

# INDUSTRIAL ARBITRATION (AMENDMENT) ACT.

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Act No. 14, 1926.

An Act to establish an Industrial Commission to exercise the powers of the Court of Industrial Arbitration and the New South Wales Board of Trade and certain other powers in relation to industrial matters and monopolies ; to provide for Conciliation Committees in industries ; to amend the Industrial Arbitration Act, 1912, and certain other Acts ; and for purposes connected therewith. [Assented to, 18th March, 1926.]

George V,  
No. 14.

BE

George V,  
No. 14.

**B**E it enacted by the King'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  
and com-  
mencement.

**1.** (1) This Act may be cited as the "Industrial Arbitration (Amendment) Act, 1926."

(2) The Industrial Arbitration Act, 1912, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

(3) This Act shall come into operation on a date to be appointed by the Governor and notified by proclamation published in the Gazette.

Definitions.

**2.** In this Act, unless the context or subject-matter otherwise requires,—

"Commission" means the Industrial Commission of New South Wales established under this Act.

"Commissioner" means the Industrial Commissioner appointed under this Act.

"Committee" means a conciliation committee established under this Act.

"Prescribed" means prescribed by this Act or by regulations made by the Governor under the Principal Act.

Judge and  
additional  
judges to  
cease to  
exercise  
jurisdiction.

**3.** (1) From and after the commencement of this Act the jurisdiction and powers of the Court of Industrial Arbitration shall be vested in and exercised by the industrial commission established by this Act.

(2) The judge and additional judges of the court holding office at such commencement shall without ceasing to hold office cease to exercise jurisdiction as judge and additional judges of the court.

Board of  
Trade.

**4.** (1) From and after the commencement of this Act the powers and duties conferred upon the New South Wales Board of Trade by the Industrial Arbitration Act, 1912, except section eighty thereof, the Monopolies Act, 1923, or any other Act, shall be exercised by the industrial commission, and the president, deputy-president and commissioners of the said board shall cease to hold office as such.

(2) All records of the board, and all books and papers in the custody of the board, shall be handed over to the industrial registrar.

(3)

(3) The powers and duties conferred upon the New South Wales Board of Trade by section eighty of the Principal Act shall be exercised in each industry by the conciliation committee established for such industry, provided that the apprenticeship register referred to in paragraph (f) of section eighty shall be continued by the industrial registrar.

5. All matters pending before the court or the New South Wales Board of Trade at the commencement of this Act shall be heard and determined by the industrial commission: Provided that the industrial commission may refer any such matter to a conciliation committee for hearing and determination.

6. (1) The Governor may appoint an industrial commissioner who shall, when sitting with members or where so authorised by this Act when sitting alone, constitute the Industrial Commission of New South Wales.

(2) Subject to this Act, such an even number of members shall be appointed to sit with the commissioner in any particular matter as the Minister may by writing under his hand determine, one-half to be representative of employers and one-half to be representative of employees nominated for appointment as prescribed.

Deputy or alternate members may be appointed as prescribed to act for and in the absence of a member.

(3) The commissioner shall receive such salary and allowances as the Governor may direct.

Other members of the commission shall be appointed by the Minister by notification published in the Gazette, and shall not receive remuneration by way of salary or fees, but all members may be reimbursed such fares and out-of-pocket expenses as are approved of by the Minister.

(4) The Governor may appoint a person qualified to be appointed commissioner to be a deputy commissioner for such time as the Governor may fix, and such deputy commissioner shall have and exercise such jurisdiction and powers of the commissioner as may be prescribed and whether or not the commissioner is absent.

(5) The commissioner shall hold office for a period of five years.

(6)

George V,  
No. 14.

(6) Upon appointment the commissioner, deputy commissioner, and each member shall take the oath prescribed.

(7) Sittings of the commission shall be convened by the commissioner whenever he thinks fit or at the request of the Minister or a majority of the members.

(8) Two-thirds of the members of the commission shall form a quorum.

(9) At meetings of the commission the opinion of the majority shall prevail, and where the members present are equally divided in opinion, the opinion of the commissioner shall prevail.

(10) The registry of the court shall be the registry of the industrial commission, and the industrial registrar shall have such duties with respect to the commission and the conciliation committees as may be prescribed.

Powers and  
functions of  
commission.

**7.** (1) The powers and functions of the commission shall include the following :—

- (a) to inquire into and determine any industrial matter referred to it by the Minister ;
- (b) not more frequently than once in every six months to determine a standard of living and to declare what shall for the purpose of this Act and of the Principal Act be the living wages based upon such standard for adult male and adult female employees in the State.

