

INDUSTRIAL ARBITRATION (AMENDMENT) ACT.

Act No. 4, 1939.

George VI. Nu. 4, 1939. An Act to authorise the Industrial Commission of New South Wales to fix maximum prices for bricks ; to authorise the said Commission to fix the maximum prices for certain other commodities where, by reason of the existence of monopolies or of certain contracts, agreements, understandings or arrangements, the prices of those commodities are

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are regulated or controlled and are excessive ; to amend the Industrial Arbitration Act, 1912-1938, and certain other Acts in certain respects ; and for purposes connected therewith. [Assented to, 3rd June, 1939.]

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 :—

1. (1) This Act may be cited as the "Industrial Arbitration (Amendment) Act, 1939." Short title and citation.

(2) The Industrial Arbitration Act, 1912-1938, as amended by this Act, may be cited as the Industrial Arbitration Act, 1912-1939.

2. The Industrial Arbitration Act, 1912-1938, is Amendment of Act No. 17, 1912. amended—

- (a) by omitting from section 48A the words "powers under that Act" and by inserting in lieu thereof the words "powers, functions or duties under this Act, or the Industrial Arbitration (Amendment) Act, 1926, or any other Act"; See. 48A.
- (b) by omitting from section eighty-two the words See. 82. "Board of Trade" and by inserting in lieu thereof the words "Industrial Commission of New South Wales (in this Part referred to as 'the Commission'))";
- (c) by inserting after section eighty-two the following new sections :— New sees. 82A-82M.

82A. Every report furnished to the Minister Reports. pursuant to paragraph (e) of subsection one of section eighty-two of this Act shall be laid before both Houses of Parliament within fourteen sitting days after the receipt of the report by the Minister if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

82B.

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Commission
may fix
prices.

82B. (1) Where after making an investigation under paragraph (e) of subsection one of section eighty-two of this Act in relation to the price of any commodity the Commission is satisfied—

- (a) that there is or has been in existence any monopoly of the trade in the commodity or any contract, agreement, understanding or arrangement between two or more persons or bodies of persons corporate or unincorporate; and
- (b) that the existence of such monopoly, contract, agreement, understanding or arrangement has resulted or is resulting, either directly or indirectly, in the regulation or control of the price of the commodity; and
- (c) that by reason of such regulation or control the price of the commodity is excessive; and
- (d) that it is expedient and desirable in the interests of the public, having regard to the circumstances of the case and the nature of the commodity, that the price of the commodity should be fixed,

the Commission shall by notice published in the Gazette, fix the price of the commodity.

(2) In the exercise of the power conferred by subsection one of this section to fix the price of any commodity the Commission may—

- (a) fix the maximum price at which the commodity may be sold;
- (b) fix different maximum prices according to differences in quality or description or in the quantity sold;
- (c) fix different maximum prices for different parts of the State;
- (d)

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- (d) in fixing any maximum price, do so relatively to such standards or measurement, weight, capacity or otherwise as it thinks proper;
- (e) fix maximum prices on a sliding scale;
- (f) fix maximum prices which shall vary in accordance with a standard, time or other circumstance;
- (g) fix maximum prices on a condition or conditions;
- (h) fix maximum prices for cash or credit, or for delivery, and, in any such case inclusive or exclusive of the cost of packing;
- (i) fix maximum prices on a percentage basis on landed or other cost.

82c. Where a reference is made under paragraph (e) of subsection one of section eighty-two of this Act by the Minister to the Commission to investigate and report as to the prices of any commodity in respect of which a notice under this Part of this Act (including any notice fixing the price of bricks published pursuant to the proviso to section three of the Industrial Arbitration (Amendment) Act, 1939) is in force, the following provisions shall apply:—

- (a) After such investigation the Commission may, under and subject to the provisions of section 82B of this Act, exercise the powers conferred by that section; and any notice fixing the price of the commodity published by the Commission pursuant to this paragraph shall replace any notice fixing the price of that commodity which is in force immediately before such publication.
- (b) If, after such investigation, the Commission is not satisfied as to the matters referred to in subsection one of section 82B of this Act, the Commission may, by notice published in the Gazette, revoke

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Appeal to
Commission
constituted
by three
members.

revoke any notice fixing the price of that commodity which is in force immediately before such publication.

82D. (1) The Minister or any other person may, if he objects to the action of the Commission in publishing a notice fixing the price of a commodity or to any provision contained in such notice, appeal to the Commission in the manner and within the time prescribed by general rules made under this Part of this Act.

