

FIRST PRINT

## INDUSTRIAL COURT BILL 1990

NEW SOUTH WALES



### EXPLANATORY NOTE

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

This Bill is cognate with the Industrial Relations Bill 1990 and the Industrial Legislation (Repeals, Amendments and Savings) Bill 1990.

The object of this Bill is to provide for the establishment of the Industrial Court of New South Wales to exercise certain functions that, before the enactment of the proposed Industrial Relations Act 1990 and proposed cognate amendments to other Acts, would have been exercisable by the Industrial Commission constituted under the Industrial Arbitration Act 1940. The functions to be exercised are those that would be more appropriate for exercise by a court than by the proposed Industrial Relations Commission.

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#### PART 1 - PRELIMINARY

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

**Clause 2** provides (with some exceptions) for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** contains definitions for the purposes of the proposed Act.

#### PART 2 - THE INDUSTRIAL COURT

**Clause 4** establishes the Industrial Court of New South Wales consisting of a Chief Judge, a Deputy Chief Judge, and other Judges, appointed by the Governor.

**Clause 5** authorises the Governor to appoint as the Chief Judge, as the Deputy Chief Judge, and as other Judges, of the Court persons having appropriate qualifications.

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**Clause 6** confers on a Judge of the Court the same rank, title, status, precedence and rights as a Judge of the Supreme Court and provides for the remuneration of the Chief Judge, the Deputy Chief Judge and the other Judges.

**Clause 7** provides for the Deputy Chief Judge to act as Chief Judge during the absence of the Chief Judge or a vacancy in the office of Chief Judge and enables the next senior Judge to act as Chief Judge if the Chief Judge and Deputy Chief Judge are both absent or there is a vacancy in both offices.

**Clause 8** enables the Governor to appoint Acting Judges.

**Clause 9** provides for the appointment of a Registrar, a Deputy Registrar and other staff, and for their functions.

### **PART 3 - FUNCTIONS OF THE COURT**

**Clause 10** confers on the Court the jurisdiction conferred by the proposed Act and any other Act. It also provides for the jurisdiction of the Court to be exercised by a Judge sitting alone unless the matter is one in respect of which jurisdiction is conferred on the Full Court.

**Clause 11** enables the Court to determine a question referred to it in relation to the interpretation, application or operation of an award or agreement.

**Clause 12** provides for the constitution and jurisdiction of the Full Court.

**Clause 13** requires an appeal to the Court (including the Full Court) to be determined on the evidence given in relation to the decision appealed against unless the Act conferring the right of appeal provides otherwise or the Court calls for fresh or new evidence.

**Clause 14** provides for the operation of the Anti-Discrimination Act 1977 in relation to the jurisdiction of the Court.

**Clause 15** makes a decision of the Court final except as determined on the exercise of a right of appeal to the Full Court. However, the provision is not to affect certain powers of the Supreme Court or a decision of the Full Court in relation to a secondary boycott.

**Clause 16** provides for the punishment of a person in contempt of the Court.

### **PART 4 - INDUSTRIAL ACTION: INJUNCTIONS AND ENFORCEMENT OF DISPUTE ORDERS**

**Clause 17** refers to the power of the Court to grant an injunction under Division 2 of Part 3 of the proposed Industrial Relations Act 1990 if industrial action is taking place, or is threatened, in relation to an industrial matter for which provision is made by an award or agreement the nominal term of which has not expired. An injunction would require a party involved in, or affected by, the actual or threatened industrial action to act, or refrain from acting, in a manner specified by the order granting the injunction.

**Clause 18** refers to the power of the Court to make an order as a consequence of a failure to comply with a dispute order that was made by the proposed Industrial

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Relations Commission because industrial action has been taking place, or threatened, in the circumstances set out in that section (which do not involve industrial action concerning settled rights).

**Clause 19** declares that rules may be made by the Court with respect to matters concerning injunctions and orders for the enforcement of dispute orders.

### **PART 5 - VOID CONTRACTS AND REGULATED CONTRACTS**

#### **Division 1 - Void contracts**

**Clause 20** would enable the Court to declare void, or vary, a contract or arrangement for the performance of work if the Court considers the contract or arrangement to be unfair, harsh, unconscionable or against the public interest. The Court would also be able to make such a declaration in the case of a contract or arrangement that provides less remuneration than that which would be payable by law if the person were an employee.

**Clause 21** would enable the Court to make an order prohibiting a person from entering into further contracts or arrangements of a kind in respect of which the Court has made an order referred to in clause 20.

**Clause 22** deals with the making of an application for an order under the proposed Division.

#### **Division 2 - Regulated contracts**

**Clause 23** defines the expressions "building work", "door-to-door handbill delivery work" and "door-to-door sales work" used in the proposed Division.

**Clause 24** applies (with some exceptions) the proposed Division to a contract for the carrying out of work of a kind defined in clause 23.

**Clause 25** would enable the Court to find that a contract to which the proposed Division applies is unfair, harsh, unconscionable or against the public interest.

