

FIRST PRINT

**INDUSTRIAL LEGISLATION (REPEALS, AMENDMENTS AND SAVINGS) 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.

The objects of this Bill are:

- (a) to repeal the Principal Acts which are intended to be replaced by the proposed Industrial Relations Act 1990 and the proposed Industrial Court Act 1990; and
- (b) to amend various other Acts as a consequence of the intended enactment of that industrial relations legislation; and
- (c) to enact appropriate savings and transitional provisions.

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

**Clause 2** provides for the commencement of the proposed Act on a proclaimed day or days.

**Clause 3** is a formal provision that gives effect to the Schedule of repeals of Acts.

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

**Clause 5** is a formal provision that gives effect to the Schedule of savings and transitional provisions.

**Schedule 1 - Repeals.**

**Schedule 2 - Amendments.**

**Schedule 3 - Savings and transitional provisions.**

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**TABLE OF PROVISIONS**

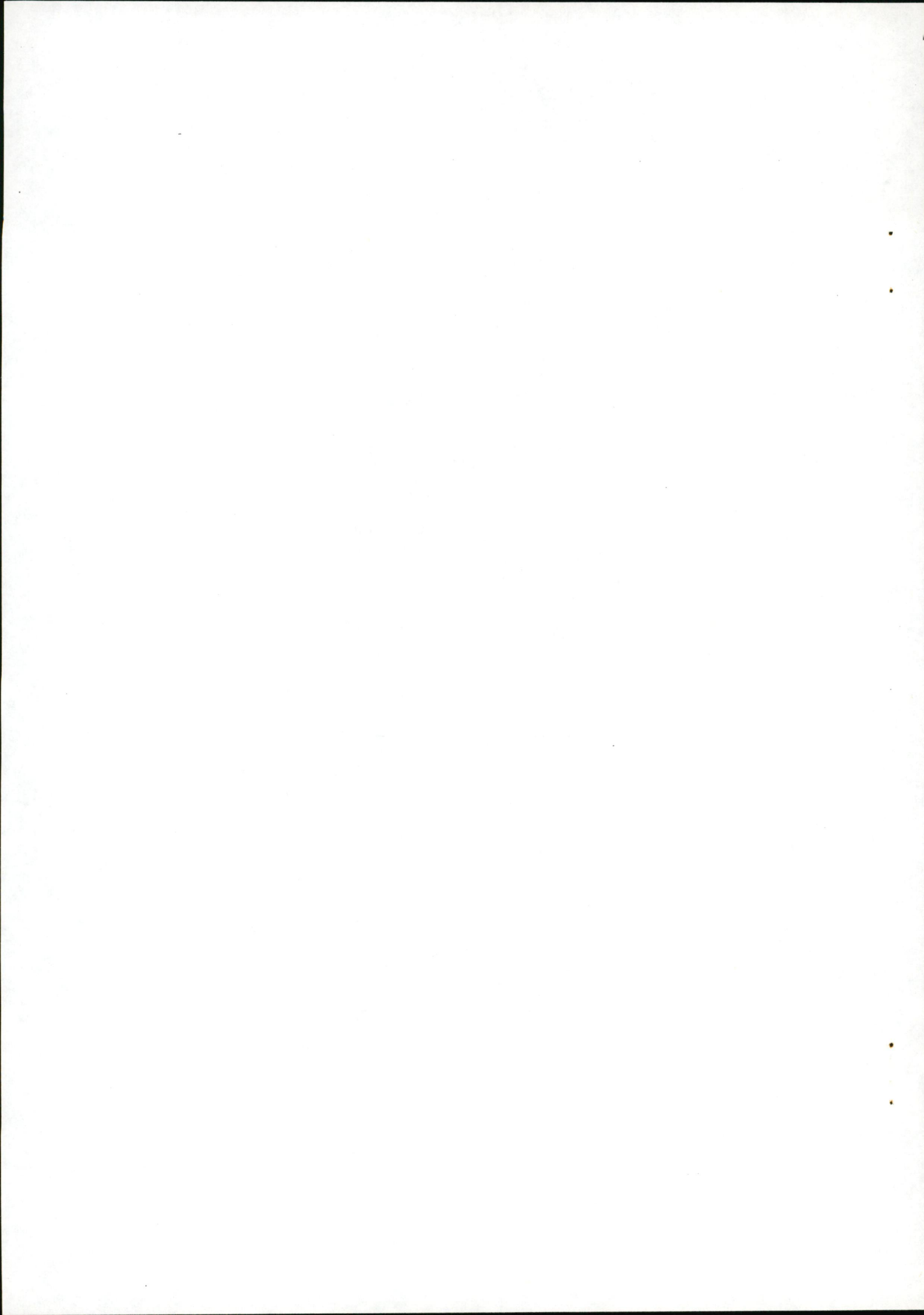
1. Short title
2. Commencement
3. Repeals
4. Amendments
5. Savings and transitional provisions

**SCHEDULE 1 - REPEALS**

**SCHEDULE 2 - AMENDMENTS**

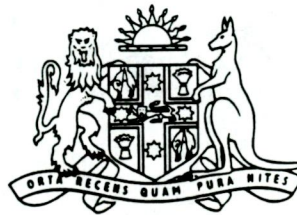
**SCHEDULE 3 - SAVINGS AND TRANSITIONAL PROVISIONS**

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**INDUSTRIAL LEGISLATION (REPEALS, AMENDMENTS  
AND SAVINGS) BILL 1990**

NEW SOUTH WALES



No. , 1990

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**A BILL FOR**

An Act to repeal certain Acts, to amend other Acts and to make savings and transitional arrangements as a consequence of the proposed enactment of the Industrial Relations Act 1990 and the Industrial Court Act 1990.

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*Industrial Legislation (Repeals, Amendments and Savings) 1990*

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

**Short title**

1. This Act may be cited as the Industrial Legislation (Repeals, Amendments and Savings) Act 1990.

**Commencement**

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

(2) Different days may be appointed for the commencement of section 3 for the purpose of repealing different provisions of the Acts listed in Schedule 1 or the regulations made under them on different days.

**Repeals**

3. The Acts listed in Schedule 1 and the regulations made under them are repealed.

**Amendments**

4. The Acts listed in Schedule 2 are amended in the manner set out in that Schedule.

**Savings and transitional provisions**

5. Schedule 3 has effect.

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**SCHEDULE 1 - REPEALS**

(Sec. 3)

Industrial Arbitration Act 1940

Trade Union Act 1881

Truck Act 1900

**SCHEDULE 2 - AMENDMENTS**

(Sec. 4)

**Annual Holidays Act 1944 No. 31**

(1) Section 2 (**Interpretation**):

- (a) From the definition of "Agreement" in section 2 (1), omit "within the meaning of the Industrial Arbitration Act 1940", insert instead ", or an enterprise agreement, registered under the Industrial Relations Act 1990".
- (b) From the definitions of "Award" and "Inspector" in section 2 (1), omit "Industrial Arbitration Act, 1940", insert instead "Industrial Relations Act 1990".

(2) Section 3 (**Annual holidays with pay**):

From section 3 (4), omit "Industrial Arbitration Act, 1940", insert instead "Industrial Relations Act 1990".

(3) Section 5 (**Special provisions - annual holidays otherwise than under this Act**):

From section 5 (1A), omit "Industrial Arbitration Act, 1940", insert instead "Industrial Relations Act 1990".

