

**INDUSTRIAL ARBITRATION (ENTERPRISE AGREEMENTS)  
AMENDMENT ACT 1990 No. 113**

**NEW SOUTH WALES**



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Industrial Arbitration Act 1940 No. 2
4. Amendment of other Acts

**SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL ARBITRATION ACT  
1940**

**PART 1 - AMENDMENT PROVIDING FOR ENTERPRISE AGREEMENTS**

**PART 2 - CONSEQUENTIAL AMENDMENTS**

**SCHEDULE 2 - AMENDMENT OF OTHER ACTS**

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**INDUSTRIAL ARBITRATION (ENTERPRISE AGREEMENTS)  
AMENDMENT ACT 1990 No. 113**

**NEW SOUTH WALES**



**Act No. 113, 1990**

An Act to amend the Industrial Arbitration Act 1940 with respect to enterprise agreements; and to amend certain other Acts consequentially. [Assented to 18 December 1990]

**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Industrial Arbitration (Enterprise Agreements) Amendment Act 1990.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

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

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

**Amendment of other Acts**

4. Each Act specified in Schedule 2 is amended as set out in that Schedule.

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**SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940**

(Sec. 3)

**PART 1 - AMENDMENT PROVIDING FOR ENTERPRISE  
AGREEMENTS**

Part 1C (sections 13A-13Z):

After section 13, insert:

**PART 1C - ENTERPRISE AGREEMENTS**

**Division 1 - Definitions**

**Definitions**

13A. (1) In this Part:

"enterprise" means a business, undertaking or project;

"enterprise employer" means the employer or employers carrying on an enterprise;

"registered" means registered under this Part.

**SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued***

(2) For the purposes of this Part, enterprises carried on by corporations that are taken to be related to each other for the purposes of the Companies (New South Wales) Code may be taken to constitute one enterprise or separate enterprises.

**Division 2 - Enterprise agreements**

**Purpose of an enterprise agreement**

13B. The purpose of an enterprise agreement is to regulate (wholly or partly) the conditions of employment of persons who are employed in a single enterprise in any one or more trades or occupations.

**Effect of a registered enterprise agreement**

13C. (1) A registered enterprise agreement, as in force for the time being, is enforceable as if it were an award.

(2) The provisions of a registered enterprise agreement, as in force for the time being, prevail over the provisions of any award, industrial agreement or order of the commission that deal with the same matters in so far as they purport to apply to a person bound by the enterprise agreement.

(3) While a registered enterprise agreement is in force, the functions of the commission and of any conciliation commissioner or conciliation committee relating to conditions of employment fixed by the agreement are exercisable only with the concurrence of each party to the agreement.

**Parties to an enterprise agreement**

13D. (1) An enterprise agreement may be made between an enterprise employer and any one of the following:

- (a) one or more industrial unions of employees that represent persons employed or intending to be employed in the enterprise;

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

- (b) each of not less than 65% of the individuals employed or intending to be employed in one or more trades or occupations in the enterprise;
- (c) a works committee formed under this Part to represent persons employed or intending to be employed in the enterprise.

(2) Before an employee or intending employee or a works committee can become a party to an enterprise agreement, the proposed agreement must be approved in a secret ballot by not less than 65% of the persons who are employed or intend to be employed in the enterprise in the one or more trades or occupations to which the agreement is to apply.

**Content of an enterprise agreement**

13E. (1) An enterprise agreement must include provisions:

- (a) identifying the parties to the agreement, the enterprise for which it is made and the trades or occupations to which it relates; and
- (b) fixing conditions of employment of a kind capable of being fixed by State awards; and
- (c) identifying each award and industrial agreement (if any) that fixes conditions of employment that will apply to employees bound by the agreement but are conditions that are not fixed by the agreement; and
- (d) setting out or adopting procedures to be followed by individual employees and parties subject to the agreement to avoid grievances and to settle them, if they should arise; and
- (e) declaring that the agreement was not entered into under duress by any party to it.

(2) An enterprise agreement applies to conditions of employment only at such places as the enterprise concerned was or was intended to be, or could have reasonably been expected to be, carried on when the agreement was made.

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

(3) An enterprise agreement may provide that it applies only to conditions of employment at a place or places specified in the agreement, despite subsection (2).

**Formal considerations**

13F. An enterprise agreement is required to be in writing and signed by or on behalf of all persons who are expressed to be parties to it.

**Term of enterprise agreement**

13G. (1) An enterprise agreement is required to specify its nominal term, which is to be not less than 12 months nor more than 3 years.

(2) An amending enterprise agreement may have a term equivalent to the residue of the term of the enterprise agreement it amends, even though the residue may be less than 12 months.

(3) Unless each of the parties enters into an agreement to terminate the enterprise agreement during its nominal term or after its nominal term has expired, the enterprise agreement can be terminated only at or after the expiration of its nominal term by one of the parties giving at least 3 months' notice of intention to terminate:

- (a) to the other party; or
- (b) if there are two or more other parties, to each other party.

(4) If the parties to the enterprise agreement (other than the enterprise employer) include individuals or a works committee, an agreement to terminate the enterprise agreement during its nominal term may be entered into by those individuals or that works committee only after a decision to do so supported in a secret ballot by not less than 65% of the persons for the time being employed in the enterprise in the one or more trades or occupations to which the enterprise agreement applies.

(5) Termination of the agreement is not effective unless the registrar has been given written notice of an agreement

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

to terminate or of service of the notice of intention to terminate.

**Variation of enterprise agreement**

13H. (1) The parties to an enterprise agreement may by mutual consent make a further such agreement that varies the former agreement.

(2) An enterprise agreement as varied from time to time must comply with the requirements made by this Division.

(3) If the parties to the enterprise agreement (other than the enterprise employer) include individuals or a works committee, such a further agreement to vary may be entered into by those individuals or that works committee only after a decision to do so supported in a secret ballot by not less than 65% of the persons for the time being employed in the enterprise in the one or more trades or occupations to which the enterprise agreement applies.

(4) Despite section 13C, the commission may vary the provisions of a registered enterprise agreement for the purpose of:

- (a) removing ambiguity or uncertainty; or
- (b) making an amendment the commission considers necessary to avoid a substantial risk of death or personal injury.

(5) A variation under subsection (4) may be made only on the application of:

- (a) the enterprise employer; or
- (b) an industrial union that is a party to the agreement; or
- (c) with the leave of the commission, an individual employee who is a party to the agreement; or
- (d) a works committee that is a party to the agreement, without the necessity for a secret ballot decision on whether the application should be made.



SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

**Approval for registration of enterprise agreement**

13I. (1) An enterprise agreement may be lodged with the registrar for approval for registration.

(2) The commission is to approve for registration each enterprise agreement so lodged, but only if the commission is satisfied:

- (a) that the agreement is not contrary to the public interest; and
- (b) that the agreement is not unfair, harsh or unconscionable; and
- (c) that the agreement was not entered into under duress; and
- (d) that the agreement complies with all other requirements made by this Division.

(3) An enterprise agreement that, in the opinion of the commission, fails to comply with the commission's wage fixation principles is not contrary to the public interest if the parties to it satisfy the commission:

- (a) that it will improve the productivity and efficiency of the enterprise concerned to such an extent as to justify failure to comply with those principles; and
- (b) that it is in the interests of the parties who will be bound by it.

(4) The commission may obtain and take into account the views of any State peak organisation as to whether or not an enterprise agreement is contrary to the public interest.

(5) Before an enterprise agreement is approved for registration, the registrar must forward a copy of the agreement for consideration by the Commissioner for Enterprise Agreements and the commission must take into account any submission concerning the agreement made, within such time as the registrar specifies, by the Commissioner.

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

(6) The functions of the commission under this section are to be exercised by a Deputy President designated by the President for the purposes of this section.

(7) In this section:

**"State peak organisation"** means the Labor Council of New South Wales and any association for employers that, in the opinion of the commission:

- (a) operates primarily throughout New South Wales; and
- (b) is representative of a significant number of member associations of employers;

**"wage fixation principles"** means principles established by the commission that apply to the determination of wages and conditions of employment, other than wages and conditions of employment fixed by enterprise agreements.

**Registration of enterprise agreement required**

13J. (1) The registrar is to register each enterprise agreement approved by the commission for registration.

(2) An enterprise agreement has no force or effect unless it is registered.

**Persons bound by enterprise agreement**

13K. A registered enterprise agreement, as in force for the time being, is binding on:

- (a) the parties to the agreement; and
- (b) each person from time to time employed in the enterprise for which the agreement was made who, whether or not a member of an industrial union or a works committee that is a party to the agreement or otherwise a named party to the agreement, is employed in a trade or occupation to which the agreement relates; and
- (c) each successor to an enterprise employer who was a party to the agreement.

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

**Register of enterprise agreements**

13L. (1) The registrar is to keep a register of all enterprise agreements (including amending enterprise agreements) that have been registered, notices of termination of such agreements and such other particulars as the registrar considers appropriate.

(2) The registrar is to permit any of the following persons without payment of any fee to inspect, and to make copies of, any document kept in the register:

- (a) a person carrying into effect provisions of this Act for enforcing the agreement;
- (b) a person carrying into effect provisions of this Act with the concurrence of the parties to the agreement;
- (c) a person, or any person of a class of persons, prescribed for the purposes of this section by the regulations.

(3) Any other person may inspect, or make copies of, any document kept in the register, but only on payment of the prescribed fee.

**Notice to be given of working conditions**

13M. (1) An employer of employees whose conditions of employment are affected by a registered enterprise agreement must cause a copy of the agreement, as in force for the time being, to be fixed and maintained in a conspicuous place in all premises to which the agreement applies so as to be easily read by employees in those premises.

(2) If any of the employees concerned cannot understand the language in which the agreement is written, the employer must cause sufficient accurate (but simply expressed) summaries of the agreement to be so fixed and maintained for each of the employees to be able to read such a summary in a language he or she understands.

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

(3) Before an employer bound by a registered enterprise agreement engages the services of a person as an employee who will be bound by conditions of employment fixed by a registered enterprise agreement, the employer must give the person:

- (a) notice of the existence of the agreement and access to a copy or to an accurate (but simply expressed) summary of the agreement, for perusal by the person, in a language the person understands; or
- (b) notice of the existence of the agreement and a copy or accurate (but simply expressed) summary of the agreement in a language the person understands.

Maximum penalty: 10 penalty units.

**Restriction on duplication of special conditions**

13N. In the making of awards or orders, and in the giving of directions under this Act, the commission, conciliation commissioners and conciliation committees are not to have regard to provisions of enterprise agreements.

**Secret ballots under this Division**

13O. (1) Except as provided by subsection (2), a secret ballot under this Division must be conducted by a person (other than the enterprise employer or a person selected by that employer) on behalf of the employees or intending employees entitled to vote in the ballot, being a person who meets any other requirement that may be imposed by the regulations.

(2) If, within 14 days next following the purported holding of such a ballot, the registrar receives a written complaint from at least 20% of the persons entitled to vote in the election alleging specified irregularities in the conduct of the election and requesting that a further secret ballot be conducted by an independent person, the registrar may (if of the opinion that such action is justified) arrange with the persons concerned:

**SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued***

- (a) for the conduct of such a further secret ballot; and
- (b) for evidence of the result of the further ballot to be supplied to the registrar.

(3) The result of such a further ballot is to be disregarded if the registrar is not satisfied that it has been conducted in accordance with the registrar's directions.

(4) Before the registrar arranges for the conduct of a further secret ballot, the registrar must forward a copy of the complaint to the Commissioner for Enterprise Agreements and must take into account any submission concerning the alleged irregularities made, within such time as the registrar specifies, by the Commissioner.

(5) The registrar may advise the commission of any such complaint received and the commission may make such orders for the stay of proceedings under this Division or otherwise as it considers appropriate.

**Division 3 - Works committees**

**Nature of works committee**

13P. A works committee is a committee formed in accordance with this Part by persons employed or intending to be employed in an enterprise in any one or more trades or occupations to represent persons so employed in the negotiating, making, varying and terminating of enterprise agreements.

**Decision to form works committee**

13Q. (1) Persons employed or intending to be employed in a single enterprise in any one or more trades or occupations and who intend to become bound by an enterprise agreement may, at a meeting held for the purpose, decide:

- (a) whether to form a works committee to represent persons employed or intending to be employed in the enterprise in those trades or occupations; and

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

(b) if a works committee is to be formed, which of those persons will be the members of the committee.

