

INDUSTRIAL ARBITRATION (AMENDMENT) ACT, 1981,
No. 53

New South Wales



ANNO TRICESIMO

ELIZABETHÆ II REGINÆ

Act No. 53, 1981.

An Act to amend the Industrial Arbitration Act, 1940, in relation to the appointment of members of the Industrial Commission, the reduction of working hours and the validation of certain trade union matters, and for other purposes. [Assented to, 22nd May, 1981.]

See also Trade Union (Amalgamations) Amendment Act, 1981.

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, 1981".

Principal Act.

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

Schedules.

3. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO MEMBERS OF THE COMMISSION.

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO WORKING HOURS.

SCHEDULE 3.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE VALIDATION OF CERTAIN TRADE UNION MATTERS.

SCHEDULE 4.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 5.—SAVINGS AND TRANSITIONAL PROVISIONS.

Amendment of Act No. 2, 1940.

4. The Principal Act is amended in the manner set forth in Schedules 1–4.

Savings and transitional provisions.

5. Schedule 5 has effect.

Industrial Arbitration (Amendment).

SCHEDULE 1.

(Sec. 4.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO MEMBERS OF THE COMMISSION.

(1) (a) Section 5 (1), definition of "Judicial member of the commission"—
After the definition of "Industry", insert:—

"Judicial member of the commission" means a member of the commission who, at the time he was appointed as a member, possessed a qualification specified in section 14 (2) (a).

(b) Section 5 (1), definition of "Non-judicial member of the commission"—

After the definition of "Motor lorry", insert:—

"Non-judicial member of the commission" means a member of the commission other than a judicial member of the commission.

(2) Section 5A—

After section 5, insert:—

References in other Acts and instruments to members of the commission.

5A. A reference in—

- (a) any other Act;
- (b) any instrument made under any other Act; or
- (c) any other document (whether of the same or of a different kind) other than an instrument made under this Act,

to a member of the commission shall—

- (d) except where a contrary intention appears; or
- (e) except in the case of an Act, instrument or document, or a provision of an Act, instrument or document, prescribed for the purposes of this paragraph,

be construed as a reference to a judicial member of the commission.

Industrial Arbitration (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO MEMBERS OF THE COMMISSION—*continued.*

(3) (a) Section 14 (1)—

Omit “The Governor may appoint a member of the commission to be President of the commission, and any such appointment may be made at the time of the member’s appointment as a member of the commission or at any time thereafter.”.

(b) Section 14 (1A)—

After section 14 (1), insert:—

(1A) Of the members of the commission—

- (a) one shall be appointed as President of the commission, whether by the same instrument as, or by a separate instrument from, the instrument by which he is appointed as a member; and
- (b) the remainder shall be appointed as Deputy Presidents of the commission.

(c) Section 14 (2)–(2i)—

Omit section 14 (2), (2A) and (2B), insert instead:—

(2) A person is qualified to be appointed as a member of the commission if—

- (a) he—
 - (i) is a Judge of the Supreme Court;
 - (ii) is a Judge of the Land and Environment Court;
 - (iii) is a barrister of not less than 5 years’ standing;
 - (iv) is a solicitor of not less than 7 years’ standing;
 - or

Industrial Arbitration (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO MEMBERS OF THE COMMISSION—*continued.*

(v) is a barrister or a solicitor of less than 5 years' or 7 years' standing respectively, where at all times during a continuous period of not less than 7 years he was on the roll of solicitors when he was not on the roll of barristers or on the roll of barristers when he was not on the roll of solicitors,

and has not attained the age of 70 years; or

(b) he—

(i) has had experience at a high level in industry, commerce, industrial relations or the service of a government or an authority of a government; or

(ii) has, not less than 5 years previously, obtained a degree of a university or an educational qualification of a similar standard, after studies in the field of law, economics or industrial relations or some other field of study considered by the Governor to have substantial relevance to the duties of a member of the commission,

and has not attained the age of 65 years,

and if he is, in the opinion of the Governor, by reason of his qualifications, experience and standing in the community, a fit and proper person to discharge the duties of a member of the commission.

(2A) A person is qualified to be appointed as President of the commission if—

(a) he is a judicial member of the commission; or

(b) he possesses a qualification specified in subsection (2) (a).

Industrial Arbitration (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO MEMBERS OF THE COMMISSION—*continued.*

(2B) Subject to subsection (2D), each member of the commission shall remain in office during his good behaviour.

(2C) A member of the commission shall be removable from office in the same manner only as a Judge of the Supreme Court is by law liable to be removed from his office.