(4) Section 12 (**Proceedings for recovery of penalties**):

(a) Omit section 12 (1), insert instead:

(1) Proceedings for the recovery of a penalty under this Act are to be taken before a Local Court constituted by a Magistrate sitting alone or before the Industrial Court and may be taken by :

- (a) an inspector; or
  - (b) the secretary of a State registered organisation whose members are engaged in the industry concerned; or
  - (c) a person whose rights are impaired.
- (b) From section 12 (2), omit "stipendiary magistrate or industrial magistrate", insert instead "Local Court or Industrial Court".

SCHEDULE 2 - AMENDMENTS - *continued*

- (c) From section 12 (3), omit "magistrate before whom", insert instead "Local Court or Industrial Court before which".
  - (d) From section 12 (3), omit "Industrial Commission of New South Wales", insert instead "Industrial Court".
- (5) Section 13 (**Recovery of holiday pay**):
- (a) From section 13 (1), omit "court of petty sessions holden before a stipendiary magistrate sitting alone, or to any industrial magistrate appointed under the Industrial Arbitration Act, 1940," insert instead "Local Court constituted by a Magistrate sitting alone or to the Industrial Court".
  - (b) From section 13 (1), omit "magistrate may make any order he", insert instead "Local Court or Industrial Court may make any order it".
  - (c) From section 13 (1), omit "Industrial Commission of New South Wales", insert instead "Industrial Court".
  - (d) Omit section 13 (1A).
  - (e) From section 13 (3), omit "an industrial union registered as such under the Industrial Arbitration Act, 1940", insert instead "State employee organisation registered under the Industrial Relations Act 1990".
- (6) Section 14:
- Omit the section, insert instead:
- Provisions as to enforcement of orders, appeals etc.**
14. The provisions of the Industrial Relations Act 1990, and of the regulations under that Act, relating to:
- (a) recovery of a penalty, and
  - (b) an application for, and enforcement of, an order for the payment of money, and
  - (c) an appeal from, or the stating of a case by, a Local Court to the Industrial Court,
- apply to proceedings under this Act for the recovery of a penalty or the payment of money.



SCHEDULE 2 - AMENDMENTS - *continued*

**Anti-Discrimination Act 1977 No. 48**

Section 95A:

After section 95, insert:

**Leave of Tribunal required for inquiry into certain industrial issues**

95A. (1) An issue that is the subject of proceedings before the Industrial Relations Commission or the Industrial Court may not be the subject of proceedings before the Tribunal without the leave of the Tribunal.

(2) This section does not affect the operation of section 107 in relation to evidence given before, or findings made by, the Industrial Relations Commission or the Industrial Court.

**Bail Act 1978 No. 161**

(1) Section 4 (Definitions):

- (a) From the definition of "court" in section 4 (1), omit "the Industrial Commission", insert instead "the Industrial Court".
- (b) Omit the definition of "Industrial Commission" from section 4 (1), insert instead:

**"Industrial Court"** means the Industrial Court of New South Wales, and includes a Judge of that Court;
- (c) From the definition of "Judge" in section 4 (1), omit "or District Court or a judicial member of the Industrial Commission", insert instead ", Industrial Court or District Court".
- (d) From the definition of "Local Court" in section 4 (1), omit ", the Children's Court and a court constituted by an industrial magistrate under the Industrial Arbitration Act 1940", insert instead "and the Children's Court".

SCHEDULE 2 - AMENDMENTS - *continued*

(2) Part 4, Division 7:

Omit the Division, insert instead:

**Division 7 - Industrial Court**

**Power of Industrial Court to grant bail**

30B. The Industrial Court may grant bail in accordance with this Act to a person accused of an offence, where proceedings for the offence are pending in that Court.

(3) Section 44 (**Power of justices, magistrates and certain courts to review**):

Omit section 44 (5), insert instead:

(5) Subject to this Part, the Industrial Court may review any decision made by the Industrial Court (however constituted) in relation to bail.

**Bread Act 1969 No. 54**

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

Omit the definition of "the Commission".

(2) Section 5 (**Definitions**):

(a) From the definition of "industrial tribunal", omit "Commission", insert instead "Industrial Commission".

(b) At the end of the section, insert:

(2) On and after the commencement of the Industrial Relations Act 1990, a reference in this Part to:

(a) an award, employee or industrial agreement, includes a reference to an award, employee or agreement within the meaning of that Act; and

(b) an industrial tribunal includes a reference to the Industrial Relations Commission.

(3) Sections 12 (8), (11), 13 (7), (9), 14 (2), (3):

Omit "Commission" wherever occurring, insert instead "Industrial Court".

SCHEDULE 2 - AMENDMENTS - *continued*

- (4) Section 30 (Proceedings):
- (a) From section 30 (4), omit "stipendiary magistrate or an industrial magistrate appointed under the Industrial Arbitration Act 1940", insert instead "Local Court constituted by a Magistrate sitting alone".
  - (b) Omit section 30 (5), insert instead:
    - (5) The provisions of the Industrial Relations Act 1990, and of the regulations under that Act, relating to appeals from, and the stating of a case by, a Local Court to the Industrial Court apply to proceedings before a Local Court for offences against this Act or the regulations.

**Builders Labourers Federation (Special Provisions) Act 1986 No. 17**

**Section 4 (Eligibility of certain building industry employees for membership of certain organisations):**

Omit section 4 (2)-(5), insert instead:

(2) Where the Secretary or another executive officer of an industrial union under the Industrial Relations Act 1990 has consented in writing to persons who are, or are usually, employed in work of a specified kind or class, in New South Wales or in a specified part or parts of New South Wales, in a relevant industry being made eligible for membership of that union:

- (a) the regulations under this Act may declare those persons to be eligible for membership of that union; and
- (b) where the regulations so declare, those regulations have effect according to their tenor notwithstanding anything in the rules of that union as in force at the time when the regulations took effect.

(3) The making of regulations for the purposes of this section declaring persons referred to in the regulations to be eligible for membership of an industrial union under the Industrial Relations Act 1990 does not preclude the making of any alteration to the rules of that union and, if an alteration so made of which the Industrial Relations Commission of New South Wales or the Industrial

SCHEDULE 2 - AMENDMENTS - *continued*

Registrar has approved under the regulations made under that Act, the first-mentioned regulations, to the extent of the inconsistency, cease to have effect.

(4) Regulations made for the purposes of this section continue in force notwithstanding that:

- (a) the State Union; or
- (b) another organisation:
  - (i) that is not registered under the Industrial Relations Act 1990;
  - (ii) that was formed in or in connection with the industry in or in connection with which the State Union was registered under the Industrial Arbitration Act 1940 immediately before 2 January 1985; and
  - (iii) all or a majority of the members of which are persons who are or have been members of the State Union or the Australian Union, becomes registered under the Industrial Relations Act 1990.

(5) Regulations made for the purposes of this section continue in force notwithstanding that:

- (a) the Australian Union; or
- (b) another association:
  - (i) that is not registered under the Industrial Relations Act 1988 of the Commonwealth;
  - (ii) that was formed in or in connection with the industry or a part of the industry in or in connection with which the Australian Union was registered under the Conciliation and Arbitration Act 1904 of the Commonwealth immediately before the commencement of the Builders Labourers' Federation (Cancellation of Registration) Act 1986 of the Commonwealth; and
  - (iii) all or a majority of the members of which are persons who are or have been members of the Australian Union or the State Union,

SCHEDULE 2 - AMENDMENTS - *continued*

becomes registered under the Industrial Relations Act 1988 of the Commonwealth.

**Building and Construction Industry Long Service Payments Act 1986  
No. 19**

**Section 64 (Proceedings for offences):**

Omit section 64 (1) and (2), insert instead:

(1) Proceedings for offences against this Act or the regulations are to be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.

