

INDUSTRIAL ARBITRATION
(AMENDMENT) ACT.

Act No. 39, 1932.

An Act to authorise the Industrial Commission of New South Wales to determine the standard hours to be worked in certain industries; to provide for the appointment of a Conciliation Commissioner; to provide for the abolition of the offices of the Deputy Commissioner and of the Chairmen of Conciliation Committees and the exercise by the Conciliation Commissioner of certain of their duties, powers, and functions; to provide for the appointment of an Apprenticeship Commissioner and for the constitution of Apprenticeship Councils; to amend the Industrial Arbitration Act, 1912, the Industrial Arbitration (Amendment) Act

George V.
No. 39, 1932.

Industrial Arbitration (Amendment) Act.

No. 39, 1932.

Act, 1926, the Industrial Arbitration (Eight Hours) Amendment Act, 1930, and certain other Acts; and for purposes connected therewith. [Assented to, 2nd December, 1932.]

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,
construction
and com-
mencement.

1. (1) This Act may be cited as the "Industrial Arbitration (Amendment) Act, 1932," and shall be read and construed with the Industrial Arbitration Act, 1912, as amended by subsequent Acts, and the Industrial Arbitration (Amendment) Act, 1926, as amended by subsequent Acts.

(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 commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Hours.

2. (1) (a) Notwithstanding the provisions of the Industrial Arbitration (Eight Hours) Amendment Act, 1930, as amended by the Industrial Arbitration (Eight Hours) Further Amendment Act, 1930, the Commission shall, as soon as conveniently possible after the commencement of this Act, and may from time to time thereafter determine after a public inquiry and declare the standard hours for all industries to which the Principal Act applies.

Where the Commission deems it necessary to hold further inquiry or to postpone the inquiry it may exclude from the operation of any such declaration, for such period as it may from time to time determine, and either generally or upon such terms and conditions as it may impose—

- (i) any industry or class of employees in an industry which prima facie ought in the opinion of the Commission to be dealt with under paragraph (b) or paragraph (c) of this subsection; or

(ii)

- (ii) any industry or class of employees in an industry in respect of which the Commission may, if it thinks fit, exercise the discretion conferred by paragraph (d) of this subsection.

For the purposes of this section, "standard hours" means the number of ordinary working hours applicable to industry generally to be worked daily, weekly, fortnightly or otherwise, as determined by the Commission.

(b) The Commission may in any industry or in respect of any employees or class of employees in any industry if in the public interest it shall deem it desirable so to do—

- (i) declare a greater number of ordinary working hours than the standard hours about to be declared; or
- (ii) declare a greater number of ordinary working hours than the standard hours already declared;

and in any event may increase the number of days on which the hours may be worked.

(c) The Commission may in respect of any employees or class of employees who are engaged upon work which in its opinion is prejudicial to health—

- (i) declare a lesser number of ordinary working hours than the standard hours about to be declared; or
- (ii) declare a lesser number of ordinary working hours than the standard hours already declared.

(d) The Commission may in any industry or in respect of any employees or class of employees in any industry where immediately prior to the fourth day of January, one thousand nine hundred and twenty-six, the ordinary working hours had been fixed for such industry, employees or class by award or industrial agreement or, where no award or industrial agreement existed by well established practice at a number less than the standard hours declared or about to be declared—

- (i) declare a lesser number of ordinary working hours than the standard hours about to be declared; or
- (ii) declare a lesser number of ordinary working hours than the standard hours already declared.

Upon

No. 39, 1932.
—

Upon any inquiry under this subsection the Commission shall give full consideration to all conditions existing at the time of the inquiry.

(2) Upon any declaration by the Commission under subsection one of this section, any provision of the Industrial Arbitration (Eight Hours) Amendment Act, 1930, as amended by the Industrial Arbitration (Eight Hours) Further Amendment Act, 1930, shall to the extent to which it is inconsistent with such declaration or with the provisions of this Act cease to have effect.

cf. Act
No. 22, 1930,
s. 5 (2).