(2) The notice of appeal shall be accompanied by a statement verified as prescribed by general rules made under this Part of this Act setting out the matters upon which the appellant relies in support of his appeal, together with full particulars in relation thereto.

(3) The Commission shall have jurisdiction to hear and determine the appeal and for that purpose shall be constituted by three members as arranged by the President of the Commission.

In case of the absence of the President or of his inability to perform the duties of his office, the powers of the President under this subsection shall, during such absence or inability devolve upon the senior member.

In case of the absence or inability of any member upon whom such powers devolve they shall, during such absence or inability devolve upon the member who is next in seniority.

A member who constituted the Commission in fixing the price of a commodity by notice under this Part of this Act shall not sit on any appeal in relation to that notice.

(4) The appeal shall be in the nature of a rehearing and after such rehearing the Commission may exercise any of the powers conferred by paragraphs (a) and (b) of section 82c of this Act in all respects as if such rehearing were an investigation within the meaning of that section.

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(5) The decision of the Commission upon the appeal shall be final; but nothing in this subsection shall prejudice or affect the generality of section 82c of this Act.

82F. A notice published in the Gazette under this Part of this Act fixing the price of any commodity shall take effect from the date of such publication or from a later date specified in the notice, and shall remain in force until replaced or revoked by a notice published pursuant to section 82c or section 82D of this Act. Notice to take effect.

A notice published in the Gazette under this Part of this Act revoking any previous notice shall take effect from the date of such publication or from a later date specified in the notice.

82F. For the purposes of exercising the powers and functions of the Commission referred to in paragraph (e) of subsection one of section eighty-two and in sections 82B, 82C, and 82G of this Act the Commission may be duly constituted by any one member. Commission may be constituted by a single member.

82G. Where the maximum price of any commodity has been fixed by notice published in the Gazette under this Part of this Act the price so fixed shall apply to— Effect of notice on existing contracts. cf. Act No. 1655 (S.A.), 1924, s. 15.

(a) the sale of any quantity of that commodity after the date upon which the notice takes effect, in pursuance of a contract entered into before that date, unless the Commission certifies that, as regards any particular contract or class of contracts, it is undesirable that the price so fixed should apply;

(b) every sale of any quantity of the commodity after the date upon which the notice takes effect, in pursuance of a contract entered into on or after that date.

82H. Any person who, whether by way of premium or otherwise howsoever, knowingly purchases or offers to purchase wholesale any commodity the price of which is fixed under this Part of this Act, at a greater price than Penalty for offering higher prices than fixed prices. cf. *Ibid.* s. 16. the

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Penalty for
charging
higher
prices than
the fixed
prices.

cf. Act No.
1655 (S.A.),
1924, s. 17.

the price so fixed shall be guilty of an offence against this Part of this Act.

82r. (1) Subject to section 82g of this Act, any person who knowingly sells, offers, or exposes for sale, or has in his possession, control or disposition for sale, any commodity the price of which is fixed under this Part of this Act, at a price greater than the price so fixed shall be guilty of an offence against this Part of this Act.

(2) In any prosecution for an offence under this section an invoice given or account rendered by the defendant, or by some person on his behalf, for the commodity in respect of which the offence is alleged to have been committed, or an offer in writing, signed by the defendant, or by some person on his behalf, to sell that commodity at a specified price, shall be *prima facie* evidence of the sale of or offer to sell the commodity, and of the price charged or to be charged therefor.

Penalty for
failing to
supply
commodity
at fixed
price.

cf. *Ibid.*
s. 18.

82r. (1) If any person who has in his custody, or under his control, any commodity the price of which is fixed under this Part of this Act, and in which he usually trades, fails, on—

(a) demand of any quantity of that commodity; and

(b) tender of payment at the fixed price for the amount demanded,

to supply the commodity in the quantity demanded, he shall, subject to the provisions of this section, be guilty of an offence against this Part of this Act:

Provided that no person shall be bound to supply any commodity at less than the cost to him thereof at his place of business.

(2) If any person carries on business of any class in connection with which a commodity the price of which is fixed under this Part of this Act is usually sold or supplied, or if he has been in the habit of selling or supplying that commodity he shall, for the purpose of this section, be deemed usually to trade in that commodity. (3)

(3) In any prosecution under this section it shall be a sufficient defence to show that, on the occasion in question— No. 4, 1939.