(2) The provisions of the Industrial Relations Act 1990 relating to appeals from, and the stating of a case by, a Local Court to the Industrial Court apply to proceedings before a Local Court for offences against this Act or the regulations.

**Coal Mines Regulation Act 1982 No. 67**

**Section 156 (Where proceedings taken):**

(a) From section 156 (1), omit "an industrial magistrate", insert instead "a Local Court constituted by a Magistrate sitting alone".

(b) Omit section 156 (3).

**Construction Safety Act 1912 No. 38**

**Section 21 (Penalties and proceedings for offences):**

(1) From section 21 (1), omit "or before an industrial magistrate appointed under the Industrial Arbitration Act, 1940, as amended by subsequent Acts".

(2) From section 21 (1), omit the third paragraph.

(3) After section 21 (1A), insert:

(1B) The provisions of the Industrial Relations Act 1990, and of the regulations under that Act, relating to appeals from, and the stating of a case by, a Local Court to the Industrial Court apply to proceedings before a Local Court for offences against this Act or the regulations.

SCHEDULE 2 - AMENDMENTS - *continued*

**Essential Services Act 1988 No. 41**

- (1) Section 3 (**Definitions**):
  - (a) Omit the definitions of "award" and "industrial agreement".
  - (b) Omit the definitions of "industrial matter" and "industrial registrar", insert instead:

"**industrial action**" has the same meaning as in the Industrial Relations Act 1990;

"**industrial matter**" has the same meaning as in the Industrial Relations Act 1990;

"**Industrial Registrar**" means the Industrial Registrar appointed under the Industrial Relations Act 1990;
  - (c) Omit the definition of "union", insert instead:

"**State registered organisation**" has the same meaning as in the Industrial Relations Act 1990.
- (2) Section 5 (**Relationship to other Acts etc.**):

Omit section 5 (c), insert instead:

  - (c) any award, industrial agreement or enterprise agreement; or
- (3) Part 4 (**Industrial action**):

Omit "union", "union's" and "industrial registrar" wherever occurring (except where omitted by another amendment in this Schedule), insert instead "State registered organisation", "State registered organisation's" and "Industrial Registrar" respectively.
- (4) Section 15 (**Reference of industrial matter to the Industrial Relations Commission**):
  - (a) Section 15 (1) and (2):

Omit the subsections, insert instead:

    - (1) When a proclamation under section 8 or an order under section 10 is in force in relation to an essential service which is being disrupted by any question, dispute or difficulty concerning industrial action or potential industrial action, the Minister must refer any industrial matter relating to the question, dispute or difficulty to the Industrial Relations Commission.

SCHEDULE 2 - AMENDMENTS - *continued*

- (2) The Minister is required to refer the industrial matter only if it can be dealt with under the Industrial Relations Act 1990 by conciliation and arbitration and is not already being so dealt with under that Act.
- (b) After "Industrial" in section 15 (3), insert "Relations".
- (5) Section 16 (**Stand down of employees**):
- (a) From section 16 (1), omit "any question, dispute or difficulty of the nature referred to in section 25 (1) (a), (b) or (c) of the Industrial Arbitration Act 1940", insert instead "industrial action".
- (b) Before "Commission" wherever occurring in section 16 (8) and (9), insert "Relations".
- (c) From section 16 (9), omit "Industrial Arbitration Act 1940", insert instead "Industrial Relations Act 1990".
- (6) Section 17 (**Suspension and cancellation of registration of State registered organisation**):
- (a) Omit section 17 (2) (a) and (b), insert instead:
- (a) the Minister has consulted with the Chief Judge of the Industrial Court and the President of the Industrial Relations Commission as to the state of any industrial action involving the State registered organisation of which either of them is aware; and
- (b) the Minister is satisfied that any order of the Court or the Commission made in relation to any such industrial action has not been complied with.
- (b) Omit section 17 (4) (a), insert instead:
- (a) the registration of the State registered organisation under the Industrial Relations Act 1990 is, by operation of this section, suspended; and
- (c) Omit section 17 (6), insert instead:
- (6) Despite any provision of the Industrial Relations Act 1990, if the registration under that Act of a State registered organisation is cancelled by operation of this section, the Industrial Registrar must refuse any application made within 3 years after the cancellation for registration of a State registered organisation under that Act which, in the

SCHEDULE 2 - AMENDMENTS - *continued*

opinion of the Industrial Registrar, is (because of its membership, executive or otherwise) the same, or substantially the same, as the State registered organisation.

- (7) Section 19 (**Amendment of rules following cancellation of registration**):  
From section 19 (1) and (2), omit "Commission" wherever occurring, insert instead "Court".
- (8) Section 21 (**Restriction on appeals**):  
From section 21, omit "section 14 (8) of the Industrial Arbitration Act 1940", insert instead "the Industrial Court Act 1990".
- (9) Section 22 (**Appeals against cancellation of registration**):
- (a) From section 22 (1), omit "Industrial Commission in court session" wherever occurring, insert instead "Full Industrial Court".
  - (b) From section 22 (2) and (3), omit "Industrial Commission" wherever occurring, insert instead "Full Industrial Court".
- (10) Section 23 (**Appeals against amendment of rules**):
- (a) From section 23 (1), omit "Industrial Commission in court session" wherever occurring, insert instead "Full Industrial Court".
  - (b) From section 23 (2)-(4), omit "Industrial Commission" wherever occurring, insert instead "Full Industrial Court".
- (11) Sections 24, 25:  
Omit the sections, insert instead:
- Provisions relating to appeals**
24. The Full Industrial Court is required to hear and determine any application for leave to appeal, or any appeal, under section 22 or 23 as if the application or appeal had been made under the Industrial Court Act 1990.



**SCHEDULE 2 - AMENDMENTS - *continued***

**Continuing obligations of State registered organisations etc.**

25. The cancellation of the registration of a State registered organisation by operation of section 17 does not relieve the organisation or any member of the organisation:

(a) from the obligations of any award, industrial agreement or enterprise agreement or of any order of the Industrial Court or the Industrial Relations Commission; or

(b) from any penalty or liability incurred prior to the cancellation.

(12) **Section 26 (Recovery of penalty by appointment of receiver):**

(a) From section 26 (4)-(6), omit "Commission" wherever occurring, insert instead "Court".

(b) Omit section 26 (7).

(13) **Section 28 (Disclosure of information):**

From section 28 (b) and (c), omit "Industrial Arbitration Act 1940" wherever occurring, insert instead "Industrial Relations Act 1990 or the Industrial Court Act 1990".

(14) **Section 31 (Proceedings for offences):**

Omit "an industrial magistrate or".

**Factories, Shops and Industries Act 1962 No. 43**

(1) **Section 145 (Proceedings):**

(a) Omit section 145 (3) (a), insert instead:

(a) before a Local Court constituted by a Magistrate; or

(b) Omit section 145 (3) (b).

(c) From section 145 (3A), omit "or before an industrial magistrate, the maximum penalty that the Local Court or industrial magistrate", insert instead ", the maximum penalty that the Local Court".

SCHEDULE 2 - AMENDMENTS - *continued*

(d) Omit section 145 (4), insert instead:

(4) The provisions of the Industrial Relations Act 1990, and of the regulations under that Act, relating to appeals from, and the stating of a case by, a Local Court to the Industrial Court apply to proceedings before a Local Court for offences against this Act or the regulations.

(2) Sections 145A (1), 147 (2), 148 (2) (a):

Omit "or industrial magistrate" wherever occurring.

