

INDUSTRIAL ARBITRATION (AMENDMENT) ACT.

Act No. 45, 1927.

George V, An Act to amend the constitution of the Industrial Commission ; to amend the law with respect to the declaration of living wages and the granting of preference of employment to unionists ; to amend the Industrial Arbitration Act, 1912, and certain other Acts ; and for purposes connected therewith. [Assented to, 9th December, 1927.]

BE 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. **1.** (1) This Act may be cited as the "Industrial Arbitration (Amendment) Act, 1927."

Construction. (2) This Act shall be read and construed with the Industrial Arbitration Act, 1912, as amended by subsequent Acts (herein referred to as the Principal Act), and the Industrial Arbitration (Amendment) Act, 1926.

Amendment of Act No. 14, 1926. **2.** (1) Section six of the Industrial Arbitration (Amendment) Act, 1926, is amended—

Sec. 6 (1), (2), (3). (a) by omitting subsections one, two, and three, and by inserting in lieu thereof the following new subsections :—

New subsecs. (1) There shall be an Industrial Commission of New South Wales constituted by the appointment by the Governor of three members, one of whom shall be by his commission appointed President.

The Commission shall be a superior court of record, and its seal shall be judicially noticed.

(2)

(2) A person to be qualified for appointment as a member shall be a puisne judge of the Supreme Court, a District Court judge, a barrister of not less than five years' standing, or a solicitor of not less than seven years' standing.

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Each member shall, subject to this section, hold office during good behaviour, shall have the same rank, title, status, and precedence and the same salary, pension and other rights as a puisne judge of the Supreme Court, and shall be removable from office in the same manner only as a judge of the Supreme Court is by law liable to be removed from his office.

Such salary and pension shall be charged upon and be payable out of the Consolidated Revenue Fund.

Each member shall retire on the day on which he attains the age of seventy years, unless he is granted retiring leave, in which case he shall retire on the expiration of such leave.

A member of the Commission shall not be capable of accepting or holding any other office or any other place of profit within the State, except any such judicial office as may be conferred upon him by or under any law of the State.

(3) If a member of the Commission is prevented by any cause from attending to his duties as such, the Governor may appoint some person qualified to be appointed a member to act temporarily as a member of the Commission, and such person shall, while so acting, have all the powers of a member of the Commission.

(b) (i) by omitting from subsection four the words Sec. 6 (4).
"qualified to be appointed commissioner."
(Deputy
Commis-
sioner.)

(ii) by omitting from the same subsection all the words after the word "exercise" and by inserting in lieu thereof the words:
"the jurisdiction and powers of the Commission in all matters referred to him by the Commission provided that at the request of

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of any party he shall, or, of his own motion, he may remit any question arising in any such matter to the Commission for its opinion and direction.

Upon the hearing of any matter so referred the members, other than the chairman of the Conciliation Committee for the industry or calling shall, if the Commission or the Deputy Commissioner so direct, sit with the Deputy Commissioner but as assessors only and without vote. The Commission may grant leave to appeal to the Commission against any order or award made by the Deputy Commissioner, and on such appeal may vary any such order or award in such manner as it thinks just.

The deputy Commissioner may from time to time, if he thinks fit, or when the Commission so directs assume and exercise the powers, functions, and jurisdiction of the chairman of the committee, whether or not the chairman is absent."

Sec. 6 (5) (6)
(7) (8) (9)*

(c) by omitting subsections five, six, seven, eight and nine and by inserting in lieu thereof the following new subsections :—

(5) On appointment the members of the Commission, and the Deputy Commissioner, shall take the Oath of Allegiance and the Judicial Oath.

This subsection extends to a person appointed to act temporarily as a member.

(6) The Commission may direct the deputy commissioner, a committee or any chairman of a committee or the industrial registrar to inquire into any matter as to which it requires information for the purpose of the exercise of the jurisdiction of the Commission.

The Deputy Commissioner, committee, chairman, or registrar shall inquire accordingly and report to the Commission.

For the purpose of any such inquiry the Deputy Commissioner, committee, chairman, or

New
subsecs. (5)
(6) (7).

or registrar may summon any person, administer oaths, and take affidavits and examine parties and witnesses. George V,
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The provisions of section thirty-four of the Principal Act shall extend to any such inquiry.

Every person so summoned shall be bound to attend upon such summons and shall for disobedience thereto be liable to a penalty not exceeding fifty pounds.

(7) At sittings of the Commission all members shall be present, and any question shall be decided according to the decision of the majority:

Provided, however, that the Commission may in any particular matter delegate any of its powers or functions to any one member. From any order or award made by such member an appeal shall lie to the Commission, and on the appeal the Commission may vary any such order or award in such manner as it thinks just.

(2) Section two of the Industrial Arbitration ^{Sec. 2.} (Amendment) Act, 1925, is amended by omitting the ^(Definition.) words "Commissioner means the Industrial Commis-
sioner appointed under this Act."

(3) Section seven of the Industrial Arbitration ^{Sec. 7.} (Amendment) Act, 1926, is amended— <sup>(Powers and
functions of the
Commission.)</sup>

(a) (i) by inserting at the end of paragraph (a) of ^{Sec. 7 (1) (a).} subsection one the words "or under section nine of this Act."

(ii) by omitting from paragraph (c) of the same ^{*Ibid.* (c).} subsection all the words after the word "Act" and by inserting in lieu thereof the words "Members other than the chairman of a committee appealed from shall if the Commission so directs sit with the Commission but as assessors only and without vote."