(2D) A member of the commission shall—

- (a) in the case of a judicial member of the commission—retire on the day on which he attains the age of 70 years; or
- (b) in the case of a non-judicial member of the commission—retire on the day on which he attains the age of 65 years,

unless he is granted retiring leave, in which case he shall retire on the expiration of that leave.

(2E) Subject to subsections (2F) and (2G), a member of the commission shall—

- (a) in the case of a judicial member of the commission—have the same rank, title, status and precedence and the same remuneration and other rights as a Judge of the Supreme Court (other than the Chief Justice and the President of the Court of Appeal); or
- (b) in the case of a non-judicial member of the commission—have the same rank, status and precedence and the same remuneration and other rights as a Judge of the Supreme Court (other than the Chief Justice and the President of the Court of Appeal).

(2F) The President of the commission is entitled to be paid remuneration in accordance with the Statutory and Other Offices Remuneration Act, 1975.

Industrial Arbitration (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO MEMBERS OF THE COMMISSION—*continued.*

(2G) The Judges' Pensions Act, 1953, does not apply to or in respect of a non-judicial member of the commission.

(2H) The remuneration referred to in subsections (2E) and (2F) and payable to a member of the commission—

- (a) shall be paid to the member for so long as he remains in office; and
- (b) is payable from the Consolidated Revenue Fund, which is hereby appropriated accordingly.

(2I) A member of the commission shall not be capable of accepting or holding any other office or any other place of profit within the State, except such judicial office as may be conferred on him by or under any law of the State.

(d) Section 14 (3)—

After "while so acting", insert "and subject to subsection (8A)".

(e) Section 14 (4)—

After "while so acting", insert "and subject to subsection (8A)".

(f) Section 14 (7A)—

Omit "paragraph (d) of subsection (8), be constituted by such members of the commission being not less than three in number as may from time to time be chosen by the President.", insert instead:—

subsection (8) (d), be constituted by—

- (a) in relation to the exercise by the commission in court session of such of its jurisdiction, powers and authorities as are prescribed for the purposes of this paragraph—not less than 3 members of the commission chosen by the President; and

Industrial Arbitration (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO MEMBERS OF THE COMMISSION—*continued.*

(b) in relation to the exercise by the commission in court session of any other jurisdiction, powers or authorities it may have—not less than 3 judicial members of the commission chosen by the President.

(g) Section 14 (8A)—

After section 14 (8), insert:—

(8A) A non-judicial member of the commission may exercise only—

(a) the powers, jurisdiction and functions (other than the powers and jurisdiction of an industrial magistrate) conferred on the commission by section 30; and

(b) such powers, jurisdiction and functions as are conferred on the commission by this or any other Act or law and as are prescribed for the purposes of this paragraph.

(h) Section 14 (9) (a)—

Omit “senior member”, insert instead “senior judicial member of the commission”.

(i) Section 14 (9) (b)—

Omit “member who is next in seniority”, insert instead “next senior judicial member of the commission”.

Industrial Arbitration (Amendment).

SCHEDULE 2.

(Sec. 4.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO WORKING HOURS.

(1) (a) Section 63 (1) (e) (ii)—

Omit the subparagraph.

(b) Section 63 (1) (g)—

After “Act”, insert “(subsections (2) and (2A) excepted)”.

(c) Section 63 (1) (g)—

Omit “and after taking into account the economic consequences of any award it may make under this paragraph”.

(d) Section 63 (2A)—

After section 63 (2), insert:—

(2A) Nothing in subsection (1) (g) authorises the commission in court session to make an award prescribing for an industry or in respect of any employees, or class of employees, in an industry ordinary working hours that are less than those specified in subsection (1) (a)—

(a) unless—

- (i) that industry, those employees or that class of employees was or were, immediately before the making of the award, bound by an agreement or some other award under which the ordinary working hours relating to it or them were less than those specified in subsection (1) (a); and
- (ii) the ordinary working hours so prescribed are not less than those contained in that agreement or that other award; or

(b) unless the commission in court session is satisfied that the making of the award is not contrary to the public interests.

Industrial Arbitration (Amendment).

SCHEDULE 2—continued.**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO WORKING HOURS—
*continued.*****(e) Section 63 (3)–(9)–**

Omit section 63 (3) and (4), insert instead:—

(3) Notwithstanding section 11 (1), an industrial agreement which—

(a) is made after the commencement of the Industrial Arbitration (Amendment) Act, 1981; and

(b) provides for ordinary working hours for employees, or any class of employees, in an industry that are—

(i) where those employees were or that class of employees was, immediately before the making of the agreement, bound by some other industrial agreement or an award—less than those specified in subsection (1) (a) and less than those specified in that other agreement or award; or

(ii) in any other case—less than those specified in subsection (1) (a),

has no force or effect unless the commission in court session orders that the agreement be endorsed with a certificate certifying that the agreement is not contrary to the public interests.

