

**INDUSTRIAL ARBITRATION (WORKERS
COMPENSATION) AMENDMENT ACT 1987 No. 77**

NEW SOUTH WALES



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**INDUSTRIAL ARBITRATION (WORKERS COMPENSATION)
AMENDMENT ACT 1987 No. 77**

NEW SOUTH WALES



Act No. 77, 1987

An Act to amend the Industrial Arbitration Act 1940 to make provision for the protection from dismissal of employees who suffer work related injuries and to make further provision for the criminal jurisdiction of industrial magistrates and the Industrial Commission. [Assented to 10 June 1987]

Industrial Arbitration (Workers Compensation) Amendment 1987

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 (Workers Compensation) Amendment Act 1987".

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 or days 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.

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940 IN
RESPECT OF THE PROTECTION OF INJURED EMPLOYEES

Part XV—

After Part XIVA, insert:

PART XV

PROTECTION OF INJURED EMPLOYEES

Injured employee

154. In this Part—

"injured employee" means an employee who receives an injury, being—

- (a) an injury within the meaning of the Workers Compensation Act 1987; or

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SCHEDULE 1—*continued*

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940 IN
RESPECT OF THE PROTECTION OF INJURED EMPLOYEES—
continued

- (b) a dust disease for which the employee is entitled to receive compensation under the Workers' Compensation (Dust Diseases) Act 1942.

Dismissal

154A. For the purposes of this Part, an employer shall be deemed to have dismissed an employee if—

- (a) the employer imposes any unreasonable condition on employment which is designed to make the employee leave the employment; and
- (b) the employee leaves the employment.

Dismissal an offence

154B. (1) An employer shall not dismiss an injured employee after the commencement of this section solely or principally because the employee is not fit for employment in a position as a result of the injury received, unless—

- (a) at least 6 months have elapsed since the employee first became unfit for employment; or
- (b) the employer believes (at the time of dismissal) on the basis of a certificate issued by a legally qualified medical practitioner that the employee will be permanently unfit for employment in the position concerned.

Penalty: \$10,000.

(2) It is a defence to a prosecution under this section if the employer satisfies the court that at the time of dismissal the employee would not undergo a medical examination reasonably required to determine fitness for employment.

(3) This section applies even if the employee became unfit for employment before the commencement of this section.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940 IN
RESPECT OF THE PROTECTION OF INJURED EMPLOYEES—
continued

Application to employer for reinstatement

154C. (1) If an injured employee is dismissed because he or she is not fit for employment in a position as a result of the injury received, the employee may apply to the employer for reinstatement to his or her former position.

(2) An injured employee's former position is—

- (a) the position from which the employee was dismissed; or
- (b) if the employee was transferred to a less advantageous position before dismissal, the position which the employee held when he or she became unfit for employment.

at the option of the employee.

(3) The employee must produce to the employer a certificate given by a legally qualified medical practitioner to the effect that the employee is fit for employment in the former position.

(4) This section does not apply to a dismissal which occurred before the commencement of this section.

Order for reinstatement

154D. (1) In this section—

“appropriate tribunal” means—

- (a) the commission; or
- (b) a conciliation committee to which is assigned the relevant industry or calling.

(2) If an employer refuses or fails under section 154C to reinstate an employee forthwith, the employee may apply to an appropriate tribunal for a reinstatement order.

(3) The secretary of an industrial union of which the employee is a member may make the application on behalf of the employee.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940 IN
RESPECT OF THE PROTECTION OF INJURED EMPLOYEES—
continued

(4) On such an application, the appropriate tribunal may order the employer to reinstate the employee, in accordance with the terms of the order, if the tribunal is satisfied that the employee is fit for employment in the position concerned.

Presumption as to reason for dismissal

154E. (1) In proceedings for a reinstatement order it shall be presumed that the injured employee was dismissed because he or she was not fit for employment in the position as a result of the injury received.

(2) That presumption is rebutted if the employer satisfies the appropriate tribunal that the employee was dismissed for reasons not solely or principally related to the injury.

Reinstatement

154E. For the purposes of this Part, it is sufficient reinstatement of an employee to a position if the employee is reinstated to another position which is no less advantageous to the employee.