The commission may declare what deductions may be made from such wages for board or residence, or board and residence, and for any customary privileges or payments in kind conceded to or made to such employees ;

- (c) to hear and determine appeals under this Act. On appeals from committees the commission shall consist of the commissioner and the members, other than the chairman, of the committee appealed from ;
- (d) to confer with any persons or industrial unions as to anything affecting the settlement of an industrial matter ;
- (e) to summon any person before the commission for the purpose of conference or of giving evidence. Such summons shall be signed as prescribed.

(2)

(2) The industrial commissioner may sitting alone exercise the powers and jurisdiction of the court under Part VI and Part VIIA, and sections eight, nine, ten, 26A, forty-nine, fifty-two, and fifty-five of the Principal Act, and the powers and functions of the New South Wales Board of Trade under the Monopolies Act, 1923.

George V,  
No. 14.

**8.** (1) The Minister may, in the manner prescribed, establish conciliation committees for any industry or calling for which a board is constituted, or for any industry or calling for which for the purpose of establishing a committee the commissioner may recommend that a board be constituted. The Minister may appoint such number of persons as may be prescribed to act as chairmen of conciliation committees and may fix their remuneration.

Conciliation  
committees.

(2) The commissioner may recommend to the Minister the combination, arrangement or grouping of industries or callings pursuant to section sixteen of the Principal Act for the purpose of establishing committees.

(3) Each committee shall consist of such an equal number of representatives of employers and employees respectively as are determined by the Minister and appointed upon nomination as prescribed, together with a chairman. Deputy or alternate members shall be nominated and appointed as prescribed, and shall be competent to discharge the duties of the regular members.

(4) Where no employer or no employee in the industry can be found who is willing to act on the committee on behalf of the employers or employees as the case may be, the Minister may appoint any person whom he considers to be acquainted with the working of the industry to represent the employers or employees on the committee.

(5) The commissioner may allot a chairman for a committee.

(6) The members of a committee other than the chairman shall not receive remuneration by way of salaries or fees, but all members may be reimbursed such fares and out-of-pocket expenses as are approved of by the Minister.

(7)

George V,  
No. 14.

(7) A chairman of a committee shall have the powers of a chairman of an industrial board.

(8) Upon appointment each member of a committee shall take the oath prescribed.

(9) The Minister may at any time dissolve a committee, and subject thereto a member of a committee shall hold office until the expiration of three years from the date of his appointment, unless he sooner resigns his office.

(10) A new committee may be appointed to take the place of a committee that has been dissolved or the members of which have resigned or have ceased to hold office.

(11) Where from any cause a member of a committee ceases to hold office, the Minister may appoint a duly qualified person to his office for the residue of the period for which such member was appointed.

(12) Where a person is appointed to any vacancy on a committee, the committee as newly established may continue the hearing of and may determine any part heard case.

(13) The provisions of sections twenty-two, fifty-six, and sixty-four of the Principal Act shall apply mutatis mutandis to, and in respect of members of a conciliation committee.

(14) The validity of any proceeding or decision of a committee or of a chairman of a committee shall not be challenged except as provided by this Act.

Powers of  
conciliation  
committees.

**9.** (1) A committee shall have cognisance of and power to inquire into any industrial matter in the industry for which it is established, and in respect thereof, may exercise the powers and jurisdiction of a board, and may make an order or award binding on any or all employers and employees in the industry.

(2) An award or order of a committee shall be signed by the chairman and forwarded to the registrar who shall forthwith publish the same in the Gazette and notify the parties in the prescribed manner.

(3) An order or award of a committee shall also in all respects operate as an award of a board and may be enforced as such.

(4)

(4) A committee may in its discretion determine that an award shall take effect from such day subsequent to the lodging of the application therefor with the industrial registrar as the committee may determine. George V,  
No. 14.

(5) From any order, determination, or award of a committee or upon any refusal of a committee to make an order or award an appeal shall lie in the prescribed manner, to the commission, on which appeal the commission may make such order or award as in its opinion the committee should have made. The pendency of an appeal shall not suspend the operation of an order or award appealed from unless the commission otherwise directs. If before or after any such order, determination, or award the parties agree to accept the unanimous decision of the committee or to accept the decision of the chairman on any question left to him by the other members of the committee no appeal shall lie to the commission in respect of the decision.