(4) The registrar shall, as soon as practicable after an industrial agreement is filed at the office of the registrar as referred to in section 11 (1), refer the agreement to the commission in court session for endorsement on the agreement of the certificate referred to in subsection (3).

(5) Where an industrial agreement is referred to the commission in court session in accordance with subsection (4), the commission—

(a) shall cause to be listed for hearing the question of whether the agreement should be endorsed with the certificate referred to in subsection (3);

Industrial Arbitration (Amendment).

SCHEDULE 2—continued.**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO WORKING HOURS—
*continued.***

(b) shall cause notice, in such form and manner as it may determine, of the time and place set down for the hearing to be given to the parties to the agreement; and

(c) shall at that time and place, or at some other time and place to which the proceedings for the determination of that question are adjourned, hear and determine that question and make an order that the agreement be endorsed with the certificate referred to in subsection (3), or that the agreement be not so endorsed, as it thinks fit.

(6) The commission in court session shall not make an order under subsection (5) (c) that an agreement be endorsed with the certificate referred to in subsection (3) unless it is satisfied that the agreement is not contrary to the public interests.

(7) For the purpose of satisfying itself that the making of an award, or that an industrial agreement referred to it, is not contrary to the public interests, the commission shall have regard to the economic consequences of the proposed award or the agreement, as the case may be, with special reference to its likely effects on the level of employment and on inflation.

(8) Without affecting the generality of section 78 (1), the Crown may intervene in any proceedings before the commission in court session in relation to—

- (a) the making of an award under subsection (1) (g); or
- (b) the hearing, under subsection (5) (c), of a question of whether an industrial agreement should be endorsed with the certificate referred to in subsection (3),

and make such representations as it thinks fit in order to safeguard the public interests.

Industrial Arbitration (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO WORKING HOURS—
continued.

(9) The Crown may, where in the opinion of the Minister the public interests are or would be likely to be adversely affected by any award made under subsection (1) (g) or any industrial agreement referred to in subsection (3), apply to the commission in court session at any time for an order suspending, varying or rescinding any such award or agreement, and the commission in court session shall have jurisdiction to make such an order if it thinks fit.

(2) (a) Section 63A (5) (a)—

Omit “subparagraph (i) of paragraph (e) of section 63”, insert instead “section 63 (1) (e) (i)”.

(b) Section 63A (5) (b)—

Omit the paragraph.

SCHEDULE 3.

(Sec. 4.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE VALIDATION
OF CERTAIN TRADE UNION MATTERS.

(1) Section 2—

After the matter relating to Part XI, insert:—

PART XIA.—VALIDATING PROVISIONS FOR TRADE UNIONS—ss.
117A—117E.

Industrial Arbitration (Amendment).

SCHEDULE 3—continued.**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE VALIDATION OF CERTAIN TRADE UNION MATTERS—continued.****(2) Part XIa—**

After Part XI, insert:—

PART XIa.**VALIDATING PROVISIONS FOR TRADE UNIONS.****Interpretation: Pt. XIa.**

117A. In this Part—

“collective body” means, in relation to a trade union, the committee of management or any conference, council, committee, panel or other body of or within the trade union;

“committee of management”, in relation to a trade union, means the group or body of persons (however described) that manages the affairs of the trade union;

“invalidity” includes nullity and includes any invalidity or nullity resulting from any omission, defect, error, irregularity or absence of quorum or caused by the fact that—

(a) the members or one or more members of a collective body of a trade union, or the persons or one or more of the persons purporting to act as the members of such a collective body, or a person holding or purporting to hold an office or position in a trade union—

- (i) have not or has not been elected or appointed or duly elected or appointed;
- (ii) have or has purported to be elected or appointed by an election or appointment that was a nullity;
- (iii) were not or was not entitled to be elected or appointed;

*Industrial Arbitration (Amendment).***SCHEDULE 3—*continued.*****AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE VALIDATION OF CERTAIN TRADE UNION MATTERS—*continued.***

- (iv) were or was elected or appointed or purported to be elected or appointed where one or more or all of the persons who took part in the election or appointment or the purported election or appointment was not or were not entitled to do so;
- (v) were not or was not a member of the trade union; or
- (vi) were or was elected or appointed or purported to be elected or appointed where one or more or all of the persons who took part in the election or appointment or the purported election or appointment was not or were not members of the trade union; or
- (b) persons took part in the making or purported making, the rescinding or purported rescinding or the altering or purported altering of the rules of a trade union, as officers or voters or otherwise, who were not entitled to do so or were not members of the trade union,
and “invalid” has a corresponding meaning;
“irregularity” has the meaning ascribed to that expression in section 111L.

