

**INDUSTRIAL ARBITRATION (RETAIL TRADE)
AMENDMENT ACT 1988 No. 97**

NEW SOUTH WALES



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4. Consequential amendment of Factories, Shops and Industries Act 1962 No. 43

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SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF FACTORIES, SHOPS AND
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**INDUSTRIAL ARBITRATION (RETAIL TRADE) AMENDMENT ACT
1988 No. 97**

NEW SOUTH WALES



Act No. 97, 1988

An Act to amend the Industrial Arbitration Act 1940 so as to abolish the Retail Trade Industrial Tribunal; to amend the Factories, Shops and Industries Act 1962 consequentially; and for related purposes. [Assented to 19 December 1988]

Industrial Arbitration (Retail Trade) Amendment 1988

The Legislature of New South Wales enacts:

Short title

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

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.

Consequential amendment of Factories, Shops and Industries Act 1962 No. 43

4. The Factories, Shops and Industries Act 1962 is amended as set out in Schedule 2.

SCHEDULE 1—AMENDMENT OF INDUSTRIAL ARBITRATION ACT 1940

(Sec. 3)

(1) Section 30 (**Jurisdiction**)—

After section 30 (2), insert:

(3) The jurisdiction and powers conferred on the commission by this Act shall be taken to include the jurisdiction and powers conferred on the commission by section 91D of the Factories, Shops and Industries Act 1962.

(2) Part 3, Division 7 (**Retail trade industry**) (ss. 38N–38V)—

Omit the Division.

(3) Schedule 5 (**Provisions Relating to the Tribunal**)—

Omit the Schedule.

(4) Schedule 6 (**Savings and Transitional Provisions**)—

After clause 1, insert:

Industrial Arbitration (Retail Trade) Amendment Act 1988

Transitional

2. The Retail Trade Industrial Tribunal is abolished and any matter (including an appeal under section 91D of the Factories, Shops and Industries Act 1962) pending before or partly heard by the Tribunal immediately before its abolition may be dealt with or may continue to be heard by the commission.

*Industrial Arbitration (Retail Trade) Amendment 1988***SCHEDULE 1—AMENDMENT OF INDUSTRIAL ARBITRATION
ACT 1940—continued****Saving of orders, awards, rulings or decisions under s. 38T**

3. An order, award, ruling or decision made under section 38T at any time and in force immediately before the abolition of the Tribunal shall, for the purposes of this Act, be taken to be an order, award, ruling or decision made at that time by a member of the commission sitting alone.

Saving of awards etc. under s. 38v

4. A variation of or an amendment to the terms of an award or a new award made under section 38v and in force immediately before the abolition of the Tribunal shall have the same effect as it would have had if Division 7 of Part 3 had not been repealed.

**SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF FACTORIES,
SHOPS AND INDUSTRIES ACT 1962**

(Sec. 4)

(1) Part 4, Division 3A—

Omit the heading, insert instead:

Division 3A—Appeals relating to retail shops**(2) Section 91A (Definitions)—**

Omit the definition of “Tribunal”.

(3) Sections 91B (Functions of Tribunal), 91C (Special provisions relating to reports by Tribunal)—

Omit the sections.

(4) Section 91D (Appeals to Industrial Commission)—

(a) Omit “Tribunal” wherever occurring, insert instead “Commission”.

(b) Section 91D (1)—

Omit “in accordance with the regulations and”.

(c) Section 91D (2)—

Omit the subsection.

Industrial Arbitration (Retail Trade) Amendment 1988

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF FACTORIES,
SHOPS AND INDUSTRIES ACT 1962—*continued*

(d) After section 91D (4), insert:

(5) In this section—

“Commission” means the Industrial Commission of New
South Wales.

[*Minister's second reading speech made in—
Legislative Assembly on 13 October 1988
Legislative Council on 7 December 1988*]





INDUSTRIAL ARBITRATION (RETAIL TRADE) AMENDMENT BILL 1988

NEW SOUTH WALES



EXPLANATORY NOTE

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

The objects of this Bill are—

- (a) to abolish the Retail Trade Industrial Tribunal so that its exclusive jurisdiction under the Industrial Arbitration Act 1940 concerning retail trade industrial matters will revert to the Industrial Commission; and
- (b) to provide for the hearing and determination by that Commission of certain appeals relating to retail shops that may presently be made under the Factories, Shops and Industries Act 1962 to that Tribunal; and
- (c) to make certain transitional and savings provisions as a consequence of the proposed abolition of that Tribunal.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

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 the Factories, Shops and Industries Act 1962.

SCHEDULE 1—AMENDMENT OF INDUSTRIAL ARBITRATION ACT 1940

Abolition of the Retail Trade Industrial Tribunal

The Bill repeals the provisions of the Act (sections 38N–38V and Schedule 5) that constitute the Retail Trade Industrial Tribunal, that specify its jurisdiction in dealing with retail trade matters under the Act and that make detailed arrangements for its members (Schedule 1 (2) and (3)).

Industrial Arbitration (Retail Trade) Amendment 1988

Expansion of Commission's jurisdiction and powers

The effect of repealing those provisions will be to return to the Commission its jurisdiction and powers relating to retail trade industrial matters.