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

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

From the definition of "conciliation committee" in section 4 (1), omit "section 18 of the Industrial Arbitration Act 1940", insert instead "the Industrial Relations Act 1990".

(2) Section 5 (**Relationship with Industrial Relations Act 1990**):

Omit section 5 (b), insert instead:

(b) the provisions of the Industrial Relations Act 1990 or of any regulation, order, award, industrial agreement or enterprise agreement under that Act,

(3) Section 71 (**Legal representation**):

(a) From section 71 (2) and (3), omit "an industrial union of employers or employees" wherever occurring, insert instead "a State registered organisation".

(b) After section 71 (3), insert:

(4) In this section:

"**State registered organisation**" has the same meaning as it has in the Industrial Relations Act 1990.

(4) Section 88 (**Determination of appeals**):

(a) From section 88 (5), (6) and (7), omit "Industrial Commission" wherever occurring, insert instead "Industrial Relations Commission".

SCHEDULE 2 - AMENDMENTS - *continued*

(b) From section 88 (6), omit "Industrial Arbitration Act 1940", insert instead "Industrial Relations Act 1990".

(5) Section 94 (Proceedings for offences):

From section 94 (1), omit "before an industrial magistrate or".

**Industrial Arbitration (Special Provisions) Act 1984 No. 121**

Section 3 (Cancellation of certain registration):

Omit section 3 (4), insert instead:

(4) Notwithstanding any provision of the Principal Act, if the registration under that Act of the union as an industrial union is cancelled pursuant to this Act, the registrar shall refuse any application for registration of an industrial union or a trade union under the Industrial Relations Act 1990 which, in the opinion of the registrar, is (by reason of its membership, executive or otherwise) the same, or substantially the same, as the union.

**Judges' Pensions Act 1953 No. 41**

(1) Section 2 (Definitions):

After the words "Industrial Commission of New South Wales," in the definition of "Judge" in section 2 (1), insert "Judge of the Industrial Court,".

(2) Section 8 (Prior judicial service):

After the words "Industrial Commission of New South Wales," in section 8 (3), insert "an Acting Judge of the Industrial Court,".

**Judicial Officers Act 1986 No. 100**

(1) Section 3 (Definitions):

(a) Omit paragraph (b) of the definition of "judicial officer" in section 3 (1), insert instead:

**SCHEDULE 2 - AMENDMENTS - *continued***

- (b) a Judge of the Industrial Court;
- (b) Omit section 3 (5) (b), insert instead:
  - (b) the Chief Judge of the Industrial Court, in relation to a Judge of the Court;
- (2) Section 5 (**The Commission**):
  - Omit section 5 (4) (b), insert instead:
    - (b) the Chief Judge of the Industrial Court;
- (3) Section 44 (**Retirement of judicial officers**):
  - Omit section 44 (2).

**Justices Act 1902 No. 27**

**Section 100I (Interpretation):**

Insert (in appropriate alphabetical order) in the statutory provisions listed in paragraph (a) of the definition of "penalty notice", the following matter:

Industrial Relations Act 1990, section 567;

**Land and Environment Court Act 1979 No. 204**

- (1) Section 8 (**Appointment and qualification of Judges**):
  - Omit section 8 (2) (b), insert instead:
    - (b) a Judge of the Industrial Court;
- (2) Section 9 (**Remuneration etc.**):
  - From section 9 (2A), omit "President of the Industrial Commission of New South Wales", insert instead "Chief Judge of the Industrial Court of New South Wales".

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

- (1) Section 3 (**Definitions**):
  - (a) Before the definition of "Award" in section 3 (1), insert:
    - "**Agreement**" means an industrial agreement, or an enterprise agreement, registered under the Industrial Relations Act 1990.

SCHEDULE 2 - AMENDMENTS - *continued*

- (b) From the definitions of "Award", "Industrial agreement" and "Inspector" in section 3 (1), omit "Industrial Arbitration Act 1940" wherever occurring, insert instead "Industrial Relations Act 1990".
  - (c) From section 3 (4), omit "Industrial Arbitration Act 1940", insert instead "Industrial Relations Act 1990".
- (2) Section 4 (Long service leave):
- (a) From section 4 (2) (a1) (i), omit "made under the Commonwealth Conciliation and Arbitration Act 1904, as amended by subsequent Acts, or made under the Industrial Arbitration Act 1940 or has been fixed by an industrial agreement made pursuant to or registered under those Acts", insert instead "in force under the Industrial Relations Act 1988 of the Commonwealth or by an award or agreement in force under the Industrial Relations Act 1990".
  - (b) From section 4 (2) (a1) (i), omit "industrial" where secondly occurring.
  - (c) From section 4 (2) (a1) (iii), omit "industrial".
  - (d) From section 4 (11) (a1) (iii), omit "section 88C of the Industrial Arbitration Act 1940", insert instead "section 69 of the Industrial Relations Act 1990".
  - (e) From section 4 (13) (a), omit paragraph (b) of the definition of "Award", insert instead:
    - (b) an award in force under the Industrial Relations Act 1988 of the Commonwealth.
- (3) Section 5 (Exemptions):
- (a) From section 5 (1) (a), omit "industrial".
  - (b) From section 5 (1) (b), omit "Industrial Arbitration Act 1940", insert instead "Industrial Relations Act 1990".
  - (c) From section 5 (2) (a), (d) and (4), omit "Industrial Commission of New South Wales" wherever occurring, insert instead "Industrial Relations Commission".

SCHEDULE 2 - AMENDMENTS - *continued*

- (d) From section 5 (4), omit "an industrial union of employers or employees", insert instead "a State registered organisation".
- (4) Section 5A (Review of exemptions):
  - (a) From section 5A (2), (3) and (4), omit "Industrial Commission of New South Wales" wherever occurring, insert instead "Industrial Relations Commission".
  - (b) From section 5A (3) (b), omit "an industrial union of employers and employees", insert instead "a State registered organisation".
- (5) Section 6 (Savings as to powers etc.):
  - (a) Omit "Industrial Commission of New South Wales", insert instead "Industrial Relations Commission".
  - (b) Omit "or a conciliation commissioner" wherever occurring.
  - (c) Omit "Industrial Arbitration Act 1940", insert instead "Industrial Relations Act 1990".
- (6) Section 11 (Recovery of penalties):
  - (a) Omit section 11 (1), insert instead:
    - (1) Proceedings for the recovery of a penalty under this Act are to be taken before a Local Court constituted by a Magistrate sitting alone and may be taken by:
      - (a) an inspector; or
      - (b) the secretary of a State registered organisation (within the meaning of the Industrial Relations Act 1990) whose members are engaged in the industry concerned; or
      - (c) a person whose rights are impaired.
  - (b) From section 11 (2), omit "stipendiary magistrate or industrial magistrate", insert instead "Local Court".
  - (c) From section 11 (3), omit "Industrial Commission of New South Wales", insert instead "Industrial Court".

SCHEDULE 2 - AMENDMENTS - *continued*

- (7) Section 12 (Recovery of long service leave pay):
- (a) From section 12 (1), omit "court of petty sessions holden before a stipendiary magistrate sitting alone, or to any industrial magistrate appointed under the Industrial Arbitration Act 1940", insert instead "Local Court constituted by a Magistrate sitting alone, or to the Industrial Court".
  - (b) From section 12 (1), omit "magistrate may make any order the magistrate", insert instead "Local Court or Industrial Court may make any order it".
  - (c) From section 12 (1), omit "Industrial Commission of New South Wales", insert instead "Industrial Court".
  - (d) Omit section 12 (1A).
  - (e) From section 12 (2), omit "industrial" where firstly and thirdly occurring.
  - (f) From section 12 (2), omit "an industrial union registered as such under the Industrial Arbitration Act 1940", insert instead "a State employee organisation registered under the Industrial Relations Act 1990".
- (8) Section 14:
- Omit the section, insert instead:
- Provisions as to enforcement of orders, appeals etc.**
14. The provisions of the Industrial Relations Act 1990, and of the regulations under that Act, relating to:
- (a) recovery of a penalty, and
  - (b) an application for, and enforcement of, an order for the payment of money, and
  - (c) an appeal from, or the stating of a case by, a Local Court to the Industrial Court,
- apply to proceedings under this Act for the recovery of a penalty or the payment of money.