(3) Wages and salaries fixed upon a weekly or longer basis by any award or industrial agreement in force at the date of any declaration made under subsection one of this section, or any award made or agreement entered into after such declaration, shall not be increased or reduced by reason of any increase or reduction of the ordinary working hours made in accordance with such declaration.

cf. Ibid.
s. 5 (3).

(4) Where the ordinary working hours in any industry are increased or reduced by reason of any declaration made under subsection one of this section, the rate of wages specified in any award or industrial agreement as payable upon a daily or hourly basis shall, without any further award or variation or amendment of the award or agreement, be deemed to have been reduced or increased from the date of any such declaration to such rate as will provide each employee working full time with the same amount of wages as he would have received for working full time under the provisions of the award or the agreement prior to the declaration.

(5) Where the ordinary working hours in any industry are increased or reduced by reason of any declaration made under subsection one of this section, any piecework rate specified in any award or industrial agreement shall, without any further award or variation or amendment of the award or agreement, be deemed to have been reduced or increased from the date of any such declaration to such rate as will provide each employee working full time with the same remuneration as he would have received working full time at the same speed under the provisions of the award or agreement prior to the declaration.

(6)

(6) Notwithstanding anything contained in this section, the Commission, having made a declaration in accordance with the provisions of subsection one of this section, and the wages having been adjusted in relation thereto, may at any time thereafter, upon application as prescribed, reduce the hours to be worked in any industry or by any employees or class of employees in any industry and provide—

- (a) in the case where wages and salaries are fixed on a daily, weekly or longer basis for proportionate reduction in the wages and salaries payable under any award or industrial agreement in force at the date of such reduction of hours;
- (b) in the case where the award or industrial agreement provides for payment hourly, or piecework basis for payment of the same hourly, or piecework rates payable under any award or industrial agreement in force at the date of such reduction of hours.

(7) Any award or industrial agreement in force at the date of any declaration under subsection one of this section to which the declaration applies shall be deemed to be varied by the substitution of the hours so declared for the ordinary working hours provided in any such award or industrial agreement as from the date of the declaration.

(8) Upon any declaration under subsection one of this section or any order under subsection six of this section during the currency of any award or industrial agreement the registrar may (subject to appeal to the Commission), upon application to him in the prescribed manner 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 in the case of an industrial agreement, by any party to the agreement and upon notice to the other parties thereto, make such variation or amendment in the terms of the award or agreement as will clearly express the effect of such declaration or order as the case may be, and make any necessary consequential amendment as to the starting or finishing times, overtime, or other matter as may be necessary.

Any

No. 39, 1932. Any such variation or amendment of the award or agreement made by the registrar shall be published in the Gazette.

The Registrar may refer any such application or any matter arising out of any such application to the Commission for directions.

(9) Where after the date of a declaration under subsection one of this section which is applicable to the industry concerned any award or industrial agreement is made which does not give effect to the declaration, such award or agreement shall not be enforceable until it has been varied or amended to give effect to the declaration.

(10) Nothing in this section shall affect section eight or section 8A of the Industrial Arbitration (Eight Hours) Amendment Act, 1930, as amended by subsequent Acts, or affect or apply to employees employed under the Public Service Act, 1902, or any Act amending the same.

Conciliation
commis-
sioner.

3. (1) The Governor may appoint a person to be the conciliation commissioner.

(2) The salary of the conciliation commissioner shall be fixed by the Governor.

(3) The conciliation commissioner shall be appointed for a term of seven years and shall be eligible for reappointment.

(4) The conciliation commissioner may be suspended from his office by the Governor for misbehaviour or incompetence, but shall not be removed from office except in manner following, that is to say—

(a) The Minister shall cause to be laid before Parliament a full statement of the grounds of suspension within seven sitting days after such suspension if Parliament is in session, or if not, then within seven sitting days after the commencement of the next session.

