

# INDUSTRIAL ARBITRATION (AMENDMENT) BILL 1988

NEW SOUTH WALES



## 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—

- (a) to repeal an obsolete provision which prohibited certain bread delivery contracts being entered into unless approved by the Industrial Commission or a conciliation committee;
- (b) to repeal a provision which enables the Industrial Commission to fix minimum remuneration rates under certain contracts for building work or door-to-door sales or handbill delivery work;
- (c) to provide increased scope for consultation between the President of the Industrial Commission and the heads of other State and Federal industrial tribunals; and
- (d) to provide the President of the Industrial Commission with greater flexibility in determining the composition of the Commission sitting in court session.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides that the proposed Act is to commence on the date of assent to the proposed Act.

**Clause 3** is a formal provision that gives effect to the Schedule of amendments to the Industrial Arbitration Act 1940.

## SCHEDULE 1—AMENDMENTS

### **Repeal of provisions concerning contract regulation**

The Bill repeals sections 88B and 88FA of the Principal Act. (Schedule 1 (5) and (7)).

Section 88B is an obsolete provision which required the approval of the Industrial Commission or a conciliation committee before certain contracts could be entered into between bread manufacturers and bread carters.

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*Industrial Arbitration (Amendment) 1988*

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Section 88<sup>FA</sup> enables the Industrial Commission to fix the minimum rate of remuneration under certain contracts for building work or door-to-door sales or handbill delivery work.

**Constitution of Industrial Commission in court session**

The Principal Act currently provides that the Commission in court session is to consist of at least 3 persons chosen by the President.

If the matter to be determined involves substantially judicial questions, at least 2 of the persons chosen must be judicial members of the Commission and 1 must be a non-judicial member. In other cases at least 1 of the persons must be a judicial member and there must be 1 non-judicial member and 1 Conciliation Commissioner.

The Bill (Schedule 1 (1)) alters this so that, in all cases, the Commission in court session will consist of at least 3 persons chosen by the President from among members of the Commission and Conciliation Commissioners. At least 1 must be a judicial member of the Commission and 1 other (but only 1) may be a Conciliation Commissioner.

**Consultation with other industrial authorities**

The Bill (Schedule 1 (4)) broadens the scope of a provision of the Principal Act which currently empowers the President of the Industrial Commission to confer with the Australian Conciliation and Arbitration Commission to secure co-ordination between awards.

When amended, the provision will empower the President to confer with any Federal, State or Territorial industrial authority to co-ordinate their decisions and any other matters arising under their administrations.

**Savings and transitional provisions**

Schedule 1 (9) and (10) insert a Schedule of savings and transitional provisions (consequent on the enactment of the proposed Act) into the Principal Act. Under those provisions, any order in force under a provision to be repealed by the proposed Act is rescinded and the reconstitution of the Commission in court session is not to apply for part heard matters unless the President of the Commission decides to reconstitute it for that purpose.

**Consequential amendments**

Schedule 1 (6) and (8) omit cross references to the sections of the Principal Act to be repealed by the proposed Act.

Schedule 1 (2) and (3) are consequential on the amendment concerning consultation with other industrial authorities (Schedule 1 (4)).

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## TABLE OF PROVISIONS

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2. Commencement
3. Amendment of Industrial Arbitration Act 1940 No. 2

## SCHEDULE 1—AMENDMENTS

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# INDUSTRIAL ARBITRATION (AMENDMENT) BILL 1988

NEW SOUTH WALES



No. , 1988

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## A BILL FOR

An Act to amend the Industrial Arbitration Act 1940 in relation to the constitution of the Industrial Commission in court session, the power of the President of the Industrial Commission to confer with other authorities and the regulation of certain contracts.

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*Industrial Arbitration (Amendment) 1988***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Industrial Arbitration (Amendment) Act 1988.