(2) Any such decision must be supported in a secret ballot by at least 65% of the persons for the time being employed or intending to be employed in the enterprise in those trades or occupations.

**Composition of works committee**

13R. (1) A works committee must consist of not more than 8 persons who would become bound by any enterprise agreement to which the committee was a party.

(2) If the enterprise employer consents, the committee may consist of more persons.

**Term**

13S. (1) If an enterprise agreement has not been entered into by a works committee within 6 months after its formation, the committee is taken to be dissolved.

(2) If a works committee enters into an enterprise agreement within 6 months after its election, the committee is taken to be dissolved when the agreement is terminated.

**Decisions and procedure**

13T. (1) A decision supported by the majority of the members for the time being of a works committee is the decision of the committee.

(2) A works committee must elect a chairperson from among its members who is to have a deliberative vote and, in the event of an equality of votes, a second or casting vote.

(3) Except as provided by this section, a works committee may determine its own procedure.

**Casual vacancy**

13U. If a vacancy occurs in the office of a member of a works committee:

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

- (a) the employees or intending employees for the time being represented by the committee may at a meeting elect in such manner as they think fit one of their number to fill the vacancy, and
- (b) pending such an election, the chairperson may appoint such an employee or intending employee to fill the vacant position.

**Dissolution**

13V. (1) A works committee may be dissolved at any time by a decision to dissolve the committee supported in a secret ballot by at least 65% of the persons for the time being employed or intending to be employed in the enterprise who are or would be bound by an enterprise agreement entered into by the committee.

(2) If a works committee is dissolved while an enterprise agreement is in force, any works committee formed in accordance with this Division within 30 days after the dissolution to represent the employees represented by the former committee is taken to be a party to the agreement instead of the former committee.

(3) If a works committee is dissolved while an enterprise agreement is in force and a further works committee is not so elected, the former works committee ceases to be a party to the agreement but persons from time to time employed in the enterprise who would have been bound by the agreement if the works committee had not been dissolved continue to be bound by the agreement as if each such person were a party to the agreement.

**Representation before the commission**

13W. In proceedings before the commission, a works committee may be represented by any of its members or by a barrister or solicitor.

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

**Secret ballots under this Division**

13X. A secret ballot under this Division must be conducted by a person (other than the enterprise employer or a person selected by that employer) on behalf of the employees or intending employees entitled to vote in the ballot, being a person who meets any other requirement imposed by the regulations.

**Division 4 - Commissioner for Enterprise Agreements**

**Appointment**

13Y. A Commissioner for Enterprise Agreements may be appointed under and subject to the Public Sector Management Act 1988.

**Functions**

13Z. (1) The Commissioner for Enterprise Agreements is required:

- (a) to keep under review the operation of the provisions of this Act relating to enterprise agreements; and
- (b) when asked for assistance in that regard, to advise any person bound or considering whether to become bound by an enterprise agreement about their rights and obligations under this Part or under the agreement or proposed agreement; and
- (c) when asked for assistance in that regard, to advise any such person about conditions of employment under any award or industrial agreement that currently apply to the person; and
- (d) to promote the use of enterprise agreements; and
- (e) to make submissions, in such cases as the Commissioner considers appropriate, to the commission about whether or not approval should be given to the registration of an enterprise agreement or of its variation; and



SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

- (f) to provide a report annually to the Minister on the Commissioner's activities during the year to which the report relates; and
  - (g) at such times as the Minister directs, to report to the Minister on such matters as the Minister nominates; and
  - (h) to exercise or perform such other powers, authorities, duties or functions as may be conferred or imposed on the Commissioner by or under this or any other Act.
- (2) The Commissioner may confer with any person or body, whether in New South Wales or elsewhere, about anything the Commissioner is authorised or required to do.

**PART 2 - CONSEQUENTIAL AMENDMENTS**

(1) Section 5 (**Definitions**):

- (a) From section 5 (1), omit the definition of "Agreement", insert instead:  
    "**Agreement**" means an enterprise agreement or an industrial agreement.
- (b) In section 5 (1), after the definition of "Employer", insert:  
    "**Enterprise agreement**" means an enterprise agreement registered under Part 1C.
- (c) In section 5 (1), after the definition of "Vocational Training Board", insert:  
    "**Works committee**" means a works committee formed in accordance with Division 3 of Part 1C.

(2) Part 1A, heading:

Omit the heading to sections 6-10A, insert instead:

**PART 1A - INDUSTRIAL UNIONS**

(3) Part 1B, heading:

Omit the heading to sections 11 and 13, insert instead:

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

**PART 1B - INDUSTRIAL AGREEMENTS**

- (4) Section 54 (**Existing awards and industrial agreements**):
- (a) In section 54 (1), before "agreements", insert "industrial".
  - (b) In section 54, before "agreement" wherever occurring, insert "industrial".
- (5) Section 55 (**Awards and industrial agreements made after appointed day**):
- (a) Before "agreements" wherever occurring, insert "industrial".
  - (b) Before "agreement" wherever occurring, insert "industrial".
- (6) Section 56 (**Retrospective awards and industrial agreements**):
- (a) In section 56 (1), before "agreements", insert "industrial".
  - (b) In section 56 (1), before "agreement" wherever occurring, insert "industrial".
- (7) Section 58 (**Action on variation of basic wage**):
- (a) Before "agreement" wherever occurring, insert "industrial".
  - (b) Before "agreements" wherever occurring, insert "industrial".
- (8) Section 63 (**Ordinary working hours**):
- (a) From section 63 (1), omit "The ordinary", insert instead "Except where working hours are provided for in an enterprise agreement, the ordinary".
  - (b) In section 63 (1), before "agreements", insert "industrial".
  - (c) In section 63 (1) (a), before "agreement" wherever occurring, insert "industrial".
  - (d) In section 63 (1) (a), after "consent", insert "or by an enterprise agreement".
  - (e) In section 63 (1) (c), before "agreement" wherever occurring, insert "industrial".

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

- (f) From section 63 (1) (c), omit "No", insert instead "Except where working hours are provided for in an enterprise agreement, no".
- (g) In section 63 (1) (f), before "agreement", insert "industrial".
- (h) In section 63 (1) (g), after "subsections", insert "(1A)".
- (i) After section 63 (1), insert:
  - (1A) Subsection (1) (g) does not authorise the commission in court session to make an award affecting anything in an enterprise agreement.
- (j) In section 63 (2A), before "agreement" wherever occurring, insert "industrial".
- (k) In section 63 (6), before "agreement" wherever occurring, insert "industrial".
- (l) In section 63 (7), before "agreement" where secondly occurring, insert "industrial".
- (9) Section 63A (**Variation of certain awards and industrial agreements**):
  - Before "agreement" wherever occurring, insert "industrial".
- (10) Section 63C (**Penalty**):
  - After "agreement", insert "(other than an enterprise agreement)".
- (11) Section 66 (**Overtime**):
  - Omit the last paragraph, insert instead:
    - (2) For the purposes of this Part, "**overtime**" means time worked in excess of the days or hours limited by or under this Act or, in the case of an employee bound by an enterprise agreement, by the agreement.

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

(12) Section 68 (**Overtime rates**):

Before "agreement" wherever occurring, insert "industrial".

(13) Section 88F (**Power of commission to declare certain contracts void**):

After section 88F (4), insert:

(5) This section does not apply to an enterprise agreement.

(14) Section 88FA (**Regulation of certain contracts**):

After section 88FA (9), insert:

(9A) This section does not apply to an enterprise agreement.

(15) Section 90B (**Obsolete awards etc.**):

Before "agreement" wherever occurring, insert "industrial".

(16) Part 8B, Division 1, heading:

Omit "or agreements".

(17) Sections 91X and 91Y:

In sections 91X (1) and 91Y (1), after "award" wherever occurring, insert ", enterprise agreement".

(18) Section 92 (**Recovery of wages etc.**):

(a) In section 92 (1) (a), after "award" where firstly occurring, insert "or an enterprise agreement".

(b) From section 92 (1) (a), omit "award or", insert instead "award, enterprise agreement".

(c) In section 92 (1) (b), after "award" wherever occurring, insert ", enterprise agreement".

(d) In section 92 (2) (b), after "award" wherever occurring, insert ", enterprise agreement".

(e) In section 92 (2A) (b), after "award", insert ", enterprise agreement".

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

- (f) In section 92 (2A) (c), after "award" where firstly occurring, insert ", enterprise agreement".
  - (g) In section 92 (2A) (c), after "an award,", insert "enterprise agreement, industrial".
  - (h) In section 92 (2D) (b), after "award", insert ", enterprise agreement".
  - (i) From section 92 (7), omit "industrial" where firstly and thirdly occurring.
- (19) Section 92A (**Certain payments may be made by cheque**):
- (a) From section 92A (2A) (a), omit "such industrial union or unions of employees which", insert instead "each industrial union that".
  - (b) In section 92A (2A) (a), after "application" where secondly occurring, insert "(or, if the employees affected by the application are bound by an enterprise agreement made with the employer otherwise than by an industrial union, each of the employees)".
  - (c) From section 92A (2A) (b), omit "union", insert instead "industrial union or employee".
  - (d) From section 92A (2A) (c), omit "the objecting union or unions", insert instead "each objecting industrial union or employee".
- (20) Section 92AA (**Certain payments may be made by electronic funds transfer etc.**):
- In section 92AA (1) (b), after "agreement,", insert "enterprise agreement,".
- (21) Section 93 (**Penalty for breach of award etc.**):
- (a) In section 93 (1) and (3), after "award," wherever occurring, insert "enterprise agreement,".
  - (b) In section 93 (2), after "award" wherever occurring, insert ", enterprise agreement".

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

- (c) In section 93 (4), after "award" where firstly occurring, insert ", an enterprise agreement".
  - (d) In section 93 (4), after "agreement" where lastly occurring, insert ", or by the secretary of an industrial union or any employee that is a party to or bound by the enterprise agreement,".
- (22) Section 94 (**Secretary of union etc. receiving money for breach of award etc.**):
- After "award", insert ", enterprise agreement".
- (23) Section 95 (**Penalty for unlawful dismissal**):
- (a) From section 95 (1) (b), omit "industrial agreement or an award", insert instead "award, enterprise agreement or industrial agreement".
  - (b) In section 95 (1) (b1), after "award", insert ", enterprise agreement".
  - (c) At the end of section 95 (1) (d), insert:
    - ; or
    - (e) after applying to the enterprise employer for leave without pay for the purpose, and after that employer has unreasonably refused leave, has been absent from work through being engaged in other duties as a member of a works committee in respect of a matter related to the enterprise the subject of an enterprise agreement to which the works committee is a party,
  - (d) In section 95 (1), after "paragraph (d)", insert "or (e)".
  - (e) At the end of section 95 (2) (b), insert:
    - ; or
    - (c) where the employee alleged to have been dismissed, injured or prejudiced is bound by an enterprise agreement (other than such an agreement to which an industrial union is a party) - by the employee.

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

(24) Section 95A (**Particulars of wages to be furnished to employees**):

- (a) In section 95A (1), after "award" where firstly occurring, insert ", enterprise agreement".
- (b) From section 95A (1), omit "award or agreement" wherever occurring, insert instead "award, enterprise agreement or industrial agreement".
- (c) From section 95A (2) (b), omit "the industrial union or industrial unions", insert instead "each industrial union or works committee".

(25) Section 96 (**Time-sheets and pay-sheets to be kept**):

In section 96 (1) (a), after "award", insert ", enterprise agreement".

(26) Section 96A (**Power to amend**):

In section 96A (1), after "award," where firstly and secondly occurring, insert "enterprise agreement,".

(27) Section 99 (**Illegal strikes**):

After section 99 (b), insert:

- (c) Any strike by employees bound by an enterprise agreement.

(28) Section 100 (**Penalty for illegal strike**):

At the end of the section, insert:

(2) In the event of an illegal strike occurring in an enterprise by employees bound by an enterprise agreement, the commission may order:

- (a) if one or more industrial unions are parties to the agreement - each such industrial union whose executive or members are taking part in or aiding or abetting or have taken part in or aided or abetted the strike; or

**SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued***

(b) if no industrial union is a party to the agreement - each employee who is bound by the agreement and who is taking part or has taken part in the strike, to pay a penalty not exceeding \$4,000.