#### **Division 3 - Certification of finding**

**Clause 26** requires the Registrar of the Court to issue to the Industrial Registrar a certificate of any finding made under proposed Division 1 or 2 that a contract to which the Division applies is unfair, harsh, unconscionable or against the public interest. On such a certificate being provided, the Industrial Relations Commission would act under the proposed Industrial Relations Act 1990 to determine the minimum rate at which a person is to be remunerated under a contract of the kind in respect of which the certificate was issued.

### **PART 6 - MISCELLANEOUS**

**Clause 27** provides for the proceedings of the Court to be heard in open court unless the Court decides otherwise.

**Clause 28** enables a person to appear before the Court personally, or by a barrister, solicitor or agent.

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**Clause 29** provides for the circumstances in which the Crown may appear before the Court or in which the Minister administering the proposed Industrial Relations Act 1990 or certain organisations may intervene in proceedings before the Court.

**Clause 30** deals with matters relating to the issue of Court process.

**Clause 31** requires judicial notice to be taken of the signature of a Judge of the Court, the Registrar and the Deputy Registrar.

**Clause 32** confers on the Court certain powers of the Supreme Court including powers with respect to the attendance and examination of witnesses, production, discovery and inspection of documents, contempt of the Court and the prosecution of a witness for perjury.

**Clause 33** deals with the powers of the Court in relation to the making of amendments and the effect and rectification of irregularities.

**Clause 34** deals with the powers of the Court in relation to costs.

**Clause 35** enables the Registrar to assess and certify costs ordered by the Court to be paid and to certify the amount of any other payment (not being a penalty) ordered by the Court. On a certificate of the Registrar being filed in the appropriate court it operates as a judgment for an amount equal to the certified amount.

**Clause 36** confers on the Court the same jurisdiction in relation to offences as is conferred on the Supreme Court by the Supreme Court (Summary Jurisdiction) Act 1967.

**Clause 37** deals with the application in relation to a corporation of a provision of the proposed Act under which it is necessary to establish a state of mind.

**Clause 38** provides for preservation of the confidentiality of trade secrets.

**Clause 39** deals with the making of rules of the Court including the making of rules by adopting rules in force under the Supreme Court Act 1970.

**Clause 40** gives effect to the transitional provisions contained in Schedule 1.

**Clause 41** enables the Governor to make regulations for the purposes of the proposed Act including regulations fixing Court fees.

### **SCHEDULE 1 - TRANSITIONAL PROVISIONS**

**Clause 1** defines certain expressions.

**Clause 2** requires the Minister to make certain offers of appointment as Chief Judge of the Court, Deputy Chief Judge of the Court, or Judge of the Court and requires the Minister to make the recommendation to the Governor necessary to give effect to acceptance of such an offer.

**Clause 3** provides for continuity of service of a member of the Industrial Commission appointed as a Judge.

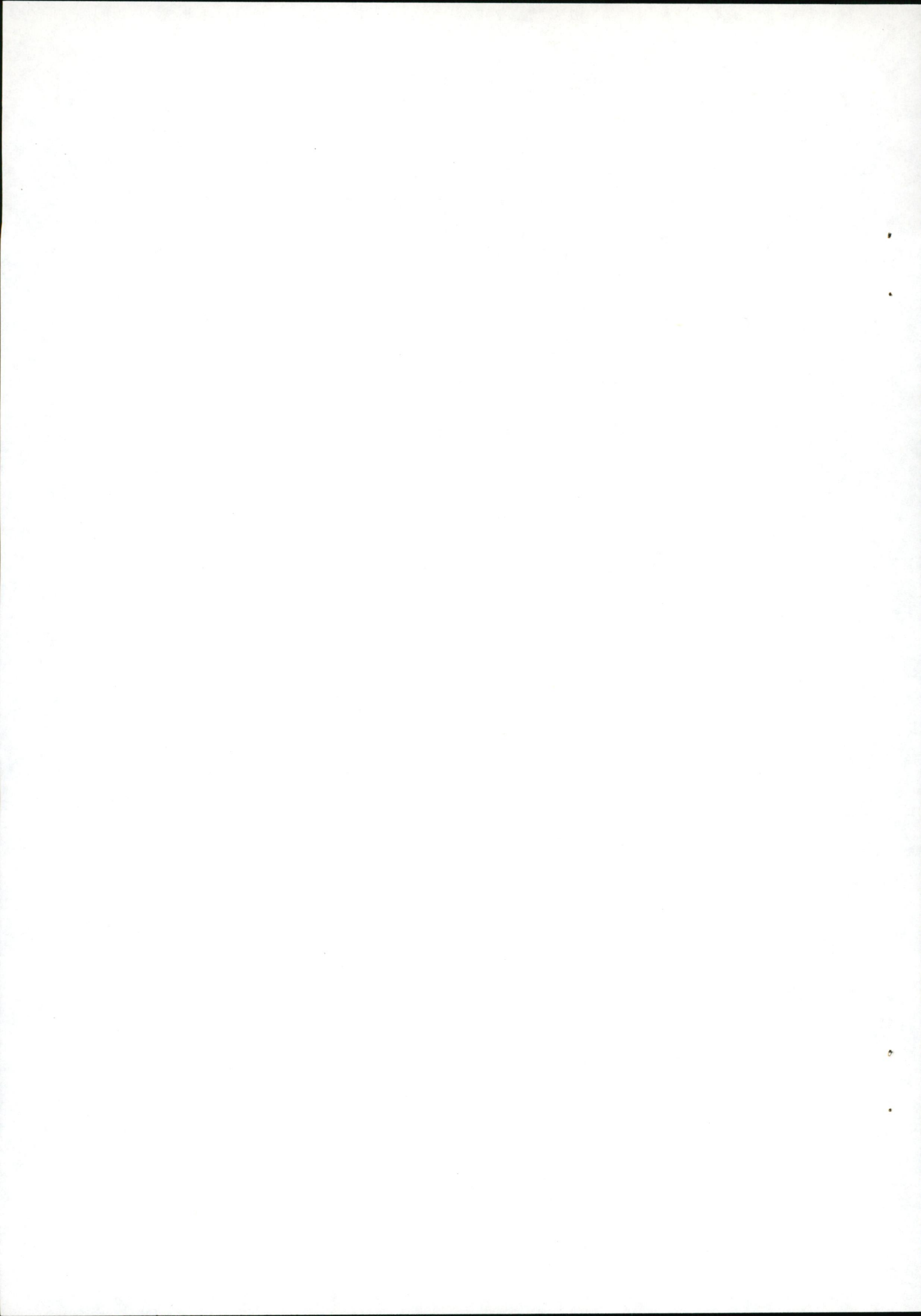
**Clause 4** provides for the completion by the Court of certain part heard proceedings before the Industrial Commission under the Industrial Arbitration Act 1940.