(6) At meetings of a committee, the opinion of the majority shall prevail, and where the members present are equally divided in opinion as to any question, they may agree to accept the decision of the chairman or may require the chairman to refer the question to the commission.

(7) Where any question is referred to the commission under this section, the commission shall consist of the commissioner and the members of the committee other than the chairman.

(8) Sittings of a committee shall be convened by the chairman whenever he thinks fit, or within three days of a request by the Minister, or by two members of the committee.

(9) Subject to the regulations as to matters of procedure, a committee may make rules for the order and conduct of its business and proceedings.

**10.** Upon the establishment of a committee, the commission shall not hear or determine any industrial matter or make an award relating to the industry for which the committee has been established, except pursuant to section nine of this Act or unless and until the commission shall have been satisfied that a committee has failed to result in an order or award. Jurisdiction  
of committees  
exclusive.

George V,  
No. 14.

Power to  
review  
previous  
inquiries.

**11.** A committee shall upon an application for a new award, or the renewal of an award, and, notwithstanding any previous inquiry under the Principal Act or this Act, review the conditions of the industry or calling, together with the wages payable in such industry or calling if either party so apply.

Crown may  
intervene.

**12.** The Crown may intervene in any proceedings before the commission or a committee or appeal from an award of a committee and make such representations as it thinks necessary in order to safeguard the public interests.

Appearance  
by counsel.

**13.** In proceedings before the commission, if the matter is an industrial matter no party shall be represented by counsel or a solicitor except by the consent of the commissioner, and in proceedings before a committee, no party shall (except by consent of the committee, and all the parties) be represented by counsel or a solicitor.

Tradesecrets.

**14.** No evidence relating to any trade secret or to the profits or financial position of any witness or party shall be disclosed except to the commission or a committee, or published without the consent of the person entitled to the trade secret or of the witness or party as the case may be.

Such evidence shall, if the witness or party so requests, be taken in private.

Amendment  
of Act No. 17,  
1912, ss. 5, 8.

**15.** (1) Section five of the Principal Act is amended—  
(i) by inserting after the definition of “Employee” the following new definition:—

“Employees of the Crown” includes employees of any person or corporation employing persons on behalf of the Government of the State; but for the purposes of section eight shall not include employees of the Government Savings Bank of New South Wales.

(ii) by omitting from the definition of “Employer” the words “the Public Service Act, 1902, and”;

(iii)



- (iii) by inserting at the end of the definition of **George V,**  
 “Industrial matters” the following new **No. 14.**  
 paragraphs:—

- (f) any shop, factory, craft or industry dispute or any matter which may be a contributory cause of such a dispute;
- (g) any claim that the same wage shall be paid to persons of either sex performing the same work or producing the same return of profit or value to their employer. cf. Qld., 7 Geo. V, No. 16, s. 8.

- (iv) by omitting the definitions “Necessary commodity” and “Schedule.”

(2) Section eight of the Principal Act is amended by inserting at the end thereof the following new subsection:—

(8) Where the court is satisfied that an industrial union has ceased to exist it may order the removal of its name from the Register of Industrial Unions.

**16.** (1) Subsection one of section twenty-four of the Principal Act is amended— Amendment of Act No. 17, 1912, s. 24.

- (i) by omitting from the first proviso to paragraph (a) the words “ten pounds per week” and inserting the words “fifteen pounds per week”;
- (ii) by omitting from the first proviso to paragraph (a) the words “five hundred and twenty-five pounds per annum” and inserting the words “seven hundred and fifty pounds per annum”;
- (iii) by omitting from paragraph (b) all the words after the words “wages so fixed”;
- (iv) by omitting therefrom paragraph (g);
- (v) by adding at the end thereof the following words: “Provided that an award affecting employees employed under the Public Service Act, 1902, or any Act amending the same shall, so far as such employees are concerned, be made only for the purposes specified in paragraphs (a), (c), (f), and (h) of this subsection and section 24c: Provided also that nothing

George V,  
No. 14.

nothing contained in this Act shall in any way alter any provisions of the Public Service Acts or of any regulations thereunder—

- (a) prescribing or authorising the Public Service Board to prescribe the passing of an examination or other test as a necessary condition for promotion of an officer or employee to a higher class, grade, or division; or
- (b) providing that payment of increments of salary to an officer as distinguished from adjustments of the living wage which shall be applied as if incorporated in an award shall be subject to the giving of a certificate by the said board that the conduct of the officer and his discharge of his duties warrant an increase of his salary. In the event of the said board refusing to give such certificate, the officer shall be supplied with a written statement showing the reason why such certificate was refused."

