

**INDUSTRIAL ARBITRATION (RETAIL TRADE) AMENDMENT  
ACT, 1983, No. 161**

**New South Wales**



ANNO TRICESIMO SECUNDO

**ELIZABETHÆ II REGINÆ**

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**Act No. 161, 1983.**

An Act to amend the Industrial Arbitration Act, 1940, to constitute a Retail Trade Industrial Tribunal and to define its powers and functions under that Act. [Assented to, 31st December, 1983.]

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*Industrial Arbitration (Retail Trade) Amendment.*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**Short title.**

1. This Act may be cited as the "Industrial Arbitration (Retail Trade) Amendment Act, 1983".

**Commencement.**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on the day appointed and notified under section 2 (2) of the Factories, Shops and Industries (Retail Trade) Amendment Act, 1983.

**Amendment of Act No. 2, 1940.**

3. The Industrial Arbitration Act, 1940, is amended in the manner set forth in Schedule 1.

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SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940.

(1) Section 2—

At the end of the matter relating to Part III, insert:—

DIVISION 7.—*Retail Trade Industry*—ss. 38N–38V.

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**SCHEDULE 1—continued.****AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—continued.****(2) Part III, Division 7—**

At the end of Part III, insert:—

**DIVISION 7.—Retail Trade Industry.****Interpretation.**

38N. In this Division and Schedule 5—

“assessor” means a person appointed as an assessor of the Tribunal under section 38R;

“chairman” means chairman of the Tribunal;

“deputy chairman” means deputy chairman of the Tribunal;

“retail trade industry” means the industry relating to the business of shops and in which such persons or classes of persons as may be prescribed are engaged;

“shop” has the meaning ascribed thereto by section 75 of the Factories, Shops and Industries Act, 1962;

“Tribunal” means the Retail Trade Industrial Tribunal constituted by this Act.

**Retail Trade Industrial Tribunal.**

38O. (1) There is hereby constituted a tribunal under the name of the “Retail Trade Industrial Tribunal”.

(2) The Tribunal shall consist of the chairman and 2 assessors.

**Chairman of Tribunal.**

38P. The chairman of the Tribunal shall be a member of the commission appointed by the Governor.

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*Industrial Arbitration (Retail Trade) Amendment.*

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**SCHEDULE 1—*continued.***

**AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—*continued.***

**Deputy chairman of Tribunal.**

38Q. (1) There shall be a deputy chairman of the Tribunal who shall be a conciliation commissioner appointed by the Governor.

(2) The deputy chairman shall act in the office of chairman—

(a) during the illness or absence of the chairman or during a vacancy in the office of chairman; and

(b) on such occasions as the chairman, from time to time, directs, and shall, while so acting, be deemed to be the chairman.

(3) The deputy chairman shall, as directed by the Tribunal, assist the Tribunal in the exercise of its powers, authorities, duties and functions.

**Assessors.**

38R. (1) The assessors of the Tribunal shall be 2 persons appointed by the Governor.

(2) Of the assessors—

(a) 1 shall be chosen by the Minister from a panel of 3 persons nominated by the Labor Council of New South Wales; and

(b) the other shall be chosen by the Minister from a panel of 3 persons nominated by the Retail Traders' Association of New South Wales.

(3) Where, for the purposes of subsection (2), nomination of persons to constitute a panel is not made within the time or in the manner specified by the Minister in a written notice given to the body concerned, the Governor may appoint a person to be an

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**SCHEDULE 1—continued.****AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—continued.**

assessor instead of the person required to be appointed from that panel and the person so appointed shall be deemed to have been chosen by the Minister from a panel duly nominated.

(4) The assessors shall assist and advise the chairman, but shall not adjudicate on any matter before the Tribunal.

**Provisions relating to Tribunal.**

38s. Schedule 5 has effect with respect to the Tribunal.

**Jurisdiction in retail trade industry.**

38t. (1) Notwithstanding any other provision of this Act, where, but for this section, any jurisdiction or powers in relation to an industrial matter in the retail trade industry would be exercisable by the commission constituted by one member, a conciliation commissioner, a conciliation committee or the chairman of a conciliation committee, the jurisdiction and powers may be exercised only by the Tribunal.

(2) An order, award, ruling or decision made by the Tribunal in the course of exercising the jurisdiction or powers referred to in subsection (1) shall, for the purposes of section 14 (8) (b) and any other provision of this Act, be deemed to be an order, award, ruling or decision of a member of the commission sitting alone.

(3) Notwithstanding any other provision of this Act, in any appeal to the commission from an order, award, ruling or decision made by the Tribunal in the course of exercising the jurisdiction or powers referred to in subsection (1), the commission in court session shall be constituted by not less than 3 members of the commission chosen by the President.

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**SCHEDULE 1—continued.****AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—continued.****Other functions of the Tribunal.**

38u. In addition to its jurisdiction and powers referred to in section 38r, the Tribunal shall have such other powers, authorities, duties and functions as may be conferred or imposed on the Tribunal by or under this or any other Act.