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**Clause 5** provides for the hearing by the Court of certain proceedings that had been instituted before, but had not been heard by, the Industrial Commission under the Industrial Arbitration Act 1940.

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**INDUSTRIAL COURT BILL 1990**

NEW SOUTH WALES



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SCHEDULE 1 - TRANSITIONAL PROVISIONS

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# INDUSTRIAL COURT BILL 1990

NEW SOUTH WALES



No. , 1990

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## A BILL FOR

An Act to establish the Industrial Court of New South Wales and provide for its jurisdiction; and for other purposes.

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

**PART 1 - PRELIMINARY**

**Short title**

1. This Act may be cited as the Industrial Court Act 1990.

**Commencement**

2. (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).

(2) Sections 3, 40 and 42, and Schedule 1, commence on the date of assent to this Act.

**Definitions**

3. (1) In this Act:

"Chief Judge" means the Chief Judge of the Court;

"Commission" means the Industrial Relations Commission established under the Industrial Relations Act 1990;

"Court" means the Industrial Court;

"Deputy Chief Judge" means the Deputy Chief Judge of the Court;

"Judge" means:

- (a) the Chief Judge; or
- (b) the Deputy Chief Judge; or
- (c) any other Judge of the Court;

"Registrar" means the Registrar holding office under section 9;

"rule" means a rule of court made under section 39 and in force.

(2) Other expressions used in both this Act and the Industrial Relations Act 1990 have the meanings that they have in the Industrial Relations Act 1990.

**PART 2 - THE INDUSTRIAL COURT**

**Establishment of the Court**

4. (1) There is established by this Act a superior court of record with the name "Industrial Court of New South Wales".

- (2) The Court is to consist of:
  - (a) a Chief Judge appointed under section 5; and
  - (b) such other Judges as may be appointed under section 5; and
  - (c) any Acting Judge, or Acting Judges, holding office under section 8.

(3) The Court is to have a seal, and judicial notice is to be taken of the seal.

### **The Judges**

5. (1) The Governor may, by commission under the public seal of the State, appoint as Chief Judge of the Court:

- (a) a person who is already a Judge of the Court; or
- (b) a Judge of another court of record; or
- (c) an eligible barrister or solicitor who is under 70 years of age.

(2) The Governor may, by commission under the public seal of the State, appoint as Deputy Chief Judge of the Court:

- (a) a person (other than the Chief Judge) who is already a Judge of the Court; or
- (b) a Judge of another court of record (except such a Judge who is the Chief Justice of the Supreme Court or the President of the Court of Appeal); or
- (c) an eligible barrister or solicitor who is under 70 years of age.

(3) The Governor may, by commission under the public seal of the State, appoint as a Judge of the Court:

- (a) a Judge of another court of record (except such a Judge who is the Chief Justice of the Supreme Court or the President of the Court of Appeal); or
- (b) an eligible barrister or solicitor who is under 70 years of age.

(4) In this section, a reference to an eligible barrister or solicitor is a reference to:

- (a) a barrister who, at all times during the last preceding period of 5 years, was either on the roll of barristers or, when not on the roll of barristers, was on the roll of solicitors; or
- (b) a solicitor who, at all times during the last preceding period of 7 years, was either on the roll of solicitors or, when not on the roll of solicitors, was on the roll of barristers.

**Status, remuneration etc. of Judges**

6. (1) Each Judge has the same rank, title, status and precedence and, subject to subsection (2), the same remuneration and other rights, as a Judge of the Supreme Court (other than the Chief Justice and the President of the Court of Appeal).

(2) The remuneration of the Chief Judge and the Deputy Chief Judge is to be determined under the Statutory and Other Offices Remuneration Act 1975.