(2) Subsection two of section 24A is hereby repealed.

Amendment  
of Act No. 17,  
1912, s. 24B  
(Rural  
industries).

**17.** Section 24B of the Principal Act is amended by omitting all words after the words "abovementioned purposes" in paragraph (d) and substituting therefor the words "shall be subject to the provisions of this Act: Provided that any award regulating conditions of employment of such employees may be made without the limitation of hours prescribed by the Forty-four Hours Week Act, 1925."

*Ibid.* new  
sec. 24C.

**18.** (1) The following new section is inserted after section 24B of the Principal Act:—

Absolute  
preference to  
unionists.

24C. The court or a board may on an application or reference to it in that behalf prescribe by award that absolute preference of employment shall be given to the members of the industrial union or unions specified in the award.

(2)

(2) Section five of the Principal Act is amended **George V,**  
by omitting from the definition of "Industrial matters" **No. 14.**  
the words "twenty-four, subsection one, paragraph Consequential  
(g)," and inserting the figures and letter "24c" in lieu amendment  
thereof. of Act  
No. 17, 1912,  
s. 5.

**19.** Section twenty-six of the Principal Act is Amendment  
omitted and the following new section is substituted of Act No. 17,  
therefor:— 1912, s. 26.

**26.** The court or a board shall not award any Wages of  
conditions nor fix rates of wages for employees of Government  
the Crown, including employees of the Railway employees.  
Commissioners for New South Wales, the Sydney  
Harbour Trust Commissioners, the Metropolitan  
Water, Sewerage and Drainage Board, the Water  
Conservation and Irrigation Commission, the Board  
of Fire Commissioners of New South Wales, the  
Commissioners of the Government Savings Bank of  
New South Wales, the Metropolitan Meat Industry  
Board, and the Hunter District Water Supply and  
Sewerage Board, less favourable than the con-  
ditions granted or the wages paid to other employees  
not employed by the Government or its departments  
doing substantially the same class of work, but the  
fact that employment is permanent or that  
additional privileges are allowed in the service of  
the Government or its departments shall not of  
itself be regarded as a substantial difference in the  
nature of the work.

**20.** The following new section is inserted after Ibid.  
section twenty-six of the Principal Act:— new sec. 26A.

**26A.** (1) No industrial agreement shall be entered No wage less  
into and no award made for a wage lower than the than declared  
declared current living wage. living wage.

(2) Upon a declaration as to the living wage Variation of  
during the currency of any award, the terms of such awards.  
award affecting rates of pay may be varied to accord  
with such declaration (subject to appeal to the  
court) by the registrar upon application to him as  
prescribed by any party whose appearance is  
recorded on the making of the award, and upon  
notice to the other parties whose names are so  
recorded, and a variation of the award shall, upon  
publication in the Gazette, have effect as an award  
from the date of the declaration.

**21.**

George V,  
No. 14.

Repeal of Part V  
of Act No. 17,  
1912,  
Amendment of  
Act No. 17, 1912,  
s. 3.

*Ibid.* s. 5.

*Ibid.* s. 49 (3).

*Ibid.* s. 52.

Penalty for  
unlawful  
dismissal.

**21.** (1) Part V of the Principal Act is repealed.

(2) Section three of the Principal Act is amended by omitting the words and figures "Conciliation Committees, ss. 38-43."

(3) Section five is amended by omitting the definition "Members of a board" and "members of a conciliation committee," and by inserting the following definition in lieu thereof—

"Members of a board" includes the chairman of the board.

**22.** Subsection three of section forty-nine of the Principal Act is amended by adding after the words "as prescribed" the following new paragraph:—

Upon such appeal the court may affirm, vary, or rescind, the judgment or order appealed from and may make such order as the court appealed from should have made, including an order as to costs of the judgment or order appealed from or of the appeal.

**23.** Section fifty-two of the Principal Act is omitted and the following new section substituted therefor:—

52. If an employer dismisses an employee or injures him in his employment or alters his position to his prejudice by reason of the fact that the employee—

- (a) is an officer, delegate, or member of a trade or industrial union or of a conciliation committee established under the Industrial Arbitration (Amendment) Act, 1926; or
- (b) claims some benefit of an industrial agreement or an award to which he is entitled; or
- (c) has appeared as a witness, or has given evidence in a proceeding in relation to an industrial matter; or
- (d) after applying to his employer for leave without pay for the purpose, and after the employer has unreasonably refused leave, has absented himself from work through being engaged in other duties as a member of an industrial union in respect of any matter affecting the industry in which he is working or as a member of such a conciliation committee,

the

the court or an industrial magistrate may order him to pay a penalty not exceeding fifty pounds. George V,  
No. 14.

