

**INDUSTRIAL ARBITRATION (INDUSTRIAL AND
COMMERCIAL TRAINING) AMENDMENT ACT 1989
No. 78**

NEW SOUTH WALES



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**INDUSTRIAL ARBITRATION (INDUSTRIAL AND COMMERCIAL
TRAINING) AMENDMENT ACT 1989 No. 78**

NEW SOUTH WALES



Act No. 78, 1989

An Act to amend the Industrial Arbitration Act 1940 as a consequence of the enactment of the Industrial and Commercial Training Act 1989; and for other purposes. [Assented to 2 June 1989]

*Industrial Arbitration (Industrial and Commercial Training) Amendment Bill
1989*

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Industrial Arbitration (Industrial and Commercial Training) Amendment Act 1989.

Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation, except as otherwise provided by this section.

(2) Section 6 and Schedule 3 commence on the date of assent to this Act.

Principal Act

3. The Industrial Arbitration Act 1940 is referred to in this Act as the Principal Act.

Amendment of Industrial Arbitration Act 1940 No. 2

4. The Principal Act is amended as set out in Schedule 1.

Savings, transitional and other provisions

5. Schedule 2 has effect.

Provisions concerning the early retirement of the conciliation commissioner for apprenticeships

6. Schedule 3 has effect.

SCHEDULE 1—AMENDMENT OF THE PRINCIPAL ACT

(Sec. 4)

(1) Section 5 (**Definitions**)—

(a) Section 5 (1)—

Omit the definition of "Apprentice", insert instead:

"Apprentice" has the same meaning as it has in the Industrial and Commercial Training Act 1989.

(b) Section 5 (1)—

Omit the definitions of "Apprenticeship award", "Apprenticeship conciliation committee" and "Appropriate apprenticeship committee".

(c) Section 5 (1)—

Omit the definition of "Award", insert instead:

"Award" means an award, all of the provisions of which are made under this Act, and includes any variation of such an award.

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SCHEDULE 1—AMENDMENT OF THE PRINCIPAL ACT—*continued*

- (d) Section 5 (1)—
Omit the definition of “Committee”, insert instead:
“Committee” means a conciliation committee established under section 18.
- (e) Section 5 (1), definition of “Employee”—
After “includes”, insert “an apprentice and a trainee and”.
- (f) Section 5 (1), definition of “Improver”—
After “a trainee apprentice”, insert “, within the meaning of the Industrial and Commercial Training Act 1989,”.
- (g) Section 5 (1), definition of “Industrial matters”—
(i) After paragraph (b), insert:
(b1) the employment of apprentices and trainees;
(ii) From paragraph (h), omit “such members.”, insert instead “such members.”.
(iii) At the end of the definition, insert:
but does not include any matter that relates to the training of apprentices or trainees or that is within the jurisdiction of the Vocational Training Board.
- (h) Section 5 (1), definition of “Trainee”—
After the definition of “Trade union”, insert:
“Trainee” has the same meaning as it has in the Industrial and Commercial Training Act 1989.
- (i) At the end of section 5 (1), insert:
“Vocational Training Board” means the Vocational Training Board established by the Industrial and Commercial Training Act 1989.
- (2) Section 14 (**Industrial commission**)—
Section 14 (14)—
Omit the subsection, insert instead:
(14) If the commission so directs—
(a) the members of the conciliation committee established for the industry or calling concerned; or
(b) the members of the contract regulation tribunal established for the class of contracts concerned.
shall sit with the commission at a conference called under subsection (13).

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SCHEDULE 1—AMENDMENT OF THE PRINCIPAL ACT—*continued*

(3) Section 15 (**Conciliation commissioners**)—

(a) Section 15 (1)—

Omit the subsection, insert instead:

(1) The Governor may appoint such number of conciliation commissioners as the Governor considers necessary for the purposes of this Act.

(b) Section 15 (1A) (a)—

Omit “, other than the conciliation commissioner for apprenticeships,”.

(c) Section 15 (1C)—

Omit the subsection.

(4) Section 18A (**Apprenticeship conciliation committees**)—

Omit the section.

(5) Section 19A (**Application of Division**)—

Omit the section.

(6) Sections 20AA, 20AB—

After section 20, insert:

Restriction of jurisdiction of committees etc.

20AA. (1) A committee has no jurisdiction to make an award or order under this Act with respect to a matter that relates to the training of apprentices or trainees or that is within the jurisdiction of the Vocational Training Board, provided that this shall not affect an appeal under section 88 (5) of the Industrial and Commercial Training Act 1989.

(2) An award or order is void in so far as it relates to a matter referred to in subsection (1).

Re-allocation of wrongly filed applications

20AB. (1) As soon as a committee or a conciliation commissioner becomes aware that any matter that is, or is to come, before the committee is one that is not within the jurisdiction of the committee, but is within the jurisdiction of some other committee, the committee or commissioner shall refer the matter to the Vice-President.

(2) The Vice-President shall allocate the matter to the appropriate committee.