**5 Commencement**

2. This Act commences on the date of assent.

**Amendment of Industrial Arbitration Act 1940 No. 2**

3. The Industrial Arbitration Act 1940 is amended as set out in Schedule 1.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

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

Section 14 (7A)—

Omit the subsection, insert instead:

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(7A) The commission in court session (2 or more sittings of which may be held at the same time) shall, subject to subsection (8) (d), be constituted by not less than 3 persons chosen by the President in accordance with the following:

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- (a) each person must be a member of the commission or a conciliation commissioner;
- (b) at least 1 person must be a judicial member of the commission;
- (c) none of the persons need be a conciliation commissioner;
- (d) only 1 person may be a conciliation commissioner.

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**(2) Part 3, Division 6, heading—**

Omit the heading, insert instead:

**Division 6—Arrangements with Federal Commission etc.**

**(3) Section 38H (Application of Division)—**

Section 38H (1)—

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Omit “an industrial matter”, insert instead “a matter”.

**(4) Section 38L (Conference with Federal Commission)—**

Omit the section, insert instead:

*Industrial Arbitration (Amendment) 1988*SCHEDULE 1—AMENDMENTS—*continued***Conference with other industrial authorities**

5 38L. (1) If it appears to the President of the commission to be desirable, in relation to a matter falling within the jurisdiction of the commission or any tribunal established under this Act, to confer with any other industrial authority, the President may (if that industrial authority is willing) confer with that industrial authority, or arrange for another member of the commission to do so, with a view to securing co-ordination between—

- 10 (a) any decision made or to be made under this Act or any matter arising under this Act; and
- (b) any decision made or to be made by that authority or any matter arising under any Act administered by that authority.

15 (2) Where it appears to the President of the commission to be desirable, the President may confer with the Federal Commission in relation to the exercise, or the proposed exercise, of the powers of the commission under section 38J.

20 (3) In subsection (1), “industrial authority” means a commission, court, board, tribunal or committee having authority under any other law of this State or under any law of the Commonwealth or of another State or a Territory of the Commonwealth to hear and determine industrial disputes or industrial matters.

(5) Section 88B (**Regulation of certain contracts**)—

25 Omit the section.

(6) Section 88E (**Certain persons to be employees**)—

Section 88E (1) (g)—

Omit “: Provided that nothing in this paragraph shall apply to any contract approved pursuant to subsection (2) of section 88B”.

30 (7) Section 88FA (**Regulation of certain contracts**)—

Omit the section.

(8) Section 127 (**Appointment and powers of inspectors**)—

Section 127 (1) (d)—

Omit “88B or”.

## 35 (9) Part 17—

After section 155, insert:

*Industrial Arbitration (Amendment) 1988*SCHEDULE 1—AMENDMENTS—*continued***PART 17—MISCELLANEOUS****Savings and transitional provisions**

156. Schedule 6 has effect.

(10) Schedule 6—

5 After Schedule 5, insert:

**SCHEDULE 6—SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 156)

*Industrial Arbitration (Amendment) Act 1988*

**Orders under s. 88FA**

10 1. An order in force under section 88FA immediately before the repeal of that section is, on that repeal, rescinded.

**Commission in court session**

15 2. (1) This clause applies to a matter which was commenced to be heard by the commission in court session before the commencement of the Industrial Arbitration (Amendment) Act 1988 ("the amending Act").

(2) A matter to which this clause applies may continue to be heard by the commission in court session as if section 14 (7A) had not been substituted by the amending Act, unless the President of the commission reconstitutes the commission under subclause (3).

20 (3) For the purpose of the hearing of a matter to which this clause applies, the President may reconstitute the commission in court session so that it is constituted in accordance with section 14 (7A) as substituted by the amending Act.



**INDUSTRIAL ARBITRATION (AMENDMENT) BILL**

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**Schedule of amendments referred to in the Legislative Council's  
Message of 16 June 1988.**

**No. 1.—Page 3, Schedule 1, lines 30 and 31. Omit all words on those lines.**

**No. 2.—Page 4, Schedule 1, lines 9 to 11. Omit all words on those lines.**

