

## INDUSTRIAL ARBITRATION (AMENDMENT) ACT.

New South Wales



ANNO VICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

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Act No. 66, 1973.

An Act to empower conciliation commissioners to settle disputes which involve demarcation of callings; to authorise the payment of wages by cheque in certain circumstances; to make certain provisions with respect to an additional member of the Industrial Commission; for these and other purposes to amend the Industrial Arbitration Act, 1940; and for purposes connected therewith. [Assented to, 18th October, 1973.]

BE

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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.

1. (1) This Act may be cited as the "Industrial Arbitration (Amendment) Act, 1973".

(2) The Industrial Arbitration Act, 1940, is in this Act referred to as the Principal Act.

Commencement.

2. (1) Subject to subsection (2), this Act commences on the date of assent.

(2) Section 8 shall be deemed to have commenced on 10th August, 1973.

Amendment of Act No. 2, 1940.

3. The Principal Act is amended—

Sec. 15. (Conciliation Commissioners.)

(a) by omitting from section 15 (1A) (c) the words "to allocate" and by inserting instead the words "and to allocate";

(b) by omitting from section 15 (1A) (c) the words "and to report annually to the Minister upon the working of this Act in respect of the functions of the conciliation commissioners and special commissioners".

Further amendment of Act No. 2, 1940.

Sec. 37. (Demarcation of callings.)

4. The Principal Act is further amended by inserting next after section 37 (1) the following new subsection :—

(1A) Subsection (1) does not operate to prevent a conciliation commissioner, in exercising the powers conferred on him by subsection (4) of section 25, from making an order or award in relation to a question as

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to the right of employees in a specified calling to do **No. 66, 1973** specified work in an industry to the exclusion of — employees in other callings.

**5. The Principal Act is further amended—**

Further  
amendment  
of Act No.  
2, 1940.

(a) by omitting from section 57 (2) the words “and Sec. 57. shall specify the day as on and from which any such variation shall take effect” and by inserting instead the following words and new paragraphs :—

and shall further direct that the variation shall take effect on—

- (a) a specified date;
- (b) the commencement of a pay period determined by reference to a specified date; or
- (c) a date determined by some other method specified by the commission;

(b) (i) by omitting section 58 (1) and by inserting **Sec. 58.** instead the following subsection :—

(1) In this section—

“Award or agreement” in relation to a direction given under subsection (2) of section 57 means an award or agreement that fixes rates of wages by reference or in relation to a basic wage and is in force on, or was made before and comes into force on or after, the reference date relating to the direction.

“Reference date” in relation to a direction means the date specified under paragraph (a) or (b) of subsection (2) of section 57, or determined by the

(Action on  
variation  
of basic  
wage.)

method

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method specified under paragraph (c) of that subsection, when the direction was given.

- (ii) by omitting from section 58 (2) the words "as on and from the specified day relating to that direction" and by inserting instead the words ", on and from the commencement of the variation, as directed by the commission in court session,";
- (iii) by omitting from section 58 (2) the words "on or after that day" and by inserting instead the words "on or after that commencement";
- (iv) by omitting from section 58 (2) the words "which were in force on that day and awards and agreements which were made or entered into before, but come into effect after, that day,";
- (v) by omitting from section 58 (3) the words "notify the basic wage for adult males and the basic wage for adult females, as varied in accordance with that direction, and the specified day relating to that direction" and by inserting instead the following word and new paragraphs :—

notify—

- (a) the basic wage for adult males and the basic wage for adult females, as varied in accordance with that direction;
- (b) the terms of the further direction given under paragraph (a), (b) or (c) of that subsection; and
- (c) the day on which the last preceding notification was published under this subsection;

(vi)

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(vi) by omitting section 58 (4) and by inserting No. 66, 1973 instead the following subsection :—

(4) A notification published under subsection (3)—

- (a) is evidence of the matters specified therein;
- (b) comes into force on the reference date for the direction to which it relates; and
- (c) ceases to be in force immediately before the reference date to which the next succeeding such notification relates.

(c) by inserting next after section 58 the following new New sec. 58A.