**Acting Chief Judge**

7. (1) If the Chief Judge is absent from duty or there is a vacancy in the office of Chief Judge, the Deputy Chief Judge is to act as Chief Judge during the absence of the Chief Judge or during the vacancy in the office of Chief Judge unless the Deputy Chief Judge is absent from duty or there is a vacancy in the office of Deputy Chief Judge.

(2) If both the Chief Judge and the Deputy Chief Judge are absent from duty or there is a vacancy in both those offices, the next senior Judge who is present on duty is to act as Chief Judge until:

- (a) the return to duty of the Chief Judge or the Deputy Chief Judge; or
- (b) if there is a vacancy in both those offices - until one of the vacancies is filled.

(3) While acting as Chief Judge, the Deputy Chief Judge or other Judge has the functions of the Chief Judge and anything done by the Deputy Chief Judge or other Judge in the exercise of those functions has effect as if it had been done by the Chief Judge.

**Acting Judges**

8. (1) The Governor may, by commission under the public seal of the State, appoint as an Acting Judge a person qualified for appointment as a Judge or a person who was formerly a Judge of the Court or of another court of record.

(2) The commission by which an Acting Judge is appointed:

- (a) may specify conditions and limitations to which the appointment is subject; and
- (b) must specify as the date on which the appointment expires a date that is not more than 12 months later than the date of the

commission and is not later than the date on which the Acting Judge would attain the age beyond which the period of appointment of an Acting Judge of the Supreme Court may not then extend.

(3) Appointment as an Acting Judge may be subject to a condition excluding all, or a part, of the period served as an Acting Judge from being regarded as a period served in a prior judicial office as referred to in section 8 (2) of the Judges' Pensions Act 1953.

(4) An Acting Judge:

- (a) has the functions of a Judge other than the Chief Judge; and
- (b) is to be taken to be a Judge, subject to any conditions and limitations to which the appointment as Acting Judge was made.

#### **Appointment of Registrar and other staff**

9. (1) A Registrar, a Deputy Registrar and such other staff as may be necessary to enable the Court to exercise its functions are to be appointed and employed under Part 2 of the Public Sector Management Act 1988.

(2) The Registrar has the functions conferred and imposed on the Registrar by or under this or any other Act.

(3) The Deputy Registrar may exercise the functions of the Registrar:

- (a) as directed by the Registrar; and
- (b) during the temporary absence of the Registrar; and
- (c) during a vacancy in the office of Registrar,

and anything done by the Deputy Registrar in so exercising those functions has effect as if it had been done by the Registrar.

### **PART 3 - FUNCTIONS OF THE COURT**

#### **Jurisdiction generally**

10. (1) The Court has the jurisdiction conferred on it by this Act and any other Act.

(2) The jurisdiction of the Court in relation to a matter is to be exercised by a Judge sitting alone unless the matter is one in respect of which this Act or another Act confers jurisdiction on the Full Court.

(3) Without affecting the generality of subsection (2), a Judge sitting alone may hear and determine:

- (a) a question of law referred to the Court by the Commission including, but not limited to, a question of law referred under section 11; and
- (b) an appeal by an aggrieved party, or by the Minister administering Part 4 of the Industrial Relations Act 1990, on a question of law arising in relation to a decision of the Commission including, but not limited to, a question concerning the interpretation, operation or application of an award or agreement; and
- (c) any other matter in respect of which any Act confers jurisdiction on the Court, but not expressly on the Full Court, unless the Judge considers that the application to hear and determine the matter is frivolous or vexatious.

(4) If the Commission has certified that a matter is a new matter, within the meaning of Division 2 of Part 3 of the Industrial Relations Act 1990, and an appeal has been made to the Court against the decision of the Commission:

- (a) the Court may order that the decision of the Commission is not to have effect until the appeal has been withdrawn or determined by the Court; and
- (b) if the Court makes such an order, it has effect according to its tenor.

(5) This section does not affect the provisions of the rules concerning the hearing and disposal of proceedings and business before the Registrar or another officer of the Court.

#### **Interpretation of awards or agreements**

11. (1) A question concerning the interpretation, application or operation of an award or agreement may be referred to the Court for determination.

- (2) Any such question may be referred to the Court by:
  - (a) a party to the making of the award or agreement; or
  - (b) an employee bound by the award or agreement or a State employee organisation, if members of the organisation are bound by the award or agreement; or

- (c) an employer bound by the award or agreement or a State employer organisation representing such an employer.
- (3) Any such question may be referred even though the nominal term of the award or agreement concerned may have expired.
- (4) The Court is not to determine a question referred to it by an individual employee unless it was referred with leave of the Court.
- (5) The Court is, by its order, to determine the question concerning the interpretation, application or operation of the award or agreement, but not so as to have the effect of changing any conditions of employment fixed by the award or agreement.