(b) The commissioner suspended under this subsection shall be restored to office unless each House of Parliament within twenty-one sitting days from the time when such statement has been laid before it, declares by resolution that the commissioner ought to be removed from office, and
if

if within the time aforesaid each House of Parliament so declares, the commissioner shall be removed by the Governor accordingly.

(5) The conciliation commissioner shall be deemed to have vacated his office if he—

- (a) becomes bankrupt, compounds with his creditors, or makes an assignment of his salary or estate for their benefit;
- (b) absents himself from duty for a period of fourteen consecutive days except on leave granted by the Minister (which leave he is authorised to grant) or becomes incapable of performing his duties;
- (c) becomes an insane person or patient or an incapable person within the meaning of the Lunacy Act of 1898;
- (d) resigns his office by writing under his hand addressed to the Governor.

4. The Governor may from time to time appoint such number of additional conciliation commissioners as he thinks fit, who shall receive such fees or remuneration as may be prescribed.

Additional
conciliation
commis-
sioners.

Every such appointment shall be for a specified period not exceeding twelve months.

Subject to this section, the provisions of section three of this Act shall apply to any person appointed an additional conciliation commissioner.

An additional conciliation commissioner shall have the powers, duties and functions of the conciliation commissioner in such cases as the Commission directs, and subject to this section a reference in this Act to the conciliation commissioner shall be deemed to be a reference also to an additional conciliation commissioner.

5. A person appointed conciliation commissioner shall take the oath of allegiance and the judicial oath.

Oath of
office.

6. (1) Upon the commencement of this Act the offices of deputy commissioner and of the chairmen of conciliation committees shall cease to exist.

Cesser of
office of
deputy com-
missioner
and
chairmen.

(2) The deputy commissioner and each chairman of conciliation committee shall receive such compensation as he would have been entitled to had his services been dispensed with otherwise than according to law.

No. 39, 1932.

Duties, etc.,
of concilia-
tion com-
missioner.

7. (1) From and after the commencement of this Act the conciliation commissioner, except as otherwise limited or provided by this Act, shall exercise and perform the duties, powers and functions formerly exercisable by the deputy commissioner and by any chairman of a conciliation committee, and shall have and exercise the jurisdiction and powers of the Commission in all matters referred by the commission under section six of the Industrial Arbitration (Amendment) Act, 1926.

(2) After the commencement of this Act a reference to the deputy commissioner or to a chairman of a conciliation committee in any Act, award, industrial agreement, regulation, or other instrument shall be construed as a reference to the conciliation commissioner appointed under this Act.

(3) Any matter pending or part heard before the deputy commissioner or a conciliation committee may, unless the Commission otherwise directs, be heard or continued before the conciliation commissioner.

Powers of
conciliation
commis-
sioner.

8. (1) The conciliation commissioner when exercising the jurisdiction, powers and functions of a chairman of a conciliation committee conferred upon him by this Act, shall endeavour to bring the parties to an agreement with respect to the matters contained in any application or reference to a committee, but shall not call witnesses or take evidence unless the Commission shall so direct.

(2) The conciliation commissioner when exercising his jurisdiction and powers and functions under this Act may elect to sit with or without the members of the committee.

When the members of a committee sit with the conciliation commissioner they shall sit as assessors only and without vote.

(3) Where an agreement is reached in respect of the matters contained in any such application or reference—

- (a) by the parties attending before the conciliation commissioner where he is sitting without the members of the committee; or
- (b) by the members of the committee other than the conciliation commissioner where he is sitting with the members of the committee,

the

the agreement shall be reduced into writing and forwarded to the registrar for settlement as an award, and after settlement it shall be signed by the conciliation commissioner and published in the Gazette. The award shall not become operative or enforceable as an award until fourteen days after publication in the Gazette.

(4) The Crown may, where, in the opinion of the Minister, the public interests are or would be likely to be affected by an award of the conciliation commissioner under this section, apply to the Commission at any time for a suspension of the award, or may, within the prescribed time, appeal to the Commission from the award.