58A. A reference, in an Act other than this Act, Interpretation of to the basic wage for adult males or adult females for the time being in force within the meaning of other Acts. of this Part is a reference to the basic wage for adult males or, as the case may be, adult females specified in the notification under subsection (3) of section 58 that is in force at the relevant time.

**6. The Principal Act is further amended—**

Further amendment of Act No. 2, 1940.

- (a) (i) by inserting in section 92 (1) (a) after the Sec. 92. word “shall” the words “, but subject to (Recovery of wages.) section 92A.”;
- (ii) by omitting from section 92 (6) the words “and Social Services”;

**(b)**

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(b) by inserting next after section 92 the following new section :—

**New sec.  
92A.**

**Certain  
payments  
may be  
made by  
cheque.**

92A. (1) Notwithstanding anything in this or any other Act, where an employer would, but for this section, be required to make in money a payment specified in subsection (1) of section 92 the employer may, subject to this section, make the payment by cheque if—

- (a) he applies in writing to the registrar for, and the registrar issues him with, a certificate that complies with subsection (3);
- (b) he makes the payment in accordance with the terms of the certificate; and
- (c) the certificate remains unrevoked.

(2) An application under subsection (1) may be made in respect of—

- (a) all persons who, from time to time, are employees of the applicant;
- (b) all persons who, from time to time, are within a specified class of employees of the applicant; or
- (c) all persons who, from time to time, are employees of the applicant who are not within a specified class.

(2A) (a) Upon receipt of an application under subsection (1) the registrar shall notify such industrial union or unions of employees which he considers to be representative of the employees affected by the application of the terms of the application.

(b) Any union notified in accordance with paragraph (a) may within fourteen days of receipt of such notice lodge an objection to the application with the registrar.

(c)

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(c) The registrar shall notify the **No. 66, 1973** applicant and the objecting union or unions of the date upon which he shall consider the objection or objections.

(3) A certificate complies with this subsection if—

- (a) it is in writing signed by the registrar;
- (b) it specifies the employer to whom it is issued and the persons to whom it relates;
- (c) it is to the effect that the employer specified pursuant to paragraph (b)—
  - (i) may make by cheque any payment that he is required by subsection (1) of section 92 to make to a person in money, if that person is a person to whom the certificate relates and he consents to the payment being so made; or
  - (ii) may make by cheque any such payment to a person to whom the certificate relates, whether or not that person consents to the payment being so made; and
- (d) it specifies any conditions imposed by the registrar in relation to the payment.

(4) The registrar shall not issue a certificate to the effect specified in subparagraph (ii) of paragraph (c) of subsection (3) unless, after consideration of the application for the certificate, the registrar is satisfied that the circumstances justify the issue of a certificate to that effect.

(5)

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(5) The registrar may revoke a certificate issued under this section by notice in writing to the employer to whom it was given.

(6) For the purposes of this section, payment shall be deemed to have been made to a person by cheque if it is paid to the credit of a bank account in the name of that person and such person consents to the payment being so made.

Transitional provision.

7. (1) Where, after the commencement of this Act, the industrial registrar first publishes the notification referred to in section 58 (3) of the Principal Act, as amended by this Act, it is a sufficient compliance with section 58 (3) (c) of the Principal Act, as so amended, to notify the day on which the last notification was published under section 58 (3) of the Principal Act before that commencement.

(2) A notification published under section 58 (3) of the Principal Act before the commencement of this Act is evidence of the matters specified therein.

Certain temporary additional member of Industrial Commission remains puisne judge of Supreme Court.

8. (1) The Honourable Ian Fitzhardinge Sheppard does not, by reason of his appointment under section 14 (4) as an additional member of the Industrial Commission of New South Wales, or of his holding office pursuant to that appointment, cease to be a puisne judge of the Supreme Court of New South Wales.

(2) Except in so far as it relates to his qualifications for the appointment referred to in subsection (1), section 14 (2) of the Principal Act does not apply to or in respect of the Honourable Ian Fitzhardinge Sheppard while he holds office pursuant to that appointment.