

**INDUSTRIAL ARBITRATION (FURTHER
AMENDMENT) ACT.**

New South Wales



ANNO VICESIMO

ELIZABETHÆ II REGINÆ

Act No. 67, 1971.

An Act to provide for cancellation of registration of industrial unions of employees in certain circumstances; to increase penalties for lock-outs and illegal strikes; for these and other purposes to amend the Industrial Arbitration Act, 1940; and for purposes connected therewith. [Assented to, 21st December, 1971.]

BE

No. 67, 1971

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
and com-
mencement.

1. (1) This Act may be cited as the "Industrial Arbitration (Further Amendment) Act, 1971".

Amend-
ment of
Act No. 2,
1940.
Sec. 8.
(Registra-
tion of
industrial
union of
employees.)

2. The Industrial Arbitration Act, 1940, is amended—

(a) (i) by omitting from subsection eight of section eight the following words:—

: Provided that, save where otherwise mentioned in this Act, such cancellation shall not relieve the industrial union or any member thereof from the obligation of any award or industrial agreement, award or apprenticeship agreement under the Apprentices Act, 1969, or order of the commission, or a conciliation commissioner, or a committee or an apprenticeship committee established under that Act or from any penalty or liability incurred prior to such cancellation :

Provided further that nothing in this subsection shall be construed as empowering the commission to cancel the registration of any industrial union on the ground that such industrial union is instigating to or aiding any other union

or

Industrial Arbitration (Further Amendment).

or any of its members in a lock-out or No. 67, 1971
strike for which such other union or any
of its members are liable to a penalty
under this Act;

(ii) by inserting at the end of the same subsection
the following new paragraph :—

The power conferred on the commission by
this subsection does not extend to empowering
the commission to cancel the registration of an
industrial union in circumstances in which the
industrial union is liable to have its registration
cancelled under section 8A of this Act.

(iii) by inserting next after the same section the New secs.
8A, 8B.
following new sections :—

8A. (1) In this section—

“essential service industry” means an
industry, any employees in which are
employed in or in connection with—

(a) the conduct of, or the
supply of fuel or any other
commodity or any services
necessary for the conduct
of, any public transport
services or undertaking;

(b) the conduct of any under-
taking for the supply of
electricity, water or gas to
the public;

(c) the provision of sewerage
or drainage services;

(d)

No. 67, 1971

(d) the removal of garbage or nightsoil;

(e) the provision of fire-fighting services; or

(f) the conduct of prisons,

and includes any other industry which the Governor, by order published in the Gazette, declares to be an essential service industry;

“industrial dispute” means any question, dispute or difficulty of the nature referred to in paragraph (a), (b) or (c) of subsection one of section twenty-five of this Act;

“no-strike order”, in relation to an industrial union of employees, means an order made by the commission or a conciliation commissioner that or to the effect that a strike should cease or not take place and directed to that industrial union or to any of the members, or the executive, of that industrial union.

(2) Subject to section 8B of this Act, the commission shall, upon application made in accordance with subsection three of this section, cancel the registration of an industrial union of employees—

(a) if the commission is satisfied that any of the members (in this paragraph referred to as “striking members”) of that industrial union are, at the time the application is made, or were, at any time within fourteen days before the application is made,

taking

Industrial Arbitration (Further Amendment).

taking part in or aiding or abetting No. 67, 1971 an illegal strike in an essential service industry, unless that industrial union satisfies the commission—

- (i) that the executive of that industrial union has, at a meeting of its members or of those striking members or by means of an announcement made in a newspaper circulating throughout New South Wales or made by radio or television or by any other means that the commission considers reasonable, directed those striking members not to take part in or continue to take part in or to aid or abet that illegal strike;
- (ii) that the executive of that industrial union has not, in any manner, aided, abetted or encouraged those striking members to take part in or continue to take part in or to aid or abet that illegal strike; and
- (iii) that the executive of that industrial union has, by enforcement of the rules of that industrial union and by any other means reasonable in the circumstances, endeavoured to

prevent

No. 67, 1971

prevent those striking members from taking part in or continuing to take part in or aiding or abetting that illegal strike;

- (b) if the commission is satisfied that the executive, or any member of the executive, of that industrial union is, at the time the application is made or, was, at any time within fourteen days before the application is made, aiding or abetting an illegal strike in an essential service industry by members of another industrial union of employees;
- (c) if the commission is satisfied that, during the period of twelve months next preceding the time the application is made, three or more no-strike orders in relation to that industrial union were not complied with;
- (d) if the commission is satisfied that, during the period of twelve months next preceding the time the application is made, an illegal strike or illegal strikes by any of the members of that industrial union took place after a no-strike order or no-strike orders in relation to that industrial union had been made in respect of that illegal strike or those illegal strikes and that as a result of that illegal strike or those illegal strikes the welfare of the public or of employees, not being members of that industrial union, was seriously affected for a protracted period;

(e)

Industrial Arbitration (Further Amendment).