- (a) the defendant supplied a reasonable quantity of the commodity demanded; or
- (b) the defendant was a wholesale trader in the commodity, and the person who demanded to be supplied was not a retail trader therein; or
- (c) the defendant had not a sufficient quantity of the commodity in his custody or under his control to supply the quantity demanded, in addition to the quantity required to satisfy all other contracts then subsisting, under which he was obliged to supply quantities of the commodity, and the ordinary requirements of his business.

(4) For the purposes of this section, in determining what is a reasonable quantity, regard shall be had to all the circumstances of the case, including the question whether the person who demanded to be supplied was or was not, at the time of the demand, carrying on business as a retail trader in the commodity demanded, either alone or with other commodities.

(5) In this section—

“Wholesale trader” means a trader who usually sells the commodity in question to retail traders only.

82K. Where any person in the usual course of his business sells or offers for sale any commodity subject to the observance or performance by the purchaser thereof of certain conditions and such conditions—

- (a) are fair and reasonable; and
- (b) do not operate to the detriment of the public,

No compulsion to sell any quantity of a commodity.
cf. Act No. 1655 (S.A.), 1924, s. 19.

nothing

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nothing contained in this Part of this Act shall be construed—

- (i) to compel such person to sell any quantity of any such commodity; or
- (ii) to render such person liable to any penalty under this Part of this Act for refusing to sell any quantity of such commodity

to a person who refuses or neglects to observe or to perform such conditions.

Penalties.

82L. (1) Any person guilty of an offence against this Part of this Act shall, where no other penalty is expressly provided therein, be liable upon summary conviction to a penalty not exceeding one hundred pounds for a first offence, and to a penalty not exceeding two hundred pounds for a second or any subsequent offence.

(2) Whosoever aids, abets, counsels or procures, or is in any way directly or indirectly knowingly concerned in the commission of an offence against this Part of this Act shall be deemed to have committed that offence, and shall be punishable accordingly.

**Interpre-
tation.**

82M. In this Part of this Act, unless the context or subject-matter otherwise indicates or requires,—

“Price” includes both wholesale and retail price.

“Purchaser” includes both a person who buys for the purpose of his own consumption or use, and a person who buys for the purpose of resale.

“Sell” includes barter and exchange, and words derived therefrom have a corresponding meaning.

**Commence-
ment of
sec. 2 and
direction to
Commission
to fix price
of bricks.**

3. (1) The provisions of section two of this Act shall be deemed to have commenced on the twenty-second day of December, one thousand nine hundred and thirty-eight:

Provided that it shall be the duty of the Commission to exercise the powers conferred by section 82B of the Industrial Arbitration Act, 1912-1939, in relation to the price of

of bricks within seven days after the date upon which His Majesty's Assent to this Act is signified and the Commission is hereby directed so to do. And for the purposes of this proviso the Commission shall be deemed to be duly constituted by the member of the Commission who carried out the investigation as to the price of bricks pursuant to the reference of the Minister of the twenty-second day of December, one thousand nine hundred and thirty-eight.

The provisions of section 82D of the Industrial Arbitration Act, 1912-1939, shall extend to and in respect of any notice fixing the price of bricks published pursuant to this proviso.

(2) The Industrial Arbitration Act, 1912-1938, is further amended by inserting after section 82M (as inserted by section two of this Act), the following new section:—

82N. (1) For the purposes of this section the assessors shall be the Auditor General or an officer of the Public Service nominated in writing by him and the Government Statistician or an officer of the Public Service nominated in writing by him.

A nomination under this subsection may be made either generally or for any particular case or class of cases.

(2) For the purpose of any investigation under paragraph (e) of subsection one of section eighty-two of this Act, or for any purpose of or relating to the exercise by the Commission of any power or function referred to in sections 82B, 82C, 82D and 82E of this Act, or in subsection one of section three of the Industrial Arbitration (Amendment) Act, 1939, the Commission may make use of the services of the assessors or either of them.

(3) An assessor shall, notwithstanding anything in any Act, be entitled to receive such remuneration, whether by way of fees, allowances or otherwise, as the Governor may determine.

(4) The assessors shall carry out such duties and perform such functions as the Commission may direct.

Without

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Without prejudice to the generality of the foregoing provisions of this subsection the assessors shall, if so directed by the Commission, prepare tables and schedules compiled from information furnished to the Commission, showing details of the minimum or maximum and average costs of manufacture, production, importation or distribution in relation to the commodity, the average net return on capital invested in any business, allowances for depreciation or reserves to equalise profits and such other matters as the Commission may require.