### **The Full Court**

- 12. (1) The Full Court consists of 3 Judges, whether or not including either the Chief Judge or the Deputy Chief Judge, or both of them.
- (2) The Full Court has jurisdiction to hear and determine:
  - (a) an appeal to it allowed by special leave of the Full Court granted to an aggrieved party, or to the Minister administering Part 4 of the Industrial Relations Act 1990, from a decision of a Judge sitting alone on a question of law arising in proceedings before the Commission; and
  - (b) a question of law that arises in the exercise of the jurisdiction of the Court by a Judge sitting alone and that is referred to the Full Court by the Judge; and
  - (c) an appeal to it from a decision of a Judge sitting alone in the exercise of the jurisdiction of the Court otherwise than on an appeal; and
  - (d) any matter in respect of which another Act confers jurisdiction on the Full Court.
- (3) The Full Court may exercise the functions of the court or person whose decision is the subject of the appeal, including:
  - (a) amendment; and
  - (b) the drawing of inferences and the making of findings of fact; and
  - (c) the assessment of damages and other money sums.
- (4) The Full Court may make any finding or assessment, give any direction for entry of judgment, or make any order, which ought to have been made or which the nature of the case requires.

(5) More than one sitting of the Full Court may be held at the same time.

**Evidence on appeal**

13. Except to the extent (if any) that another Act conferring jurisdiction on the Court provides otherwise, an appeal to the Court (including the Full Court) is to be determined:

- (a) on the evidence adduced in relation to the decision to which the appeal relates; and
- (b) on any other evidence (whether or not fresh or new evidence) and information called for by the Court as constituted for the hearing of the appeal.

**Anti-discrimination matters**

14. (1) In the exercise of its jurisdiction, the Court is to take into account the principles contained in the Anti-Discrimination Act 1977 relating to discrimination with respect to employment.

(2) An issue that is the subject of proceedings before the Equal Opportunity Tribunal constituted under the Anti-Discrimination Act 1977 may not be the subject of proceedings before the Court without the leave of the Court.

(3) The Court may, at its discretion, admit in proceedings before it evidence given before, or findings made by, the Equal Opportunity Tribunal.

**Finality of decisions**

15. (1) Except as determined on the exercise of a right of appeal to the Full Court conferred by this Act, the Industrial Relations Act 1990 or any other Act, a decision of the Court (however constituted) is final and may not be appealed against, reviewed, quashed or called in question by any court or tribunal.

(2) A judgment or order that, but for this section, might be given or made in order to grant a relief or remedy in the nature of prohibition or certiorari may not be given or made in relation to a decision of the Court (however constituted).

(3) This section does not:

- (a) affect the operation of section 48 of the Supreme Court Act 1970; or



- (b) apply in relation to a decision made under Part 8 of the Industrial Relations Act 1990 (which relates to secondary boycotts).

#### **Contempt of the Court**

16. (1) A person in contempt of the Court is guilty of an offence.

Maximum penalty: 1,000 penalty units in the case of a corporation or, in any other case, 100 penalty units or imprisonment for 6 months, or both.

(2) For the purposes of subsection (1), conduct is a contempt only if the same conduct in relation to the Supreme Court would be a contempt of the Supreme Court.

### **PART 4 - INDUSTRIAL ACTION: INJUNCTIONS AND ENFORCEMENT OF DISPUTE ORDERS**

#### **Injunctions relating to certain industrial action**

17. If industrial action to which Division 2 of Part 3 of the Industrial Relations Act 1990 applies is taking place, or is threatened, the Court may:

- (a) grant an injunction in accordance with that Division; and
- (b) if appropriate, take action under that Division for breach of the injunction.

#### **Enforcement of dispute orders**

18. If a dispute order has been made because industrial action has been taken by a person in the circumstances prescribed by section 235 (1) of the Industrial Relations Act 1990, the Court may, if appropriate, make an order under section 237 of that Act.

#### **Rules**

19. The rules may provide for applications for injunctions and orders of the Court referred to in this Part and for applications to the Court relating to any such injunctions granted or orders made by the Court.

**PART 5 - VOID CONTRACTS AND REGULATED CONTRACTS**

**Division 1 - Void contracts**

**Power of the Court to declare certain contracts void**

**20. (1)** The Court may make an order declaring wholly or partly void, or varying, either from its commencement or from some other time, any contract or arrangement or any related condition or collateral arrangement under which a person performs work in any industry if the Court finds that the contract or arrangement or any related condition or collateral arrangement:

- (a) is unfair; or
- (b) is harsh or unconscionable; or
- (c) is against the public interest; or
- (d) provides or has provided a total remuneration less than a person performing the work would have received as an employee performing the work; or
- (e) was designed to, or does, avoid the provisions of an award or industrial agreement; or
- (f) was designed to, or does, avoid the provisions of an agreement registered, or contract determination made, under Division 8 of Part 2 of the Industrial Relations Act 1990 (which relates to contracts of bailment of a public vehicle and to certain contracts of carriage).

**(2)** In considering the question of public interest for the purposes of subsection (1) (c) (but without limiting the generality of the expression "public interest") regard is to be had to the effect that a contract, or a series of contracts, referred to in subsection (1) has had, or may have, on any system of apprenticeship and other methods of providing a sufficient and trained labour force.

**(3)** In making an order under subsection (1), the Court may make such order as to the payment of money in connection with any contract, arrangement, condition or collateral arrangement declared wholly or partly void, or varied, as may appear to the Court to be just in the circumstances of the case.