SCHEDULE 2 - AMENDMENTS - *continued*

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

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

- (a) Before the definition of "Award" in section 3 (1), insert:  
"Agreement" means an industrial agreement, or an enterprise agreement, registered under the Industrial Relations Act 1990.
- (b) From the definitions of "Award", "Industrial agreement" and "Inspector" in section 3 (1), omit "Industrial Arbitration Act, 1940" wherever occurring, insert instead "Industrial Relations Act 1990".
- (c) From section 3 (3), omit "Industrial Arbitration Act, 1940", insert instead "Industrial Relations Act 1990".

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

- (a) From section 4 (2) (b) (i), omit "made under the Commonwealth Conciliation and Arbitration Act 1904, as amended by subsequent Acts, or made under the Industrial Arbitration Act, 1940, or has been fixed by an industrial agreement made pursuant to or registered under the said Acts", insert instead "in force under the Industrial Relations Act 1988 of the Commonwealth or by an award or agreement in force under the Industrial Relations Act 1990".
- (b) From section 4 (2) (b) (i), omit "industrial" where secondly occurring.
- (c) From section 4 (2) (b) (iii), omit "industrial".
- (d) From section 4 (11) (a) (i), omit "section 88C of the Industrial Arbitration Act, 1940", insert instead "section 69 of the Industrial Relations Act 1990".
- (e) From section 4 (13) (a), omit paragraph (b) of the definition of "Award", insert instead:
  - (b) an award in force under the Industrial Relations Act 1988 of the Commonwealth.



SCHEDULE 2 - AMENDMENTS - *continued*

- (3) Section 5 (Exemptions):
- (a) From section 5 (1) (a), omit "industrial".
  - (b) From section 5 (1) (b), omit "Industrial Arbitration Act, 1940", insert instead "Industrial Relations Act 1990".
  - (c) From section 5 (2) (a) and (d), omit "Industrial Commission of New South Wales" wherever occurring, insert instead "Industrial Relations Commission".
  - (d) From section 5 (2) (d) (ii), omit "said Industrial Commission", insert instead "Industrial Relations Commission".
  - (e) From section 5 (2) (d) (ii), omit, "an industrial union of employers or employees", insert instead "a State registered organisation".
- (4) Section 5A (Review of exemptions):
- (a) From section 5A (2), (3) and (4), omit "Industrial Commission of New South Wales" wherever occurring, insert instead "Industrial Relations Commission".
  - (b) From section 5A (3) (b), omit "an industrial union of employers or employees", insert instead "a State registered organisation".
- (5) Section 6 (Savings as to powers etc.):
- (a) Omit "Industrial Commission of New South Wales", insert instead "Industrial Relations Commission".
  - (b) Omit "or a conciliation commissioner" wherever occurring.
  - (c) Omit "Industrial Arbitration Act, 1940", insert instead "Industrial Relations Act 1990".
- (6) Section 11 (Recovery of penalties):
- (a) Omit section 11 (1), insert instead:
    - (1) Proceedings for the recovery of a penalty under this Act are to be taken before a Local Court constituted by a Magistrate sitting alone and may be taken by:

SCHEDULE 2 - AMENDMENTS - *continued*

- (a) an inspector; or
  - (b) the secretary of a State registered organisation (within the meaning of the Industrial Relations Act 1990) whose members are engaged in the industry concerned; or
  - (c) a person whose rights are impaired.
- (b) From section 11 (2), omit "stipendiary magistrate or industrial magistrate", insert instead "Local Court".
- (c) From section 11 (3), omit "Industrial Commission of New South Wales", insert instead "Industrial Court".
- (7) Section 12 (**Recovery of long service leave pay**):
- (a) From section 12 (1), omit "court of petty sessions holden before a stipendiary magistrate sitting alone, or to any industrial magistrate appointed under the Industrial Arbitration Act, 1940, ", insert instead "Local Court constituted by a Magistrate sitting alone, or to the Industrial Court,".
  - (b) From section 12 (1), omit "magistrate may make any order he", insert instead "Local Court or Industrial Court may make any order it".
  - (c) From section 12 (1), omit "Industrial Commission of New South Wales", insert instead "Industrial Court".
  - (d) Omit section 12 (1A).
  - (e) From section 12 (2), omit "industrial" where firstly and thirdly occurring.
  - (f) From section 12 (2), omit "an industrial union registered as such under the Industrial Arbitration Act, 1940," insert instead "a State employee organisation registered under the Industrial Relations Act 1990".

SCHEDULE 2 - AMENDMENTS - *continued*

(8) Section 14:

Omit the section, insert instead:

**Provisions as to enforcement of orders, appeals etc.**

14. The provisions of the Industrial Relations Act 1990, and of the regulations under that Act, relating to:

- (a) recovery of a penalty; and
- (b) an application for, and enforcement of, an order for the payment of money; and
- (c) an appeal from, or the stating of a case by, a Local Court to the Industrial Court,

apply to proceedings under this Act for the recovery of a penalty or the payment of money.

**Monopolies Act 1923 No. 54**

Section 4 (Definitions):

From the definition of "Industrial Commission", omit "Industrial Commission of New South Wales", insert instead "Industrial Relations Commission of New South Wales".

**Motor Vehicle Repairs Act 1980 No. 71**

(1) Section 4 (Definitions):

From section 4 (1), omit the definition of "industrial magistrate".

(2) Section 49 (Notice of revocation etc.):

- (a) From section 49 (6), omit "industrial magistrate" wherever occurring, insert instead "Local Court".
- (b) From section 49 (6) (b) (i), omit "that magistrate", insert instead "the Local Court".

(3) Section 50 (Appeals):

- (a) From section 50 (1), omit the definition of "registrar", insert instead:

SCHEDULE 2 - AMENDMENTS - *continued*

"**clerk of the court**" means the clerk of the Local Court to which an appeal is made under this Part.

- (b) From section 50 (2), (3), (8) and (11), omit "an industrial magistrate" wherever occurring, insert instead "a Local Court".
  - (c) From section 50 (4) and (5), omit "registrar" wherever occurring, insert instead "clerk of the court".
  - (d) From section 50 (7), omit "the industrial magistrate", insert instead "the Local Court".
  - (e) From section 50 (9) and (10), omit "An industrial magistrate" wherever occurring, insert instead "A Local Court".
- (4) Section 87 (**Proceedings**):
- (a) From section 87 (1) (b), omit "before an industrial magistrate or".
  - (b) Omit section 87 (3).

**Occupational Health and Safety Act 1983 No. 20**

- (1) Section 4 (**Definitions**):
- Omit the definition of "Industrial Commission".
- (2) Section 47 (**Summary procedure for offences**):
- (a) From section 47 (1) (a), omit "alone;", insert instead "alone; or".
  - (b) Omit section 47 (1) (b) and (c), insert instead:
    - (b) before the Industrial Court".
  - (c) From section 47 (2), omit "or an industrial magistrate".
  - (d) From section 47 (3), omit "Industrial Commission", insert instead "Industrial Court".
  - (e) After section 47 (3), insert:
    - (4) The provisions of the Industrial Relations Act 1990, and of the regulations under that Act, relating to appeals from, and the stating of a case by, a Local Court to the Industrial Court apply to proceedings before a Local Court for offences against this Act or the regulations.

