

**INDUSTRIAL ARBITRATION (SUPERANNUATION  
APPEALS) AMENDMENT ACT 1986 No. 130**

NEW SOUTH WALES



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**INDUSTRIAL ARBITRATION (SUPERANNUATION APPEALS)  
AMENDMENT ACT 1986 No. 130**

**NEW SOUTH WALES**



**Act No. 130, 1986**

An Act to amend the Industrial Arbitration Act 1940 to enable the Industrial Commission of New South Wales to hear and determine certain superannuation appeals. [Assented to, 4 December 1986]

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See also *Miscellaneous Acts (Superannuation Appeals) Amendment Act 1986*.

*Industrial Arbitration (Superannuation Appeals) Amendment 1986*

**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 (Superannuation Appeals) Amendment Act 1986".

**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 such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

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

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

**SCHEDULE 1**

(Sec. 3)

**AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940**

## (1) Part III, Division 8—

After Division 7, insert:

**DIVISION 8—*Superannuation Appeals*****Interpretation**

38w. In this Division—

"superannuation appeal" means an appeal made in accordance with a right of appeal conferred by an Act relating to the administration of a scheme, fund or arrangement under which any superannuation or retirement benefits are provided.

*Industrial Arbitration (Superannuation Appeals) Amendment 1986***SCHEDULE 1—continued****AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940—  
*continued*****Jurisdiction**

38x. The jurisdiction of the commission includes the power to hear and determine superannuation appeals.

**Exercise of jurisdiction**

38y. (1) The jurisdiction of the commission to hear and determine superannuation appeals shall be exercised in accordance with this Division by a judicial member of the commission.

(2) The judicial member may, at the discretion of and to the extent determined by the judicial member, be assisted in the exercise of the jurisdiction by—

- (a) a conciliation commissioner; or
- (b) an assessor or assessors appointed under section 38z,  
or both.

(3) An assessor shall not assist in the exercise of the jurisdiction in relation to a superannuation appeal to which the assessor's employer is a party.

**Assessors**

38z. (1) The commission may appoint persons—

- (a) who possess qualifications or experience in medicine, law, actuarial science or the administration of superannuation or retirement benefits schemes; or
- (b) who possess such qualifications or experience as may be prescribed,

to be assessors for the purposes of this Division.

(2) The appointment of an assessor shall be published in the Gazette.

*Industrial Arbitration (Superannuation Appeals) Amendment 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940—  
*continued*

(3) A copy of a Gazette containing a notice of the appointment of an assessor purporting to have been published in pursuance of this section shall be conclusive evidence that the person named in the notice was legally appointed to the office named and had power and jurisdiction to act in that office and the appointment shall not be challenged for any cause.

(4) The regulations under this Act may make provision for or with respect to—

- (a) the appointment, term of office and conditions of office of assessors;
- (b) the oath to be taken by them; and
- (c) their remuneration.

**Powers of the commission on appeals**

38AA. (1) A superannuation appeal shall be dealt with by the commission by way of a new hearing and fresh evidence or evidence in addition to, or in substitution for, the evidence given before the person or body whose decision or determination is the subject of the appeal may be given on the appeal.

(2) The commission shall, for the purposes of hearing and determining a superannuation appeal, have all the powers, authorities, duties, functions and discretions which the person or body whose decision or determination is the subject of the appeal had in respect of the matter the subject of the appeal.

(3) In making its determination, the commission shall have regard to the Act under which the superannuation appeal was made, any relevant instrument under that Act and such other matters as it considers to be relevant.

(4) For the purposes of a superannuation appeal, the commission shall not be bound by the rules of evidence and may inform itself on any matter as it thinks fit.

*Industrial Arbitration (Superannuation Appeals) Amendment 1986***SCHEDULE 1—continued****AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940—  
*continued*****Rights of representation**

38AB. (1) A party to a superannuation appeal may be represented before the commission by an agent.

(2) A party may be represented by a barrister or a solicitor but only with the consent of the commission.

**Determination of superannuation appeal**

38AC. The determination of a superannuation appeal by the commission shall, for the purposes of the Act under which the appeal is made, be deemed to be the final decision or determination of the person or body against whose decision or determination the appeal was made and shall be given effect to accordingly.

**Finality of determination**

38AD. (1) Except as provided in section 14, the determination of a superannuation appeal by the commission shall be final and no proceedings, whether for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, shall lie in respect of any such determination or any decision, proceeding, step or other matter involved in the making of any such determination.

(2) A determination shall not be vitiated by reason only of any informality or want of form or be liable to be challenged, appealed against, reviewed, quashed or called in question by any court of judicature on any account whatsoever.

*Industrial Arbitration (Superannuation Appeals) Amendment 1986*

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**SCHEDULE 1—*continued*****AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940—  
*continued*****(2) Section 130 (**Regulations made by Governor**)—****Section 130 (1) (h)—**

After “magistrate,”, insert “being proceedings brought under this or any other Act,.”.

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