

FIRST PRINT

INDUSTRIAL ARBITRATION (SUPERANNUATION APPEALS) AMENDMENT BILL 1986

NEW SOUTH WALES



EXPLANATORY NOTE

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

The Miscellaneous Acts (Superannuation Appeals) Amendment Bill 1986 is cognate with this Bill.

The object of this Bill is to enable the Industrial Commission of New South Wales to hear and determine appeals against decisions of bodies administering statutory superannuation schemes.

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 is a formal provision that gives effect to the Schedule of amendments.

Schedule 1 (1) inserts a new Division, Division 8—Superannuation Appeals, into Part III of the Principal Act containing the following provisions:

Proposed section 38w is an interpretation provision which defines “superannuation appeal”.

Proposed section 38x confers jurisdiction on the Industrial Commission of New South Wales to hear and determine superannuation appeals.

Proposed section 38Y provides that the Commission's jurisdiction shall be exercised by a judicial member of the Commission who may be assisted by a conciliation commissioner and assessors appointed under the proposed Division.

Proposed section 38Z provides for the appointment of assessors.

Proposed section 38AA specifies the powers of the Commission on appeals. Superannuation appeals are to be dealt with by way of a new hearing. In determining the appeal, the Commission is to have the functions of the person against whose decision the appeal is brought, the Commission is to have regard to the Act under which the appeal is made and other relevant matters and the Commission is not bound by the rules of evidence.

Proposed section 38AB enables a party to a superannuation appeal to be represented by an agent or, with the consent of the Commission, a legal representative.

Proposed section 38AC provides that the Commission's determination of a superannuation appeal takes effect as if it were the decision of the person against whose decision the appeal was made.

Proposed section 38AD provides that the Commission's determination is final and may only be challenged by way of an appeal to the Commission in court session if a question of jurisdiction is involved or if the Commission in court session is of the opinion that the matter raised on appeal is of such importance that an appeal should lie.

Schedule 1 (2) makes a consequential amendment to the regulation-making powers conferred by section 130 of the Principal Act so as to enable the regulation of procedures to be followed in bringing superannuation appeals.

