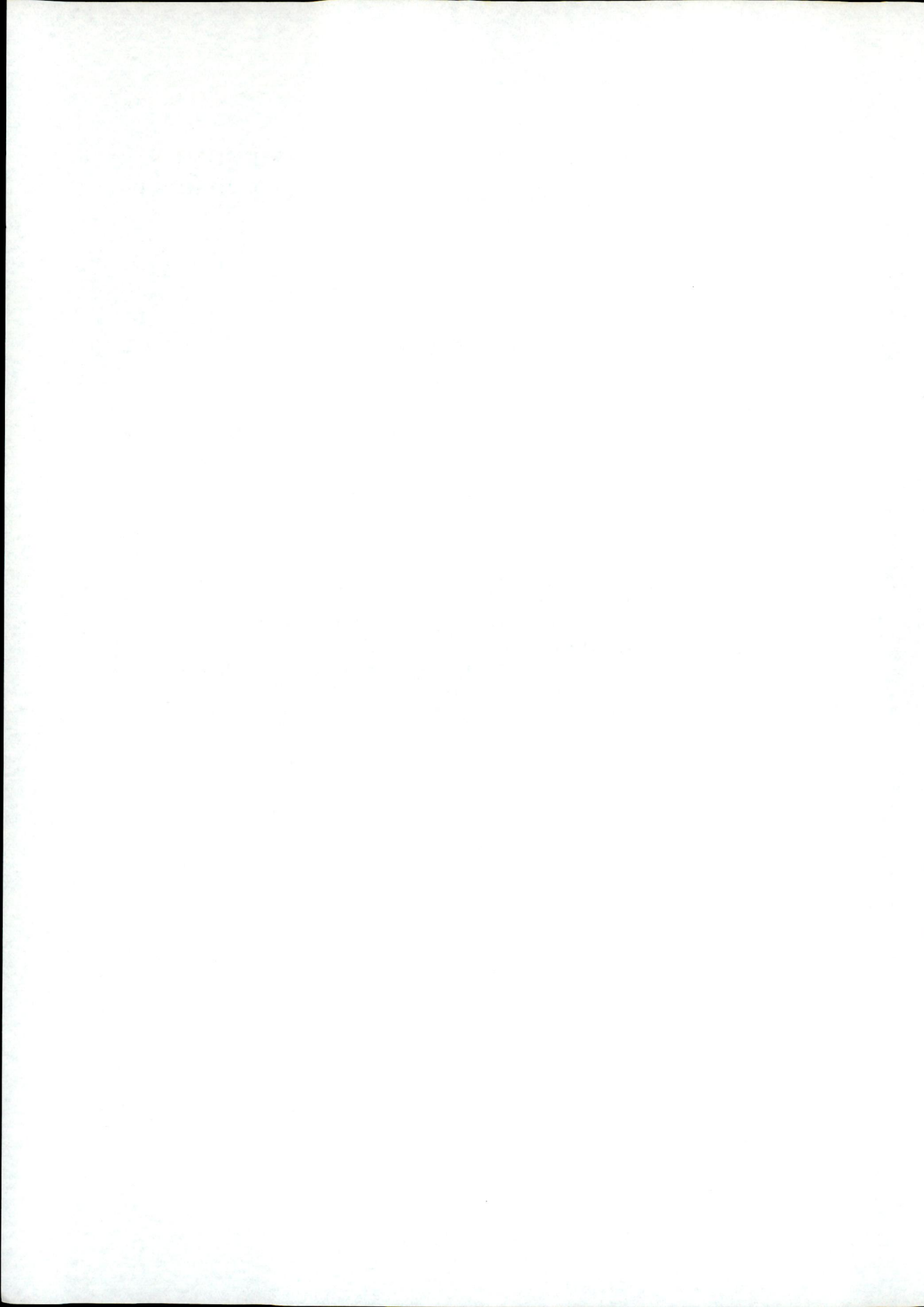


TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 2, 1940
4. Appeals, etc., from the Retail Trade Industrial Tribunal

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

**SCHEDULE 2—AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940
RELATING TO THE RETAIL TRADE INDUSTRIAL TRIBUNAL**



INDUSTRIAL ARBITRATION (FURTHER AMENDMENT) BILL 1986

NEW SOUTH WALES



No. , 1986

A BILL FOR

An Act to amend the Industrial Arbitration Act 1940 with respect to the duration and review of exemptions in respect of awards granted under that Act and with respect to decisions of the Retail Trade Industrial Tribunal; and for other purposes.

