

**INDUSTRIAL ARBITRATION (AMENDMENT) ACT,
1980, No. 55**

New South Wales



ANNO VICESIMO NONO

ELIZABETHÆ II REGINÆ

Act No. 55, 1980.

An Act to amend the Industrial Arbitration Act, 1940, to provide for maternity leave for female employees, and for certain other purposes. [Assented to, 28th April, 1980.]

Industrial Arbitration (Amendment).

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. This Act may be cited as the "Industrial Arbitration (Amendment) Act, 1980".

Schedules.

2. This Act contains the following Schedules :—

SCHEDULE 1.—AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940, RELATING TO MATERNITY LEAVE.

SCHEDULE 2.—MISCELLANEOUS AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940.

Amendment of Act No. 2, 1940.

3. The Industrial Arbitration Act, 1940, is amended in the manner set forth in Schedules 1 and 2.

Sec. 3.

SCHEDULE 1.

**AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940,
RELATING TO MATERNITY LEAVE.**

(1) Section 2—

After the matter relating to Part XIV, insert :—

PART XIVa.—MATERNITY LEAVE—ss. 153a–153s.

Industrial Arbitration (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940,
RELATING TO MATERNITY LEAVE—*continued.*

(2) Part XIVA—

After section 153, insert :—

PART XIVA.

MATERNITY LEAVE.

153A. In this Part, except in so far as the context or subject-matter otherwise indicates or requires—
Interpre-
tation:
Pt. XIVA.

“confinement”, in relation to a female employee, means her confinement caused by the birth of a child or other termination of a pregnancy;

“expected date of confinement”, in relation to a female employee who is pregnant, means a date certified by a medical practitioner to be the date on which he expects the employee to be confined in respect of her pregnancy;

“employee” means a person who is—

- (a) a worker as defined in the Annual Holidays Act, 1944; and
- (b) employed full-time or part-time by an employer;

“employer” means any person who employs another person or other persons and includes the Crown;

“maternity leave” means unpaid leave in accordance with this Act in respect of a pregnancy;

“ordinary maternity leave” means maternity leave which is not special maternity leave;

*Industrial Arbitration (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940,
RELATING TO MATERNITY LEAVE—*continued.*

“special maternity leave” means maternity leave under section 153I.

Construction of this Part.

153B. (1) The provisions of this Part shall not be construed to affect or override any entitlement that a female employee may have under a provision of any other Act or any award, agreement or contract of employment in relation to sick leave or other leave or payment for such leave.

(2) Except as provided in subsection (3), no contract or agreement made or entered into either before or after the date of assent to the Industrial Arbitration (Amendment) Act, 1980, shall operate to annul, vary or exclude any of the provisions of this Part.

(3) Where a female employee is entitled under a provision of any other Act or any award, agreement or contract of employment to a benefit that is more favourable to the employee than a benefit provided in this Part, this Part shall not apply to the extent that it is inconsistent with the provision.

Entitlement to maternity leave.

153C. (1) Subject to this Part, every female employee shall be entitled to be absent on maternity leave from the service of her employer if she has continuously served that employer during the whole of the period of 12 months immediately preceding her absence.

(2) For the purposes of subsection (1), section 4 (11) (c) of the Long Service Leave Act, 1955, applies to and in respect of the service of an employee in the same way as it applies to and in respect of the service of a worker.

Industrial Arbitration (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940,
RELATING TO MATERNITY LEAVE—*continued.*

153D. (1) A female employee who wishes to take ordinary maternity leave shall—

(a) not less than 10 weeks prior to the expected date of her confinement give to her employer a certificate from a medical practitioner—

(i) certifying as to her pregnancy; and

(ii) stating the expected date of confinement; and

(b) not less than 4 weeks prior to the date upon which she intends to commence ordinary maternity leave, give to her employer a notice in writing—

(i) stating her intention to take maternity leave; and

(ii) specifying the period of leave she intends to take and the date of commencement of the period.

