

FIRST PRINT

**INDUSTRIAL ARBITRATION (TRIBUNALS AND
DELEGATIONS) AMENDMENT BILL 1987**

NEW SOUTH WALES



EXPLANATORY NOTE

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

The objects of this Bill are—

- (a) to amend the Industrial Arbitration Act 1940 so as to vary in a minor respect the requirements relating to the constitution of the Industrial Commission of New South Wales in court session, to provide that the Vice-President of the Commission may delegate the functions of that office and to provide for the Governor to determine the seniority of conciliation commissioners (other than the conciliation commissioner for apprenticeships); and
- (b) to validate proceedings conducted in the name of the Retail Trade Industrial Tribunal in the absence of assessors.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with the exception of the validation to be effected by clause 5 and other minor provisions, commence on a day or days to be appointed by the Governor-in-Council.

Clause 3 defines the Principal Act.

Clause 4 gives effect to the Schedule of amendments to the Principal Act.

Industrial Arbitration (Tribunals and Delegations) Amendment 1987

Clause 5 validates proceedings, and orders, awards, rulings and decisions which purport to have been conducted before or made by the Retail Trade Industrial Tribunal in the absence of the 2 assessors appointed to assist and advise the Tribunal. The clause saves the effect of the particular decisions and orders made by the New South Wales Court of Appeal in the case in which it was decided by that Court that, in the absence of the assessors, the Tribunal was not validly constituted.

Schedule 1 (1) amends section 14 (Industrial commission) of the Principal Act so as to provide that the Commission must include at least 2 judicial members when sitting in court session if the President is of the opinion that the matter to be determined involves substantially judicial questions (instead of solely a question of law, as presently provided).

Schedule 1 (2) inserts proposed section 14B (Delegation by Vice-President) into the Principal Act which will enable the Vice-President of the Commission to delegate certain functions to the most senior conciliation commissioner available to carry them out.

Schedule 1 (3) amends section 15 (Conciliation commissioners) of the Principal Act so as to provide for the seniority of conciliation commissioners (other than the conciliation commissioner for apprenticeships) to be determined by the Governor.

INDUSTRIAL ARBITRATION (TRIBUNALS AND DELEGATIONS) AMENDMENT BILL 1987

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TABLE OF PROVISIONS

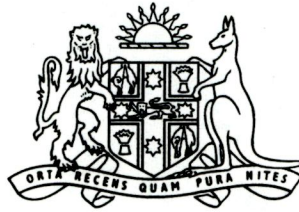
1. Short title
2. Commencement
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5. Validation

SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT



**INDUSTRIAL ARBITRATION (TRIBUNALS AND
DELEGATIONS) AMENDMENT BILL 1987**

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act to amend the Industrial Arbitration Act 1940 with respect to the constitution of the Industrial Commission in court session, delegations by the Vice-President of the Commission and the seniority of conciliation commissioners; and to validate certain proceedings of the Retail Trade Industrial Tribunal.

Industrial Arbitration (Tribunals and Delegations) Amendment 1987

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 (Tribunals and Delegations) Amendment Act 1987".

Commencement

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

(2) The several provisions of Schedule 1, and section 4 in its application to those provisions, shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

15 Principal Act

3. The Industrial Arbitration Act 1940 is referred to in this Act as the Principal Act.

Amendment of Act No. 2, 1940

4. The Principal Act is amended in the manner set forth in Schedule 1.

20 Validation

5. (1) Except as provided by subsection (2)—

- (a) any jurisdiction, power, authority, duty or function; or
- (b) any order, award, ruling or decision,

purporting to have been exercised or performed, or to have been made, by 25 the Retail Trade Industrial Tribunal on or after 17 February 1984 and before 20 December 1986 which could have been validly exercised or performed, or made, only with the assistance and advice or in the presence of the assessors of that Tribunal, is validated.

(2) Subsection (1) does not affect the application of any decision or order 30 of the Court of Appeal relating to Appeal No. 553 of 1986 to and in respect of the parties to that matter and the facts to which it relates.

SCHEDULE 1

(Sec. 4)

AMENDMENTS TO THE PRINCIPAL ACT

(1) Section 14 (**Industrial commission**)—

5 Section 14 (7A) (a), (b)—

Omit “solely a question of law” wherever occurring, insert instead “substantially judicial questions”.

(2) Section 14B—

After section 14A, insert:

10 **Delegation by Vice-President**

14B. (1) The Vice-President of the commission may delegate to the most senior conciliation commissioner for the time being acting as a conciliation commissioner the exercise or performance of any of the Vice-President’s functions, other than this power of delegation.