Disputes as to fitness—medical panels and referees

154G. (1) The appropriate tribunal may refer to a medical referee or a medical panel (established under the Workers Compensation Act 1987) any dispute as to the employee's condition and fitness for employment.

(2) The referee or panel shall submit a report to the appropriate tribunal in accordance with the terms of the reference.

Duty to inform replacement employee

154H. An employer shall not employ a person in the former position of a dismissed injured employee unless the employer has informed the person that the dismissed employee may be entitled to be reinstated to the position under this Part.

Penalty: \$1,000.

SCHEDULE 1—*continued*

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940 IN
RESPECT OF THE PROTECTION OF INJURED EMPLOYEES—
continued

Continuity of service of reinstated employee

154i. (1) If an employee is reinstated to a position under this Part, the dismissal and subsequent reinstatement of the employee shall not, for any purpose, be regarded as interrupting or otherwise affecting the continuity of the service by the employee with the employer.

(2) The period between dismissal and reinstatement shall not be taken into account in calculating for any purpose the period of service of the employee with the employer.

Other provisions not affected

154j. (1) This Part does not affect any other rights of a dismissed employee under this or any other Act or under any award, agreement or contract of employment.

(2) No contract or agreement, made or entered into before or after the commencement of this section, shall operate to annul, vary or exclude any of the provisions of this Part.

Regulations

154k. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Part is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Part.

(2) A regulation may create an offence punishable by a penalty not exceeding \$500.

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SCHEDULE 2

(Sec. 3)

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940
CONCERNING THE SPECIAL CRIMINAL JURISDICTION OF THE
INDUSTRIAL COMMISSION AND INDUSTRIAL MAGISTRATES

(1) Part III, Division 9—

At the end of Part III, insert:

DIVISION 9—*Special criminal jurisdiction of commission***Interpretation**

39. In this Division—

“criminal proceeding” means a proceeding for any of the following offences:

An offence against the Occupational Health and Safety Act 1983 or the regulations under that Act.

An offence against the Workers Compensation Act 1987 or the regulations under that Act.

Any other offence which an Act provides may be prosecuted before the commission.

Jurisdiction of commission

40. (1) The jurisdiction of the commission includes the power to hear and determine criminal proceedings.

(2) That jurisdiction may be exercised only by a judicial member of the commission.

Powers of commission in criminal proceedings

41. For the purposes of hearing and determining a criminal proceeding, the commission shall have and may exercise all the powers, authorities, duties and functions of an industrial magistrate in relation to such a proceeding.

SCHEDULE 2—*continued*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940
CONCERNING THE SPECIAL CRIMINAL JURISDICTION OF THE
INDUSTRIAL COMMISSION AND INDUSTRIAL MAGISTRATES—
*continued***Appeal etc.**

42. (1) An appeal lies to the commission in court session from any order of the commission in a criminal proceeding imposing a penalty, ordering the payment of a penalty or ordering that the proceeding be dismissed for any reason.

(2) The commission may, on application by any party to a criminal proceeding, state a case for the opinion of the commission in court session, setting forth the facts and the grounds for any conviction made by the commission.

(3) Section 120 applies to an appeal from an order of, and the stating of a case by, the commission in a criminal proceeding to the commission in court session in the same way as it applies to an appeal from an order of, and the stating of a case by, an industrial magistrate to the commission.

Rules of evidence

43. Without limiting the operation of any other provision of this Division, the commission shall be bound by the rules of evidence in the exercise of its jurisdiction under this Division.

(2) Section 126 (**Industrial magistrate**)—

Section 126 (3)—

After section 126 (2), insert:

(3) The provisions of this Act and the regulations relating to proceedings before an industrial magistrate and to appeals from, and the stating of a case by, an industrial magistrate to the commission apply in respect of proceedings before an industrial magistrate for any of the following offences:

An offence against the Occupational Health and Safety Act 1983 or the regulations under that Act.

An offence against the Workers Compensation Act 1987 or the regulations under that Act.

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SCHEDULE 2—*continued*

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940
CONCERNING THE SPECIAL CRIMINAL JURISDICTION OF THE
INDUSTRIAL COMMISSION AND INDUSTRIAL MAGISTRATES—
continued

Any other offence which an Act provides may be prosecuted
before an industrial magistrate.