- (e) if the commission is satisfied that, No. 67, 1971 during the period of twelve months next preceding the time the application is made, the executive, or any member of the executive, of that industrial union has, directly or indirectly, in connection with or in the course of an industrial dispute, counselled, advised, encouraged, threatened, aided or abetted the use of violence or threats of violence to persons or damage or threats of damage to property; or
- (f) if the commission is satisfied that, during the period of twelve months next preceding the time the application is made, there has been an illegal strike by any of the members of that industrial union, or a threat by the executive, or any member of the executive, of that industrial union of a strike, which, if commenced, would have been an illegal strike, with a view to compelling an employer to dismiss from employment or injure an employee in his employment or with a view to compelling an employer to disadvantage an employee unfairly in his employment.

(3) An application under subsection two of this section may be made by the Crown, by an employer who at the time the application is made is employing employees who are members of the industrial union in respect of which the application is made or by an industrial union of employers.

*Industrial Arbitration (Further Amendment).***No. 67, 1971**

Powers of commission as an alternative to de-registering an industrial union.

8B. (1) The commission, instead of cancelling the registration of an industrial union under subsection eight of section eight, or under subsection two of section 8A, of this Act, may, where it is satisfied that the liability of the industrial union to have its registration cancelled arises by reason or mainly by reason of the conduct of a particular group, class, section or description of members of that industrial union, order that the rules of that industrial union be amended as on and from the date of the order or a later date specified therein and in such manner as may be specified therein, so as to exclude from eligibility for membership of that industrial union persons belonging to that group, class or section or of that description.

(2) The commission, instead of cancelling the registration of an industrial union under subsection eight of section eight, or under subsection two of section 8A, of this Act or making an order under subsection one of this section, may, where it is satisfied that by reason of the previous conduct of the executive and members of that industrial union and any other matters that to the commission seem relevant it is appropriate to do so, order that industrial union to pay a penalty not exceeding four thousand dollars.

(3) Where an order referred to in subsection one of this section is made in respect of an industrial union of employees, the rules of that industrial union shall be deemed to be amended as on and from the date and in the manner specified in the order.

(4)

(4) The commission may—

No. 67, 1971

- (a) cancel any award or industrial agreement, or award or apprenticeship agreement under the Apprentices Act, 1969, relating to any industrial union whose registration as an industrial union of employees has been cancelled pursuant to subsection eight of section eight, or subsection two of section 8A, of this Act, or relating to the members thereof; or
- (b) cancel any award or industrial agreement, or award or apprenticeship agreement under the Apprentices Act, 1969, in so far as it relates to members of an industrial union in respect of which an order has been made under subsection one of this section.

(5) The cancellation of the registration of any industrial union pursuant to subsection eight of section eight, or subsection two of section 8A, of this Act, the making of an order under subsection one of this section, or the cancellation or partial cancellation of any award or industrial agreement or award or apprenticeship agreement under the Apprentices Act, 1969, pursuant to subsection four of this section shall not relieve that industrial union or any member thereof from the obligation of any award or industrial agreement, or award or apprenticeship agreement under the Apprentices Act, 1969, or order of the commission, or a conciliation commissioner, or a committee or an apprenticeship committee established under that Act, or from any penalty or liability incurred prior to such cancellation or partial cancellation.

(b)

No. 67, 1971

Sec. 30B.
(Jurisdiction of the commission.)

Sec. 98.
(Penalty for lock-out.)

Sec. 100.
(Penalty for illegal strike.)

Subst. sec.
101.

Proceedings for penalty under section 100.

- (b) by omitting from paragraph (e) of subsection one of section 30B the words "section one hundred and one excepted";
- (c) by omitting from section ninety-eight the words "two thousand dollars" and by inserting in lieu thereof the words "four thousand dollars";
- (d) by omitting from section one hundred the words "one thousand dollars" and by inserting in lieu thereof the words "four thousand dollars";
- (e) by omitting section one hundred and one and by inserting in lieu thereof the following section :—

101. No proceedings for an order under section one hundred of this Act shall be commenced after the expiration of fourteen days from the cessation of the strike to which the proceedings refer.

BROKEN