See also Long Service Leave (Amendment) Bill 1986; Long Service Leave (Metalliferous Mining Industry) Amendment Bill 1986.

Industrial Arbitration (Further Amendment) 1986

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 1986".

Commencement

2. (1) Except as provided by subsection (2), this Act shall commence
10 on the date of assent to this Act.

(2) Schedule 1, and section 3 in its application to that Schedule, shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment of Act No. 2, 1940

15 3. The Industrial Arbitration Act 1940 is amended in the manner set forth in Schedules 1 and 2.

Appeals, etc., from the Retail Trade Industrial Tribunal

4. The amendments made by Schedule 2 do not apply in relation to any order, award, ruling or decision made by the Retail Trade Industrial
20 Tribunal before the commencement of this Act.

SCHEDULE 1

(Sec. 3)

**AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940
RELATING TO EXEMPTIONS**

25 (1) Sections 87A, 87B—

After section 87, insert:

SCHEDULE 1—*continued*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940
RELATING TO EXEMPTIONS—*continued***Exemptions from awards**

87A. The commission or a committee shall not direct that an exemption under section 87 be granted in respect of an award unless it is satisfied—

- 5 (a) that the employees engaged in the industry or calling to which the award relates are entitled under any Act or under any scheme conducted by or on behalf of their employers to benefits that are not less favourable than those provided for in the award; and
- 10 (b) that it is in the best interests of the employees that the exemption should be granted.

Review of exemptions from awards

87B. (1) In this section, “exemption” means an exemption granted under section 87 or 88C in respect of an award.

- 15 (2) Unless sooner revoked, an exemption granted after the commencement of this section remains in force for the period of 3 years from the date on which it is granted or for such shorter period as the commission or a committee specifies when granting it, but it may be extended by the commission or a committee
- 20 from time to time for a further period or further periods of 3 years or such shorter period or periods as the commission or committee specifies when extending it.
- (3) The commission may review any exemption—
- 25 (a) of its own motion, after causing a notice to be served on such persons as appear to be appropriate in the circumstances stating that the commission requires them to show cause why the exemption should not be varied or revoked on the ground that the benefits provided by the award are more favourable than those then applying;
- 30 (b) on application by an industrial union of employers or employees, or by an employer, affected by the exemption; or
- (c) at the request of the Minister or following a report by the Industrial Registrar.

*Industrial Arbitration (Further Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940
RELATING TO EXEMPTIONS—*continued*

(4) After reviewing an exemption, the commission may confirm the exemption, vary the terms of the exemption or any condition subject to which the exemption was granted, or revoke the exemption.

5 (2) Section 90B (**Obsolete awards, etc.**)—

(a) Section 90B—

After “award,” wherever occurring, insert “agreement, exemption,”.

(b) Section 90B (1)—

10 After “made”, insert “, entered into or granted”.

(c) Section 90B (5)—

After section 90B (4), insert:

15 (5) A reference in this section to an award, agreement, exemption, order or contract determination includes a reference to a part thereof.

SCHEDULE 2

(Sec. 3)

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940
RELATING TO THE RETAIL TRADE INDUSTRIAL TRIBUNAL20 (1) Section 38T (**Jurisdiction in retail trade industry**)—

(a) Section 38T (1)—

After “industry”, insert “(including any jurisdiction or powers under section 32)”.

(b) Section 38T (1)—

25 After “by” where firstly occurring, insert “the commission in court session.”.

*Industrial Arbitration (Further Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940
RELATING TO THE RETAIL TRADE INDUSTRIAL TRIBUNAL—
continued

(c) Section 38T (2), (3)—

Omit section 38T (2) and (3), insert instead:

5 (2) An order, award, ruling or decision made by the Tribunal in the course of exercising the jurisdiction or powers referred to in subsection (1) shall, for the purposes of this Act, be deemed to be an order, award, ruling or decision of the commission in court session.

10 (3) Notwithstanding anything in this Act, no appeal lies to the commission from any order, award, ruling or decision of the Tribunal.