The Bill also amends section 30 (jurisdiction) of the Act because, as explained below, certain appeals relating to retail shops will be made to the Commission instead of the Tribunal (Schedule 1 (1)).

Transitional and savings provisions

The Bill inserts proposed clauses 2-4 into Schedule 6 to the Act. These clauses formally abolish the Tribunal and save orders, awards, rulings and decisions of the Tribunal. Provision is also made for matters that have been commenced before or been partly heard by the Tribunal before its abolition to be dealt with or continued before the Commission (Schedule 1 (4)).

**SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF FACTORIES, SHOPS
AND INDUSTRIES ACT 1962**

Abolition of Tribunal's functions

The Bill repeals or appropriately amends all provisions of Part 4 of the Act (relating to the hours of trade or work in certain industries) conferring functions on or relating to the Tribunal (Schedule 2 (1)-(3)).

Appeals relating to retail shops

The Bill amends section 91D of the Act so as to provide that appeals presently available against decisions of the Secretary of the Department of Industrial Relations and Employment about—

- * the classification of retail shops; and
- * the registration or deregistration of retail shops as small shops; and
- * exemptions from the provisions of Division 3 of that Part that relate to the opening and closing hours of retail shops,

are to be made to the Commission (constituted by a single member) instead of the Tribunal.

To the limited extent provided by section 14 of the Industrial Arbitration Act 1940, an appeal lies to the Commission in court session from the decision of such a single member (Schedule 2 (4)).

INDUSTRIAL ARBITRATION (RETAIL TRADE) AMENDMENT BILL 1988

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SCHEDULE 1—AMENDMENT OF INDUSTRIAL ARBITRATION ACT 1940

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF FACTORIES, SHOPS AND
INDUSTRIES ACT 1962



**INDUSTRIAL ARBITRATION (RETAIL TRADE)
AMENDMENT BILL 1988**

NEW SOUTH WALES



No. , 1988

A BILL FOR

An Act to amend the Industrial Arbitration Act 1940 so as to abolish the Retail Trade Industrial Tribunal; to amend the Factories, Shops and Industries Act 1962 consequentially; and for related purposes.

Industrial Arbitration (Retail Trade) Amendment 1988

The Legislature of New South Wales enacts:

Short title

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

5 Commencement

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

Amendment of Industrial Arbitration Act 1940 No. 2

10 1. 3. The Industrial Arbitration Act 1940 is amended as set out in Schedule

Consequential amendment of Factories, Shops and Industries Act 1962 No. 43

4. The Factories, Shops and Industries Act 1962 is amended as set out in Schedule 2.

15 SCHEDULE 1—AMENDMENT OF INDUSTRIAL ARBITRATION ACT 1940

(Sec. 3)

(1) Section 30 (**Jurisdiction**)—

After section 30 (2), insert:

20 (3) The jurisdiction and powers conferred on the commission by this Act shall be taken to include the jurisdiction and powers conferred on the commission by section 91D of the Factories, Shops and Industries Act 1962.

(2) Part 3, Division 7 (**Retail trade industry**) (ss. 38N–38V)—

25 Omit the Division.

(3) Schedule 5 (**Provisions Relating to the Tribunal**)—

Omit the Schedule.

(4) Schedule 6 (**Savings and Transitional Provisions**)—

After clause 1, insert:

30 *Industrial Arbitration (Retail Trade) Amendment Act 1988*

Transitional

35 2. The Retail Trade Industrial Tribunal is abolished and any matter (including an appeal under section 91D of the Factories, Shops and Industries Act 1962) pending before or partly heard by the Tribunal immediately before its abolition may be dealt with or may continue to be heard by the commission.

SCHEDULE 1—AMENDMENT OF INDUSTRIAL ARBITRATION
ACT 1940—*continued*

Saving of orders, awards, rulings or decisions under s. 38t

3. An order, award, ruling or decision made under section 38t at any time and in force immediately before the abolition of the Tribunal shall, for the purposes of this Act, be taken to be an order, award, ruling or decision made at that time by a member of the commission sitting alone.

Saving of awards etc. under s. 38v

4. A variation of or an amendment to the terms of an award or a new award made under section 38v and in force immediately before the abolition of the Tribunal shall have the same effect as it would have had if Division 7 of Part 3 had not been repealed.

SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF FACTORIES,
SHOPS AND INDUSTRIES ACT 1962

(Sec. 4)

(1) Part 4, Division 3A—

Omit the heading, insert instead:

Division 3A—Appeals relating to retail shops

(2) Section 91A (**Definitions**)—

Omit the definition of “Tribunal”.

(3) Sections 91B (**Functions of Tribunal**), 91C (**Special provisions relating to reports by Tribunal**)—

Omit the sections.

(4) Section 91D (**Appeals to Industrial Commission**)—

(a) Omit “Tribunal” wherever occurring, insert instead “Commission”.

(b) Section 91D (1)—

Omit “in accordance with the regulations and”.

(c) Section 91D (2)—

Omit the subsection.

(d) After section 91D (4), insert:

(5) In this section—

“Commission” means the Industrial Commission of New South Wales.