(5) Any party, employer or industrial union affected by an award of the conciliation commissioner under this section may, within the prescribed time and in the prescribed manner, either—

- (a) appeal to the Commission from the award; or
- (b) apply to the Commission for a suspension of the award.

(6) An appeal under this section shall be by way of rehearing and on any such appeal or on any such application for suspension the Commission may—

- (a) require the members of the conciliation committee other than the conciliation commissioner to sit with the Commission, but as assessors only and without a vote;
- (b) direct that its determination, order, or award shall take effect as from any date subsequent to the lodging of the application or reference with the registrar;
- (c) call for or receive further information or evidence.

(7) Where no agreement has been reached or where agreement has only been reached in respect of some of the matters contained in any such application or reference the conciliation commissioner shall—

- (a) certify that the parties or the members of the committee have made a genuine attempt to arrive at an agreement, and set out the matters on which agreement has been reached, or
- (b) refuse to so certify;

L

and

No. 39, 1932.

and in either such case shall refer the application or reference to the Commission, together with the certificate, or where no certificate is made, a statement setting out his reasons for refusing to so certify. The Commission may either hear and determine the application or reference or refer the application or reference back to the conciliation commissioner with such directions as it deems proper.

Compulsory conference.

9. (1) The conciliation commissioner may summon any person to a compulsory conference—

- (a) where any question has arisen which, in his opinion, might lead to a lockout or strike, or where a lockout or strike has commenced;
- (b) where there exists any shop, factory, craft, or industry dispute, or any matter which may be a contributory cause of such a dispute;
- (c) where there is an actual, threatened, probable, or contemplated cessation of work or employment

in an endeavour to bring the interested parties to an agreement which will settle the question, dispute, or difficulty which has arisen or might arise.

(2) Any person summoned to attend the conference shall attend and continue to attend as directed by the conciliation commissioner, and in default shall be liable, on summary conviction, to a penalty not exceeding fifty pounds.

(3) The conciliation commissioner may summon the members of the conciliation committee established for the particular industry concerned to sit with him at the conference.

(4) If the parties are unable to come to an agreement the conciliation commissioner shall refer the question, dispute, or difficulty to the Commission which, in its discretion, may hear and determine the matter.

Apprenticeship commissioner.

10. (1) The Governor may appoint an apprenticeship commissioner.

(2) The apprenticeship commissioner shall be appointed for such period not exceeding three years and at such salary as the Governor may fix, and shall be eligible for reappointment.

(3)

(3) The apprenticeship commissioner, together with the members of the conciliation committee established for an industry, shall constitute the apprenticeship council for that industry.

(4) The apprenticeship commissioner shall be the chairman of each apprenticeship council.

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

(6) The powers and duties conferred upon the New South Wales Board of Trade by section eighty of the Principal Act shall be exercised by the apprenticeship council for each industry.

Where it is proved to an apprenticeship council or the Commission, upon application in the prescribed manner, that there exists in the establishment of any employer apprenticeship conditions of a special and proper character not unfavourable to apprentices, an apprenticeship council or the Commission may exempt any such employer in respect of any apprentices employed by such employer from any or all of the conditions of employment of apprentices prescribed by any award, order or regulation applicable to the trade or calling in which such apprentices are employed as the apprenticeship council or Commission may deem proper, but not so as to relieve any such employer from any provision requiring the lodging or registration of indentures with the Industrial Registrar.

(7) Sitzings of the council shall be convened in the manner prescribed, and the procedure shall be as prescribed. Until regulations are made or in so far as the regulations do not prescribe such manner or procedure, it shall be as the apprenticeship commissioner directs.

(8) At sittings of the council the members other than the apprenticeship commissioner shall sit as assessors only and without a vote.