**SCHEDULE 2 - AMENDMENTS - *continued***

**Public Sector Management Act 1988 No. 33**

**Section 27 (Legal proceedings not to be brought in respect of appointments etc.):**

From section 27 (i), omit "Industrial Arbitration Act 1940", insert instead "Industrial Relations Act 1990".

**Search Warrants Act 1985 No. 37**

**Section 10 (Definitions):**

In alphabetical order of Acts, insert:

section 568 of the Industrial Relations Act 1990;

**Statutory and Other Offices Remuneration Act 1975 (1976 No. 4)**

(1) Schedule 1:

(a) Omit "President of the Industrial Commission of New South Wales", insert instead "Chief Judge of the Industrial Court".

(b) Omit "Vice-President of the Industrial Commission of New South Wales", insert instead "Deputy Chief Judge of the Industrial Court".

(2) Schedule 2, Part 1:

(a) Omit the following:

Conciliation Commissioner (under the Industrial Arbitration Act 1940).

Chief Industrial Magistrate.

(b) At the end of Part 1, insert:

President of the Industrial Relations Commission.  
Deputy President of the Industrial Relations Commission.

Conciliation Commissioner (being a member of the Industrial Relations Commission).

(3) Schedule 4:

Omit "Member of the Industrial Commission of New South Wales, other than the President or Vice-President", insert instead "Judge of the Industrial Court other than the Chief Judge and the Deputy Chief Judge".

**SCHEDULE 2 - AMENDMENTS - *continued***

**Superannuation Act 1916 No. 28**

**Section 3 (Interpretation):**

From the definition of "Employee" in section 3 (1), omit "Judge of the Supreme Court, or a member of the Industrial Commission of New South Wales, or a Judge of the District Court, or a Judge of the Compensation Court", insert instead "Judge within the meaning of the Judges' Pensions Act 1953".

**Supreme Court Act 1970 No. 52**

- (1) **Section 26 (Appointment and qualifications: Chief Justice and other Judges):**

Omit section 26 (2) (b), insert instead:

(b) a Judge of the Industrial Court;

- (2) **Section 48 (Assignment to the Court of Appeal):**

Omit paragraph (ii) of the definition of "specified tribunal" in section 48 (1) (a), insert instead:

(ia) the Industrial Court or a Judge of that Court;

(ii) the Industrial Relations Commission or a member of that Commission;

**Textile Products Labelling Act 1954 No. 26**

**Section 8 (Proceedings for offences):**

Omit section 8 (2) and (3), insert instead:

(2) Proceedings for offences against this Act are to be disposed of summarily before a Local Court constituted by a Magistrate sitting alone.

(3) The provisions of the Industrial Relations Act 1990 relating to appeals from, and the stating of a case by, a Local Court to the Industrial Court apply to proceedings before a Local Court for offences against this Act or the regulations.

SCHEDULE 2 - AMENDMENTS - *continued*

**Workers Compensation Act 1987 No. 70**

(1) Section 149 (**Definitions**):

From paragraph (f) of the definition of "damages" in section 149 (1), omit "an award or industrial agreement within the meaning of the Industrial Arbitration Act 1940", insert instead "an award or agreement within the meaning of the Industrial Relations Act 1990".

(2) Section 278 (**Proceedings for offences**):

(a) From section 278 (1) (a), omit "alone;", insert instead "alone; or".

(b) Omit section 278 (1) (b) and (c), insert instead:

(b) before the Industrial Court.

(c) From section 278 (2), omit "or an industrial magistrate".

(d) From section 278 (3), omit "Industrial Commission of New South Wales", insert instead "Industrial Court".

(e) After section 278 (3), insert:

(4) The provisions of the Industrial Relations Act 1990, and of the regulations under that Act, relating to appeals from, and the stating of a case by, a Local Court to the Industrial Court apply to proceedings before a Local Court for offences against this Act or the regulations.

**SCHEDULE 3 - SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 5)

**PART 1 - PRELIMINARY**

**Definitions**

1. (1) In this Schedule:

"**appointed day**", in relation to an item in this Schedule, means the day on which the item commences;

"**Court**" means the Industrial Court established under the Court Act;

"**Court Act**" means the Industrial Court Act 1990;

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

"**1990 Act**" means the Industrial Relations Act 1990;

"**former Commission**" means the Industrial Commission of New South Wales as constituted under the 1940 Act immediately before the commencement of section 186 of the 1990 Act;

"**former Conciliation Committee**" means a Conciliation Committee as constituted under the 1940 Act immediately before the commencement of section 189 of the 1990 Act;

"**former Tribunal**" means a contract regulation tribunal as constituted under the 1940 Act immediately before the commencement of section 195 of the 1990 Act;

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

"**Trade Union Act**" means the Trade Union Act 1881.

(2) Other expressions used in this Schedule have the same meaning as they have in the 1990 Act and the Court Act.

**Regulations**

2. (1) The Governor may make regulations containing provisions of a saving or transitional nature consequent on the enactment of the following Acts:

- (a) the 1990 Act;
- (b) the Court Act;
- (c) this Act.



SCHEDULE 3 - SAVINGS AND TRANSITIONAL  
PROVISIONS - *continued*

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

(4) If the regulations so provide, a provision referred to in subclause (1) has effect despite any other clause of this Schedule (clauses 1-7 excepted).

**PART 2 - GENERAL PROVISIONS**

**First appointments as Presidential Members of new Commission**

3. (1) Appointment as a Presidential Member of the new Commission:

- (a) must be offered by the Minister to a judicial member of the former Commission holding office immediately before the appointed day (other than such a member who has been appointed, or has accepted an offer of appointment, as a Judge of the Industrial Court); and
- (b) must be offered by the Minister to a non-judicial member of the former Commission holding office immediately before the appointed day.

(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, title, status, precedence and other rights as the person had under the 1940 Act immediately before the appointed day.

SCHEDULE 3 - SAVINGS AND TRANSITIONAL  
PROVISIONS - *continued*

(4) A person appointed to an office in accordance with a recommendation made under subclause (2) is entitled, while holding the office, to remuneration not less than that 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) Subclause (3) has effect despite the provisions of the Statutory and Other Offices Remuneration Act 1975 relating to members of the new Commission.

(6) The Judges' Pensions Act 1953 applies to a judicial member of the former Commission who takes office on the appointed day as a member of the new Commission in accordance with a recommendation made under subclause (2) and so applies in the same way as it applied to the appointee as a member of the former Commission.

(7) The Judges' Pensions Act 1953 does not apply to a non-judicial member of the former Commission who takes office on the appointed day as a member of the new Commission in accordance with a recommendation made under subclause (2).

(8) The Judicial Officers Act 1986 (including, despite its repeal, section 44 (2) of that Act) applies to a member of the former Commission who is appointed to the new Commission in accordance with a recommendation made under subclause (2) and so applies in the same way as it applied to the appointee as a member of the former Commission.

(9) Clauses 3 and 4 of Schedule 4 to the 1990 Act do not apply to a member of the former Commission who is appointed to the new Commission in accordance with a recommendation made under subclause (2).

(10) This clause has effect despite any provision of the 1990 Act.

