

FIRST PRINT

**INDUSTRIAL ARBITRATION (INDUSTRIAL TORTS)  
AMENDMENT BILL 1986**

NEW SOUTH WALES



**EXPLANATORY NOTE**

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

The object of this Bill is to prevent actions in industrial tort against an industrial union of employees or its officials or members without the leave of the Industrial Commission of New South Wales.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day to be appointed by the Governor-in-Council.

Clause 3 amends the Industrial Arbitration Act 1940 by the insertion in that Act of a new Part XIB which contains the following proposed sections:

- (a) Proposed section 117F defines certain expressions for the purposes of the new Part. In particular —
  - (i) “industrial dispute” is defined in similar terms to those used in other provisions of the Principal Act, namely, sections 8A, 25 and 25A; and
  - (ii) “industrial union of employees” has been defined to ensure that the new Part applies to registered unions only.

- (b) Proposed section 117G prevents actions in tort for acts done or omitted to be done by industrial unions of employees or by their officials or members in contemplation or furtherance of an industrial dispute in which the Commission has jurisdiction unless the full bench of the Commission has given leave for the action to be brought. The bar on actions in industrial tort without leave extends to proceedings for an injunction in connection with any such existing or threatened tort.
  - (c) Proposed section 117H exempts from the new Part any action—
    - (i) for the recovery of damages in respect of an intentional tort causing death, personal injury or physical damage to property; or
    - (ii) for the recovery of goods.
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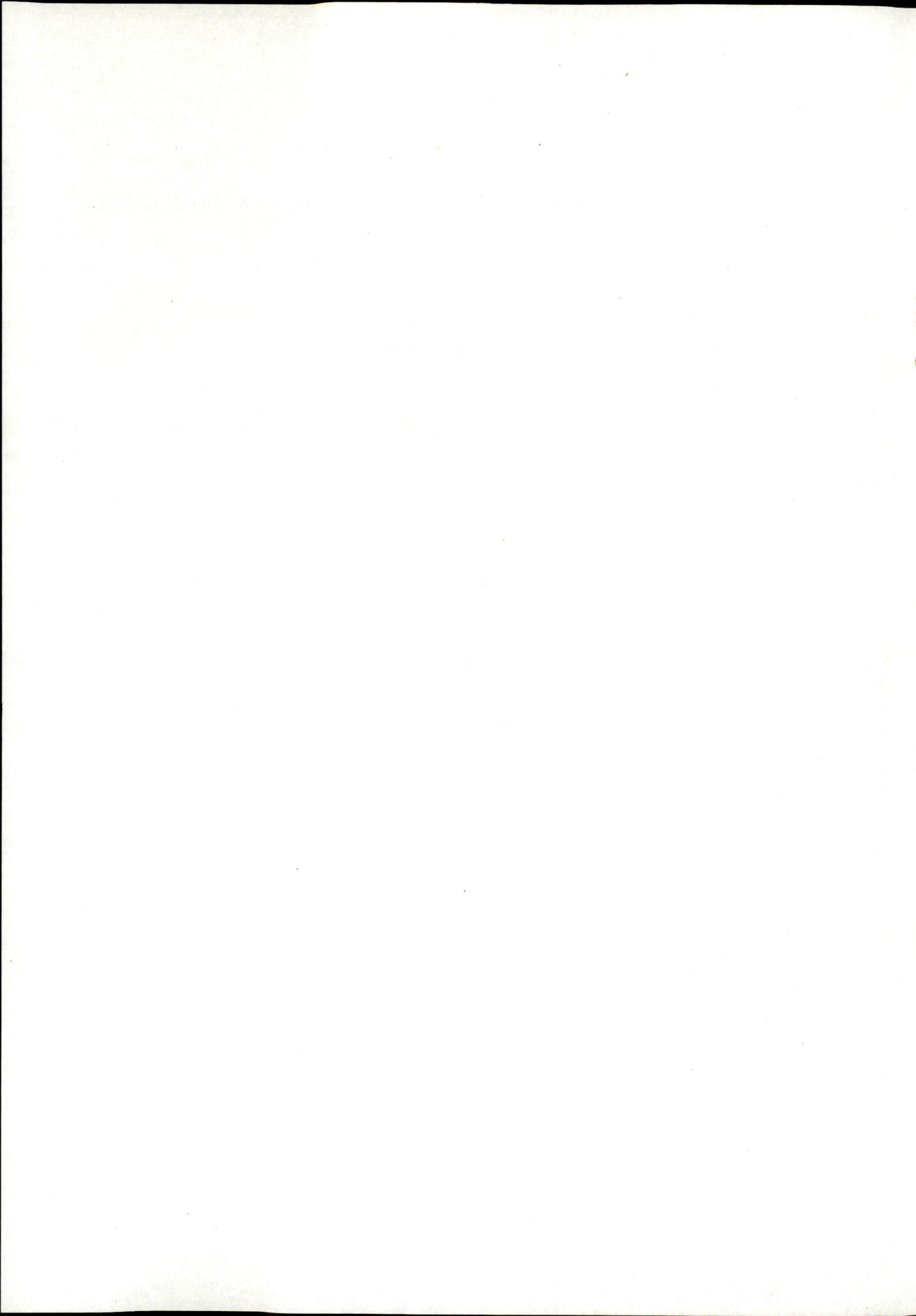
# INDUSTRIAL ARBITRATION (INDUSTRIAL TORTS) AMENDMENT BILL 1986