Validation of certain acts.

117B. (1) Subject to this section and to section 117E, all acts done in good faith by—

- (a) a collective body of a trade union or persons purporting to act as such a collective body; or
- (b) a person holding or purporting to hold an office or position in a trade union,

Industrial Arbitration (Amendment).

SCHEDULE 3—continued.**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE VALIDATION OF CERTAIN TRADE UNION MATTERS—continued.**

shall be valid notwithstanding any invalidity that may afterwards be discovered in—

- (c) the election or appointment of the collective body or any member thereof or of the persons or any of the persons purporting to act as the collective body;
- (d) the election or appointment of the person holding or purporting to hold the office or position; or
- (e) the making, rescinding or altering of a rule of the trade union.

(2) For the purposes of this section, a person shall not be treated as purporting to act as a member of a collective body of a trade union or as the holder of an office or position in a trade union unless he has, in good faith, purported to be, and has been treated by officers or members of the trade union as being, such a member or the holder of such an office or position.

(3) For the purposes of this section—

- (a) an act is to be treated as done in good faith until the contrary is proved;
- (b) a person who has purported to be a member of a collective body of a trade union is to be treated as having done so in good faith until the contrary is proved;
- (c) knowledge of facts from which an invalidity arises is not of itself to be treated as knowledge that the invalidity exists; and
- (d) an invalidity in any election or appointment or in the making, rescinding or altering of a rule to which this section applies shall not be treated as discovered before the earliest time

Industrial Arbitration (Amendment).

SCHEDE 3—continued.**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE VALIDATION OF CERTAIN TRADE UNION MATTERS—continued.**

proved to be a time when the existence of the invalidity was known to a majority of the members of the committee of management of the trade union or to a majority of the persons purporting to act as that committee of management.

(4) This section applies to and in respect of an act done at any time, including an act done before the commencement of this section.

(5) Nothing in this section validates the expulsion or suspension of, or the imposition of a fine or any other penalty upon, a member of a trade union which would not have been valid if this section had not been enacted.

Validation of certain matters by effluxion of time.

117C. (1) Subject to this section and to section 117E, upon the expiration of 4 years from—

(a) the doing of an act—

(i) by, or by persons purporting to act as, a collective body of a trade union purporting to exercise power conferred by or under the rules of the trade union; or

(ii) by a person holding or purporting to hold an office or position in a trade union and purporting to exercise power conferred by or under the rules of the trade union;

(b) the election or purported election or the appointment or purported appointment of a person to an office or position in a trade union; or

Industrial Arbitration (Amendment).

SCHEDULE 3—continued.**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE VALIDATION
OF CERTAIN TRADE UNION MATTERS—continued.**

(c) the making or purported making, the rescinding or purported rescinding or the altering or purported altering of a rule of a trade union,

the act, election or purported election, appointment or purported appointment, or the making or purported making, rescinding or purported rescinding or altering or purported altering of the rule, shall, for all purposes, be deemed to have been done in compliance with the rules of the trade union.

(2) The operation of this section shall not affect the validity or operation of any order, judgment, decree, declaration, direction, verdict, sentence, decision or similar judicial act made under this or any other Act or law before the expiration of the 4 years referred to in subsection (1).

(3) This section extends to an act, to an election or purported election and to an appointment or purported appointment, and to the making or purported making, the rescinding or purported rescinding and the altering or purported altering of a rule, done or occurring before the commencement of this section.

Commission may make certain orders.

117D. (1) A trade union, a member of a trade union or any person having a sufficient interest in respect of a trade union may apply to the commission for a determination of the question whether an invalidity has occurred in the management or administration of the trade union or in an election or appointment in, or the making, rescinding or altering of the rules of, the trade union and the commission has jurisdiction to hear and determine the application and to make such declaration as it thinks proper.

Industrial Arbitration (Amendment).