INDUSTRIAL ARBITRATION (SUPERANNUATION APPEALS) AMENDMENT BILL 1986

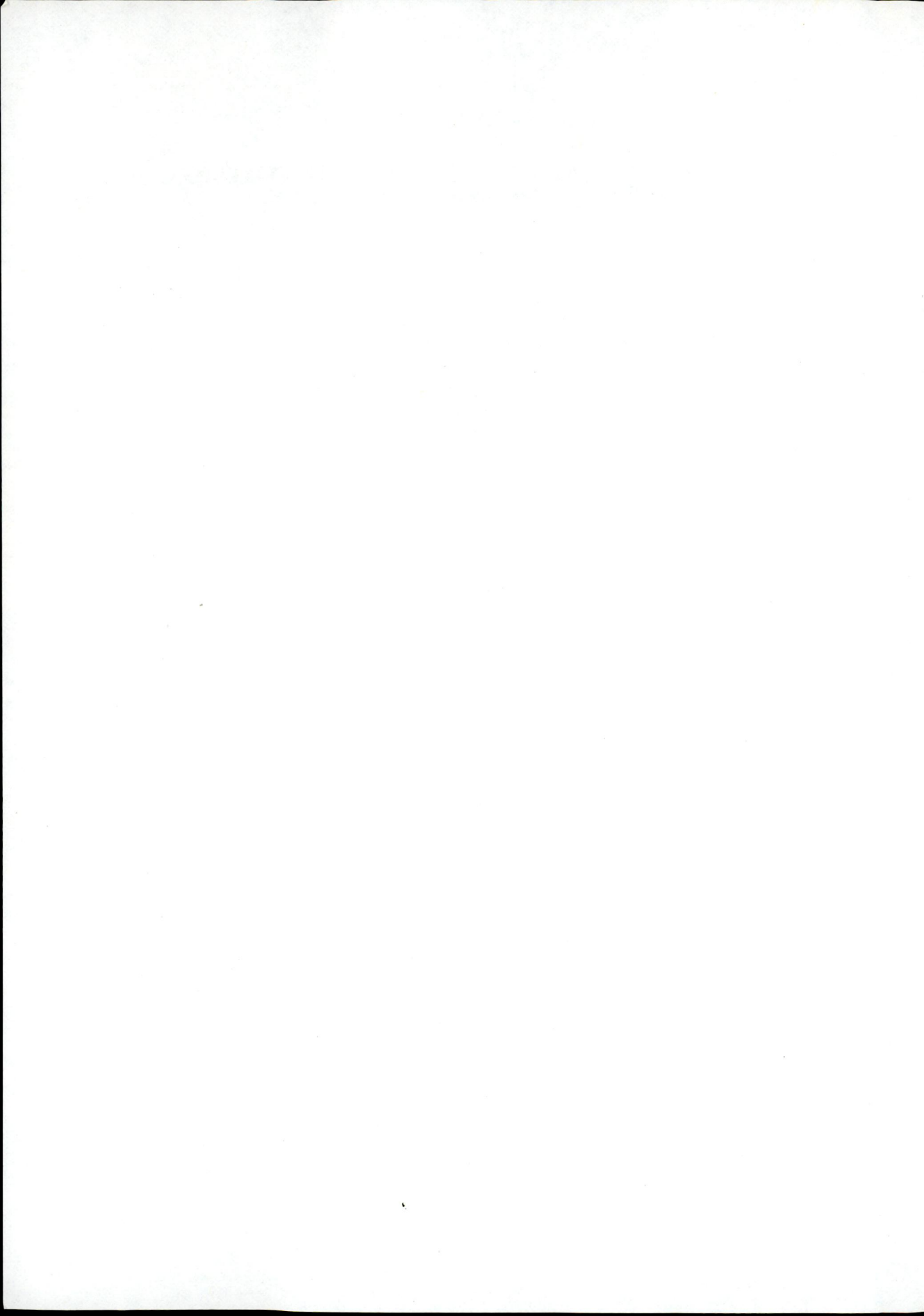
NEW SOUTH WALES



TABLE OF PROVISIONS

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

SCHEDULE 1—AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940



INDUSTRIAL ARBITRATION (SUPERANNUATION APPEALS) AMENDMENT BILL 1986

NEW SOUTH WALES



No. , 1986

A BILL FOR

An Act to amend the Industrial Arbitration Act 1940 to enable the Industrial Commission of New South Wales to hear and determine certain superannuation appeals.

See also Miscellaneous Acts (Superannuation Appeals) Amendment Bill 1986.

Industrial Arbitration (Superannuation Appeals) 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 (Superannuation Appeals) 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 in the manner set forth in Schedule 1.

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940

20 (1) Part III, Division 8—

After Division 7, insert:

DIVISION 8—*Superannuation Appeals*

Interpretation

38w. In this Division—

25 "superannuation appeal" means an appeal made in accordance with a right of appeal conferred by an Act relating to the administration of a scheme, fund or arrangement under which any superannuation or retirement benefits are provided.

*Industrial Arbitration (Superannuation Appeals) Amendment 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940—
*continued***Jurisdiction**

38x. The jurisdiction of the commission includes the power to hear and determine superannuation appeals.

Exercise of jurisdiction

5 38y. (1) The jurisdiction of the commission to hear and determine superannuation appeals shall be exercised in accordance with this Division by a judicial member of the commission.

(2) The judicial member may, at the discretion of and to the extent determined by the judicial member, be assisted in the exercise of the jurisdiction by—

(a) a conciliation commissioner; or

(b) an assessor or assessors appointed under section 38z,
or both.

15 (3) An assessor shall not assist in the exercise of the jurisdiction in relation to a superannuation appeal to which the assessor's employer is a party.

Assessors

38z. (1) The commission may appoint persons—

20 (a) who possess qualifications or experience in medicine, law, actuarial science or the administration of superannuation or retirement benefits schemes; or

(b) who possess such qualifications or experience as may be prescribed,

to be assessors for the purposes of this Division.

25 (2) The appointment of an assessor shall be published in the Gazette.

*Industrial Arbitration (Superannuation Appeals) Amendment 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940—
continued

5 (3) A copy of a Gazette containing a notice of the appointment of an assessor purporting to have been published in pursuance of this section shall be conclusive evidence that the person named in the notice was legally appointed to the office named and had power and jurisdiction to act in that office and the appointment shall not be challenged for any cause.

(4) The regulations under this Act may make provision for or with respect to—

10 (a) the appointment, term of office and conditions of office of assessors;

(b) the oath to be taken by them; and

(c) their remuneration.

Powers of the commission on appeals

15 38AA. (1) A superannuation appeal shall be dealt with by the commission by way of a new hearing and fresh evidence or evidence in addition to, or in substitution for, the evidence given before the person or body whose decision or determination is the subject of the appeal may be given on the appeal.

20 (2) The commission shall, for the purposes of hearing and determining a superannuation appeal, have all the powers, authorities, duties, functions and discretions which the person or body whose decision or determination is the subject of the appeal had in respect of the matter the subject of the appeal.