**First appointments of Conciliation Commissioners as members of new Commission**

4. (1) The Minister must offer to each Conciliation Commissioner holding office under the 1940 Act immediately before the appointed

SCHEDULE 3 - SAVINGS AND TRANSITIONAL  
PROVISIONS - *continued*

day membership of the new Commission as a Conciliation Commissioner.

(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) Despite their repeal, the provisions of section 15 (except subsections (1), (1A) (c), (1B), (8B) and (9)) of the 1940 Act apply to a Conciliation Commissioner who takes office on the appointed day as a member of the new Commission in accordance with a recommendation made under subclause (2) and so apply in the same way as they applied to the appointee when the appointee was a Conciliation Commissioner under the 1940 Act.

(4) A Conciliation Commissioner to whom this clause applies is not entitled in respect of the same period of service to claim a benefit under this Act and any other Act.

(5) Clause 4 of Schedule 4 to the 1990 Act (which relates to the vacation of office by a member of the new Commission) does not apply to a Conciliation Commissioner who is appointed to the new Commission in accordance with a recommendation made under subclause (2).

(6) This clause has effect despite any provision of the 1990 Act.

**Service as member of former Commission or as Conciliation Commissioner**

5. If:

- (a) a member of the former Commission as constituted immediately before the appointed day takes office on the appointed day as a member of the new Commission; or
- (b) a Conciliation Commissioner holding office under the 1940 Act immediately before the appointed day takes office on the appointed day as a member of the new Commission,

service as a member of the former Commission or, as the case may be, as a Conciliation Commissioner under the 1940 Act is to be reckoned for all purposes as service as a member of the new Commission.

SCHEDULE 3 - SAVINGS AND TRANSITIONAL  
PROVISIONS - *continued*

**Chief Industrial Magistrate**

6. The person who, immediately before the repeal of section 126A of the 1940 Act, held office as Chief Industrial Magistrate continues, despite the repeal, to have the same rights, and to be entitled to the same remuneration, as would have been applicable to the person but for the repeal.

**Registrar, Deputy Registrar and inspectors**

7. Any person appointed under the Public Sector Management Act 1988 to the office of Industrial Registrar, Deputy Industrial Registrar or inspector for the purposes of the 1940 Act and holding that office immediately before the appointed day is to be taken to have been so appointed to the corresponding office for the purposes of the 1990 Act.

**Temporary continuation of existing Conciliation Committees and existing Tribunals**

8. (1) A Conciliation Committee, or a Contract Regulation Tribunal, holding office under the 1940 Act immediately before the appointed day becomes, on that day, a Conciliation Committee, or a Contract Regulation Tribunal, holding office under the 1990 Act, except that the Chairperson is to be a Conciliation Commissioner who holds office under the 1990 Act and is nominated as Chairperson by the new Commission.

(2) A Conciliation Committee or a Contract Regulation Tribunal constituted by subclause (1) continues until:

(a) the Committee or Tribunal is replaced by a Committee or Tribunal stated by the new Commission to be its replacement;  
or

(b) the first anniversary of the appointed day,  
whichever occurs first.

**Changes of jurisdiction**

9. (1) If, before the appointed day, proceedings in relation to a matter were instituted in the former Commission, before a Conciliation Commissioner sitting alone, or before a Conciliation Committee or a Contract Regulation Tribunal, but the hearing of the

SCHEDULE 3 - SAVINGS AND TRANSITIONAL  
PROVISIONS - *continued*

matter had not been commenced before the appointed day, the proceedings are to be taken to be:

- (a) proceedings instituted in the new Commission, if they are of a kind in respect of which the new Commission has jurisdiction on the appointed day; or
- (b) proceedings instituted in the Court, if they are of a kind in respect of which the Court has jurisdiction on the appointed day.

(2) If, before the appointed day, the former Commission, a Conciliation Committee or a Contract Regulation Tribunal had commenced the hearing of, but had not determined, a matter, the person or persons constituting the Commission, Committee or Tribunal hearing the matter are to continue the hearing, and are to determine the matter even if the person, or any person, hearing and determining the matter takes office on that day as a member of the new Commission or as a Judge of the Court.

(3) If, before the appointed day, a Conciliation Commissioner sitting alone had commenced the hearing of, but had not determined, a matter, the Conciliation Commissioner is to continue the hearing, and is to determine the matter, sitting as the Commission.

(4) A determination of a matter made under subclause (2) or (3) has effect:

- (a) if the matter determined is of a kind in respect of which the new Commission has jurisdiction at the time of the determination - as a determination of the new Commission; or
- (b) if the matter determined is of a kind in respect of which the Court has jurisdiction at the time of the determination - as a determination of the Court.

**Awards, orders and contract determinations**

10. (1) An award or order made under the 1940 Act by the former Commission or Retail Trade Industrial Tribunal, or a former Conciliation Committee or Commissioner, being an award or order in force immediately before the appointed day, is to be taken to have been made under the 1990 Act.

SCHEDULE 3 - SAVINGS AND TRANSITIONAL  
PROVISIONS - *continued*

(2) A contract determination made under Part 8A of the 1940 Act and in force immediately before the appointed day is to be taken to have been made under the 1990 Act.

**Industrial and other agreements**

11. (1) An industrial agreement, or an agreement under Part 8A of the 1940 Act, that was registered under the 1940 Act and was in force immediately before the appointed day is to be taken to have been made and registered under the 1990 Act.

(2) An agreement referred to in subclause (1) that was lodged for registration under the 1940 Act immediately before the appointed day, but that had not been registered before that day, is to be taken to have been lodged for registration under the 1990 Act.

**Saving of certain exemptions**

12. An exemption from an award made under the 1940 Act, being an exemption in force immediately before the appointed day, is to be taken to have been granted under the 1990 Act.

**Grievance and dispute settlement procedures for certain awards and agreements**

13. (1) The regulations may provide that awards and industrial agreements continued in force by this Schedule are to be taken to have inserted in them provisions for the avoidance and settlement of grievances of individual employees and questions, disputes and difficulties concerning employees and their employers, in each case of the kind to which section 74 of the 1990 Act applies.

(2) Any such provisions are to be subject to the express provisions of the awards and agreements concerned, as varied in accordance with the 1990 Act from time to time.

**Preference clauses**

14. A provision in an award or industrial agreement conferring a right of preference in employment in favour of a member of an industrial union of employees registered under the 1940 Act over a person who is not a member of an industrial union, being a provision

**SCHEDULE 3 - SAVINGS AND TRANSITIONAL PROVISIONS - *continued***

that was in force immediately before the appointed day, expires 12 months after such commencement.

**Permits for aged, infirm or slow workers**

15. A permit issued under the 1940 Act for an aged, infirm or slow worker to work for less than the wage fixed by an award, being a permit in force immediately before the appointed day, is to be taken to have been issued under the 1990 Act.

**Industrial union of employers registered under 1940 Act**

16. (1) Unless its registration as a State registered organisation is suspended for the time being or is cancelled under the 1990 Act, an industrial union of employers (other than an incorporated company) that, immediately before the appointed day, was registered under the 1940 Act is to be taken to be registered as a State employer organisation under the 1990 Act for a period of 12 months after that day.

(2) Unless its registration as a State registered organisation is suspended for the time being or is cancelled under the 1990 Act, an incorporated company registered as an industrial union of employers immediately before the appointed day is to be taken to be registered as a State employer organisation under the 1990 Act.

(3) Section 319 (Incorporation) and such other provisions of Part 7 of the 1990 Act as may be prescribed by the regulations under that Act do not apply to a State employer organisation referred to in subclause (2).