If any or all of the members, other than the apprenticeship commissioner, are absent from a duly convened sitting of the council, the apprenticeship commissioner may

Industrial Arbitration (Amendment) Act.**No. 39, 1932.**

may proceed to hear and determine any matter before the council. Such determination shall be deemed to be a decision of the council.

(9) Any decision of the council upon any matter in dispute between parties shall be deemed to be and shall operate as an award.

(10) An appeal in the manner prescribed shall lie to the Commission from any order, determination or award of the council.

(11) The appeal shall be by way of rehearing.

(12) The Commission may, on any such appeal, require the members of the council other than the apprenticeship commissioner to sit with the Commission, but as assessors only and without a vote.

(13) The Commission may, on any such appeal, vary or reverse any such order, determination or award and may make such further or other order as ought to have been made by the council in the first instance.

11. Where an officer of the Public Service is appointed a conciliation commissioner or an apprenticeship commissioner, he shall, while he holds such office, be deemed to be an employee within the meaning of the Superannuation Act, 1916-1930, and shall be entitled to have his services as conciliation commissioner or apprenticeship commissioner reckoned as service for the purposes of the Public Service Act, 1902, and regulations made thereunder. Upon the termination of his appointment as conciliation commissioner or apprenticeship commissioner, if he has not attained the age of sixty-five years, he shall be entitled to be appointed to some position in the Public Service corresponding in classification and salary to that which he held at the date of his appointment as conciliation commissioner or apprenticeship commissioner.

**Amendment
of Act No.
14, 1926, s. 7
(1) (b).**

12. (1) The Industrial Arbitration (Amendment) Act, 1926, is amended by inserting at the end of paragraph (b) of subsection one of section seven the following words:—

The Commission shall within twenty-eight days from the end of the months of March and September adjust

adjust the living wages so declared at such amount as will, in the opinion of the Commission, accord with the increased or decreased cost of maintaining the determined standard, and shall within the said period of twenty-eight days cause to be published in the Gazette the amounts of the living wages so adjusted.

Upon a declaration of the living wages or upon any adjustment thereof during the currency of any award or industrial agreement the terms of such award or industrial agreement affecting rates of pay shall be deemed to be varied to accord with such declaration as from the date of the declaration and with such adjustment as from the commencement of the first pay period in the month immediately following the month in which the adjustment is published in the Gazette.

The Commission may on application to it in the prescribed manner exempt any award or industrial agreement from the effect of the declaration or adjustment to such extent and subject to such conditions as it may direct.

(2) The first adjustment of the living wages under the amendment made by this section shall be made and published in the Gazette within twenty-eight days after the thirty-first day of March, one thousand nine hundred and thirty-three.

13. (1) The Principal Act is amended—

Amendment
of Act No. 17,
1912.

- (a) by omitting section 12B and by inserting in lieu thereof the following section:—

Sec. 12B.

12B. Upon a declaration of the living wage or upon the publication in the Gazette of any adjustment thereof during the currency of any industrial agreement, the registrar shall (subject to appeal to the court), upon application to him in the prescribed manner by any party to the agreement and upon notice to the other parties thereto, make such variation in the terms of such agreement affecting rates of pay as will clearly express the effect of such declaration or adjustment.

Variation of
industrial
agreements.

(b)

Industrial Arbitration (Amendment) Act.

No. 39, 1932.

Sec. 26A.

No wages
less than
declared or
adjusted
living wage.

Variation
of awards.

- (b) by omitting section 26A and by inserting in lieu thereof the following section:—

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

(2) Upon a declaration of the living wage or upon the publication in the Gazette of any adjustment thereof during the currency of any award, the registrar shall (subject to appeal to the court), upon application to him in the prescribed manner 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, make such variation in the terms of such award affecting rates of pay as will clearly express the effect of such declaration or adjustment.

Consequential
repeal of sec. 20
of Act No. 14,
1926.

Further
amendment
of Act No. 14,
1926.

Sec. 4 (3).
(Appren-
ticeship.)

Sec. 6.
New s. (3A).
(Industrial
Commission.)