(29) **Section 127 (Appointment and powers of inspectors):**

- (a) In section 127 (1), after "force", insert "or in respect of an enterprise, within the meaning of Part 1C, that is the subject of an enterprise agreement".
- (b) In section 127 (1) (a), (b) and (c), after "industry" wherever occurring, insert "or enterprise".
- (c) In section 127 (1), after "award" where lastly occurring, insert ", enterprise agreement".

(30) **Section 153B (Construction of this Part):**

In section 153B (1) and (3), after "award," wherever occurring, insert "enterprise agreement, industrial".

**SCHEDULE 2 - AMENDMENT OF OTHER ACTS**

(Sec. 4)

**Annual Holidays Act 1944 No. 31**

**Section 2 (Definitions):**

From section 2 (1), omit the definition of "Agreement", insert instead:

**"Agreement"** means:

- (a) an industrial agreement in force under the Industrial Arbitration Act 1940; or
- (b) an enterprise agreement registered under that Act.

**Long Service Leave Act 1955 No. 38**

(1) **Section 3 (Definitions):**

In section 3 (1), after the definition of "Employer", insert:



SCHEDULE 2 - AMENDMENT OF OTHER ACTS - *continued*

**"Enterprise agreement"** means an enterprise agreement registered under the Industrial Arbitration Act 1940.

(2) Section 4 (**Long service leave**):

- (a) In section 4 (2) (a1) (i), after "Acts" where secondly occurring, insert "or by an enterprise agreement".
- (b) From section 4 (2) (a1) (i), omit "or industrial agreement", insert instead ", industrial agreement or enterprise agreement".
- (c) In section 4 (2) (a1) (iii), after "award", insert ", enterprise agreement".
- (d) In section 4 (13) (a), at the end of the definition of "Award", insert:
  - ; and
  - (c) an enterprise agreement.

(3) Section 5 (**Exemptions**):

In section 5 (1) (a), after "this Act,", insert "or by an enterprise agreement,".

**Long Service Leave (Metalliferous Mining Industry) Act 1963 No. 48**

(1) Section 3 (**Definitions**):

In section 3 (1), after the definition of "Employer", insert:  
**"Enterprise agreement"** means an enterprise agreement registered under the Industrial Arbitration Act 1940.

(2) Section 4 (**Long service leave**):

- (a) In section 4 (2) (b) (i), after "Acts" where secondly occurring, insert "or by an enterprise agreement".
- (b) From section 4 (2) (b) (i), omit "or industrial agreement", insert instead ", industrial agreement or enterprise agreement".
- (c) In section 4 (2) (b) (iii), after "award", insert ", enterprise agreement".

SCHEDULE 2 - AMENDMENT OF OTHER ACTS - *continued*

(d) In section 4 (13) (a), at the end of the definition of "Award", insert:

; and

(c) an enterprise agreement.

(3) Section 5 (**Exemptions**):

In section 5 (1) (a), after "this Act,", insert "or by an enterprise agreement,".

**Employment Protection Act 1982 No. 122**

(1) Section 4 (**Definitions**):

From section 4 (1), omit the definition of "agreement", insert instead:

**"agreement"** means an agreement within the meaning of the Principal Act;

(2) Section 14 (**Orders of Commission**):

In section 14 (2) (b) and (3), before "agreement" wherever occurring, insert "industrial".

**Essential Services Act 1988 No. 41**

Section 5 (**Relationship to other Acts etc.**):

In section 5 (c), after "award", insert ", enterprise agreement".

**Industrial and Commercial Training Act 1989 No. 77**

Section 5 (**Relationship with Industrial Arbitration Act 1940**):

Omit section 5 (b), insert instead:

(b) the provisions of the Industrial Arbitration Act 1940, of any regulation, order or industrial award made under that Act or of any industrial agreement or enterprise agreement registered under that Act,

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[Minister's second reading speech made in -  
Legislative Assembly on 22 November 1990  
Legislative Council on 30 November 1990 a.m.]















FIRST PRINT

**INDUSTRIAL ARBITRATION (ENTERPRISE AGREEMENTS)  
AMENDMENT BILL 1990**

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 so as:

- (a) to enable the registration and enforcement of enterprise agreements made between an employer carrying on a business, undertaking or project (an "enterprise") and one or more industrial unions, each of at least 65% of the individuals employed or intending to be employed in one or more trades or occupations in the enterprise, or a works committee, which agreements will fix conditions of employment for the employees bound by them; and
- (b) to provide for the selection of works committees by persons employed or intending to be employed in an enterprise, which committees will be able to represent the employees or intending employees who selected their members in negotiating, making, varying or terminating an enterprise agreement; and
- (c) to provide for the appointment of a Commissioner for Enterprise Agreements to keep under review the provisions of that Act relating to enterprise agreements and to provide advice relating to enterprise agreements; and
- (d) to make other provisions of a minor or consequential nature.

The proposed Act will also amend certain other Acts consequentially.

The intention is to facilitate a new approach to industrial relations under which appropriate conditions of employment may be negotiated for each particular enterprise between the employer and persons employed in the enterprise (or industrial unions or works committees acting on their behalf), rather than on an industry-wide basis.

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*Industrial Arbitration (Enterprise Agreements) Amendment 1990*

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a proclaimed day or proclaimed days.

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

Clause 4 is a formal provision that gives effect to the Schedule of consequential amendments to other Acts.

**SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940**

**PART 1 - AMENDMENT PROVIDING FOR ENTERPRISE AGREEMENTS**

The amendment made by this Schedule inserts a new Part 1C into the Industrial Arbitration Act. The proposed provisions of that Part may be summarised as follows:

**PART 1C - ENTERPRISE AGREEMENTS**

**Division 1 - Definitions**

**Section 13A (Definitions)** defines the terms "enterprise", "enterprise employer" and "registered" for the purposes of the proposed Part. It is made clear that businesses conducted by holding companies and subsidiary companies may be treated, for the purposes of the proposed Part, as a single enterprise or separate enterprises.

**Division 2 - Enterprise agreements**

**Section 13B (Purpose of an enterprise agreement)** explains that an enterprise agreement is an agreement made to fix conditions of employment for persons employed in a single enterprise in any number of trades or occupations.

**Section 13C (Effect of a registered enterprise agreement)** declares that a registered enterprise agreement will be enforceable as if it were an award. Provisions of such an agreement will prevail over any award made under the Industrial Arbitration Act or any industrial agreement or order of the Industrial Commission. Intervention by the Commission or by a Conciliation Commissioner or Committee in relation to a condition of employment fixed by such an agreement may occur only with the consent of the parties to the agreement.

**Section 13D (Parties to an enterprise agreement)** provides that the parties to an enterprise agreement are to be the employer carrying on the enterprise and any one or more industrial unions or a works committee representing employees engaged or intending to be engaged in the enterprise or (as individual parties) each of not less than 65% of the employees or prospective employees in one or more trades or occupations.

**Section 13E (Content of an enterprise agreement)** specifies that an enterprise agreement must:

*Industrial Arbitration (Enterprise Agreements) Amendment 1990*

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- \* identify the parties to the agreement, the enterprise and the trades or occupations to which it relates
- \* fix conditions of employment
- \* identify any award or industrial agreement that fixes other conditions of employment for employees bound by the agreement
- \* set out procedures to be followed to avoid grievances, and to settle any grievances, between the parties to the agreement
- \* declare that the agreement was not entered into under duress.

Such an agreement will apply only to conditions of employment at places at which the enterprise was or was intended to be, or could have reasonably been expected to be, carried on when the agreement was made, unless the agreement provides otherwise.

**Section 13F (Formal considerations)** requires an enterprise agreement to be in writing and signed by or on behalf of each party to it.

**Section 13G (Term of enterprise agreement)** provides that an enterprise agreement, unless it is an amending agreement, is to have a nominal term of not less than 12 months nor more than 3 years. It can be terminated at any time if all parties agree. Should agreement to terminate not be reached, it can be terminated at the end of its nominal term or at any time afterwards, but only if one of the parties gives at least 3 months' notice to each other party.

**Section 13H (Variation of enterprise agreement)** permits the variation of an enterprise agreement at any time by mutual consent of the parties to it.

The Commission may vary an enterprise agreement to remove ambiguity or uncertainty, or to make a change the Commission considers necessary to avoid a substantial risk of death or personal injury.

**Section 13I (Approval for registration of enterprise agreement)** requires the Commission to approve an enterprise agreement lodged for registration if satisfied:

- \* that the agreement is not contrary to the public interest
- \* that the agreement is not unfair, harsh or unconscionable
- \* that the agreement was not entered into under duress
- \* that the agreement complies with all other requirements of proposed Division 2.

An agreement that does not comply with the Commission's wage fixation principles is not necessarily contrary to the public interest.

Before approving an agreement, the Commission may take into account the views of the Labor Council of New South Wales or of any major peak organisation for employers operating in the State and must take into account any submission made by the Commissioner for Enterprise Agreements (to be appointed under proposed Division 4).

**Section 13J (Registration of enterprise agreement required)** requires the Industrial Registrar to register each enterprise agreement approved by the Commission for registration. Such an agreement is binding only if registered.

*Industrial Arbitration (Enterprise Agreements) Amendment 1990*

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**Section 13K (Persons bound by enterprise agreement)** provides that an enterprise agreement binds not only the parties to it, but all persons employed in the enterprise who are employed in a trade or occupation to which the agreement relates. Successors to the enterprise employer (such as purchasers of the enterprise) are also bound.

**Section 13L (Register of enterprise agreements)** requires the Registrar to keep a register of all registered enterprise agreements (including amending agreements) and of notices of termination and limits the kinds of persons who may, without payment of a fee, inspect, or obtain a copy of, a registered enterprise agreement held by the Registrar.

**Section 13M (Notice to be given of working conditions)** requires an enterprise employer to give employees and prospective employees of the enterprise access to a copy of any registered enterprise agreement fixing conditions of employment that are or would be applicable to them or to inform them about those conditions.

**Section 13N (Restriction on duplication of special conditions)** aims to prevent conditions of enterprise agreements from being duplicated in awards, orders or directions of the Commission, or of Conciliation Commissioners or Conciliation Committees.

**Section 13O (Secret ballots under this Division)** requires that any such secret ballot must be conducted by a person (other than the enterprise employer concerned) on behalf of the employees or intending employees entitled to vote. If irregularities are alleged, the Registrar may arrange for a further ballot and the Commission may make orders staying proceedings under the Division.

**Division 3 - Works committees**

**Section 13P (Nature of works committee)** explains that such a committee is formed by employees or intending employees of an enterprise to represent them in matters concerning enterprise agreements.

**Section 13Q (Decision to form works committee)** provides for not less than 65% of the employees or intending employees of an enterprise who are or are to be employed in one or more trades or occupations to decide in a secret ballot that they will form a works committee and who will be the members of the committee.

**Section 13R (Composition of works committee)** limits the number of members of a works committee to 8 (or more, if the enterprise employer consents). Each member must be a person who would be bound by any enterprise agreement to which the committee was a party.

**Section 13S (Term)** provides for the dissolution of a works committee that does not enter into an enterprise agreement within 6 months of its formation. If a committee does enter into such an agreement, it is dissolved when the agreement is terminated.

**Section 13T (Decisions and procedure)** establishes that a works committee decision is that supported by a majority of votes of the members of the committee. A committee must elect a chairperson, who has (if necessary) a casting vote.

## *Industrial Arbitration (Enterprise Agreements) Amendment 1990*

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**Section 13U (Casual vacancy)** allows the employees or intending employees concerned to elect a new member to fill a casual vacancy on a works committee. Pending such an election, the chairperson may appoint such an employee to fill the vacancy.

**Section 13V (Dissolution)** allows for the dissolution of a works committee at any time by the decision in a secret ballot of at least 65% of employees or intending employees who are or are to be employed in the trades or occupations for which the committee was formed. If a works committee is formed to replace the former committee within 30 days of the dissolution, the new committee will take its place as a party to an enterprise agreement entered into by the former committee. If no works committee takes the place of a former such committee, the enterprise agreement continues in force and continues to bind the employees represented by the former committee.

**Section 13W (Representation before the Commission)** provides for a works committee to be represented before the Commission by any member or, with the Commission's consent, by a barrister or solicitor.

**Section 13X (Secret ballots under this Division)** requires that any such secret ballot must be conducted by a person (other than the enterprise employer concerned) on behalf of the employees or intending employees entitled to vote.