(3) A committee to which a matter has been allocated under this section shall hear and determine the matter as if proceedings on the matter had been duly commenced before the committee.

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SCHEDULE 1—AMENDMENT OF THE PRINCIPAL ACT—*continued*

- (7) Part 3, Division 1A (**Apprenticeship Conciliation Committees**)—
Omit the Division.
- (8) Section 24 (**Appeal from committees etc.**)—
Section 24 (9) (c)—
Omit the paragraph, insert instead:
(c) call for and receive such further information or evidence
as it considers appropriate.
- (9) Section 25 (**Compulsory conferences**)—
(a) Section 25 (3) (b)—
Omit the paragraph.
(b) Section 25 (4) (a) (i)—
Omit “except as provided in subparagraph (ia),”.
(c) Section 25 (4) (a) (i)—
After “committee;”, insert “or”.
(d) Section 25 (4) (a) (ia)—
Omit the subparagraph.
(e) Section 25 (4) (b) (ii)—
After “commission;”, insert “or”.
(f) Section 25 (4) (b1)—
Omit the paragraph.
- (10) Section 26 (**Powers of conciliation commissioners**)—
Omit “or of the appropriate apprenticeship committee for any
apprenticeships”.
- (11) Part 3, Division 3 (**Conciliation Commissioner for Apprenticeships**)—
Omit the Division.
- (12) Section 30 (**Jurisdiction**)—
(a) Section 30 (1)—
Omit “Subject to subsection (1A), the”, insert instead “The”.
(b) Section 30 (1A)—
Omit the subsection.
- (13) Section 30B (**Jurisdiction of the commission**)—
(a) From section 30B (1) (c), omit “1955,”, insert instead “1955 or”.
(b) From section 30B (1) (c), omit “or section 14 (5) of the
Apprenticeship Act 1981”.

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SCHEDULE 1—AMENDMENT OF THE PRINCIPAL ACT—*continued*

(14) Section 35 (**Further powers**)—

Section 35 (1) (a)—

Omit the paragraph.

(15) Section 36 (**Demarcation, jurisdiction and codification of awards etc.**)—

(a) Section 36 (1)—

Omit “each apprenticeship award and”.

(b) Section 36 (1A)—

Omit the subsection.

(16) Section 74 (**Commencement of proceedings**)—

(a) Section 74 (1)—

Omit the subsection, insert instead:

(1) Proceedings before a committee shall be commenced by—

(a) a reference to the committee made by the commission, the Minister or the Commissioner for Vocational Training; or

(b) an application to the committee made by employers or employees in the industries or callings for which the committee has been established.

(b) Section 74 (2A)—

Omit the subsection.

(c) Section 74 (6)—

After section 74 (5), insert:

(6) The Commissioner for Vocational Training is not empowered to make a reference under subsection (1) if the proceedings do not relate to the employment of apprentices or trainees.

(17) Section 78 (**Intervention by Crown etc.**)—

After section 78 (2), insert:

(3) The Commissioner for Vocational Training may intervene in any proceedings before the commission, a conciliation commissioner, a committee or a tribunal, being proceedings—

(a) to which an apprentice or a trainee is a party; or

(b) which relate to the employment of apprentices or trainees.

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(18) Section 87—

Omit the section, insert instead:

Binding effect etc. of awards

87. (1) Subject to any conditions imposed and any exemptions granted under subsection (2), an award made under this Act by the commission or by a committee is binding—

- (a) on such of the employers and employees engaged in the industry or calling to which the award relates as the commission or committee directs; and
- (b) within the locality specified in the award; and
- (c) for the period (not exceeding 3 years) specified in the award and, after that period, until varied or rescinded.

(2) In making an award under this Act, the commission or a committee may impose such conditions and grant such exemptions as the commission or committee may determine and direct.

(19) Section 88AB (**Age of apprentices**)—

Omit “an apprentice from completing the full term of his apprenticeship”, insert instead “a person from beginning, continuing or completing an apprenticeship or traineeship”.

(20) Section 88G (**Provisions relevant to automation**)—

(a) Section 88G (1)—

Omit “, a committee or an apprenticeship council”, insert instead “or a committee”.

(b) Section 88G (2) (d)—

Omit “, committee or apprenticeship council”, insert instead “or committee”.

(21) Section 90A (**Incorporation of variation in reprint of awards**)—

Section 90A (1)—

Omit “or an apprenticeship award”.

(22) Part 8C—

After Part 8B, insert:

PART 8C—AUSTRALIAN TRAINEESHIP SYSTEM

Definition

91AA. In this Part—

“appropriate tribunal”, in relation to an application under this Part, means—

- (a) the commission; or

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SCHEDULE 1—AMENDMENT OF THE PRINCIPAL ACT—*continued*

- (b) a conciliation committee that has power to make an award binding on employees to whom the application relates.

Provisions in awards and agreements

91BB. (1) On application, the appropriate tribunal may make an award containing Australian Traineeship System provisions or may insert Australian Traineeship System provisions in an existing award, as the case requires.

