

Act No. 77

INDUSTRIAL ARBITRATION (WORKERS COMPENSATION) AMENDMENT BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Workers Compensation Bill 1987.

The object of this Bill is to amend the Industrial Arbitration Act 1940—

- (a) to make it an offence to dismiss an employee within 6 months after the employee is incapacitated by a work related injury unless the incapacity is permanent;
- (b) to make provision for the reinstatement of an employee dismissed from employment because of a work related injury, but who has recovered; and
- (c) to clarify the powers of an industrial magistrate and the Industrial Commission to hear and determine proceedings for criminal offences under other Acts.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that, with minor exceptions, the proposed Act will commence on a day appointed by the Governor-in-Council.

Clause 3 is a formal provision that gives effect to the Schedules of amendments to the Principal Act.

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SCHEDULE 1—AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT 1940
IN RESPECT OF THE PROTECTION OF INJURED EMPLOYEES.

Schedule 1 inserts proposed Part XV into the Principal Act (proposed sections 154–154K):

- (a) Proposed section 154 defines “injured employee” in the proposed Part to mean an employee who receives an injury as defined in the proposed Workers Compensation Act 1987 or who is entitled to compensation for a dust disease under the Workers’ Compensation (Dust Diseases) Act 1942.
- (b) Proposed section 154A deems an employer to have dismissed an employee if the employer imposes unreasonable conditions on employment which are intended to cause and which do cause the employee to resign.
- (c) Proposed section 154B prohibits an employer from dismissing an injured employee who is unfit for employment because of injury for at least 6 months after the employee became unfit unless there is medical evidence that the employee is permanently unfit for employment. It is a defence to a prosecution if the employee refuses or fails unreasonably to undergo a medical examination.
- (d) Proposed section 154C provides for an application by a dismissed injured employee to his or her employer for reinstatement to the employee’s former position. The application must be accompanied by medical evidence of fitness for employment.
- (e) Proposed section 154D empowers an appropriate tribunal (the Industrial Commission or a conciliation committee) to order the reinstatement of a dismissed injured employee who has been refused reinstatement under proposed section 154C.
- (f) Proposed section 154E creates a rebuttable presumption that an injured employee was dismissed because he or she was not fit for employment as a result of the injury received.
- (g) Proposed section 154F provides that reinstatement to a position includes reinstatement to a no less advantageous position.
- (h) Proposed section 154G provides for the referral by the appropriate tribunal to a medical panel or medical referee (under the proposed Workers Compensation Act 1987) of disputes concerning the condition or fitness of injured employees.
- (i) Proposed section 154H requires an employer, before employing a person in a former position of a dismissed injured employee, to warn the person that the dismissed employee may be entitled to be reinstated.
- (j) Proposed section 154I provides that the dismissal and subsequent reinstatement of an injured employee does not interrupt continuity of service with the employer.
- (k) Proposed section 154J provides that the proposed Part does not affect any rights of an employee under the Principal Act, any other Act or any award, agreement or contract of employment. The provisions of the proposed Part cannot be annulled, varied or excluded by a contract or agreement.

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- (l) Proposed section 154k empowers the Governor to make regulations for the purposes of the proposed Part.

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

Schedule 2 (1) inserts proposed Division 9 into Part III of the Principal Act (proposed sections 39–43)—

- (a) Proposed section 39 defines “criminal proceeding” in the proposed Division to mean an offence against the Occupational Health and Safety Act 1983 or the proposed Workers Compensation Act 1987 (and the regulations under those Acts) or any other offence which an Act provides may be prosecuted before the Industrial Commission;
- (b) Proposed section 40 makes it clear that the jurisdiction of the Industrial Commission includes the power to hear and determine such criminal proceedings. The provision is consequential on provisions in the Acts referred to in paragraph (a) which authorise the prosecution of offences before the Commission. The Commission’s jurisdiction in criminal proceedings may be exercised only by a judicial member.
- (c) Proposed section 41 grants to the Industrial Commission all the powers, authorities, duties and functions of an industrial magistrate in respect of criminal proceedings.
- (d) Proposed section 42 provides for an appeal from a decision of, and the stating of a case by, the Commission in criminal proceedings to the Commission in court session.
- (e) Proposed section 43 makes it clear that in criminal proceedings the Commission is bound by the rules of evidence.

Schedule 2 (2) makes it clear that the jurisdiction of an industrial magistrate includes criminal jurisdiction vested in an industrial magistrate under other Acts.