**(4)** This Division does not apply in relation to an enterprise agreement.

**Further order by the Court**

**21. (1)** The Court, when making an order under section 20 or at a later time, may make such further order as may appear to the Court to be appropriate for the purpose of prohibiting (either absolutely or otherwise than in accordance with specified conditions):

- (a) any party to the contract, arrangement or collateral arrangement; or
- (b) any other person who is (in any way considered relevant by the Court) associated with any such party,

from:

- (c) entering into any specified kind of contract, arrangement or collateral arrangement under which a person performs work in an industry; or
- (d) doing any act (whether by way of newspaper advertising or otherwise) which may reasonably be construed as being intended to induce other persons to enter into any such contract, arrangement or collateral arrangement.

**(2)** An order under this section must identify the person or persons upon whom it is binding and takes effect in respect of each such person:

- (a) on service on the person of a copy of the order; or
- (b) on publication of the order in a daily newspaper circulating generally throughout New South Wales,

whichever first occurs.

**Application for order**

**22. (1)** An order may be made under section 20 or 21 on the application of:

- (a) in the case of an order under section 20 - any party to the contract, arrangement or collateral arrangement; or
- (b) in the case of an order under section 21:
  - (i) any party to the contract, arrangement or collateral arrangement; or
  - (ii) any person who, but for the making of an order under section 20, would be a party to the contract, arrangement or collateral arrangement; or

- (c) the secretary of a State employer organisation whose members employ persons working in the industry to which the contract, arrangement or collateral arrangement relates; or
  - (d) the secretary of an industrial union whose members are employed in the industry to which the contract, arrangement or collateral arrangement relates; or
  - (e) the Minister,
- and not otherwise.

(2) An application under this Subdivision in respect of a contract of carriage to which Division 8 of Part 2 of the Industrial Relations Act 1990 applies may be made by a party to the contract or by an association of contract carriers of which a party to the contract is a member.

## **Division 2 - Regulated contracts**

### **Definitions**

23. In this Division:

**"building work"** means work carried out for the purpose of:

- (a) constructing, altering, adding to, renovating, decorating or painting any building or structure; or
- (b) excavating or filling the site on which any building or structure is proposed to be constructed; or
- (c) demolishing any building or structure; or
- (d) doing anything prescribed by the regulations as building work for the purposes of this definition,

but does not include work that:

- (e) is carried out otherwise than on the site on which a building or structure is being, or is proposed to be, constructed or on which a building or structure is being demolished; or
- (f) the regulations declare not to be building work for the purposes of this definition;

**"door-to-door handbill delivery work"** includes work which the regulations declare to be door-to-door handbill delivery work for the purposes of this definition, but does not include work that the regulations declare not to be door-to-door handbill delivery work for the purposes of this definition;

"door-to-door sales work" includes work that the regulations declare to be door-to-door sales work for the purposes of this definition, but does not include work that the regulations declare not to be door-to-door sales work for the purposes of this definition.

**Application of Division**

**24. (1)** This Division applies to a contract under which there is carried out:

- (a) building work; or
- (b) door-to-door handbill delivery work; or
- (c) door-to-door sales work,

except as provided by subsection (2).

**(2)** This Division does not apply to any such contract:

- (a) to the extent that it is a contract under which work is done by a person in the capacity of an employee; or
- (b) unless at least one of the parties to the contract (other than a person who actually does the work) is a person who carries on a business of doing, or arranging for the doing, of that kind of work.

**(3)** This Division does not apply in relation to an enterprise agreement.

**Power of Court to declare certain contracts unfair etc.**

**25. (1)** The Court may, on application, find that a contract to which this Division applies:

- (a) is unfair; or
- (b) is harsh or unconscionable; or
- (c) is against the public interest.

**(2)** An application for the purposes of this Division may be made only by the secretary of an industrial union whose members are employed in the industry or calling in connection with which work is done of the same kind as that done under the contract to which the application relates.

**Division 3 - Certification of finding**

**Finding by Court to be certified to the Industrial Registrar**

26. If the Court has found under section 20, or finds on application made under section 25, that a contract:

- (a) is unfair; or
- (b) is harsh or unconscionable; or
- (c) is against the public interest,

the Registrar of the Court is to issue to the Industrial Registrar a certified copy of the finding of the Court.

**PART 6 - MISCELLANEOUS**

**Proceedings in open court**

27. Proceedings before the Court are to be heard in open court unless the Court orders otherwise.

**Appearances**

28. (1) A person may appear before the Court personally, or by a barrister or solicitor, or by an agent who is not a barrister or solicitor.

(2) The Court may allow a party appearing before it to have the services of an interpreter.

**Intervention**

29. (1) The Crown may appear before the Court in any case in which the public interest or any right or interest of the Crown may be involved.

(2) Without affecting the generality of subsection (1), the Minister administering Part 4 of the Industrial Relations Act 1990 may, at any stage of proceedings before the Court, intervene by a barrister, solicitor or agent, examine witnesses and address the Court with respect to matters relevant to the proceedings.

**Issue of process**

30. All process issuing out of the Court is to be in the form required by the rules, is to be signed by the officer issuing the process and is to be marked with the Court office stamp.

**Judicial notice of certain signatures**

**31.** Judicial notice is to be taken of the signature of a Judge, the Registrar or the Deputy Registrar when appearing on a document issuing out of the Court.