(2) Where an employee is unable to comply with the requirement in subsection (1) (b) by reason of her confinement occurring earlier than the expected date of her confinement, she shall, if her confinement results in the birth of a living child, be entitled to give the notice referred to in that subsection not later than 2 weeks after her confinement.

(3) Any absence by a female employee in respect of a pregnancy shall not be regarded as absence on ordinary maternity leave for the purposes of this Part unless she has given to her employer a certificate and a notice in accordance with subsection (1) or subsections (1) and (2), as the case may be.

*Industrial Arbitration (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940,
RELATING TO MATERNITY LEAVE—*continued.*

(4) Any absence by a female employee in respect of a pregnancy, other than absence during the period of leave specified in the notice given by her under subsection (1) (b) in respect of the pregnancy or absence during that period as last varied in accordance with section 153F, as the case may be, shall not be regarded as absence on ordinary maternity leave except where the absence is occasioned by—

- (a) the confinement of the employee occurring prior to the commencement of the period, where the confinement results in the birth of a living child; or
- (b) the employer of the employee requiring her under section 153E to commence ordinary maternity leave.

Employer
may vary
date of
commencement
of
leave in
certain
cases.

153E. Where an employee has given to her employer a certificate referred to in section 153D (1) (a) and—

- (a) has given to her employer a notice under section 153D (1) (b) stating that she intends to commence maternity leave on a date later than 6 weeks prior to the expected date of her confinement; or
- (b) has not given to her employer a notice under section 153D (1) (b) prior to 8 weeks before the expected date of her confinement,

her employer may, by not less than 14 days' notice in writing, require her to commence ordinary maternity leave on a specified date within the period of 6 weeks immediately preceding the expected date of confinement.

*Industrial Arbitration (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940,
RELATING TO MATERNITY LEAVE—*continued.*

153F. (1) An employee who has given to her employer Employee a notice under section 153D (1) (b) may, by a further notice in writing given to her employer in accordance with subsection (2), vary the period of maternity leave she specified in the notice under section 153D (1) (b)—

- (a) before commencing ordinary maternity leave, any number of times; and
- (b) after commencing ordinary maternity leave—
 - (i) once without the consent of her employer;
 - (ii) any number of times with the consent of her employer; and
 - (iii) in addition to any variation made under subparagraph (i), once without the consent of her employer in the circumstances referred to in section 153H (2).

(2) The further notice varying the period of maternity leave shall be given—

- (a) before the commencement of ordinary maternity leave—
 - (i) where the commencement is delayed, at least 4 weeks prior to the commencement of the period as last notified to the employer before the giving of the further notice; and
 - (ii) where the commencement is accelerated, at least 4 weeks prior to the commencement of the period as varied in the further notice; and

*Industrial Arbitration (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940,
RELATING TO MATERNITY LEAVE—*continued.*

(b) after the commencement of ordinary maternity leave—

- (i) where the period is extended, at least 4 weeks prior to the last day of the period as last notified to the employer before the giving of the further notice; and
- (ii) where the period is shortened, at least 4 weeks prior to the last day of the period as varied in the further notice.

Ordinary
maternity
leave to
include
period of
6 weeks
after con-
finement.

153G. Except as provided in section 153H (3), the period of ordinary maternity leave taken by an employee shall include the period of 6 weeks immediately following her confinement.

Maternity
leave
where
pregnancy
terminates
otherwise
than by the
birth of a
living
child.

153H. (1) Where the pregnancy of a female employee who is not absent on ordinary maternity leave terminates otherwise than by the birth of a living child, the employee shall, if otherwise entitled to ordinary maternity leave in respect of that pregnancy, cease to be so entitled.

(2) Where the pregnancy of a female employee who is absent on ordinary maternity leave terminates not earlier than 28 weeks before the expected date of her confinement otherwise than by the birth of a living child, the employee may shorten the period of her maternity leave in accordance with section 153F.

