

**INDUSTRIAL ARBITRATION (FURTHER AMENDMENT)  
ACT 1986 No. 23**

**NEW SOUTH WALES**



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**INDUSTRIAL ARBITRATION (FURTHER AMENDMENT)  
ACT 1986 No. 23**

**NEW SOUTH WALES**



**Act No. 23, 1986**

An Act to amend the Industrial Arbitration Act 1940 with respect to the duration and review of exemptions in respect of awards granted under that Act and with respect to decisions of the Retail Trade Industrial Tribunal; and for other purposes. [Assented to, 2nd May, 1986.]

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See also Long Service Leave (Amendment) Act 1986; Long Service Leave (Metalliferous Mining Industry) Amendment Act 1986.

*Industrial Arbitration (Further Amendment) 1986*

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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 (Further Amendment) Act 1986".

**Commencement**

**2. (1)** Except as provided by subsection (2), this Act shall commence on the date of assent to this Act.

**(2)** Schedule 1, and section 3 in its application to that Schedule, 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 Schedules 1 and 2.

**Appeals, etc., from the Retail Trade Industrial Tribunal**

**4.** The amendments made by Schedule 2 do not apply in relation to any order, award, ruling or decision made by the Retail Trade Industrial Tribunal before the commencement of this Act.

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**SCHEDULE 1**

(Sec. 3)

**AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940  
RELATING TO EXEMPTIONS**

(1) Sections 87A, 87B—

After section 87, insert:

*Industrial Arbitration (Further Amendment) 1986***SCHEDULE 1—continued****AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940  
RELATING TO EXEMPTIONS—continued****Exemptions from awards**

87A. The commission or a committee shall not direct that an exemption under section 87 be granted in respect of an award unless it is satisfied—

- (a) that the employees engaged in the industry or calling to which the award relates are entitled under any Act or under any scheme conducted by or on behalf of their employers to benefits that are not less favourable than those provided for in the award; and
- (b) that it is in the best interests of the employees that the exemption should be granted.

**Review of exemptions from awards**

87B. (1) In this section, “exemption” means an exemption granted under section 87 or 88C in respect of an award.

(2) Unless sooner revoked, an exemption granted after the commencement of this section remains in force for the period of 3 years from the date on which it is granted or for such shorter period as the commission or a committee specifies when granting it, but it may be extended by the commission or a committee from time to time for a further period or further periods of 3 years or such shorter period or periods as the commission or committee specifies when extending it.

(3) The commission may review any exemption—

- (a) of its own motion, after causing a notice to be served on such persons as appear to be appropriate in the circumstances stating that the commission requires them to show cause why the exemption should not be varied or revoked on the ground that the benefits provided by the award are more favourable than those then applying;
- (b) on application by an industrial union of employers or employees, or by an employer, affected by the exemption; or

*Industrial Arbitration (Further Amendment) 1986***SCHEDULE 1—*continued*****AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940  
RELATING TO EXEMPTIONS—*continued***

(c) at the request of the Minister or following a report by the Industrial Registrar.

(4) After reviewing an exemption, the commission may confirm the exemption, vary the terms of the exemption or any condition subject to which the exemption was granted, or revoke the exemption.

(2) **Section 90B (Obsolete awards, etc.)—**

(a) **Section 90B—**

After “award,” wherever occurring, insert “agreement, exemption.”.

(b) **Section 90B (1)—**

After “made”, insert “, entered into or granted”.

(c) **Section 90B (5)—**

After section 90B (4), insert:

(5) A reference in this section to an award, agreement, exemption, order or contract determination includes a reference to a part thereof.

**SCHEDULE 2**

(Sec. 3)

**AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940  
RELATING TO THE RETAIL TRADE INDUSTRIAL TRIBUNAL**

(1) **Section 38T (Jurisdiction in retail trade industry)—**

(a) **Section 38T (1)—**

After “industry”, insert “(including any jurisdiction or powers under section 32)”.

*Industrial Arbitration (Further Amendment) 1986***SCHEDULE 2—*continued*****AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940  
RELATING TO THE RETAIL TRADE INDUSTRIAL TRIBUNAL—  
*continued*****(b) Section 38T (1)—**

After “by” where firstly occurring, insert “the commission in court session.”.

**(c) Section 38T (2), (3)—**

Omit section 38T (2) and (3), insert instead:

(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 this Act, be deemed to be an order, award, ruling or decision of the commission in court session.

(3) Notwithstanding anything in this Act, no appeal lies to the commission from any order, award, ruling or decision of the Tribunal.

**(2) Section 38v (Review of retail trade industry)—****Section 38v (4), (5)—**

After section 38v (3), insert:

(4) The Tribunal shall consider and report to the Minister on such matters relating to industrial matters in the retail trade industry as are referred to it by the Minister.

(5) Subsection (4) does not limit the operation of section 38T in relation to any duty referred to in section 35 (1) (o).

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