

**INDUSTRIAL ARBITRATION (REINSTATEMENT
AWARDS) AMENDMENT ACT, 1978, No. 99**

New South Wales



ANNO VICESIMO SEPTIMO

ELIZABETHÆ II REGINÆ

Act No. 99, 1978.

An Act to amend the Industrial Arbitration Act, 1940, so as to clarify the powers under that Act to make awards with respect to the dismissal or proposed dismissal of employees. [Assented to, 13th December, 1978.]

Industrial Arbitration (Reinstatement Awards) Amendment.

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 (Reinstatement Awards) Amendment Act, 1978".

Amendment of Act No. 2, 1940. **2.** The Industrial Arbitration Act, 1940, is amended—

Sec. 20. (Original jurisdiction.) (a) by inserting in section 20 (1D) after the word "Act" where firstly occurring the matter "(section 20A excepted)";

Sec. 20A. (b) by inserting after section 20 the following section :—

Awards relating to dismissal of employees. **20A.** (1) The power conferred by this Act to make an award determining an industrial matter includes the power to make an award—

(a) in the case where an employer has dismissed an employee, directing the employer—

(i) to reinstate the dismissed employee in his old position or in a position not less advantageous to the employee than that held by him prior to his dismissal; and

(ii) if the body or person making the award thinks fit, to reimburse the dismissed employee for all or part of the wages lost by him by reason of his dismissal; or

Industrial Arbitration (Reinstatement Awards) Amendment.

- (b) in the case where an employer has indicated that he proposes to dismiss an employee, directing the employer to refrain from implementing that proposal,

and, in either case, to include in the award—

- (c) such provisions for determining any dispute or question with respect to the promotion or regression of the dismissed employee or the employee proposed to be dismissed, as the case may be; and

- (d) such terms and conditions,

as the body or person making the award thinks fit.

(2) The references in subsection (1) to the dismissal or proposed dismissal of an employee are, in relation to a person employed under the Public Service Act, 1902, references to the termination or proposed termination of the employment of that person under section 44, 56, or 61 of that Act or as referred to in section 65 of that Act, including the termination or proposed termination of the employment of that person under section 56 or 61 of that Act pursuant to a direction that he resign or be allowed to resign.

(3) Subsection (1) has effect notwithstanding any provisions relating to conditions of, termination of, or dismissal from, employment contained in any other Act or in any regulations or by-laws made under any other Act and notwithstanding anything contained in any contract of service or award that relates, or at any time related, to the dismissed employee or the employee proposed to be dismissed, as the case may be.

Industrial Arbitration (Reinstatement Awards) Amendment.

(4) Nothing in this Act authorises the making of an award containing provisions referred to in subsection (1) (a), (b), (c) or (d)—

(a) if—

- (i) under the provisions of any other Act or of any regulations or by-laws made under any other Act, an order or direction may be made awarding any redress to the dismissed employee in respect of his dismissal or to the employee proposed to be dismissed in respect of his proposed dismissal or requiring an inquiry to be held relating to the dismissal or proposed dismissal of the employee; and
 - (ii) the dismissed employee or the employee proposed to be dismissed has not lodged with the registrar an instrument in writing refusing the benefit of the provisions referred to in subparagraph (i); or
- (b) if proceedings under the provisions referred to in paragraph (a) (i) have been commenced by the dismissed employee or the employee proposed to be dismissed.

(5) Where the regulations so provide, an instrument referred to in subsection (4) (a) (ii) shall be in or to the effect of the prescribed form.

(6) An instrument referred to in subsection (4) (a) (ii)—

- (a) has no effect if it is lodged with the registrar after the dismissed employee or the employee proposed to be dismissed has commenced proceedings under the provisions referred to in subsection (4) (a) (i); and

Industrial Arbitration (Reinstatement Awards) Amendment.

(b) may not, after it has been so lodged, be revoked or withdrawn.

(7) Any provisions referred to in subsection (4) (a) (i) do not apply in respect of the dismissal or proposed dismissal of an employee after he has lodged with the registrar an effective instrument referred to in subsection (4) (a) (ii) relating to that dismissal or proposed dismissal.

(8) The foregoing provisions of this section (subsection (4) excepted) do not limit, and are not limited by, any other provisions of this Act.