(3) An employee who under subsection (2) shortens the period of her maternity leave, shall not be entitled to resume work within the period of 6 weeks immediately following the date of her confinement unless

*Industrial Arbitration (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940,
RELATING TO MATERNITY LEAVE—*continued.*

she has given to her employer a certificate from a medical practitioner stating that the pregnancy of the employee terminated otherwise than by the birth of a living child.

153I. A female employee who is not absent on ordinary maternity leave but who is entitled to take maternity leave shall, in respect of a pregnancy, be entitled to be absent on special maternity leave for such period or periods as a qualified medical practitioner certifies as necessary—
Special
maternity
leave.

- (a) in respect of any illness related to the pregnancy; and
- (b) in respect of the normal consequences of confinement where, not earlier than 28 weeks before the expected date of confinement, her pregnancy terminates otherwise than by the birth of a living child.

153J. (1) An employee shall not, in respect of the same pregnancy, be entitled to be absent on maternity leave for a period which exceeds, 52 weeks, or for periods which in total exceed, 52 weeks.
Maternity
leave not
to exceed
52 weeks.

(2) Where an employee has, in respect of a pregnancy, been absent on maternity leave for 52 weeks, any further absence by the employee in respect of that pregnancy shall not be regarded as absence on maternity leave for the purposes of this Part.

*Industrial Arbitration (Amendment).*SCHEDULE 1—*continued.***AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940,
RELATING TO MATERNITY LEAVE—*continued.***

Annual
holiday or
long service
leave may
be sub-
stituted for
or added to
maternity
leave.

153K. An employee who is entitled under this Part to maternity leave in respect of a pregnancy may take any annual holiday leave or long service leave to which she is entitled in substitution for or in addition to maternity leave if the total of all periods of annual holiday leave, long service leave and maternity leave (whether special or ordinary) taken in respect of that pregnancy does not exceed 52 weeks.

Effect of
resumption
of employ-
ment on
further
maternity
leave.

153L. (1) Subject to subsection (2), an employee who resumes her employment after being absent from that employment on maternity leave in respect of a pregnancy shall not be entitled to any further maternity leave in respect of that pregnancy.

(2) Subsection (1) does not apply in respect of absences on special maternity leave taken by an employee under section 153I (a).

Notice to
be given
confirming
intention
to return
to work.

153M. (1) An employee who, in respect of a pregnancy, is absent on maternity leave shall, not more than 6 weeks and not less than 4 weeks prior to the last day of the period of leave specified in the notice given by her under section 153D (1) (b) in respect of the pregnancy or absence during that period as last varied in accordance with section 153F, as the case may be, give to her employer a notice in writing confirming her intention to return to work.

(2) An employee who fails to give to her employer a notice in accordance with subsection (1) shall be deemed to have terminated her employment with the employer on the day after the last day on which the notice is required under that subsection to be given.

Industrial Arbitration (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940,
RELATING TO MATERNITY LEAVE—*continued.*

153N. (1) In this section, “former position”, in relation to an employee who has taken maternity leave in respect of a pregnancy, means—

(a) the position held by her in the employment of her employer immediately before she commenced the maternity leave; or

(b) where by reason only of the pregnancy she had transferred or been transferred from one such position to another such position before commencing maternity leave, the position held by her in that employment immediately before she so transferred or was transferred to another position.

(2) An employer shall make available to an employee who returns to work for him at the conclusion of maternity leave—

(a) the former position of the employee; or

(b) where the former position of the employee has ceased to exist but there is another position available, or other positions available, in the employment of the employer for which the employee is capable or qualified, that position or, as the case may be, such of those positions as is as close as possible in status and salary or wages to that of her former position.

(3) An employer shall not employ a person in the former position of an employee who is taking or will be taking maternity leave unless he has informed that person of the rights of that employee under subsection (2) in relation to her former position.

*Industrial Arbitration (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940,
RELATING TO MATERNITY LEAVE—*continued.*

(4) A person who contravenes subsection (2) or (3) is guilty of an offence and shall be liable to a penalty not exceeding \$1,000.

Absence on
maternity
leave not
to affect
continuity
of service.