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

14. The Industrial Arbitration (Amendment) Act, 1926, is further amended—

- (a) by omitting from subsection three of section four the words “conciliation committee established for such industry” and by inserting in lieu thereof the words “Apprenticeship Council constituted under the Industrial Arbitration (Amendment) Act, 1932.”

- (b) by inserting after subsection three of section six the following new subsection:—

(3A) The Governor may, upon a report by the Commission that the Commission is unable to cope promptly and expeditiously with the matters in the Commission's list, appoint some person qualified to be appointed a member to act temporarily as an additional member of the Commission, and such additional member, while so acting, shall have and exercise the jurisdiction and powers of the Commission in all matters referred to him by the Commission.

(c).

Industrial Arbitration (Amendment) Act.

327

- (c) (i) by omitting subsection one of section eight and by inserting in lieu thereof the following subsection:—

No. 39, 1932.

Sec. 8.

(Conciliation committees.)

(1) The Minister may upon the recommendation of the Commission and in the manner prescribed establish conciliation committees.

Any such committee may be established for any industry or calling.

Upon the recommendation of the Commission the Minister may assign to a committee established for one industry or calling any other industry or calling, and may on the like recommendation alter the assignment of industries or callings previously made to any committee.

- (ii) (a) by omitting from subsection three of the same section the words “determined by the Minister and appointed” and by inserting in lieu thereof the words “recommended by the Commission and appointed by the Minister upon the recommendation of the Commission and”;
- (b) by inserting in the same subsection, after the word “prescribed” where secondly occurring, the words “in the same manner as the representatives aforesaid”;
- (iii) by inserting in subsection nine of the same section after the words “at any time” the words “upon the recommendation of the Commission”;
- (iv) by inserting in subsection eleven of the same section after the words “the Minister may” the words “upon the recommendation of the Commission”;
- (d) (i) by inserting at the end of subsection two of section nine the following words: “Upon any settlement the registrar may refer any provision of the award or order or submit any question of law to the Commission, and the

Sec. 9.

(Powers of conciliation committees.)

No. 39, 1932.

the Commission may give such direction as it deems proper, or it may refer the matter back to the chairman of the committee for report ”;

- (ii) by omitting from subsection seven of the same section the words “ under this section ” and by inserting in lieu thereof the words “ under the Principal Act or this Act ”;

Sec. 10.
(Jurisdiction
of committees.)

- (e) by omitting section ten;

Sec. 11.
(Power to
review.)

- (f) by inserting in section eleven after the word “ committee ” the words “ or the Commission.”

Amendment
of Act No. 17,
1912.

15. (1) The Principal Act is amended—

Sec. 57.
(Adjourn-
ment.)

- (a) by omitting from section fifty-seven the words “ chief clerk ” and by inserting in lieu thereof the words “ deputy registrar ”;

Sec. 65.
(Deputy
registrar.)

- (b) by omitting subsection two of section sixty-five and by inserting in lieu thereof the following subsection:—

(2) The Governor may appoint any person to be a deputy industrial registrar.

The deputy industrial registrar shall exercise such powers and perform such duties of the registrar as the registrar shall from time to time direct, and whilst exercising such powers or performing such duties and during the temporary absence of the registrar, or during any vacancy in the position of registrar, the deputy industrial registrar shall have the same jurisdiction and powers as if he were registrar.

Sec. 80.
(Appren-
ticeship.)

- (c) (i) by inserting in paragraph (b) of section eighty after the word “ prescribe ” the words “ either generally or in any particular case ”;
- (ii) by inserting at the end of the same paragraph the words “ including the age at which persons may be apprenticed and the term of apprenticeship.”

(2).

(2) The Industrial Arbitration (Eight Hours)
Further Amendment Act, 1930, is amended by omitting
subparagraph (i) of paragraph (g) of section four.

No. 39, 1932.
Consequential
repeal of
sec. 46 (i) of
Act No. 53,
1930.
