

**INDUSTRIAL ARBITRATION (UNFAIR DISMISSAL)  
AMENDMENT BILL 1991**

NEW SOUTH WALES



**EXPLANATORY NOTE**

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

The object of this Bill is to amend the Industrial Arbitration Act 1940 So as:

- (a) to provide for access by an individual employee to a Conciliation Commissioner where the employee claims to have been unfairly dismissed or threatened with dismissal; and
- (b) to restate the remedies that are available to an employee who has been unfairly dismissed or threatened with dismissal and to empower Conciliation Commissioners to make orders providing those remedies; and
- (c) to make other consequential amendments.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act.

**Clause 3** gives effect to the Schedule of amendments.

**Clause 4** has the effect of applying the proposed new scheme relating to unfair dismissal only to cases of dismissal or threatened dismissal that occur after the new scheme commences. If an employee was dismissed or threatened with dismissal before that commencement, the present provisions of the Industrial Arbitration Act will apply.

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**SCHEDULE 1—AMENDMENT OF INDUSTRIAL ARBITRATION ACT 1940**

**PART 1—AMENDMENT RELATING TO UNFAIR DISMISSAL**

**Schedule 1** inserts proposed Division 3 (consisting of proposed sections 91ZA–91ZN) into Part 8B of the Industrial Arbitration Act. Of the proposed sections:

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\* Amended in committee—see table at end of volume.

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**Section 91ZA (Application of Division)** applies the benefit of the proposed Division only to employees whose conditions of employment are fixed by an award or an industrial or enterprise agreement. Trainees and apprentices are excluded. The regulations under the Industrial Arbitration Act may expand or reduce the number of employees who have the benefit of the proposed Division.

**Section 91ZB (Employees in the public sector)** states how the concepts of dismissal and threatened dismissal of employees apply to certain employees in the public sector. The proposed Division will not apply to public sector executives.

**Section 91ZC (Applications)** provides for applications to be made to the Industrial Registrar by employees or former employees for a remedy under the proposed Division. The application is to be dealt with by a Conciliation Commissioner sitting alone.

**Section 91ZD (Conciliation)** requires the Commissioner dealing with a claim to settle the claim by conciliation, if possible.

**Section 91ZE (Arbitration)** provides that, when all reasonable attempts to settle the claim have been made but have been unsuccessful, the Commissioner is to make an order determining the claim.

**Section 91ZF (Matters to be considered)** states matters that should be taken into account by a Commissioner in determining a claim, if applicable in the circumstances.

**Section 91ZG (Orders for reinstatement, re-employment or lost wages)** empowers a Commissioner to make an order requiring an employer to reinstate or re-employ a person or not to carry out a threat to dismiss an employee. Other orders may be made for compensation.

**Section 91ZH (Effect of reinstatement or re-employment)** provides that a Commissioner may make an order having the effect of nullifying any break in employment of a person who is ordered to be re-employed.

**Section 91ZI (Costs)** allows a commissioner to order costs on limited grounds.

**Section 91ZJ (Limit on appeals)** provides for an appeal to the Industrial Commission of New South Wales (constituted by a single member) against any decision made by a commissioner under the proposed Division.

**Section 91ZK (Enforcement of orders)** makes an order for reinstatement or re-employment, or requiring an employer not to dismiss an employee, enforceable as an award under the Industrial Arbitration Act.

**Section 91ZL (Effect of availability of other remedies)** prevents a person from obtaining a remedy under another Act (or under an instrument made under an Act) as well as under the proposed Division.

**Section 91ZM (Effect of other Acts, contracts, awards and agreements)** declares that the proposed Division has effect despite provisions of other Acts, contracts of service and awards, industrial agreements or enterprise agreements.

**Section 91ZN (Disposal of wider questions, disputes or difficulties)** requires a commissioner who becomes aware that a claim under the proposed Division relates to an industrial matter (such as a strike or lock-out) concerning persons who are not parties to the claim, whether or not the matter also concerns those parties, to notify the President of the Industrial commission. If the President so directs, the Commissioner may exercise other powers with respect to the matter (for example, by convening a compulsory conference).

**PART 2—CONSEQUENTIAL AMENDMENTS****Definition of "Industrial matters"**

Item (1) amends section 5 of the Industrial Arbitration Act so as to make it clear that the dismissal or threatened dismissal of, and the refusal to re-employ or reinstate, an employee in any industry are each industrial matters within the meaning of that Act.

**Consequential amendment**

Item (2) alters a reference to a section of that Act to be repealed and substitutes a reference to the proposed new Division.

**Repeal of Industrial Commission's powers to make awards relating to unfair dismissal**

Item (3) repeals section 20A of that Act, which currently empowers the Industrial Commission to make awards concerning unfair dismissal or threats of dismissal, but only on the application of industrial unions of employees.

**Additional jurisdiction**

Item (4) amends section 25 of that Act so as to allow a Commissioner dealing with a question, dispute or difficulty concerning an industrial matter under Part 2 of that Act to make an order under the proposed Division, even if an application has not been made under that Division.

**Representation**

Item (5) amends section 80 of that Act so as to exclude representation by barristers or solicitors in a proceeding under the proposed new Division, unless the Commissioner concerned consents to such representation.

**Recovery of compensation**

Item (6) amends section 119 of that Act so as to provide for the recovery of wages ordered to be paid under the proposed Division.

**Recovery of costs**

Item (7) amends section 123 of that Act so as to provide for the recovery of costs ordered to be paid under the proposed Division.

**Saving**

Item (8) amends Schedule 6 to that Act so as to save awards made under section 20A of the Act before the repeal of that section.

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