153O. (1) The absence of an employee on maternity leave shall not for any purpose be regarded as interrupting or affecting the continuity of the service by the employee with her employer.

(2) Subject to subsection (1), any period during which an employee is absent on maternity leave shall not be taken into account in calculating for any purpose the period of service of the employee.

Employee
may be
transferred
to a more
suitable
position.

153P. Where—

- (a) a female employee who is pregnant gives to her employer a certificate from a medical practitioner stating that illness or risks arising out of her pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue in her present position; and
- (b) there is another position available, or other positions available, in the employment of the employer which is or are suitable to be performed by the employee and which the employee is capable of performing,

*Industrial Arbitration (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940,
RELATING TO MATERNITY LEAVE—*continued.*

the employer shall, if he considers it to be practicable, make available to the employee that position or, as the case may be, such of those positions as is as close as possible in status and salary or wages to that of her present position.

Penalty : \$1,000.

153Q. An employer shall not terminate the employment of an employee by reason only of the fact that the employee is or has been pregnant or absent on maternity leave.

Employer not to terminate employment on ground of pregnancy or absence on maternity leave.

Penalty : \$1,000.

153R. The provision by this Part of a penalty for a contravention of this Act does not operate to prejudice or affect any right or remedy in respect of such a contravention that an employee would have if such a penalty were not so provided.

Civil remedies not affected.

153s. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Part is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Part.

Regulations.

Industrial Arbitration (Amendment).

Sec. 3.

SCHEDULE 2.

MISCELLANEOUS AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940.

(1) Section 15 (1)—

Omit “not more than eight persons each of whom shall be a conciliation commissioner”, insert instead “such number of conciliation commissioners as he thinks fit”.

(2) (a) Section 20 (1A)—

Omit “officers of either House of Parliament or persons employed in either of the Departments of the Legislature under the separate control of the President or Speaker or under their joint control”.

(b) Section 20 (1A)—

Omit “officers or”.

(3) Section 88A—

Omit the section, insert instead :—

Crown
employees.

88A. (1) In this section—

“parent award” means an award in respect of which changes in rates of wages or conditions of employment, or in both, are traditionally reflected in another award or other awards;

“prescribed award” means—

- (a) an award that, pursuant to this section as from time to time in force before the commencement of the Industrial Arbitration (Amendment) Act, 1980, was used by the commission or a committee to award conditions or fix rates of wages or other payments for employees of the Crown which were not

Industrial Arbitration (Amendment).

SCHEDULE 2—*continued.*MISCELLANEOUS AMENDMENTS TO THE INDUSTRIAL ARBITRATION ACT, 1940—*continued.*

less favourable than those awarded or fixed for private employees doing substantially the same class of work;

- (b) an award made after that commencement that extends or replaces an award referred to in paragraph (a); or
- (c) an award made before or after that commencement (not being an award referred to in paragraph (a) or (b)) that, in the opinion of the commission or a committee when considering the award for the purposes of this section, is a parent award for the purpose of awarding conditions or fixing rates of wages or other payments for private employees;

“private employees” means employees other than employees of the Crown.

(2) Subject to this section, the commission or a committee, in awarding conditions or fixing rates of wages or other payments in respect of employees of the Crown shall have regard to (but shall not be obliged to adopt, award or fix) the conditions and the rates of wages and other payments awarded or fixed for private employees doing substantially the same class of work.

(3) The commission or a committee shall not award any conditions or fix any rates of wages or other payments in respect of employees of the Crown less favourable than those awarded or fixed under a prescribed award for private employees doing substantially the same class of work.

Industrial Arbitration (Amendment).

SCHEDULE 2—*continued.*MISCELLANEOUS AMENDMENTS TO THE INDUSTRIAL ARBITRATION
ACT, 1940—*continued.*

(4) In determining whether work done by a class of employees of the Crown is substantially the same class of work as that done by private employees, the fact that the employment of the employees of the Crown is permanent or that they are allowed additional privileges shall not of itself be regarded as a substantial difference in the nature or class of the work.