### **Division 4 - Commissioner for Enterprise Agreements**

**Section 13Y (Appointment)** declares that a Commissioner for Enterprise Agreements may be appointed under the Public Sector Management Act 1988.

**Section 13Z (Functions)** states the powers, authorities, duties and functions of the Commissioner which include:

- \* ongoing review of the enterprise agreements provisions of the Industrial Arbitration Act
- \* assisting and advising persons concerning enterprise agreements
- \* promoting the use of enterprise agreements
- \* provision of annual and other reports

## **PART 2 - CONSEQUENTIAL AMENDMENTS**

### **Definitions**

The present definition of "agreement" in the Industrial Arbitration Act is substituted so as to include an enterprise agreement. Definitions of "enterprise agreement" and "works committee" are inserted. (Item (1)).

### **Enforcement of registered enterprise agreements**

Although many of the provisions of the Industrial Arbitration Act that relate to industrial agreements are inappropriate to be applied to enterprise agreements, the scope of the following provisions of that Act applicable to industrial agreements is extended by specific amendments for the purpose of allowing the enforcement of enterprise agreements:

*Industrial Arbitration (Enterprise Agreements) Amendment 1990*

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- \* section 92 (recovery of wages etc.)
  - \* section 93 (penalty for breach of award etc.)
  - \* section 95A (particulars of wages to be furnished to employees)
  - \* section 96 (time-sheets and pay-sheets to be kept)
  - \* section 96A (power to amend)
- (Items (17), (20), (22), (23) and (24)).

**Statute law revision**

Part 1 (**Preliminary**) of the Industrial Arbitration Act, as presently enacted, is to be divided so as to contain two new Parts, namely Part 1A (ss. 6-10A relating to industrial unions) and Part 1B (ss. 11 and 13 relating to industrial agreements) (Items (2) and (3)).

**Other consequential amendments**

The other amendments made by Part 2 of Schedule 1 are consequential on the insertion of proposed Part 1C into the Industrial Arbitration Act.

**SCHEDULE 2 - AMENDMENT OF OTHER ACTS**

The following Acts are amended so as to make it clear that they apply to employees bound by enterprise agreements:

- \* **Annual Holidays Act 1944**
- \* **Long Service Leave Act 1955**
- \* **Long Service Leave (Metalliferous Mining Industry) Act 1963**

The **Employment Protection Act 1982** is amended so as to make it clear that it applies to those employees, but not so as to permit the Commission to vary or cancel an enterprise agreement.

The **Essential Services Act 1988** is amended to make it clear that it applies to an essential service provided by an enterprise the subject of an enterprise agreement.

The **Industrial and Commercial Training Act 1989** is amended to make it clear that requirements made by or under that Act have effect despite provisions of enterprise agreements.

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FIRST PRINT

**INDUSTRIAL ARBITRATION (ENTERPRISE AGREEMENTS)  
AMENDMENT BILL 1990**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Industrial Arbitration Act 1940 No. 2
4. Amendment of other Acts

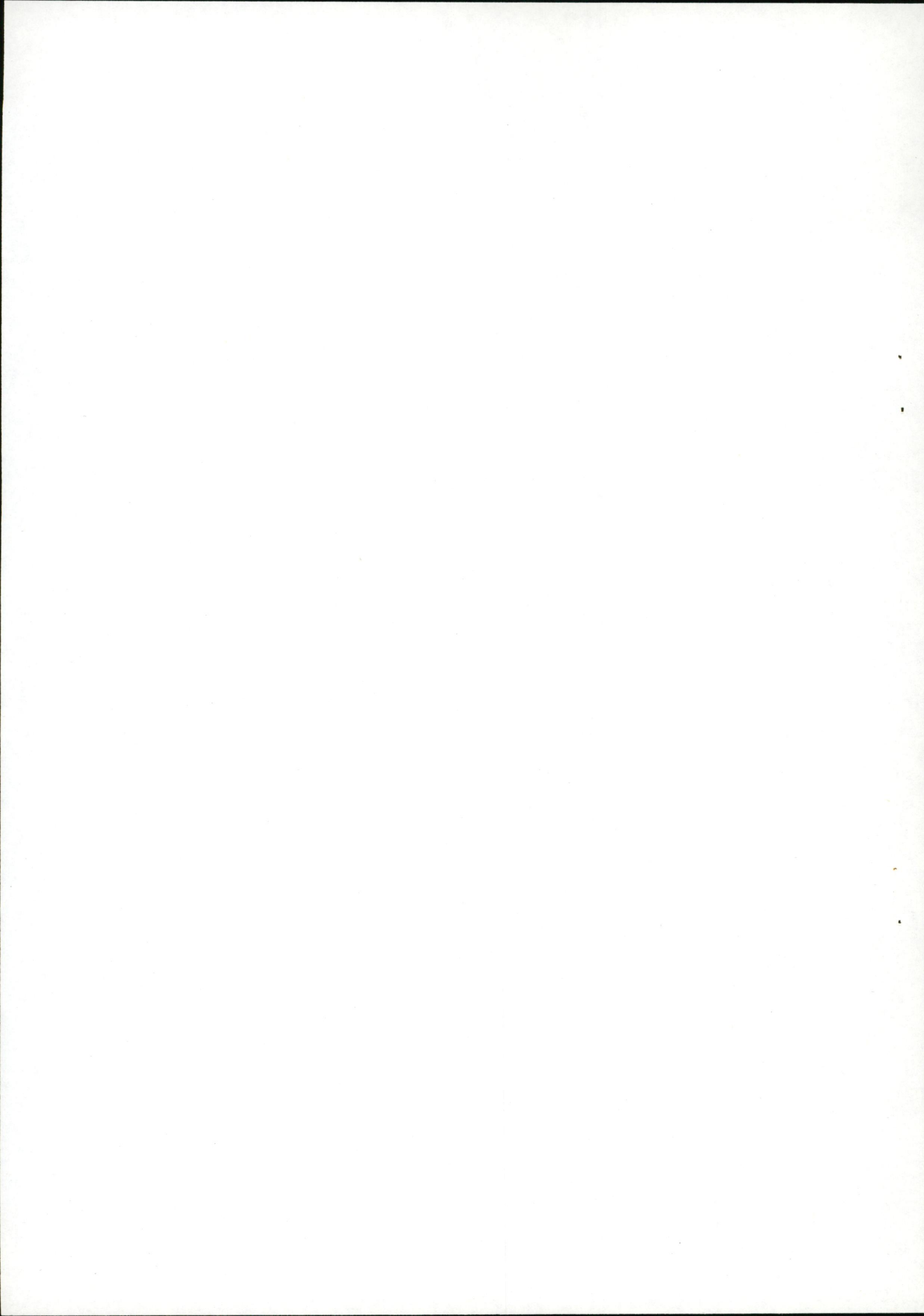
SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL ARBITRATION ACT  
1940

PART 1 - AMENDMENT PROVIDING FOR ENTERPRISE AGREEMENTS

PART 2 - CONSEQUENTIAL AMENDMENTS

SCHEDULE 2 - AMENDMENT OF OTHER ACTS

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**INDUSTRIAL ARBITRATION (ENTERPRISE AGREEMENTS)  
AMENDMENT BILL 1990**

NEW SOUTH WALES



No. , 1990

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**A BILL FOR**

An Act to amend the Industrial Arbitration Act 1940 with respect to enterprise agreements; and to amend certain other Acts consequentially.

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*Industrial Arbitration (Enterprise Agreements) Amendment 1990*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Industrial Arbitration (Enterprise Agreements) Amendment Act 1990.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

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

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

**Amendment of other Acts**

4. Each Act specified in Schedule 2 is amended as set out in that Schedule.

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**SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940**

(Sec. 3)

**PART 1 - AMENDMENT PROVIDING FOR ENTERPRISE  
AGREEMENTS**

Part 1C (sections 13A-13Z):

After section 13, insert:

**PART 1C - ENTERPRISE AGREEMENTS**

**Division 1 - Definitions**

**Definitions**

13A. (1) In this Part:

"enterprise" means a business, undertaking or project;

"enterprise employer" means the employer or employers carrying on an enterprise;

"registered" means registered under this Part.

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

(2) For the purposes of this Part, enterprises carried on by corporations that are taken to be related to each other for the purposes of the Companies (New South Wales) Code may be taken to constitute one enterprise or separate enterprises.

**Division 2 - Enterprise agreements**

**Purpose of an enterprise agreement**

13B. The purpose of an enterprise agreement is to regulate (wholly or partly) the conditions of employment of persons who are employed in a single enterprise in any one or more trades or occupations.

**Effect of a registered enterprise agreement**

13C. (1) A registered enterprise agreement, as in force for the time being, is enforceable as if it were an award.

(2) The provisions of a registered enterprise agreement, as in force for the time being, prevail over the provisions of any award, industrial agreement or order of the commission that deal with the same matters in so far as they purport to apply to a person bound by the enterprise agreement.

(3) While a registered enterprise agreement is in force, the functions of the commission and of any conciliation commissioner or conciliation committee relating to conditions of employment fixed by the agreement are exercisable only with the concurrence of each party to the agreement.

**Parties to an enterprise agreement**

13D. (1) An enterprise agreement may be made between an enterprise employer and any one of the following:

- (a) one or more industrial unions of employees that represent persons employed or intending to be employed in the enterprise;

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

- (b) each of not less than 65% of the individuals employed or intending to be employed in one or more trades or occupations in the enterprise;
- (c) a works committee formed under this Part to represent persons employed or intending to be employed in the enterprise.

(2) Before an employee or intending employee or a works committee can become a party to an enterprise agreement, the proposed agreement must be approved in a secret ballot by not less than 65% of the persons who are employed or intend to be employed in the enterprise in the one or more trades or occupations to which the agreement is to apply.

**Content of an enterprise agreement**

13E. (1) An enterprise agreement must include provisions:

- (a) identifying the parties to the agreement, the enterprise for which it is made and the trades or occupations to which it relates; and
- (b) fixing conditions of employment of a kind capable of being fixed by State awards; and
- (c) identifying each award and industrial agreement (if any) that fixes conditions of employment that will apply to employees bound by the agreement but are conditions that are not fixed by the agreement; and
- (d) setting out or adopting procedures to be followed by individual employees and parties subject to the agreement to avoid grievances and to settle them, if they should arise; and
- (e) declaring that the agreement was not entered into under duress by any party to it.

(2) An enterprise agreement applies to conditions of employment only at such places as the enterprise concerned was or was intended to be, or could have reasonably been expected to be, carried on when the agreement was made.

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

(3) An enterprise agreement may provide that it applies only to conditions of employment at a place or places specified in the agreement, despite subsection (2).

**Formal considerations**

13F. An enterprise agreement is required to be in writing and signed by or on behalf of all persons who are expressed to be parties to it.

**Term of enterprise agreement**

13G. (1) An enterprise agreement is required to specify its nominal term, which is to be not less than 12 months nor more than 3 years.

(2) An amending enterprise agreement may have a term equivalent to the residue of the term of the enterprise agreement it amends, even though the residue may be less than 12 months.

(3) Unless each of the parties enters into an agreement to terminate the enterprise agreement during its nominal term or after its nominal term has expired, the enterprise agreement can be terminated only at or after the expiration of its nominal term by one of the parties giving at least 3 months' notice of intention to terminate:

- (a) to the other party, or
- (b) if there are two or more other parties, to each other party.

(4) If the parties to the enterprise agreement (other than the enterprise employer) include individuals or a works committee, an agreement to terminate the enterprise agreement during its nominal term may be entered into by those individuals or that works committee only after a decision to do so supported in a secret ballot by not less than 65% of the persons for the time being employed in the enterprise in the one or more trades or occupations to which the enterprise agreement applies.

(5) Termination of the agreement is not effective unless the registrar has been given written notice of an agreement

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

to terminate or of service of the notice of intention to terminate.

**Variation of enterprise agreement**

13H. (1) The parties to an enterprise agreement may by mutual consent make a further such agreement that varies the former agreement.

(2) An enterprise agreement as varied from time to time must comply with the requirements made by this Division.

(3) If the parties to the enterprise agreement (other than the enterprise employer) include individuals or a works committee, such a further agreement to vary may be entered into by those individuals or that works committee only after a decision to do so supported in a secret ballot by not less than 65% of the persons for the time being employed in the enterprise in the one or more trades or occupations to which the enterprise agreement applies.