**Powers of the Court as to the production of evidence**

**32.** The Court may exercise the functions of the Supreme Court in relation to:

- (a) compelling the attendance of witnesses and examining them on oath or affirmation, or by use of a statutory declaration; and
- (b) compelling the production, discovery and inspection of books, records, documents and other papers; and
- (c) compelling witnesses to answer questions which the Court considers to be relevant in any proceeding before it; and
- (d) the apprehension, detention and punishment of persons guilty of contempt, or of disobedience to any order made by the Court, or of disobedience to any process issuing out of the Court; and
- (e) directing that a witness be prosecuted for perjury.

**Amendments and irregularities**

**33. (1)** The Court may, in any proceedings before it, order the making of any amendments that the Court considers to be necessary in the interests of justice.

**(2)** An order under this section may be made:

- (a) at any stage of the proceedings; and
- (b) on such terms as to costs or otherwise as the Court thinks fit.

**(3)** If this Act or a rule is not complied with in relation to the institution or conduct of proceedings before the Court, the failure to comply is to be treated as an irregularity and does not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order in the proceedings.

**(4)** For the purposes of subsection (3), the Court may, by order on terms:

- (a) wholly or partly set aside the proceedings, a step taken in the proceedings, or a judgment, document or order in the proceedings; or

- (b) exercise its functions under this Act and the rules to allow amendments, and make orders, dealing with the proceedings generally.

(5) The Court may refuse to make an order under this section unless application for the order is made:

- (a) within a reasonable time; and
- (b) before the applicant has taken any fresh step after becoming aware of the irregularity.

### **Costs**

**34. (1)** Subject to the rules and subject to any other Act:

- (a) costs are in the discretion of the Court; and
- (b) the Court may determine by whom and to what extent costs are to be paid; and
- (c) the Court may order costs to be taxed or otherwise ascertained on a party and party basis or on any other basis.

(2) The Court may order a party instituting proceedings in the Court to give security for the payment of costs and to give the security for such amount, at such time, and in such manner and form, as the Court directs.

(3) The Court may reduce or increase the amount of security ordered under subsection (2) to be given and may vary the time at which, or the manner or form in which, the security is to be given.

(4) If security, or further security, is not given in accordance with an order under this section, the Court may order that the proceedings be dismissed.

(5) The provisions of this section relating to security do not affect the operation of any provision made by or under any other Act or by the rules for or in relation to the furnishing of security.

(6) In this section, "costs" includes:

- (a) costs of or incidental to proceedings in the Court; and
- (b) in the case of an appeal to the Court, the costs of or incidental to the proceedings giving rise to the appeal, as well as the costs of or incidental to the appeal.



**Recovery of costs and other amounts ordered to be paid**

35. (1) If, under section 34, the Court orders the payment of costs, they are to be assessed and certified by the Registrar.

(2) If the Court orders the making of a payment (other than costs or a penalty) the amount ordered to be paid is to be certified by the Registrar.

(3) A certificate given under subsection (1) or (2) must identify the person liable to pay the certified amount.

(4) A certificate of the Registrar that:

(a) is given under subsection (1) or (2); and

(b) is filed in the office of a court having jurisdiction to give judgment for a debt the same as the amount stated in the certificate,

operates as such a judgment.

(5) An appeal lies to the Court against:

(a) an amount of costs assessed under subsection (1); or

(b) the amount of a payment certified under subsection (2).

**Offences to be dealt with summarily**

36. (1) Proceedings:

(a) for an offence under this Act; or

(b) for any other offence in respect of which proceedings are to be taken before the Court,

are to be dealt with summarily by the Court.

(2) The Supreme Court (Summary Jurisdiction) Act 1967 (except sections 11 (2), 14 (3), 15 and 16) applies to proceedings referred to in subsection (1) in the same way as it applies to proceedings that may be taken before the Supreme Court in its summary jurisdiction.

(3) For the purposes of subsection (2), a reference (however expressed) in the Supreme Court (Summary Jurisdiction) Act 1967:

(a) to the Supreme Court - is to be taken to be a reference to the Industrial Court; and

(b) to rules - is to be taken to be a reference to rules of the Industrial Court; and

- (c) to the Prothonotary - is to be taken to be a reference to the Registrar of the Industrial Court.

**Conduct by officers, directors, employees or agents**

37. (1) If it is necessary to establish, for the purposes of this Act, the state of mind of a corporation in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by an officer, director, employee or agent of the corporation within the scope of his or her actual or apparent authority; and
- (b) that the officer, director, employee or agent had the state of mind.

(2) Any conduct engaged in on behalf of a corporation by:

- (a) an officer, director, employee or agent of the corporation within the scope of his or her actual or apparent authority; or
- (b) any other person at the direction or with the consent or agreement (whether express or implied) of an officer, director, employee or agent of the corporation if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the officer, director, employee or agent,

is to be taken, for the purposes of this Act, to have been engaged in also by the corporation.

(3) A reference in this section to the state of mind of a person includes a reference to the knowledge, intent, opinion, belief or purpose of the person and the person's reasons for the intent, opinion, belief or purpose.

**Trade secrets etc. tendered as evidence**

38. (1) In a proceeding before the Court:

- (a) the person entitled to a trade secret may object that information tendered as evidence relates to the trade secret; or
- (b) a witness or party may object that information tendered as evidence relates to the profits or financial position of the witness or party.