SCHEDULE 3—continued.**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE VALIDATION OF CERTAIN TRADE UNION MATTERS—continued.**

(2) Where, in proceedings under subsection (1), the commission finds that an invalidity of the kind referred to in that subsection has occurred, the commission—

- (a) may make such order as it thinks fit to rectify or cause to be rectified the invalidity, or to negative, modify or cause to be modified the consequences in law of the invalidity, or to validate any act, matter or thing rendered invalid by or as a result of the invalidity;
- (b) shall, before making any such order, satisfy itself that such an order would not do substantial injustice to the trade union or to any member or creditor of the trade union or to any person having dealings with the trade union;
- (c) where any such order is made, may give such ancillary or consequential directions as it thinks fit; and
- (d) may determine what notice, summons or rule to show cause is to be given to other persons of the intention to make such an order, and whether and how it should be given or served and whether and how it should be advertised.

(3) This section applies to and in respect of an invalidity occurring at any time, including an invalidity occurring before the commencement of this section.

Commission may suspend operation of sections 117B and 117C.

117E. (1) Where, upon an application for an order under this section, the commission is satisfied that the application of section 117B or 117C to an act would do substantial injustice having regard

Industrial Arbitration (Amendment).

SCHEDE 3—continued.**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE VALIDATION
OF CERTAIN TRADE UNION MATTERS—continued.**

to the interests of the trade union, members or creditors of the trade union or persons having dealings with the trade union, the commission shall, by order, declare accordingly and, where such a declaration is made, section 117B or 117C, as the case may be, does not apply, and shall be deemed not to have applied, in relation to the act referred to in the declaration.

(2) The commission may make an order under subsection (1) on the application of the trade union, a member of the trade union or any person having a sufficient interest in respect of the trade union.

(3) The commission may determine what notice, summons or rule to show cause is to be given to other persons of the intention to make any such application or of the intention to make such an order, and whether and how it should be given or served and whether and how it should be advertised.

(4) A reference in this section to an act includes a reference to an election or purported election, to an appointment or purported appointment and to the making or purported making, the rescinding or purported rescinding and the altering or purported altering of a rule.

Industrial Arbitration (Amendment).

SCHEDULE 4.

(Sec. 4.)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 78 (2)—

At the end of section 78, insert:—

(2) The Labor Council of New South Wales may, subject to establishing a sufficient interest in any proceedings, intervene in those proceedings before the commission, a conciliation commissioner, a committee or a tribunal and make such representations as it thinks necessary in order to safeguard the interests of any or all of the trade unions affiliated to it.

(2) Section 153 (2)—

At the end of section 153, insert:—

(2) Without affecting the generality of subsection (1), the Governor may make regulations restricting or regulating the manner in which a person may carry on the business of a private employment agent in respect of that person's acting as an agent—

- (a) for procuring or assisting to procure a person to carry out baby-sitting services for a person seeking to have those services carried out; or
- (b) for procuring or assisting to procure employment for a person seeking to be employed to carry out baby-sitting services.

SCHEDULE 5.

(Sec. 5.)

SAVINGS AND TRANSITIONAL PROVISIONS.

Interpretation.

1. In this Schedule, "commission" means the Industrial Commission of New South Wales.

Industrial Arbitration (Amendment).

SCHEDULE 5—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

Members of the commission.

2. The persons holding office as members of the commission immediately before the commencement of this Act—

- (a) shall, except in the case of the person holding office as President of the commission under section 14 (1) of the Principal Act, be deemed to have been duly appointed, upon that commencement, as Deputy Presidents of the commission under section 14 (1A) (b) of the Principal Act, as amended by this Act; and
- (b) shall be deemed to be judicial members of the commission within the meaning of the Principal Act, as amended by this Act.

President of the commission.

3. The person holding office as President of the commission under section 14 (1) of the Principal Act immediately before the commencement of this Act shall be deemed to have been duly appointed, upon that commencement, as President of the commission under section 14 (1A) (a) of the Principal Act, as amended by this Act.

Reference to section 14 (2) of the Principal Act.

4. The reference in section 3 (1) (b) of the Judges' Pensions Act, 1953, to section 14 (2) of the Industrial Arbitration Act, 1940, shall be read and construed as a reference to section 14 of the Industrial Arbitration Act, 1940.

Certain proceedings.

5. Any proceedings before the commission in court session which were commenced before the commencement of this Act and not completed before that commencement may be continued and completed, and an award may be made, as if this Act had not been enacted.

Industrial Arbitration (Amendment).

SCHEDULE 5—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.***Working hours.**

6. The ordinary working hours which applied to an industry, or in respect of the employees or any class of employees in an industry, under section 63 of the Principal Act immediately before the commencement of this Act shall continue to apply to the industry, or in respect of those employees or that class of employees, until they are varied.