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(2) A delegation—

(a) shall be in writing;

(b) may be general or limited; and

(c) may be revoked, wholly or partly, by the Vice-President.

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(3) A delegate is, in the exercise or performance of a delegated function, subject to such conditions as are specified in the instrument of delegation.

(4) A delegated function, when exercised or performed by the delegate, shall be deemed to have been exercised or performed by the Vice-President.

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(5) A delegation does not prevent the exercise or performance of a function by the Vice-President.

(6) A function purporting to have been exercised or performed by a delegate shall, until the contrary is proved, be deemed to have been duly exercised or performed by a delegate under this section.

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(7) In this section, a reference to a function includes a reference to a power, an authority and a duty.

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*(3) Section 15 (**Conciliation commissioners**)—

Section 15 (1A) (a)—

Omit the paragraph, insert instead:

- 5 (a) The conciliation commissioners, other than the conciliation commissioner for apprenticeships, shall have seniority according to such order of precedence as may be assigned to them from time to time by the Governor.

INDUSTRIAL ARBITRATION (TRIBUNALS AND DELEGATIONS) AMENDMENT ACT 1987 No. 123

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Principal Act
4. Amendment of Act No. 2, 1940
5. Validation

SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT

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**INDUSTRIAL ARBITRATION (TRIBUNALS AND DELEGATIONS)
AMENDMENT ACT 1987 No. 123**

NEW SOUTH WALES



Act No. 123, 1987

An Act to amend the Industrial Arbitration Act 1940 with respect to the constitution of the Industrial Commission in court session, delegations by the Vice-President of the Commission and the seniority of conciliation commissioners; and to validate certain proceedings of the Retail Trade Industrial Tribunal. [Assented to 16 June 1987]

Industrial Arbitration (Tribunals and Delegations) Amendment 1987

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 (Tribunals and Delegations) Amendment Act 1987".

Commencement

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

(2) The several provisions of Schedule 1, and section 4 in its application to those provisions, shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

Principal Act

3. The Industrial Arbitration Act 1940 is referred to in this Act as the Principal Act.

Amendment of Act No. 2, 1940

4. The Principal Act is amended in the manner set forth in Schedule 1.

Validation

5. (1) Except as provided by subsection (2)—

(a) any jurisdiction, power, authority, duty or function; or

(b) any order, award, ruling or decision,

purporting to have been exercised or performed, or to have been made, by the Retail Trade Industrial Tribunal on or after 17 February 1984 and before 20 December 1986 which could have been validly exercised or performed, or made, only with the assistance and advice or in the presence of the assessors of that Tribunal, is validated.

(2) Subsection (1) does not affect the application of any decision or order of the Court of Appeal relating to Appeal No. 553 of 1986 to and in respect of the parties to that matter and the facts to which it relates.

SCHEDULE 1

(Sec. 4)

AMENDMENTS TO THE PRINCIPAL ACT

(1) Section 14 (**Industrial commission**)—

Section 14 (7A) (a), (b)—

Omit “solely a question of law” wherever occurring, insert instead “substantially judicial questions”.

(2) Section 14B—

After section 14A, insert:

Delegation by Vice-President

14B. (1) The Vice-President of the commission may delegate to the most senior conciliation commissioner for the time being acting as a conciliation commissioner the exercise or performance of any of the Vice-President’s functions, other than this power of delegation.

(2) A delegation—

(a) shall be in writing;

(b) may be general or limited; and

(c) may be revoked, wholly or partly, by the Vice-President.

(3) A delegate is, in the exercise or performance of a delegated function, subject to such conditions as are specified in the instrument of delegation.

(4) A delegated function, when exercised or performed by the delegate, shall be deemed to have been exercised or performed by the Vice-President.

(5) A delegation does not prevent the exercise or performance of a function by the Vice-President.

(6) A function purporting to have been exercised or performed by a delegate shall, until the contrary is proved, be deemed to have been duly exercised or performed by a delegate under this section.

(7) In this section, a reference to a function includes a reference to a power, an authority and a duty.

Industrial Arbitration (Tribunals and Delegations) Amendment 1987

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(3) Section 15 (**Conciliation commissioners**)—

Section 15 (1A) (a)—

Omit the paragraph, insert instead:

(a) The conciliation commissioners, other than the conciliation commissioner for apprenticeships, shall have seniority according to such order of precedence as may be assigned to them from time to time by the Governor.