25 (3) In making its determination, the commission shall have regard to the Act under which the superannuation appeal was made, any relevant instrument under that Act and such other matters as it considers to be relevant.

30 (4) For the purposes of a superannuation appeal, the commission shall not be bound by the rules of evidence and may inform itself on any matter as it thinks fit.

*Industrial Arbitration (Superannuation Appeals) Amendment 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940—
*continued***Rights of representation**

38AB. (1) A party to a superannuation appeal may be represented before the commission by an agent.

5 (2) A party may be represented by a barrister or a solicitor but only with the consent of the commission.

Determination of superannuation appeal

10 38AC. The determination of a superannuation appeal by the commission shall, for the purposes of the Act under which the appeal is made, be deemed to be the final decision or determination of the person or body against whose decision or determination the appeal was made and shall be given effect to accordingly.

Finality of determination

15 38AD. (1) Except as provided in section 14, the determination of a superannuation appeal by the commission shall be final and no proceedings, whether for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, shall lie in respect of any such determination or any decision, proceeding, step or other matter involved in the making of any such determination.

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(2) A determination shall not be vitiated by reason only of any informality or want of form or be liable to be challenged, appealed against, reviewed, quashed or called in question by any court of judicature on any account whatsoever.

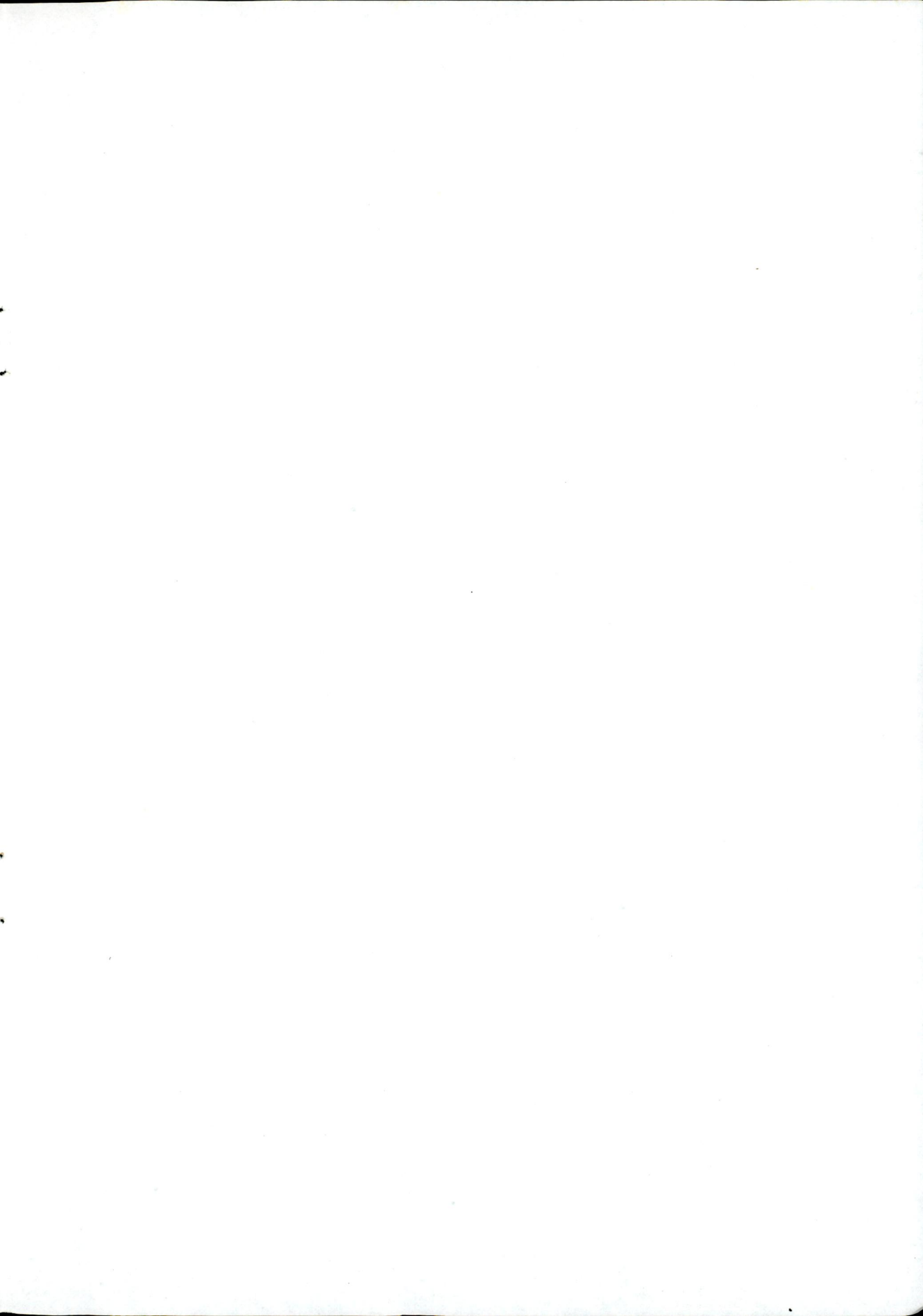
25 (2) Section 130 (**Regulations made by Governor**)—