(2) If an objection is made under subsection (1) to the tendering of information as evidence, the information may only be given as evidence under a direction of the Court.

(3) If information is given as evidence under subsection (2), it must not be published in any newspaper, or otherwise, unless the Court, by order, permits the publication.

(4) If the Court directs that information relating to a trade secret or to the profits or financial position of a witness or party is to be given in evidence, the evidence must be taken in private if the person entitled to the trade secret, or the witness or party, so requests.

(5) The Court may direct that evidence given in a proceeding before it, or the contents of a document produced for inspection, not be published.

#### **Rules of court**

39. (1) The Chief Judge and 2 other Judges may make rules for or with respect to any matter that by this Act is required or permitted to be prescribed by rules or that is necessary or convenient to be prescribed by rules for carrying out or giving effect to this Act.

(2) Without affecting the generality of subsection (1), rules may be made for or with respect to:

- (a) the practice and procedure (including the method of pleading) to be followed in the Court in any proceedings; and
- (b) the practice and procedure in the offices of the Court; and
- (c) the joinder of causes of action, the consolidation of proceedings, and the joinder, misjoinder and non-joinder of parties; and
- (d) the means for, and the practice and procedure to be followed in, the enforcement and execution of decisions, judgments and orders of the Court; and
- (e) the provision of security; and
- (f) the costs of proceedings in the Court; and
- (g) the functions that may be exercised by the Registrar; and
- (h) matters incidental to practice and procedure in respect of which rules may be made.

(3) In relation to matters within the jurisdiction of the Court and without affecting the generality of subsections (1) and (2), rules may be made for or with respect to any matter that may be the subject of rules under the Supreme Court Act 1970.

(4) Rules may be made by adopting, with or without specified modifications, rules in force under the Supreme Court Act 1970.

**Transitional provisions**

40. Schedule 1 has effect.

**Regulations**

41. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed by regulations.

(2) Regulations may be made for or with respect to the fees to be charged in respect of the business of the Court.

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**SCHEDULE 1 - TRANSITIONAL PROVISIONS**

(Sec. 40)

**Definitions**

1. In this Schedule:

"**appointed day**" means the date of repeal of section 14 of the former Act;

"**former Act**" means the Industrial Arbitration Act 1940;

"**former Commission**" means the Industrial Commission of New South Wales constituted under the former Act.

**First appointments as Judges**

2. (1) The Minister must offer:

(a) to the President of the former Commission - appointment as Chief Judge of the Court; and

(b) to the Vice-President of the former Commission - appointment as Deputy Chief Judge of the Court; and

(c) to each other judicial member of the former Commission - appointment as a Judge of the Court, other than the Chief Judge and the Deputy Chief Judge,

with effect on and from the appointed day.

**SCHEDULE 1 - TRANSITIONAL PROVISIONS - *continued***

(2) If an offer made under subclause (1) is accepted, the Minister must make the recommendation to the Governor that would be necessary for the making of the appointment.

(3) A person appointed to an office in accordance with a recommendation made under subclause (2) has, while holding the office, the same rank, status and precedence and, subject to subclause (4), the same remuneration and other rights as the person had under the former Act immediately before the appointed day but with the title conferred on the person by this Act.

(4) The reference in subclause (3) to the same remuneration of a person is a reference to remuneration from time to time determined on the basis of the same comparison with a Judge of the Supreme Court as that on which the remuneration of the person immediately before the appointed day had been determined.

(5) This clause has effect despite the provisions of the Statutory and Other Offices Remuneration Act 1975 relating to:

- (a) the Chief Judge; and
- (b) the Deputy Chief Judge; and
- (c) a Judge other than the Chief Judge and the Deputy Chief Judge.

**Service as member of former Commission**

3. If a member of the former Commission as constituted immediately before the appointed day takes office on the appointed day as a Judge of the Court, service as a judicial member of the former Commission is to be reckoned for all purposes as service as a Judge of the Court.

**Completion of part heard proceedings**

4. (1) A member of the former Commission who is a Judge of the Court and, immediately before the appointed day, was engaged in the hearing and determination of proceedings before the former Commission may continue and complete the hearing and determination of the proceedings as if the appointed day had not preceded the determination of the proceedings under this clause.

SCHEDULE 1 - TRANSITIONAL PROVISIONS - *continued*

(2) A determination made in proceedings referred to in subclause (1) that are of a kind that could be instituted on or after the appointed day:

- (a) in the Court - has effect as a determination of the Court; or
- (b) in the Industrial Relations Commission - has effect as a determination of the Commission.

**Completion of proceedings commenced but not heard**

5. (1) If, immediately before the appointed day:

- (a) proceedings (including an appeal) within the jurisdiction of the former Commission had been instituted but the hearing of the proceedings had not commenced; and
- (b) the proceedings are of a kind that would not be within the jurisdiction of the Commission after the appointed day but would be within the jurisdiction of the Court,

the proceedings are to be taken to be proceedings instituted in the Court on the appointed day.

(2) If proceedings referred to in subclause (1) are proceedings to be heard before the former Commission sitting as the Commission in Court Session, the reference in that subclause to the Court is a reference to the Court sitting as the Full Court.

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