(4) Despite section 13C, the commission may vary the provisions of a registered enterprise agreement for the purpose of:

- (a) removing ambiguity or uncertainty; or
- (b) making an amendment the commission considers necessary to avoid a substantial risk of death or personal injury.

(5) A variation under subsection (4) may be made only on the application of:

- (a) the enterprise employer; or
- (b) an industrial union that is a party to the agreement; or
- (c) with the leave of the commission, an individual employee who is a party to the agreement; or
- (d) a works committee that is a party to the agreement, without the necessity for a secret ballot decision on whether the application should be made.

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

**Approval for registration of enterprise agreement**

13I. (1) An enterprise agreement may be lodged with the registrar for approval for registration.

(2) The commission is to approve for registration each enterprise agreement so lodged, but only if the commission is satisfied:

- (a) that the agreement is not contrary to the public interest; and
- (b) that the agreement is not unfair, harsh or unconscionable; and
- (c) that the agreement was not entered into under duress; and
- (d) that the agreement complies with all other requirements made by this Division.

(3) An enterprise agreement that, in the opinion of the commission, fails to comply with the commission's wage fixation principles is not contrary to the public interest if the parties to it satisfy the commission:

- (a) that it will improve the productivity and efficiency of the enterprise concerned to such an extent as to justify failure to comply with those principles; and
- (b) that it is in the interests of the parties who will be bound by it.

(4) The commission may obtain and take into account the views of any State peak organisation as to whether or not an enterprise agreement is contrary to the public interest.

(5) Before an enterprise agreement is approved for registration, the registrar must forward a copy of the agreement for consideration by the Commissioner for Enterprise Agreements and the commission must take into account any submission concerning the agreement made, within such time as the registrar specifies, by the Commissioner.

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

(6) The functions of the commission under this section are to be exercised by a Deputy President designated by the President for the purposes of this section.

(7) In this section:

**"State peak organisation"** means the Labor Council of New South Wales and any association for employers that, in the opinion of the commission:

(a) operates primarily throughout New South Wales; and

(b) is representative of a significant number of member associations of employers;

**"wage fixation principles"** means principles established by the commission that apply to the determination of wages and conditions of employment, other than wages and conditions of employment fixed by enterprise agreements.

**Registration of enterprise agreement required**

13J. (1) The registrar is to register each enterprise agreement approved by the commission for registration.

(2) An enterprise agreement has no force or effect unless it is registered.

**Persons bound by enterprise agreement**

13K. A registered enterprise agreement, as in force for the time being, is binding on:

(a) the parties to the agreement; and

(b) each person from time to time employed in the enterprise for which the agreement was made who, whether or not a member of an industrial union or a works committee that is a party to the agreement or otherwise a named party to the agreement, is employed in a trade or occupation to which the agreement relates; and

(c) each successor to an enterprise employer who was a party to the agreement.



SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

**Register of enterprise agreements**

13L. (1) The registrar is to keep a register of all enterprise agreements (including amending enterprise agreements) that have been registered, notices of termination of such agreements and such other particulars as the registrar considers appropriate.

(2) The registrar is to permit any of the following persons without payment of any fee to inspect, and to make copies of, any document kept in the register:

- (a) a person carrying into effect provisions of this Act for enforcing the agreement;
- (b) a person carrying into effect provisions of this Act with the concurrence of the parties to the agreement;
- (c) a person, or any person of a class of persons, prescribed for the purposes of this section by the regulations.

(3) Any other person may inspect, or make copies of, any document kept in the register, but only on payment of the prescribed fee.

**Notice to be given of working conditions**

13M. (1) An employer of employees whose conditions of employment are affected by a registered enterprise agreement must cause a copy of the agreement, as in force for the time being, to be fixed and maintained in a conspicuous place in all premises to which the agreement applies so as to be easily read by employees in those premises.

(2) Before an employer bound by a registered enterprise agreement engages the services of a person as an employee who will be bound by conditions of employment fixed by a registered enterprise agreement, the employer must give the person:

- (a) access to a copy of the agreement for perusal by the person; or

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

- (b) notice of the existence of the agreement and an accurate summary of the provisions of the agreement that would be relevant to the person as an employee.

Maximum penalty: 10 penalty units.

**Restriction on duplication of special conditions**

13N. In the making of awards or orders, and in the giving of directions under this Act, the commission, conciliation commissioners and conciliation committees are not to have regard to provisions of enterprise agreements.

**Secret ballots under this Division**

13O. (1) Except as provided by subsection (2), a secret ballot under this Division must be conducted by a person (other than the enterprise employer or a person selected by that employer) on behalf of the employees or intending employees entitled to vote in the ballot, being a person who meets any other requirement that may be imposed by the regulations.

(2) If, within 14 days next following the purported holding of such a ballot, the registrar receives a written complaint from at least 20% of the persons entitled to vote in the election alleging specified irregularities in the conduct of the election and requesting that a further secret ballot be conducted by an independent person, the registrar may (if of the opinion that such action is justified) arrange with the persons concerned:

- (a) for the conduct of such a further secret ballot; and
- (b) for evidence of the result of the further ballot to be supplied to the registrar.

(3) The result of such a further ballot is to be disregarded if the registrar is not satisfied that it has been conducted in accordance with the registrar's directions.

(4) Before the registrar arranges for the conduct of a further secret ballot, the registrar must forward a copy of the complaint to the Commissioner for Enterprise

**SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued***

Agreements and must take into account any submission concerning the alleged irregularities made, within such time as the registrar specifies, by the Commissioner.

(5) The registrar may advise the commission of any such complaint received and the commission may make such orders for the stay of proceedings under this Division or otherwise as it considers appropriate.

**Division 3 - Works committees**

**Nature of works committee**

13P. A works committee is a committee formed in accordance with this Part by persons employed or intending to be employed in an enterprise in any one or more trades or occupations to represent persons so employed in the negotiating, making, varying and terminating of enterprise agreements.

**Decision to form works committee**

13Q. (1) Persons employed or intending to be employed in a single enterprise in any one or more trades or occupations and who intend to become bound by an enterprise agreement may, at a meeting held for the purpose, decide:

- (a) whether to form a works committee to represent persons employed or intending to be employed in the enterprise in those trades or occupations; and
- (b) if a works committee is to be formed, which of those persons will be the members of the committee.

(2) Any such decision must be supported in a secret ballot by at least 65% of the persons for the time being employed or intending to be employed in the enterprise in those trades or occupations.

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

**Composition of works committee**

13R. (1) A works committee must consist of not more than 8 persons who would become bound by any enterprise agreement to which the committee was a party.

(2) If the enterprise employer consents, the committee may consist of more persons.

**Term**

13S. (1) If an enterprise agreement has not been entered into by a works committee within 6 months after its formation, the committee is taken to be dissolved.

(2) If a works committee enters into an enterprise agreement within 6 months after its election, the committee is taken to be dissolved when the agreement is terminated.

**Decisions and procedure**

13T. (1) A decision supported by the majority of the members for the time being of a works committee is the decision of the committee.

(2) A works committee must elect a chairperson from among its members who is to have a deliberative vote and, in the event of an equality of votes, a second or casting vote.

(3) Except as provided by this section, a works committee may determine its own procedure.

**Casual vacancy**

13U. If a vacancy occurs in the office of a member of a works committee:

(a) the employees or intending employees for the time being represented by the committee may at a meeting elect in such manner as they think fit one of their number to fill the vacancy, and

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

- (b) pending such an election, the chairperson may appoint such an employee or intending employee to fill the vacant position.

**Dissolution**

13V. (1) A works committee may be dissolved at any time by a decision to dissolve the committee supported in a secret ballot by at least 65% of the persons for the time being employed or intending to be employed in the enterprise who are or would be bound by an enterprise agreement entered into by the committee.

(2) If a works committee is dissolved while an enterprise agreement is in force, any works committee formed in accordance with this Division within 30 days after the dissolution to represent the employees represented by the former committee is taken to be a party to the agreement instead of the former committee.

(3) If a works committee is dissolved while an enterprise agreement is in force and a further works committee is not so elected, the former works committee ceases to be a party to the agreement but persons from time to time employed in the enterprise who would have been bound by the agreement if the works committee had not been dissolved continue to be bound by the agreement as if each such person were a party to the agreement.

**Representation before the commission**

13W. In proceedings before the commission, a works committee may be represented by any of its members or, with the consent of the commission, by a barrister or solicitor.

**Secret ballots under this Division**

13X. A secret ballot under this Division must be conducted by a person (other than the enterprise employer or a person selected by that employer) on behalf of the employees or intending employees entitled to vote in the

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

ballot, being a person who meets any other requirement imposed by the regulations.

**Division 4 - Commissioner for Enterprise Agreements**

**Appointment**

13Y. A Commissioner for Enterprise Agreements may be appointed under and subject to the Public Sector Management Act 1988.

**Functions**

13Z. (1) The Commissioner for Enterprise Agreements is required:

- (a) to keep under review the operation of the provisions of this Act relating to enterprise agreements; and
- (b) when asked for assistance in that regard, to advise any person bound or considering whether to become bound by an enterprise agreement about their rights and obligations under this Part or under the agreement or proposed agreement; and
- (c) when asked for assistance in that regard, to advise any such person about conditions of employment under any award or industrial agreement that currently apply to the person; and
- (d) to promote the use of enterprise agreements; and
- (e) to make submissions, in such cases as the Commissioner considers appropriate, to the commission about whether or not approval should be given to the registration of an enterprise agreement or of its variation; and
- (f) to provide a report annually to the Minister on the Commissioner's activities during the year to which the report relates; and
- (g) at such times as the Minister directs, to report to the Minister on such matters as the Minister nominates; and

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

(h) to exercise or perform such other powers, authorities, duties or functions as may be conferred or imposed on the Commissioner by or under this or any other Act.

(2) The Commissioner may confer with any person or body, whether in New South Wales or elsewhere, about anything the Commissioner is authorised or required to do.

**PART 2 - CONSEQUENTIAL AMENDMENTS**

(1) Section 5 (**Definitions**):

(a) From section 5 (1), omit the definition of "Agreement", insert instead:

**"Agreement"** means an enterprise agreement or an industrial agreement.

(b) In section 5 (1), after the definition of "Employer", insert:

**"Enterprise agreement"** means an enterprise agreement registered under Part 1C.

(c) In section 5 (1), after the definition of "Vocational Training Board", insert:

**"Works committee"** means a works committee formed in accordance with Division 3 of Part 1C.

(2) Part 1A, heading:

Omit the heading to sections 6-10A, insert instead:

**PART 1A - INDUSTRIAL UNIONS**

(3) Part 1B, heading:

Omit the heading to sections 11 and 13, insert instead:

**PART 1B - INDUSTRIAL AGREEMENTS**

(4) Section 54 (**Existing awards and industrial agreements**):

(a) In section 54 (1), before "agreements", insert "industrial".

(b) In section 54, before "agreement" wherever occurring, insert "industrial".

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

- (5) Section 55 (**Awards and industrial agreements made after appointed day**):
- (a) Before "agreements" wherever occurring, insert "industrial".
  - (b) Before "agreement" wherever occurring, insert "industrial".
- (6) Section 56 (**Retrospective awards and industrial agreements**):
- (a) In section 56 (1), before "agreements", insert "industrial".
  - (b) In section 56 (1), before "agreement" wherever occurring, insert "industrial".
- (7) Section 58 (**Action on variation of basic wage**):
- (a) Before "agreement" wherever occurring, insert "industrial".
  - (b) Before "agreements" wherever occurring, insert "industrial".
- (8) Section 63 (**Ordinary working hours**):
- (a) From section 63 (1), omit "The ordinary", insert instead "Except where working hours are provided for in an enterprise agreement, the ordinary".
  - (b) In section 63 (1), before "agreements", insert "industrial".
  - (c) In section 63 (1) (a), before "agreement" wherever occurring, insert "industrial".
  - (d) In section 63 (1) (a), after "consent", insert "or by an enterprise agreement".
  - (e) In section 63 (1) (c), before "agreement" wherever occurring, insert "industrial".
  - (f) From section 63 (1) (c), omit "No", insert instead "Except where working hours are provided for in an enterprise agreement, no".



SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

- (g) In section 63 (1) (f), before "agreement", insert "industrial".
- (h) In section 63 (1) (g), after "subsections", insert "(1A)".
- (i) After section 63 (1), insert:
  - (1A) Subsection (1) (g) does not authorise the commission in court session to make an award affecting anything in an enterprise agreement.
- (j) In section 63 (2A), before "agreement" wherever occurring, insert "industrial".
- (k) In section 63 (6), before "agreement" wherever occurring, insert "industrial".
- (l) In section 63 (7), before "agreement" where secondly occurring, insert "industrial".
- (9) Section 63A (**Variation of certain awards and industrial agreements**):
  - Before "agreement" wherever occurring, insert "industrial".
- (10) Section 63C (**Penalty**):
  - After "agreement", insert "(other than an enterprise agreement)".
- (11) Section 66 (**Overtime**):
  - Omit the last paragraph, insert instead:
    - (2) For the purposes of this Part, "**overtime**" means time worked in excess of the days or hours limited by or under this Act or, in the case of an employee bound by an enterprise agreement, by the agreement.
- (12) Section 68 (**Overtime rates**):
  - Before "agreement" wherever occurring, insert "industrial".

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

- (13) Section 88F (**Power of commission to declare certain contracts void**):  
After section 88F (4), insert:  
(5) This section does not apply to an enterprise agreement.
- (14) Section 88FA (**Regulation of certain contracts**):  
After section 88FA (9), insert:  
(9A) This section does not apply to an enterprise agreement.
- (15) Section 90B (**Obsolete awards etc.**):  
Before "agreement" wherever occurring, insert "industrial".
- (16) Part 8B, Division 1, heading:  
Omit "or agreements".
- (17) Section 92 (**Recovery of wages etc.**):
- (a) In section 92 (1) (a), after "award" where firstly occurring, insert "or an enterprise agreement".
  - (b) From section 92 (1) (a), omit "award or", insert instead "award, enterprise agreement,".
  - (c) In section 92 (1) (b), after "award" wherever occurring, insert ", enterprise agreement".
  - (d) In section 92 (2) (b), after "award" wherever occurring, insert ", enterprise agreement".
  - (e) In section 92 (2A) (b), after "award", insert ", enterprise agreement".
  - (f) In section 92 (2A) (c), after "award" where firstly occurring, insert ", enterprise agreement".
  - (g) In section 92 (2A) (c), after "an award,", insert "enterprise agreement, industrial".

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

- (h) In section 92 (2D) (b), after "award", insert ", enterprise agreement".
  - (i) From section 92 (7), omit "industrial" where firstly and thirdly occurring.
- (18) Section 92A (**Certain payments may be made by cheque**):
- (a) From section 92A (2A) (a), omit "such industrial union or unions of employees which", insert instead "each industrial union that".
  - (b) In section 92A (2A) (a), after "application" where secondly occurring, insert "(or, if the employees affected by the application are bound by an enterprise agreement made with the employer otherwise than by an industrial union, each of the employees)".
  - (c) From section 92A (2A) (b), omit "union", insert instead "industrial union or employee".
  - (d) From section 92A (2A) (c), omit "the objecting union or unions", insert instead "each objecting industrial union or employee".
- (19) Section 92AA (**Certain payments may be made by electronic funds transfer etc.**):
- In section 92AA (1) (b), after "agreement,", insert "enterprise agreement,".
- (20) Section 93 (**Penalty for breach of award etc.**):
- (a) In section 93 (1) and (3), after "award," wherever occurring, insert "enterprise agreement,".
  - (b) In section 93 (2), after "award" wherever occurring, insert ", enterprise agreement".
  - (c) In section 93 (4), after "award" where firstly occurring, insert ", an enterprise agreement".
  - (d) In section 93 (4), after "agreement" where lastly occurring, insert ", or by the secretary of an industrial union or any

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

employee that is a party to or bound by the enterprise agreement,".

- (21) Section 94 (**Secretary of union etc. receiving money for breach of award etc.**):

After "award", insert ", enterprise agreement".

- (22) Section 95A (**Particulars of wages to be furnished to employees**):

(a) In section 95A (1), after "award" where firstly occurring, insert ", enterprise agreement".

(b) From section 95A (1), omit "award or agreement" wherever occurring, insert instead "award, enterprise agreement or industrial agreement".

(c) From section 95A (2) (b), omit "the industrial union or industrial unions", insert instead "each industrial union or works committee".

- (23) Section 96 (**Time-sheets and pay-sheets to be kept**):

In section 96 (1) (a), after "award", insert ", enterprise agreement".

- (24) Section 96A (**Power to amend**):

In section 96A (1), after "award," where firstly and secondly occurring, insert "enterprise agreement,".

- (25) Section 99 (**Illegal strikes**):

After section 99 (b), insert:

(c) Any strike by employees bound by an enterprise agreement.

- (26) Section 100 (**Penalty for illegal strike**):

At the end of the section, insert:

(2) In the event of an illegal strike occurring in an enterprise by employees bound by an enterprise agreement, the commission may order:

**SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued***

- (a) if one or more industrial unions are parties to the agreement - each such industrial union whose executive or members are taking part in or aiding or abetting or have taken part in or aided or abetted the strike; or
  - (b) if no industrial union is a party to the agreement - each employee who is bound by the agreement and who is taking part or has taken part in the strike, to pay a penalty not exceeding \$4,000.
- (27) **Section 127 (Appointment and powers of inspectors):**
- (a) In section 127 (1), after "force", insert "or in respect of an enterprise, within the meaning of Part 1C, that is the subject of an enterprise agreement".
  - (b) In section 127 (1) (a), (b) and (c), after "industry" wherever occurring, insert "or enterprise".
  - (c) In section 127 (1), after "award" where lastly occurring, insert ", enterprise agreement".
- (28) **Section 153B (Construction of this Part):**
- In section 153B (1) and (3), after "award," wherever occurring, insert "enterprise agreement, industrial".

**SCHEDULE 2 - AMENDMENT OF OTHER ACTS**

(Sec. 4)

**Annual Holidays Act 1944 No. 31**

**Section 2 (Definitions):**

From section 2 (1), omit the definition of "Agreement", insert instead:

**"Agreement" means:**

- (a) an industrial agreement in force under the Industrial Arbitration Act 1940; or
- (b) an enterprise agreement registered under that Act.

SCHEDULE 2 - AMENDMENT OF OTHER ACTS - *continued*

**Long Service Leave Act 1955 No. 38**

(1) Section 3 (**Definitions**):

In section 3 (1), after the definition of "Employer", insert:  
**"Enterprise agreement"** means an enterprise agreement registered under the Industrial Arbitration Act 1940.

(2) Section 4 (**Long service leave**):

(a) In section 4 (2) (a1) (i), after "Acts" where secondly occurring, insert "or by an enterprise agreement".

(b) From section 4 (2) (a1) (i), omit "or industrial agreement", insert instead ", industrial agreement or enterprise agreement".

(c) In section 4 (2) (a1) (iii), after "award", insert ", enterprise agreement".

(d) In section 4 (13) (a), at the end of the definition of "Award", insert:

; and

(c) an enterprise agreement.

(3) Section 5 (**Exemptions**):

In section 5 (1) (a), after "this Act,", insert "or by an enterprise agreement,".

**Long Service Leave (Metalliferous Mining Industry) Act 1963 No. 48**

(1) Section 3 (**Definitions**):

In section 3 (1), after the definition of "Employer", insert:  
**"Enterprise agreement"** means an enterprise agreement registered under the Industrial Arbitration Act 1940.

(2) Section 4 (**Long service leave**):

(a) In section 4 (2) (b) (i), after "Acts" where secondly occurring, insert "or by an enterprise agreement".

SCHEDULE 2 - AMENDMENT OF OTHER ACTS - *continued*

- (b) From section 4 (2) (b) (i), omit "or industrial agreement", insert instead ", industrial agreement or enterprise agreement".
- (c) In section 4 (2) (b) (iii), after "award", insert ", enterprise agreement".
- (d) In section 4 (13) (a), at the end of the definition of "Award", insert:
  - ; and
  - (c) an enterprise agreement.

(3) Section 5 (**Exemptions**):

In section 5 (1) (a), after "this Act", insert "or by an enterprise agreement,".

**Employment Protection Act 1982 No. 122**

(1) Section 4 (**Definitions**):

From section 4 (1), omit the definition of "agreement", insert instead:

"**agreement**" means an agreement within the meaning of the Principal Act;

(2) Section 14 (**Orders of Commission**):

In section 14 (2) (b) and (3), before "agreement" wherever occurring, insert "industrial".

**Essential Services Act 1988 No. 41**

Section 5 (**Relationship to other Acts etc.**):

In section 5 (c), after "award", insert ", enterprise agreement".

SCHEDULE 2 - AMENDMENT OF OTHER ACTS - *continued*

**Industrial and Commercial Training Act 1989 No. 77**

**Section 5 (Relationship with Industrial Arbitration Act 1940):**

Omit section 5 (b), insert instead:

- (b) the provisions of the Industrial Arbitration Act 1940, of any regulation, order or industrial award made under that Act or of any industrial agreement or enterprise agreement registered under that Act,
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SECOND PRINT

**INDUSTRIAL ARBITRATION (ENTERPRISE AGREEMENTS)  
AMENDMENT BILL 1990**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Industrial Arbitration Act 1940 No. 2
4. Amendment of other Acts

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL ARBITRATION ACT  
1940

PART 1 - AMENDMENT PROVIDING FOR ENTERPRISE AGREEMENTS

PART 2 - CONSEQUENTIAL AMENDMENTS

SCHEDULE 2 - AMENDMENT OF OTHER ACTS

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*This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

*Clerk of the Legislative Assembly.*  
*Legislative Assembly Chamber,*  
*Sydney, , 1990*

NEW SOUTH WALES



Act No. , 1990

An Act to amend the Industrial Arbitration Act 1940 with respect to enterprise agreements; and to amend certain other Acts consequentially.

*Industrial Arbitration (Enterprise Agreements) Amendment 1990*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Industrial Arbitration (Enterprise Agreements) Amendment Act 1990.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

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

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

**Amendment of other Acts**

4. Each Act specified in Schedule 2 is amended as set out in that Schedule.

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**SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940**

(Sec. 3)

**PART 1 - AMENDMENT PROVIDING FOR ENTERPRISE  
AGREEMENTS**

Part 1C (sections 13A-13Z):

After section 13, insert:

**PART 1C - ENTERPRISE AGREEMENTS**

**Division 1 - Definitions**

**Definitions**

13A. (1) In this Part:

"enterprise" means a business, undertaking or project;

"enterprise employer" means the employer or employers carrying on an enterprise;

"registered" means registered under this Part.

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

(2) For the purposes of this Part, enterprises carried on by corporations that are taken to be related to each other for the purposes of the Companies (New South Wales) Code may be taken to constitute one enterprise or separate enterprises.

**Division 2 - Enterprise agreements**

**Purpose of an enterprise agreement**

13B. The purpose of an enterprise agreement is to regulate (wholly or partly) the conditions of employment of persons who are employed in a single enterprise in any one or more trades or occupations.

**Effect of a registered enterprise agreement**

13C. (1) A registered enterprise agreement, as in force for the time being, is enforceable as if it were an award.

(2) The provisions of a registered enterprise agreement, as in force for the time being, prevail over the provisions of any award, industrial agreement or order of the commission that deal with the same matters in so far as they purport to apply to a person bound by the enterprise agreement.

(3) While a registered enterprise agreement is in force, the functions of the commission and of any conciliation commissioner or conciliation committee relating to conditions of employment fixed by the agreement are exercisable only with the concurrence of each party to the agreement.

**Parties to an enterprise agreement**

13D. (1) An enterprise agreement may be made between an enterprise employer and any one of the following:

- (a) one or more industrial unions of employees that represent persons employed or intending to be employed in the enterprise;

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

- (b) each of not less than 65% of the individuals employed or intending to be employed in one or more trades or occupations in the enterprise;
  - (c) a works committee formed under this Part to represent persons employed or intending to be employed in the enterprise.
- (2) Before an employee or intending employee or a works committee can become a party to an enterprise agreement, the proposed agreement must be approved in a secret ballot by not less than 65% of the persons who are employed or intend to be employed in the enterprise in the one or more trades or occupations to which the agreement is to apply.