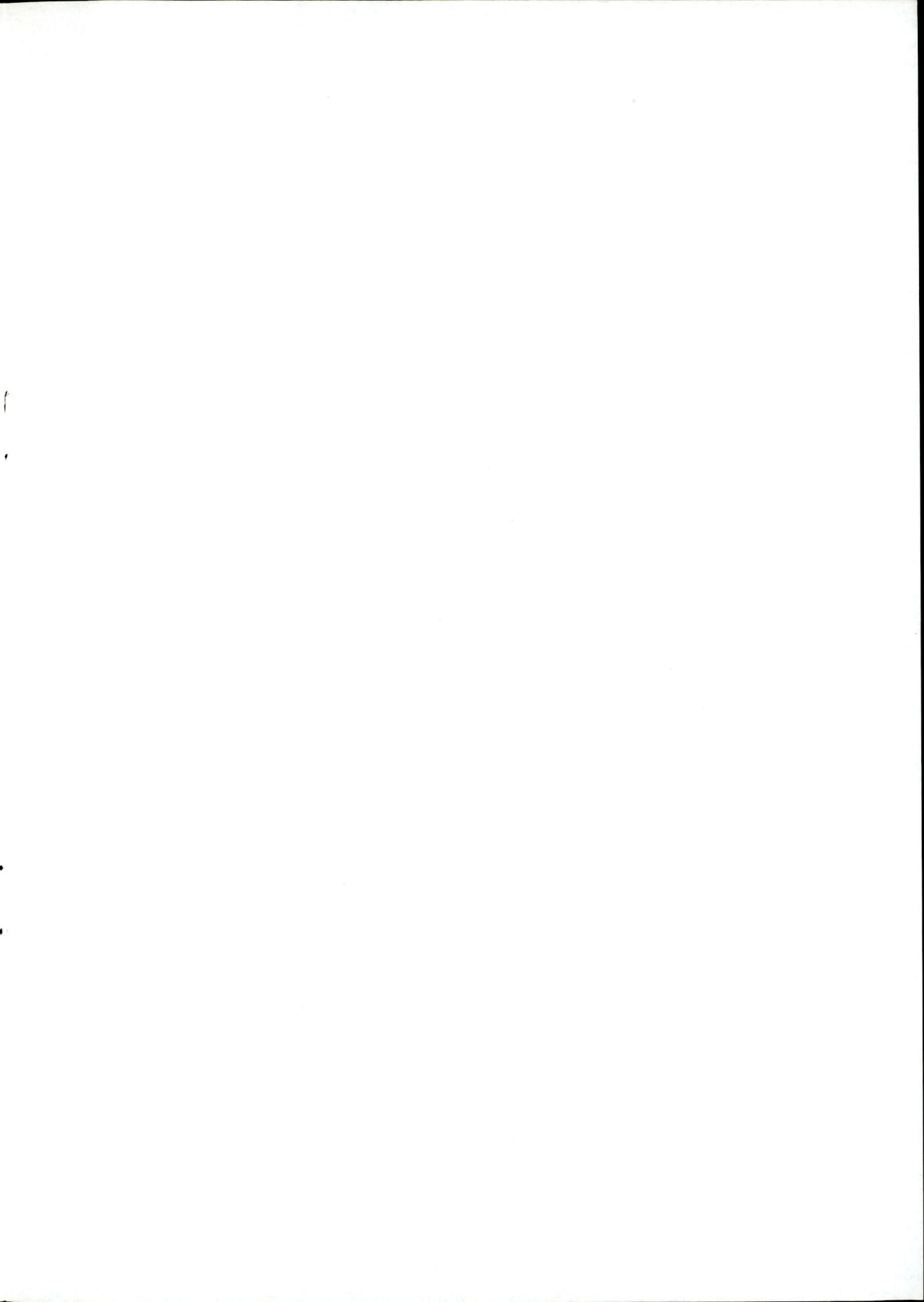
(2) Section 38v (**Review of retail trade industry**)—

Section 38v (4), (5)—

After section 38v (3), insert:

15 (4) The Tribunal shall consider and report to the Minister on such matters relating to industrial matters in the retail trade industry as are referred to it by the Minister.

(5) Subsection (4) does not limit the operation of section 38T in relation to any duty referred to in section 35 (1) (o).



**INDUSTRIAL ARBITRATION (FURTHER AMENDMENT)
ACT 1986 No. 23**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 2, 1940
4. Appeals, etc., from the Retail Trade Industrial Tribunal

SCHEDULE 1—AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940
RELATING TO EXEMPTIONS

SCHEDULE 2—AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940
RELATING TO THE RETAIL TRADE INDUSTRIAL TRIBUNAL

THE UNIVERSITY OF CHICAGO



**INDUSTRIAL ARBITRATION (FURTHER AMENDMENT)
ACT 1986 No. 23**

NEW SOUTH WALES



Act No. 23, 1986

An Act to amend the Industrial Arbitration Act 1940 with respect to the duration and review of exemptions in respect of awards granted under that Act and with respect to decisions of the Retail Trade Industrial Tribunal; and for other purposes. [Assented to, 2nd May, 1986.]