Section 130 (1) (h)—

After “magistrate,” insert “being proceedings brought under this or any other Act,”.

BY AUTHORITY

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



**INDUSTRIAL ARBITRATION (SUPERANNUATION
APPEALS) AMENDMENT ACT 1986 No. 130**

NEW SOUTH WALES



TABLE OF PROVISIONS

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

SCHEDULE 1—AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940



**INDUSTRIAL ARBITRATION (SUPERANNUATION APPEALS)
AMENDMENT ACT 1986 No. 130**

NEW SOUTH WALES



Act No. 130, 1986

An Act to amend the Industrial Arbitration Act 1940 to enable the Industrial Commission of New South Wales to hear and determine certain superannuation appeals. [Assented to, 4 December 1986]

See also Miscellaneous Acts (Superannuation Appeals) Amendment Act 1986.

Industrial Arbitration (Superannuation Appeals) 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 (Superannuation Appeals) Amendment Act 1986".

Commencement

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

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

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940

(1) Part III, Division 8—

After Division 7, insert:

DIVISION 8—*Superannuation Appeals*

Interpretation

38w. In this Division—

“superannuation appeal” means an appeal made in accordance with a right of appeal conferred by an Act relating to the administration of a scheme, fund or arrangement under which any superannuation or retirement benefits are provided.

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

38x. The jurisdiction of the commission includes the power to hear and determine superannuation appeals.

Exercise of jurisdiction

38y. (1) The jurisdiction of the commission to hear and determine superannuation appeals shall be exercised in accordance with this Division by a judicial member of the commission.

(2) The judicial member may, at the discretion of and to the extent determined by the judicial member, be assisted in the exercise of the jurisdiction by—

- (a) a conciliation commissioner; or
- (b) an assessor or assessors appointed under section 38z,

or both.

(3) An assessor shall not assist in the exercise of the jurisdiction in relation to a superannuation appeal to which the assessor's employer is a party.

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38z. (1) The commission may appoint persons—

- (a) who possess qualifications or experience in medicine, law, actuarial science or the administration of superannuation or retirement benefits schemes; or
- (b) who possess such qualifications or experience as may be prescribed,

to be assessors for the purposes of this Division.

(2) The appointment of an assessor shall be published in the Gazette.

Industrial Arbitration (Superannuation Appeals) Amendment 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940—
continued

(3) A copy of a Gazette containing a notice of the appointment of an assessor purporting to have been published in pursuance of this section shall be conclusive evidence that the person named in the notice was legally appointed to the office named and had power and jurisdiction to act in that office and the appointment shall not be challenged for any cause.

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- (a) the appointment, term of office and conditions of office of assessors;
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38AA. (1) A superannuation appeal shall be dealt with by the commission by way of a new hearing and fresh evidence or evidence in addition to, or in substitution for, the evidence given before the person or body whose decision or determination is the subject of the appeal may be given on the appeal.

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(3) In making its determination, the commission shall have regard to the Act under which the superannuation appeal was made, any relevant instrument under that Act and such other matters as it considers to be relevant.

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Industrial Arbitration (Superannuation Appeals) Amendment 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940—
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Rights of representation

38AB. (1) A party to a superannuation appeal may be represented before the commission by an agent.

(2) A party may be represented by a barrister or a solicitor but only with the consent of the commission.

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38AD. (1) Except as provided in section 14, the determination of a superannuation appeal by the commission shall be final and no proceedings, whether for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, shall lie in respect of any such determination or any decision, proceeding, step or other matter involved in the making of any such determination.

(2) A determination shall not be vitiated by reason only of any informality or want of form or be liable to be challenged, appealed against, reviewed, quashed or called in question by any court of judicature on any account whatsoever.

Industrial Arbitration (Superannuation Appeals) Amendment 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940—
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(2) Section 130 (**Regulations made by Governor**)—

Section 130 (1) (h)—

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