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**INDUSTRIAL ARBITRATION (INDUSTRIAL TORTS)  
AMENDMENT BILL 1986**

NEW SOUTH WALES



No.           , 1986

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**A BILL FOR**

An Act to amend the Industrial Arbitration Act 1940 in relation to the bringing of actions in tort in connection with industrial disputes.

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*Industrial Arbitration (Industrial Torts) 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 (Industrial Torts) Amendment Act 1986".

**Commencement**

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

**(2)** Except as provided by subsection (1), this Act 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 by inserting after Part XIA the following Part:

**PART XI<sub>B</sub>  
INDUSTRIAL TORTS**

**Interpretation**

**20 117F.** In this Part—

“industrial dispute” means any question, dispute or difficulty of the nature referred to in section 25 (1) (a), (b) or (c);

“industrial union of employees” means an industrial union of employees registered under this Act;

**25** “member”, in relation to an industrial union of employees, means a member of that union, or of a branch of that union, when acting in the capacity of such a member;

**30** “official”, in relation to an industrial union of employees, means a person who holds an office in that union, or in a branch of that union, or who has authority to act on behalf of that union or branch, when acting in the person's capacity as the holder of that office or of that authority.

**Industrial torts not actionable without leave of commission**

5 117G. (1) An act done or omitted to be done by an industrial union of employees, or by an official or a member of any such union, in contemplation or furtherance of an industrial dispute in which the commission has jurisdiction is not actionable in tort unless the commission in court session has given leave for the action to be brought.

10 (2) An injunction shall not be granted to restrain a threatened or an apprehended tort, or to restrain the continuation or repetition of a tort, if the tort is not actionable at the time because of subsection (1).

(3) In determining whether to give leave under this section, the commission in court session shall have regard to—

- 15 (a) the maintenance of industrial harmony;
- (b) the merits of the industrial dispute;
- (c) the conduct of the parties during the industrial dispute;
- (d) the nature of the damage to which the action in tort relates; and
- (e) the public interest.

20 (4) The jurisdiction and powers of the commission, a conciliation commissioner or a conciliation committee in respect of an industrial dispute are not affected by the giving of leave under this section in connection with the dispute.

**Actions in tort exempted from this Part**

25 117H. (1) This Part does not apply to or in respect of—

- (a) an action for the recovery of damages in respect of an intentional tort causing death or personal injury;
- 30 (b) an action for the recovery of damages (not being damages for economic loss) in respect of an intentional tort causing physical damage to property; or
- (c) an action for conversion or detinue.

(2) Proceedings for an injunction to restrain a threatened or an apprehended tort are not exempted from the operation of this Part by subsection (1).

*Industrial Arbitration (Industrial Torts) Amendment 1986*

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(3) This Part does not apply to or in respect of an action brought before the commencement of this Part.

(4) In this section, "personal injury" includes any disease and any impairment of the physical or mental condition of a person.

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BY AUTHORITY

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