See also Long Service Leave (Amendment) Act 1986; Long Service Leave (Metalliferous Mining Industry) Amendment Act 1986.

Industrial Arbitration (Further Amendment) 1986

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 1986".

Commencement

2. (1) Except as provided by subsection (2), this Act shall commence on the date of assent to this Act.

(2) Schedule 1, and section 3 in its application to that Schedule, shall commence on such day as may be appointed by the Governor and 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 Schedules 1 and 2.

Appeals, etc., from the Retail Trade Industrial Tribunal

4. The amendments made by Schedule 2 do not apply in relation to any order, award, ruling or decision made by the Retail Trade Industrial Tribunal before the commencement of this Act.

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940
RELATING TO EXEMPTIONS

(1) Sections 87A, 87B—

After section 87, insert:

SCHEDULE 1—*continued*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940
RELATING TO EXEMPTIONS—*continued***Exemptions from awards**

87A. The commission or a committee shall not direct that an exemption under section 87 be granted in respect of an award unless it is satisfied—

- (a) that the employees engaged in the industry or calling to which the award relates are entitled under any Act or under any scheme conducted by or on behalf of their employers to benefits that are not less favourable than those provided for in the award; and
- (b) that it is in the best interests of the employees that the exemption should be granted.

Review of exemptions from awards

87B. (1) In this section, “exemption” means an exemption granted under section 87 or 88C in respect of an award.

(2) Unless sooner revoked, an exemption granted after the commencement of this section remains in force for the period of 3 years from the date on which it is granted or for such shorter period as the commission or a committee specifies when granting it, but it may be extended by the commission or a committee from time to time for a further period or further periods of 3 years or such shorter period or periods as the commission or committee specifies when extending it.

(3) The commission may review any exemption—

- (a) of its own motion, after causing a notice to be served on such persons as appear to be appropriate in the circumstances stating that the commission requires them to show cause why the exemption should not be varied or revoked on the ground that the benefits provided by the award are more favourable than those then applying;
- (b) on application by an industrial union of employers or employees, or by an employer, affected by the exemption;
or

Industrial Arbitration (Further Amendment) 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940
RELATING TO EXEMPTIONS—*continued*

- (c) at the request of the Minister or following a report by the Industrial Registrar.
- (4) After reviewing an exemption, the commission may confirm the exemption, vary the terms of the exemption or any condition subject to which the exemption was granted, or revoke the exemption.
- (2) Section 90B (**Obsolete awards, etc.**)—
- (a) Section 90B—
- After “award,” wherever occurring, insert “agreement, exemption,”.
- (b) Section 90B (1)—
- After “made”, insert “, entered into or granted”.
- (c) Section 90B (5)—
- After section 90B (4), insert:
- (5) A reference in this section to an award, agreement, exemption, order or contract determination includes a reference to a part thereof.

SCHEDULE 2

(Sec. 3)

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940
RELATING TO THE RETAIL TRADE INDUSTRIAL TRIBUNAL

- (1) Section 38T (**Jurisdiction in retail trade industry**)—
- (a) Section 38T (1)—
- After “industry”, insert “(including any jurisdiction or powers under section 32)”.

Industrial Arbitration (Further Amendment) 1986

SCHEDULE 2—*continued*

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940
RELATING TO THE RETAIL TRADE INDUSTRIAL TRIBUNAL—
continued

(b) Section 38T (1)—

After “by” where firstly occurring, insert “the commission in court session,”.

(c) Section 38T (2), (3)—

Omit section 38T (2) and (3), insert instead:

(2) An order, award, ruling or decision made by the Tribunal in the course of exercising the jurisdiction or powers referred to in subsection (1) shall, for the purposes of this Act, be deemed to be an order, award, ruling or decision of the commission in court session.

(3) Notwithstanding anything in this Act, no appeal lies to the commission from any order, award, ruling or decision of the Tribunal.

(2) Section 38v (**Review of retail trade industry**)—

Section 38v (4), (5)—

After section 38v (3), insert:

(4) The Tribunal shall consider and report to the Minister on such matters relating to industrial matters in the retail trade industry as are referred to it by the Minister.

(5) Subsection (4) does not limit the operation of section 38T in relation to any duty referred to in section 35 (1) (o).