**Content of an enterprise agreement**

13E. (1) An enterprise agreement must include provisions:

- (a) identifying the parties to the agreement, the enterprise for which it is made and the trades or occupations to which it relates; and
  - (b) fixing conditions of employment of a kind capable of being fixed by State awards; and
  - (c) identifying each award and industrial agreement (if any) that fixes conditions of employment that will apply to employees bound by the agreement but are conditions that are not fixed by the agreement; and
  - (d) setting out or adopting procedures to be followed by individual employees and parties subject to the agreement to avoid grievances and to settle them, if they should arise; and
  - (e) declaring that the agreement was not entered into under duress by any party to it.
- (2) An enterprise agreement applies to conditions of employment only at such places as the enterprise concerned was or was intended to be, or could have reasonably been expected to be, carried on when the agreement was made.

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

(3) An enterprise agreement may provide that it applies only to conditions of employment at a place or places specified in the agreement, despite subsection (2).

**Formal considerations**

13F. An enterprise agreement is required to be in writing and signed by or on behalf of all persons who are expressed to be parties to it.

**Term of enterprise agreement**

13G. (1) An enterprise agreement is required to specify its nominal term, which is to be not less than 12 months nor more than 3 years.

(2) An amending enterprise agreement may have a term equivalent to the residue of the term of the enterprise agreement it amends, even though the residue may be less than 12 months.

(3) Unless each of the parties enters into an agreement to terminate the enterprise agreement during its nominal term or after its nominal term has expired, the enterprise agreement can be terminated only at or after the expiration of its nominal term by one of the parties giving at least 3 months' notice of intention to terminate:

- (a) to the other party, or
- (b) if there are two or more other parties, to each other party.

(4) If the parties to the enterprise agreement (other than the enterprise employer) include individuals or a works committee, an agreement to terminate the enterprise agreement during its nominal term may be entered into by those individuals or that works committee only after a decision to do so supported in a secret ballot by not less than 65% of the persons for the time being employed in the enterprise in the one or more trades or occupations to which the enterprise agreement applies.

(5) Termination of the agreement is not effective unless the registrar has been given written notice of an agreement

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

to terminate or of service of the notice of intention to terminate.

**Variation of enterprise agreement**

13H. (1) The parties to an enterprise agreement may by mutual consent make a further such agreement that varies the former agreement.

(2) An enterprise agreement as varied from time to time must comply with the requirements made by this Division.

(3) If the parties to the enterprise agreement (other than the enterprise employer) include individuals or a works committee, such a further agreement to vary may be entered into by those individuals or that works committee only after a decision to do so supported in a secret ballot by not less than 65% of the persons for the time being employed in the enterprise in the one or more trades or occupations to which the enterprise agreement applies.

(4) Despite section 13C, the commission may vary the provisions of a registered enterprise agreement for the purpose of:

- (a) removing ambiguity or uncertainty; or
- (b) making an amendment the commission considers necessary to avoid a substantial risk of death or personal injury.

(5) A variation under subsection (4) may be made only on the application of:

- (a) the enterprise employer; or
- (b) an industrial union that is a party to the agreement; or
- (c) with the leave of the commission, an individual employee who is a party to the agreement; or
- (d) a works committee that is a party to the agreement, without the necessity for a secret ballot decision on whether the application should be made.



SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

**Approval for registration of enterprise agreement**

13I. (1) An enterprise agreement may be lodged with the registrar for approval for registration.

(2) The commission is to approve for registration each enterprise agreement so lodged, but only if the commission is satisfied:

- (a) that the agreement is not contrary to the public interest; and
- (b) that the agreement is not unfair, harsh or unconscionable; and
- (c) that the agreement was not entered into under duress; and
- (d) that the agreement complies with all other requirements made by this Division.

(3) An enterprise agreement that, in the opinion of the commission, fails to comply with the commission's wage fixation principles is not contrary to the public interest if the parties to it satisfy the commission:

- (a) that it will improve the productivity and efficiency of the enterprise concerned to such an extent as to justify failure to comply with those principles; and
- (b) that it is in the interests of the parties who will be bound by it.

(4) The commission may obtain and take into account the views of any State peak organisation as to whether or not an enterprise agreement is contrary to the public interest.

(5) Before an enterprise agreement is approved for registration, the registrar must forward a copy of the agreement for consideration by the Commissioner for Enterprise Agreements and the commission must take into account any submission concerning the agreement made, within such time as the registrar specifies, by the Commissioner.

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

(6) The functions of the commission under this section are to be exercised by a Deputy President designated by the President for the purposes of this section.

(7) In this section:

**"State peak organisation"** means the Labor Council of New South Wales and any association for employers that, in the opinion of the commission:

- (a) operates primarily throughout New South Wales; and
- (b) is representative of a significant number of member associations of employers;

**"wage fixation principles"** means principles established by the commission that apply to the determination of wages and conditions of employment, other than wages and conditions of employment fixed by enterprise agreements.

**Registration of enterprise agreement required**

13J. (1) The registrar is to register each enterprise agreement approved by the commission for registration.

(2) An enterprise agreement has no force or effect unless it is registered.

**Persons bound by enterprise agreement**

13K. A registered enterprise agreement, as in force for the time being, is binding on:

- (a) the parties to the agreement; and
- (b) each person from time to time employed in the enterprise for which the agreement was made who, whether or not a member of an industrial union or a works committee that is a party to the agreement or otherwise a named party to the agreement, is employed in a trade or occupation to which the agreement relates; and
- (c) each successor to an enterprise employer who was a party to the agreement.

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

**Register of enterprise agreements**

13L. (1) The registrar is to keep a register of all enterprise agreements (including amending enterprise agreements) that have been registered, notices of termination of such agreements and such other particulars as the registrar considers appropriate.

(2) The registrar is to permit any of the following persons without payment of any fee to inspect, and to make copies of, any document kept in the register:

- (a) a person carrying into effect provisions of this Act for enforcing the agreement;
- (b) a person carrying into effect provisions of this Act with the concurrence of the parties to the agreement;
- (c) a person, or any person of a class of persons, prescribed for the purposes of this section by the regulations.

(3) Any other person may inspect, or make copies of, any document kept in the register, but only on payment of the prescribed fee.

**Notice to be given of working conditions**

13M. (1) An employer of employees whose conditions of employment are affected by a registered enterprise agreement must cause a copy of the agreement, as in force for the time being, to be fixed and maintained in a conspicuous place in all premises to which the agreement applies so as to be easily read by employees in those premises.

(2) Before an employer bound by a registered enterprise agreement engages the services of a person as an employee who will be bound by conditions of employment fixed by a registered enterprise agreement, the employer must give the person:

- (a) access to a copy of the agreement for perusal by the person; or

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

- (b) notice of the existence of the agreement and an accurate summary of the provisions of the agreement that would be relevant to the person as an employee.

Maximum penalty: 10 penalty units.

**Restriction on duplication of special conditions**

13N. In the making of awards or orders, and in the giving of directions under this Act, the commission, conciliation commissioners and conciliation committees are not to have regard to provisions of enterprise agreements.

**Secret ballots under this Division**

13O. (1) Except as provided by subsection (2), a secret ballot under this Division must be conducted by a person (other than the enterprise employer or a person selected by that employer) on behalf of the employees or intending employees entitled to vote in the ballot, being a person who meets any other requirement that may be imposed by the regulations.

(2) If, within 14 days next following the purported holding of such a ballot, the registrar receives a written complaint from at least 20% of the persons entitled to vote in the election alleging specified irregularities in the conduct of the election and requesting that a further secret ballot be conducted by an independent person, the registrar may (if of the opinion that such action is justified) arrange with the persons concerned:

- (a) for the conduct of such a further secret ballot; and  
(b) for evidence of the result of the further ballot to be supplied to the registrar.

(3) The result of such a further ballot is to be disregarded if the registrar is not satisfied that it has been conducted in accordance with the registrar's directions.

(4) Before the registrar arranges for the conduct of a further secret ballot, the registrar must forward a copy of the complaint to the Commissioner for Enterprise

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

Agreements and must take into account any submission concerning the alleged irregularities made, within such time as the registrar specifies, by the Commissioner.

(5) The registrar may advise the commission of any such complaint received and the commission may make such orders for the stay of proceedings under this Division or otherwise as it considers appropriate.

**Division 3 - Works committees**

**Nature of works committee**

13P. A works committee is a committee formed in accordance with this Part by persons employed or intending to be employed in an enterprise in any one or more trades or occupations to represent persons so employed in the negotiating, making, varying and terminating of enterprise agreements.

**Decision to form works committee**

13Q. (1) Persons employed or intending to be employed in a single enterprise in any one or more trades or occupations and who intend to become bound by an enterprise agreement may, at a meeting held for the purpose, decide:

- (a) whether to form a works committee to represent persons employed or intending to be employed in the enterprise in those trades or occupations; and
- (b) if a works committee is to be formed, which of those persons will be the members of the committee.

(2) Any such decision must be supported in a secret ballot by at least 65% of the persons for the time being employed or intending to be employed in the enterprise in those trades or occupations.

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

**Composition of works committee**

13R. (1) A works committee must consist of not more than 8 persons who would become bound by any enterprise agreement to which the committee was a party.

(2) If the enterprise employer consents, the committee may consist of more persons.

**Term**

13S. (1) If an enterprise agreement has not been entered into by a works committee within 6 months after its formation, the committee is taken to be dissolved.

(2) If a works committee enters into an enterprise agreement within 6 months after its election, the committee is taken to be dissolved when the agreement is terminated.

**Decisions and procedure**

13T. (1) A decision supported by the majority of the members for the time being of a works committee is the decision of the committee.

(2) A works committee must elect a chairperson from among its members who is to have a deliberative vote and, in the event of an equality of votes, a second or casting vote.

(3) Except as provided by this section, a works committee may determine its own procedure.

**Casual vacancy**

13U. If a vacancy occurs in the office of a member of a works committee:

- (a) the employees or intending employees for the time being represented by the committee may at a meeting elect in such manner as they think fit one of their number to fill the vacancy, and

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

- (b) pending such an election, the chairperson may appoint such an employee or intending employee to fill the vacant position.

**Dissolution**

13V. (1) A works committee may be dissolved at any time by a decision to dissolve the committee supported in a secret ballot by at least 65% of the persons for the time being employed or intending to be employed in the enterprise who are or would be bound by an enterprise agreement entered into by the committee.

(2) If a works committee is dissolved while an enterprise agreement is in force, any works committee formed in accordance with this Division within 30 days after the dissolution to represent the employees represented by the former committee is taken to be a party to the agreement instead of the former committee.

(3) If a works committee is dissolved while an enterprise agreement is in force and a further works committee is not so elected, the former works committee ceases to be a party to the agreement but persons from time to time employed in the enterprise who would have been bound by the agreement if the works committee had not been dissolved continue to be bound by the agreement as if each such person were a party to the agreement.

**Representation before the commission**

13W. In proceedings before the commission, a works committee may be represented by any of its members or, with the consent of the commission, by a barrister or solicitor.

**Secret ballots under this Division**

13X. A secret ballot under this Division must be conducted by a person (other than the enterprise employer or a person selected by that employer) on behalf of the employees or intending employees entitled to vote in the

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

ballot, being a person who meets any other requirement imposed by the regulations.

**Division 4 - Commissioner for Enterprise Agreements**

**Appointment**

13Y. A Commissioner for Enterprise Agreements may be appointed under and subject to the Public Sector Management Act 1988.

**Functions**

13Z. (1) The Commissioner for Enterprise Agreements is required:

- (a) to keep under review the operation of the provisions of this Act relating to enterprise agreements; and
- (b) when asked for assistance in that regard, to advise any person bound or considering whether to become bound by an enterprise agreement about their rights and obligations under this Part or under the agreement or proposed agreement; and
- (c) when asked for assistance in that regard, to advise any such person about conditions of employment under any award or industrial agreement that currently apply to the person; and
- (d) to promote the use of enterprise agreements; and
- (e) to make submissions, in such cases as the Commissioner considers appropriate, to the commission about whether or not approval should be given to the registration of an enterprise agreement or of its variation; and
- (f) to provide a report annually to the Minister on the Commissioner's activities during the year to which the report relates; and
- (g) at such times as the Minister directs, to report to the Minister on such matters as the Minister nominates; and



SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

(h) to exercise or perform such other powers, authorities, duties or functions as may be conferred or imposed on the Commissioner by or under this or any other Act.

(2) The Commissioner may confer with any person or body, whether in New South Wales or elsewhere, about anything the Commissioner is authorised or required to do.