The court or magistrate may further order that the employee be reimbursed the wages lost by him and the court may also direct his reinstatement in his old or a similar position.

In any proceeding for an offence against this section, if all the facts and circumstances constituting the offence, other than the reason for the defendant's action, are proved, it shall lie upon the defendant to prove that he was not actuated by the reason alleged in the charge.

In a proceeding for an offence in respect of paragraph (d) of this section it shall not be necessary for the prosecution to prove among the facts and circumstances constituting the offence that the employer unreasonably refused leave.

A prosecution under this section may be taken before the court or an industrial magistrate by the secretary of the industrial union concerned in the industry in which the employee alleged to have been so dismissed, injured, or prejudiced was employed: Provided always that if any party feels aggrieved by any decision of a magistrate, he may appeal in the prescribed manner to the court.

No prosecution for an offence under this section shall be commenced except by leave of the court.

**24.** Section sixty-seven of the Principal Act is amended— Amendment  
of Act No. 17,  
1912, s. 67.

(i) by adding at the end of subsection one the words— Right of entry  
by union  
officials.

“Any officer of an industrial union of  
“employees authorised in writing by the court  
“or board shall have the right to enter any cf. Qld.,  
7 Geo. V,  
No. 16, s. 90,  
and 14 Geo.  
V, No. 10,  
s. 28.  
“place or premises or any ship or vessel of any  
“kind whatsoever, wherein members of such  
“union or persons in the same calling as such  
“members are engaged, for the purpose of  
“conversing with or interviewing the employees  
“in such place, premises, ship or vessel:  
“Provided that such officers shall not wilfully  
“hamper or hinder the employees during their  
“working

George V,  
No. 14.

“working time and may interview any  
“employees or converse with them any lunch  
“hour or non-working time.

“Every person who hinders or obstructs  
“any such officer in the exercise of any power  
“conferred by this subsection, or who refuses  
“entrance to such officer or unduly delays such  
“officer in entrance during any time as afore-  
“said to any such place, premises, ship or  
“vessel, shall be liable to a penalty not  
“exceeding fifty pounds”;

(ii) by omitting the words “fifty-three” and  
by inserting in lieu thereof the word “fifty.”

Amendment  
of Act No. 17,  
1912, ss. 72,  
73.

**25.** (1) Section seventy-two of the Principal Act is amended by omitting the word “judge” and substituting the word “Governor” in lieu thereof.

(2) Section seventy-three of the Principal Act is amended by omitting subsection one, and by inserting the following subsection in lieu thereof :—

(1) The regulations shall be published in the Gazette, and shall take effect from the date of publication or from some later date to be specified in the regulations.

*Ibid.* s. 81.

**26.** (1) The Principal Act is further amended by omitting section eighty-one.

(2) Any regulations made under section eighty-one of the Principal Act, and in force at the commencement of this Act, shall continue in force until varied, rescinded, or amended by an award of a conciliation committee established for the industry to which the regulation relates.

Repeal of  
ss. 2, 3, 7, 12  
of Act No. 30,  
1922.

**27.** Sections two, three, seven, and twelve of the Industrial Arbitration (Amendment) Act, 1922, and subsections one and two of section seventy-nine of the Principal Act as inserted therein by section eleven of the Industrial Arbitration (Amendment) Act, 1922, are hereby repealed.

Amendment  
of Act No. 17,  
1912, ss. 48A,  
83.

Additional  
powers of  
court to take  
evidence.

**28.** The Principal Act is amended—

(i) by omitting section 48A and by inserting the following new section :—

48A. The court and the industrial commission established under the Industrial Arbitration (Amendment) Act, 1926, in the exercise

exercise of any of its powers under that Act, shall have the powers conferred by the Royal Commissions Act, 1923, on a commissioner appointed under Division 1 of Part II of that Act and the said Act, section thirteen and Division 2 of Part II excepted, shall mutatis mutandis apply to any witness or person summoned by or appearing before the court or such industrial commission ;

**George V,  
No. 14.**

(ii) by omitting section eighty-three.