**Industrial union of employees registered under 1940 Act**

17. (1) Unless its registration as a State registered organisation is suspended for the time being or is cancelled under the 1990 Act, an industrial union of employees that, immediately before the appointed day, was registered under the 1940 Act is to be taken to be registered as an industrial union under the 1990 Act for a period of 12 months after that day.

(2) Any such industrial union of employees is to be taken to be so registered and may, after the appointed day, apply to be and be

SCHEDULE 3 - SAVINGS AND TRANSITIONAL  
PROVISIONS - *continued*

registered under the 1990 Act as an industrial union even if it has fewer than 50 members.

**Trade union registered under Trade Union Act**

18. (1) A trade union that, immediately before the appointed day, was registered under the Trade Union Act but was not registered under the 1940 Act is to be taken to be registered as a trade union under the 1990 Act for a period of 12 months after that day.

(2) This clause does not prevent suspension or cancellation of registration of such a registered trade union at any time after the appointed day.

**Transitional registration**

19. (1) The registration (by the operation of this Schedule) of a body, other than a body referred to in subclause 16 (2) or the Labor Council of New South Wales, lapses 12 months after the body is first required by this Schedule to be taken to be registered under the 1990 Act unless the body applies for registration and has been registered under that Act before it lapses.

(2) The regulations may provide for:

- (a) applications to be made for registration as State registered organisations under the 1990 Act by former industrial unions of employees or of employers to which clauses 16 (1) and 17 apply; and
- (b) the variation of requirements of that Act so as to enable their registration as State registered organisations; and
- (c) the application of provisions of that Act that apply to and in respect of members of State registered organisations so as to apply those provisions with respect to former industrial unions of employees or of employers to which clauses 16 and 17 apply.

(3) On the incorporation because of its registration under the 1990 Act of a body that is:

- (a) a company incorporated under the Companies (New South Wales) Code; or



SCHEDULE 3 - SAVINGS AND TRANSITIONAL  
PROVISIONS - *continued*

- (b) an association incorporated under the Associations Incorporation Act 1984; or
- (c) a society registered under the Co-operation Act 1923, the body ceases to be incorporated otherwise than under the 1990 Act and the Corporate Affairs Commission constituted by the Companies (Administration) Act 1981 (in the case of such a company or incorporated association) or the Registrar of Co-operative Societies (in the case of such a society) must cancel the registration of the company, association or society concerned.

(4) Incorporation under the 1990 Act does not affect the identity of a body to which subsection (3) applies and such a body is to be taken to be the same body before and after that incorporation and no act, matter or thing is to be affected or abated by that incorporation and, in particular, any claim by or against the body subsisting immediately before its incorporation under this Act may be continued by or against the body in its former name or commenced by or against the body in its new name.

(5) Without limiting the generality of subsection (4), nothing in subsection (3):

- (a) affects any right, privilege, obligation or liability acquired or incurred under the Companies (New South Wales) Code or the Co-operation Act 1923; or
- (b) affects any penalty, forfeiture or punishment incurred in respect of any offence committed against that Code or that Act; or
- (c) affects any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if subsection (3) had not been enacted.

**Existing office holders**

20. A person who, immediately before the appointed day, held an office in a body that, on that day, becomes a State registered organisation or registered trade union is to be taken to have been elected to that office for the remainder of the term for which he or she

SCHEDULE 3 - SAVINGS AND TRANSITIONAL  
PROVISIONS - *continued*

was appointed or elected under the 1940 Act or the Trade Union Act, as the case may be, or for a period of 12 months, whichever is the lesser.

**Elections for offices**

21. An application to the Registrar under section 335 of the 1990 Act for the conduct of an election by a State registered organisation or a branch of a State registered organisation must be made within 4 years after the last election of officers of the organisation or branch that was held before the appointed day.

**Labor Council of New South Wales as State peak organisation**

22. The Labor Council of New South Wales is to be taken to be approved by the Commission as a State peak organisation for the purposes of the 1990 Act from the appointed day.

**Labor Council of New South Wales as registered trade union**

23. The Labor Council of New South Wales is to be taken to be registered as a trade union under the 1990 Act from the appointed day.

**Conscientious objectors**

24. A certificate of exemption from membership of an industrial union issued under section 129B of the 1940 Act before the appointed day is to be taken to be a certificate of exemption issued by the Registrar under section 375 of the 1990 Act.

**Private employment agent licence**

25. A licence in force under Division 2 of Part 14 of the 1940 Act (relating to private employment agents) immediately before the appointed day is to be taken to have been issued by the Director-General of the Department of Industrial Relations and Employment under Part 9 of the 1990 Act.

**Matters pending before industrial magistrates**

26. (1) If, before the appointed day, proceedings in relation to a matter were instituted before an industrial magistrate, but the hearing

SCHEDULE 3 - SAVINGS AND TRANSITIONAL  
PROVISIONS - *continued*

of the matter had not been commenced before the appointed day, the proceedings are to be taken to be proceedings instituted before a Local Court constituted by a Magistrate.

(2) If, before the appointed day, an industrial magistrate had commenced the hearing of, but had not determined, a matter, the hearing of the matter may continue before a Local Court constituted by a Magistrate as if it had been partly heard by the industrial magistrate as a Magistrate constituting a Local Court.

(3) Any decision made by an industrial magistrate before the appointed day is to be taken to have been made by a Local Court constituted by a Magistrate for the purposes of allowing the commencement of an appeal or the commencement of any other further proceedings relating to that decision on or after the appointed day.

(4) Any monetary restriction imposed by the 1990 Act on the jurisdiction of a Local Court in dealing with proceedings of the kind to which this clause applies has effect with respect to particular proceedings to which this clause applies only to the extent (if any) that an industrial magistrate dealing with proceedings of the same kind under the 1940 Act would have been bound by the restriction.

**Expiration of current period**

27. If, for any purpose, time had commenced to run under a provision of the 1940 Act before, but had not expired before, the repeal of the provision, it expires for the corresponding purpose under the 1990 Act, or the Court Act, at the time at which it would have expired if the provision had not been repealed.

**Meaning of certain references**

28. A reference in another Act or in an instrument made under another Act (not in either case being the 1990 Act or the Court Act):

- (a) to the 1940 Act - is to be read as including a reference to the 1990 Act or to the Court Act, as is appropriate; or
- (b) to the Trade Union Act 1881 or the Truck Act 1900 - is to be read as including a reference to the 1990 Act; or

SCHEDULE 3 - SAVINGS AND TRANSITIONAL  
PROVISIONS - *continued*

- (c) to the former Commission - is to be read as including a reference to the Industrial Relations Commission established under the 1990 Act or to the Industrial Court, as is appropriate; or
- (d) to a former Conciliation Committee - is to be read as including a reference to a Conciliation Committee established under the 1990 Act; or
- (e) to a former Tribunal - is to be read as including a reference to a Contract Regulation Tribunal established under the 1990 Act; or
- (f) to an industrial magistrate - is to be read as including a reference to a Magistrate or a Local Court constituted by a Magistrate sitting alone, as is appropriate; or
- (g) to an award made, or industrial agreement registered, under the 1940 Act - is to be read as including a reference to an award made, or an industrial agreement registered, under the 1990 Act.

**General saving**

29. If anything done or commenced under the 1940 Act, the Trade Union Act 1881 or the Truck Act 1900 before the appointed day and still having effect or not completed immediately before that day could have been done or commenced under the 1990 Act or the Court Act if the 1990 Act or the Court Act and this Act had been in force when the thing was done or commenced:

- (a) the thing done continues to have effect; or
- (b) the thing commenced may be completed,

as if it had been done or commenced under the 1990 Act or the Court Act.

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