(b) by omitting subsection two. ^{Sec. 7 (2).}

(4) (a) Section eight of the Industrial Arbitra- ^{Sec. 8.} tion (Amendment) Act, 1926, is amended by omitting <sup>(Conciliation
Committee.)</sup> the word "Commissioner" wherever occurring and by inserting in lieu thereof the word "Commission"; (b)

**George V,
No. 45.**Sec. 13.
(Appearance
by counsel.)Pending
matters.Further amend-
ment of No. 14,
1926, s. 9.
New subsecs.
6 and 7.
(Chairman's
vote.)

(b) Section thirteen of the same Act is amended—

- (i) by inserting after the word "Commission" the words "or the Deputy Commissioner."
- (ii) by omitting the word "Commissioner" and by inserting in lieu thereof the words "Commission or Deputy Commissioner as the case may be."

(5) Subject to this Act all matters pending before the Industrial Commission or the Industrial Commissioner or the Deputy Commissioner at the commencement of this Act may be continued before the Commission appointed in pursuance of the Industrial Arbitration (Amendment) Act, 1926, as amended by this Act.

3. Section nine of the Industrial Arbitration (Amendment) Act, 1926, is amended :—

- (a) by omitting subsection six and by inserting in lieu thereof the following new subsection :—

(6) At meetings of a committee the opinion of the majority of the members, other than the chairman, shall prevail.

Where such members are equally divided in opinion as to any question, they may agree to accept the decision of the chairman.

Save as aforesaid the chairman of the committee shall not take any part in the decisions of the committee and shall have no vote.

Where a committee fails to make an order or award upon an application or makes an order or award which deals only partially with the application the chairman shall refer the application or the remaining undetermined portion thereof as the case may be to the Commission.

- (b) by omitting subsection seven and by inserting in lieu thereof the following new subsection :—

(7) Where any question or application is referred to the Commission under this section, members other than the chairman of the committee shall, if the Commission so directs, sit with the Commission, but as assessors only, and without vote.

Any

Any determination, order, or award made by the Commission upon any such reference shall take effect from such day subsequent to the lodging with the industrial registrar of the application to the committee as the Commission may direct.

4. (1) The Principal Act is amended—

(a) by omitting section 24c as inserted by the <sup>Amendment of
Act No. 17, 1912
(Preference).</sup> Industrial Arbitration (Amendment) Act, ^{Sec. 24c.} 1926.

(b) by inserting in subsection one of section ^{Sec. 24 (1).} twenty-four the following new paragraph :— ^{New par. (g).}

(g) prescribing that as between members of any industrial union or unions of employees specified in the award and other persons offering or desiring service or employment at the same time, preference shall be given to such members other things being equal.

(c) by inserting at the end of section twenty-four ^{Sec. 24.} the following new subsection :— ^{(New sub-section).}

(3) Notwithstanding anything elsewhere contained in this Act or any Act amending the same, neither the court nor a board shall have power to prescribe—

(a) any form of preference of employment in excess of that set out in paragraph (g) of subsection one of this section ; nor

(b) that any employee shall join any industrial or trade union whether as a condition of his employment or of the continuance of his employment in any industry or not ; nor

(c) that any engagement of labour shall be made only at the office of a union or through an official of a union ;

(d) by omitting from the definition of “ Industrial matters ” in section five the word, figures, ^{Sec. 5.} and letter “ section 24c ” and by inserting in lieu thereof the words “ paragraph (g) of subsection one of section twenty-four as inserted by the Industrial Arbitration (Amendment) Act, 1927 ”;

(e)

**George V,
No. 45.**
Sec. 24 (1).
(Conse-
quential.)

Consequential
repeal of Act
No. 14, 1926,
s. 18.
Construction
of certain
awards.

Further
amendment of
Act No. 14 1926,
s. 7 (1).
(Living wage.)

Industrial
Commiss-
sioner.

(e) by omitting from the first proviso in subsection one of section twenty-four after paragraph (h) the words and figures "and (h)" of this subsection and section 24c" and by inserting in lieu thereof the brackets word and letters "(g) and (h)" ;

(2) Section eighteen of the Industrial Arbitration (Amendment) Act, 1926, is hereby repealed.

3) From and after the commencement of this Act—

(a) any existing award which prescribes that any form of preference of employment shall be given to members of any industrial union or unions of employees in excess of the preference permitted to be prescribed by paragraph (g) of subsection one of section twenty-four of the Principal Act as inserted by this Act, shall, to the extent of any such excess become and be inoperative and of no effect ; and

(b) the provisions of any existing award which relate to the matters dealt with in paragraphs (b) and (c) of subsection three of section twenty-four of the Principal Act as inserted by this Act, shall cease to have any force or effect.

5. Subsection one of section seven of the Industrial Arbitration (Amendment) Act, 1926, is amended by inserting in paragraph (b) after the words "to determine" the words "after public inquiry."

6. The Industrial Commissioner if he accepts office as a member of the Commission shall be entitled to receive as such a member and in lieu of his salary as Industrial Commissioner the same salary as heretofore for the remainder of the period for which he was appointed Industrial Commissioner and no more and after the expiration of that period to receive the salary provided for in subsection two of section six of the Industrial Arbitration (Amendment) Act, 1926 as amended by this Act.