**PART 2 - CONSEQUENTIAL AMENDMENTS**

(1) Section 5 (Definitions):

(a) From section 5 (1), omit the definition of "Agreement", insert instead:

**"Agreement"** means an enterprise agreement or an industrial agreement.

(b) In section 5 (1), after the definition of "Employer", insert:  
**"Enterprise agreement"** means an enterprise agreement registered under Part 1C.

(c) In section 5 (1), after the definition of "Vocational Training Board", insert:

**"Works committee"** means a works committee formed in accordance with Division 3 of Part 1C.

(2) Part 1A, heading:

Omit the heading to sections 6-10A, insert instead:

**PART 1A - INDUSTRIAL UNIONS**

(3) Part 1B, heading:

Omit the heading to sections 11 and 13, insert instead:

**PART 1B - INDUSTRIAL AGREEMENTS**

(4) Section 54 (Existing awards and industrial agreements):

(a) In section 54 (1), before "agreements", insert "industrial".

(b) In section 54, before "agreement" wherever occurring, insert "industrial".

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

- (5) Section 55 (**Awards and industrial agreements made after appointed day**):
  - (a) Before "agreements" wherever occurring, insert "industrial".
  - (b) Before "agreement" wherever occurring, insert "industrial".
- (6) Section 56 (**Retrospective awards and industrial agreements**):
  - (a) In section 56 (1), before "agreements", insert "industrial".
  - (b) In section 56 (1), before "agreement" wherever occurring, insert "industrial".
- (7) Section 58 (**Action on variation of basic wage**):
  - (a) Before "agreement" wherever occurring, insert "industrial".
  - (b) Before "agreements" wherever occurring, insert "industrial".
- (8) Section 63 (**Ordinary working hours**):
  - (a) From section 63 (1), omit "The ordinary", insert instead "Except where working hours are provided for in an enterprise agreement, the ordinary".
  - (b) In section 63 (1), before "agreements", insert "industrial".
  - (c) In section 63 (1) (a), before "agreement" wherever occurring, insert "industrial".
  - (d) In section 63 (1) (a), after "consent", insert "or by an enterprise agreement".
  - (e) In section 63 (1) (c), before "agreement" wherever occurring, insert "industrial".
  - (f) From section 63 (1) (c), omit "No", insert instead "Except where working hours are provided for in an enterprise agreement, no".

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

- (g) In section 63 (1) (f), before "agreement", insert "industrial".
- (h) In section 63 (1) (g), after "subsections", insert "(1A)".
- (i) After section 63 (1), insert:
  - (1A) Subsection (1) (g) does not authorise the commission in court session to make an award affecting anything in an enterprise agreement.
- (j) In section 63 (2A), before "agreement" wherever occurring, insert "industrial".
- (k) In section 63 (6), before "agreement" wherever occurring, insert "industrial".
- (l) In section 63 (7), before "agreement" where secondly occurring, insert "industrial".
- (9) **Section 63A (Variation of certain awards and industrial agreements):**
  - Before "agreement" wherever occurring, insert "industrial".
- (10) **Section 63C (Penalty):**
  - After "agreement", insert "(other than an enterprise agreement)".
- (11) **Section 66 (Overtime):**
  - Omit the last paragraph, insert instead:
    - (2) For the purposes of this Part, "overtime" means time worked in excess of the days or hours limited by or under this Act or, in the case of an employee bound by an enterprise agreement, by the agreement.
- (12) **Section 68 (Overtime rates):**
  - Before "agreement" wherever occurring, insert "industrial".

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

- (13) Section 88F (**Power of commission to declare certain contracts void**):  
After section 88F (4), insert:  
(5) This section does not apply to an enterprise agreement.
- (14) Section 88FA (**Regulation of certain contracts**):  
After section 88FA (9), insert:  
(9A) This section does not apply to an enterprise agreement.
- (15) Section 90B (**Obsolete awards etc.**):  
Before "agreement" wherever occurring, insert "industrial".
- (16) Part 8B, Division 1, heading:  
Omit "or agreements".
- (17) Sections 91X and 91Y:  
In sections 91X (1) and 91Y (1), after "award" wherever occurring, insert ", enterprise agreement".
- (18) Section 92 (**Recovery of wages etc.**):
- (a) In section 92 (1) (a), after "award" where firstly occurring, insert "or an enterprise agreement".
  - (b) From section 92 (1) (a), omit "award or", insert instead "award, enterprise agreement,".
  - (c) In section 92 (1) (b), after "award" wherever occurring, insert ", enterprise agreement".
  - (d) In section 92 (2) (b), after "award" wherever occurring, insert ", enterprise agreement".
  - (e) In section 92 (2A) (b), after "award", insert ", enterprise agreement".
  - (f) In section 92 (2A) (c), after "award" where firstly occurring, insert ", enterprise agreement".

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

- (g) In section 92 (2A) (c), after "an award,", insert "enterprise agreement, industrial".
  - (h) In section 92 (2D) (b), after "award", insert ", enterprise agreement".
  - (i) From section 92 (7), omit "industrial" where firstly and thirdly occurring.
- (19) Section 92A (**Certain payments may be made by cheque**):
- (a) From section 92A (2A) (a), omit "such industrial union or unions of employees which", insert instead "each industrial union that".
  - (b) In section 92A (2A) (a), after "application" where secondly occurring, insert "(or, if the employees affected by the application are bound by an enterprise agreement made with the employer otherwise than by an industrial union, each of the employees)".
  - (c) From section 92A (2A) (b), omit "union", insert instead "industrial union or employee".
  - (d) From section 92A (2A) (c), omit "the objecting union or unions", insert instead "each objecting industrial union or employee".
- (20) Section 92AA (**Certain payments may be made by electronic funds transfer etc.**):
- In section 92AA (1) (b), after "agreement,", insert "enterprise agreement,".
- (21) Section 93 (**Penalty for breach of award etc.**):
- (a) In section 93 (1) and (3), after "award," wherever occurring, insert "enterprise agreement,".
  - (b) In section 93 (2), after "award" wherever occurring, insert ", enterprise agreement".
  - (c) In section 93 (4), after "award" where firstly occurring, insert ", an enterprise agreement".

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

- (d) In section 93 (4), after "agreement" where lastly occurring, insert ", or by the secretary of an industrial union or any employee that is a party to or bound by the enterprise agreement,".
- (22) Section 94 (**Secretary of union etc. receiving money for breach of award etc.**):
  - After "award", insert ", enterprise agreement".
- (23) Section 95 (**Penalty for unlawful dismissal**):
  - (a) From section 95 (1) (b), omit "industrial agreement or an award", insert instead "award, enterprise agreement or industrial agreement".
  - (b) In section 95 (1) (b1), after "award", insert ", enterprise agreement".
  - (c) At the end of section 95 (1) (d), insert:
    - ; or
    - (e) after applying to the enterprise employer for leave without pay for the purpose, and after that employer has unreasonably refused leave, has been absent from work through being engaged in other duties as a member of a works committee in respect of a matter related to the enterprise the subject of an enterprise agreement to which the works committee is a party,
  - (d) In section 95 (1), after "paragraph (d)", insert "or (e)".
  - (e) At the end of section 95 (2) (b), insert:
    - ; or
    - (c) where the employee alleged to have been dismissed, injured or prejudiced is bound by an enterprise agreement (other than such an agreement to which an industrial union is a party) - by the employee.

SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued*

- (24) Section 95A (**Particulars of wages to be furnished to employees**):
- (a) In section 95A (1), after "award" where firstly occurring, insert ", enterprise agreement".
  - (b) From section 95A (1), omit "award or agreement" wherever occurring, insert instead "award, enterprise agreement or industrial agreement".
  - (c) From section 95A (2) (b), omit "the industrial union or industrial unions", insert instead "each industrial union or works committee".
- (25) Section 96 (**Time-sheets and pay-sheets to be kept**):
- In section 96 (1) (a), after "award", insert ", enterprise agreement".
- (26) Section 96A (**Power to amend**):
- In section 96A (1), after "award," where firstly and secondly occurring, insert "enterprise agreement,".
- (27) Section 99 (**Illegal strikes**):
- After section 99 (b), insert:
- (c) Any strike by employees bound by an enterprise agreement.
- (28) Section 100 (**Penalty for illegal strike**):
- At the end of the section, insert:
- (2) In the event of an illegal strike occurring in an enterprise by employees bound by an enterprise agreement, the commission may order:
    - (a) if one or more industrial unions are parties to the agreement - each such industrial union whose executive or members are taking part in or aiding or abetting or have taken part in or aided or abetted the strike; or

**SCHEDULE 1 - AMENDMENT OF THE INDUSTRIAL  
ARBITRATION ACT 1940 - *continued***

- (b) if no industrial union is a party to the agreement - each employee who is bound by the agreement and who is taking part or has taken part in the strike, to pay a penalty not exceeding \$4,000.
- (29) **Section 127 (Appointment and powers of inspectors):**
- (a) In section 127 (1), after "force", insert "or in respect of an enterprise, within the meaning of Part 1C, that is the subject of an enterprise agreement".
- (b) In section 127 (1) (a), (b) and (c), after "industry" wherever occurring, insert "or enterprise".
- (c) In section 127 (1), after "award" where lastly occurring, insert ", enterprise agreement".
- (30) **Section 153B (Construction of this Part):**
- In section 153B (1) and (3), after "award," wherever occurring, insert "enterprise agreement, industrial".

**SCHEDULE 2 - AMENDMENT OF OTHER ACTS**

(Sec. 4)

**Annual Holidays Act 1944 No. 31**

**Section 2 (Definitions):**

From section 2 (1), omit the definition of "Agreement", insert instead:

**"Agreement" means:**

- (a) an industrial agreement in force under the Industrial Arbitration Act 1940; or
- (b) an enterprise agreement registered under that Act.

**Long Service Leave Act 1955 No. 38**

**(1) Section 3 (Definitions):**

In section 3 (1), after the definition of "Employer", insert:



SCHEDULE 2 - AMENDMENT OF OTHER ACTS - *continued*

**"Enterprise agreement"** means an enterprise agreement registered under the Industrial Arbitration Act 1940.

(2) Section 4 (**Long service leave**):

- (a) In section 4 (2) (a1) (i), after "Acts" where secondly occurring, insert "or by an enterprise agreement".
- (b) From section 4 (2) (a1) (i), omit "or industrial agreement", insert instead ", industrial agreement or enterprise agreement".
- (c) In section 4 (2) (a1) (iii), after "award", insert ", enterprise agreement".
- (d) In section 4 (13) (a), at the end of the definition of "Award", insert:
  - ; and
  - (c) an enterprise agreement.

(3) Section 5 (**Exemptions**):

In section 5 (1) (a), after "this Act", insert "or by an enterprise agreement,".

**Long Service Leave (Metalliferous Mining Industry) Act 1963 No. 48**

(1) Section 3 (**Definitions**):

In section 3 (1), after the definition of "Employer", insert:  
**"Enterprise agreement"** means an enterprise agreement registered under the Industrial Arbitration Act 1940.

(2) Section 4 (**Long service leave**):

- (a) In section 4 (2) (b) (i), after "Acts" where secondly occurring, insert "or by an enterprise agreement".
- (b) From section 4 (2) (b) (i), omit "or industrial agreement", insert instead ", industrial agreement or enterprise agreement".
- (c) In section 4 (2) (b) (iii), after "award", insert ", enterprise agreement".

SCHEDULE 2 - AMENDMENT OF OTHER ACTS - *continued*

(d) In section 4 (13) (a), at the end of the definition of "Award", insert:

; and

(c) an enterprise agreement.

(3) Section 5 (**Exemptions**):

In section 5 (1) (a), after "this Act", insert "or by an enterprise agreement,".

**Employment Protection Act 1982 No. 122**

(1) Section 4 (**Definitions**):

From section 4 (1), omit the definition of "agreement", insert instead:

"**agreement**" means an agreement within the meaning of the Principal Act;

(2) Section 14 (**Orders of Commission**):

In section 14 (2) (b) and (3), before "agreement" wherever occurring, insert "industrial".

**Essential Services Act 1988 No. 41**

Section 5 (**Relationship to other Acts etc.**):

In section 5 (c), after "award", insert ", enterprise agreement".

**Industrial and Commercial Training Act 1989 No. 77**

Section 5 (**Relationship with Industrial Arbitration Act 1940**):

Omit section 5 (b), insert instead:

(b) the provisions of the Industrial Arbitration Act 1940, of any regulation, order or industrial award made under that Act or of any industrial agreement or enterprise agreement registered under that Act,