**Special review of retail trade industry.**

38v. (1) As soon as practicable after the commencement of this Division, the Tribunal shall conduct a review of all awards relating to the retail trade industry for the purposes of subsection (2).

(2) In conducting the review referred to in subsection (1), the Tribunal shall determine what alterations to the terms of the awards referred to in subsection (1) will be necessary—

- (a) upon the extension of trading hours for general shops to include—
  - (i) one night of each week, in addition to Thursday night; and
  - (ii) Saturday afternoon; and
- (b) to guarantee the rights of current full-time weekly employees in shops to continue to work, if the employees wish to do so, at the times that they were, immediately before the commencement of this Division, normally rostered to work notwithstanding any extension of trading hours as referred to in paragraph (a).

(3) After conducting the review referred to in subsection (1), the Tribunal shall—

- (a) make such variations or amendments to the terms of the awards referred to in subsection (1); or

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**SCHEDULE 1—continued.****AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—continued.**

(b) make such new awards replacing those awards,  
as may be necessary to give effect to the alterations determined in  
respect of those awards as referred to in subsection (2).

**(3) Schedule 5—**

After Schedule 4, insert:—

**SCHEDULE 5**

(Sec. 38s.)

*Provisions Relating to the Tribunal.***Deputies for assessors.**

1. (1) The Governor may, from time to time, appoint a person to be the deputy of an assessor.

(2) A person shall not be appointed under subclause (1) as the deputy of—

(a) the assessor referred to in section 38R (2) (a), unless the person is chosen by the Minister from the same panel from which the assessor was appointed or is so chosen from a further panel of 3 persons nominated by the Labor Council of New South Wales; or

(b) the assessor referred to in section 38R (2) (b), unless the person is chosen by the Minister from the same panel from which the assessor was appointed or is so chosen from a further panel of 3 persons nominated by the Retail Traders' Association of New South Wales.

(3) Two or more persons may be appointed under subclause (1) as deputies from a single further panel of 3 persons referred to in subclause (2).

(4) In the absence of an assessor, the deputy of the assessor under subclause (1) shall have and may exercise and perform all the powers, authorities, duties and functions of the assessor.

(5) The Governor may remove a deputy from any office to which the deputy was appointed under subclause (1).

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**SCHEDULE 1—continued.****AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—continued.**

(6) A deputy of an assessor under subclause (1) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the deputy.

(7) For the purposes of this clause, a vacancy in the office of an assessor shall be deemed to be an absence from office of the assessor.

**Age of assessors, etc.**

2. A person of or above the age of 70 years is not eligible to be appointed as an assessor or as the deputy of an assessor.

**Term of office.**

3. Subject to this Schedule, a person appointed as—

- (a) the chairman or deputy chairman; or
- (b) an assessor,

shall hold office for such period, not exceeding 3 years, as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

**Effect of appointment of chairman or deputy chairman.**

4. (1) The appointment of a person who is a member of the commission or a conciliation commissioner as the chairman or deputy chairman shall not, nor shall the person's service as chairman or deputy chairman, affect the person's tenure of office as a member of the commission or conciliation commissioner or the person's rank, title, status, precedence, remuneration or other rights or privileges as a holder of that office.

(2) A member of the commission or a conciliation commissioner may, notwithstanding that he or she holds office as chairman or deputy chairman, exercise and perform the powers, authorities, duties and functions of such a member or commissioner, as the case may be.

(3) The service, as chairman or deputy chairman, of a member of the commission or a conciliation commissioner shall, for all purposes, be taken to be service as such a member or commissioner, as the case may be.



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**SCHEDULE 1—continued.****AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—continued.****Remuneration.**

5. An assessor is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the assessor.

**Vacation of office.**

6. (1) A person holding office as chairman or deputy chairman shall be deemed to have vacated that office if the person—

- (a) ceases to be qualified to be appointed to that office; or
- (b) resigns that office by instrument in writing addressed to the Minister.

(2) A person holding office as an assessor shall be deemed to have vacated that office if the person—

- (a) dies;
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (c) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- (d) is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or upwards, or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable;
- (e) resigns that office by instrument in writing addressed to the Minister;
- (f) attains the age of 70 years; or
- (g) is removed from office by the Governor under subclause (3).

(3) The Governor may remove an assessor from office.

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**SCHEDULE 1—*continued.***

**AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—*continued.***

**Effect of Public Service Act, 1979.**

7. The provisions of the Public Service Act, 1979, do not apply to or in respect of the appointment of—

- (a) a person as chairman or deputy chairman; or
- (b) an assessor,

and a person holding office as chairman, deputy chairman or as an assessor is not, as chairman, deputy chairman or an assessor, subject to the provisions of that Act.

**Assessor absent from meeting.**

8. If an assessor is absent from a duly convened meeting of the Tribunal, the chairman may, with the assistance and advice of the other assessor, if present, or alone, if no assessors are present, proceed to hear and adjudicate on any matter before the Tribunal and any determination made at that meeting shall be deemed to be a decision of the Tribunal.