(2) Australian Traineeship System provisions are provisions relating to the conditions of employment of trainees trained by employers under the Australian Traineeship System.

(3) Australian Traineeship System provisions may be inserted in an award by way of variation or otherwise.

(4) This section does not affect any power of an appropriate tribunal to refer or remit a matter or question to another appropriate tribunal for opinion, direction or determination.

(5) This section applies to an award whether made before or after the commencement of this section.

Matters to be considered

91CC. In exercising its functions under this Part, an appropriate tribunal shall comply with such guidelines as may be issued from time to time by the Minister in relation to the Australian Traineeship System, but may have regard to such other matters as it considers appropriate.

(23) Section 92 (**Recovery of wages etc.**)—

Section 92 (1A)—

Omit the subsection.

(24) Section 96 (**Time-sheets and pay-sheets to be kept**)—

Omit section 96 (1) (b), insert instead:

- (b) in a declared trade or declared calling within the meaning of the Industrial and Commercial Training Act 1989,

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SCHEDULE 2—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 5)

Provisions of apprenticeship awards

1. (1) Where, immediately before the commencement of this clause, an apprenticeship award was in force under the Principal Act—

- (a) those provisions of the award that could be included in a vocational training order under the Industrial and Commercial Training Act 1989 shall, on and from that commencement, be taken to be such an order; and
- (b) the remaining provisions of the award shall, on and from that commencement, be taken to form part of an award under the Principal Act, as amended by this Act, that is binding on the employers of the apprentices to which the first-mentioned award applied immediately before that commencement.

(2) Provisions of an apprenticeship award that, by virtue of subclause (1) (a), are to be taken to be a vocational training order within the meaning of the Industrial and Commercial Training Act 1989 may be varied or revoked under that Act in the same manner and to the same extent as such an order may be varied or revoked.

(3) Provisions of an apprenticeship award that, by virtue of subclause (1) (b), are to be taken to form part of an award under the Principal Act, as amended by this Act, may be varied or rescinded under that Act, as so amended, in the same manner and to the same extent as such an award may be varied or rescinded.

(4) The registrar may make such amendments to an award (being an award of which the provisions of an apprenticeship award are, pursuant to this clause, to be taken to form part) as are necessary to give effect to this clause.

Matters pending before conciliation commissioners

2. Any matter that has been commenced before a conciliation commissioner pursuant to clause 2 of Schedule 3, but has not been determined, before the commencement of this clause shall be heard and determined in accordance with the Principal Act as if this Act (section 6 and Schedule 3 excepted) had not been enacted.

Regulations

3. (1) The regulations under the Principal Act may contain other provisions of a savings or transitional nature consequent on the enactment of this Act.

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

(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 that publication; or

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- (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 that publication.

**SCHEDULE 3—PROVISIONS CONCERNING THE EARLY RETIREMENT OF
THE CONCILIATION COMMISSIONER FOR APPRENTICESHIPS**

(Sec. 6)

Early retirement of conciliation commissioner for apprenticeships

1. (1) The person who, immediately before the date of assent to this Act, held office as conciliation commissioner for apprenticeships—

- (a) shall, for all purposes, be taken to have retired on that date; and
(b) shall, for the purposes only of—

- (i) any superannuation scheme to which that person was then a contributor or under which that person was then entitled to receive any benefit; and
(ii) any law under which that person was then entitled to any leave in the nature of long service leave,

be taken to have attained the age of 65 years on that date.

(2) Any contribution that would have been payable by the person referred to in subclause (1) or by that person's employer, had that person continued in office as conciliation commissioner for apprenticeships between the date of assent to this Act and the date on which that person would, in fact, attain the age of 65 years, becomes payable by that person or by that person's employer, as the case requires, on the date of assent to this Act.

(3) The period of time in respect of which the person referred to in subclause (1) is entitled to leave in the nature of long service leave is the sum of—

- (a) the period of time in respect of which that person would, but for this subclause, be entitled to such leave; and
(b) the period of time between the date of assent to this Act and the date on which the person would, in fact, attain the age of 65 years.

(4) On and from the date of assent to this Act, a reference in the Principal Act or in any other Act, in any statutory instrument or in any other document (whether of the same or of a different kind) to the conciliation commissioner for apprenticeships shall be read as a reference to a conciliation commissioner.

Matters pending before conciliation commissioner for apprenticeships

2. (1) Any matter that has been commenced before the conciliation commissioner for apprenticeships, but has not been determined, before the date of assent to this Act shall be heard and determined by such other conciliation commissioner as may (in accordance with directions given by the Vice-President with respect to the allocation of such matters) be nominated to hear and determine the matter.

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SCHEDULE 3—PROVISIONS CONCERNING THE EARLY RETIREMENT OF
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(2) For the purpose of hearing and determining any such matter, a conciliation commissioner has the same jurisdiction as the conciliation commissioner for apprenticeships has in relation to the matter.

[*Minister's second reading speech made in—
Legislative Assembly on 3 May 1989
Legislative Council on 10 May 1989*]