

INDUSTRIAL ARBITRATION (AMENDMENT) ACT.

Act No. 23, 1957.

An Act to regulate the making of certain contracts for the performance of services and certain other contracts; to deem certain outdoor workers to be employees or workers for the purposes of certain Acts; for these and other purposes to amend the Industrial Arbitration Act, 1940, the Factories and Shops Act, 1912, and certain other Acts; and for purposes connected therewith. [Assented to, 30th April, 1957.]

Elizabeth II,
No. 23, 1957.

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 :—

1. (1) This Act may be cited as the "Industrial Arbitration (Amendment) Act, 1957".

Short title
and
citation.

(2) The Industrial Arbitration Act, 1940, as amended by subsequent Acts and by this Act, may be cited as the Industrial Arbitration Act, 1940-1957.

(3)

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No. 23, 1957. (3) The Factories and Shops Act, 1912, as amended by subsequent Acts and by this Act, may be cited as the Factories and Shops Act, 1912-1957.

**Amendment
of Act
No. 2,
1940.**

2. The Industrial Arbitration Act, 1940, as amended by subsequent Acts, is amended—

**Sec. 5.
(Inter-
pretation.)**

(a) by omitting subsection two of section five and by inserting in lieu thereof the following subsection:—

(2) (a) Any person, not being the occupier of a factory, who, for or on behalf of the occupier of a factory or any trader who sells clothing by wholesale or retail, does or performs outside a factory, otherwise than as an employee of such occupier or trader, any work in the clothing trades for which a price or rate is for the time being fixed by an award or agreement shall—

(i) for the purposes of this Act, be deemed to be an employee employed by such occupier or trader, and

(ii) for the purposes of the Annual Holidays Act, 1944, the Long Service Leave Act, 1955, and the Workers' Compensation Act, 1926, and any Act amending or replacing any of those Acts, be deemed to be a worker employed by such occupier or trader,

and such occupier or trader shall, for the purposes of any such Act, be deemed to be the employer of that person.

Nothing in this paragraph shall affect the operation of section eighty-nine of this Act.

(b) In this section—

“Factory” has the meaning ascribed thereto in section three of the Factories and Shops Act, 1912, as amended by subsequent Acts, but does not include an office, building or place (whether or not the same is required to be registered as a factory

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factory under that Act, as so amended) No. 23, 1957.
in which mechanical power of less than
one horse power is used.

“Occupier” has the meaning ascribed thereto
in section three of the Factories and
Shops Act, 1912, as amended by subse-
quent Acts.

(b) by omitting section 88B and by inserting in lieu Substituted
section 88B.
thereof the following section:—

88B. (1) This section applies to any con- Regulation
of certain
contracts.
tract—

(a) between a bread manufacturer (in this
section referred to as “principal”) and
any other person—

(i) under which such other person
agrees to carry out or perform, or
to cause to be carried out or
performed, or to arrange for the
carrying out or performance of,
the work (in this section referred
to as “contract work”) of deliver-
ing bread or bread rolls, usually
carried out or performed by bread-
carters; or

(ii) under which such principal sells or
agrees to sell to such other person
bread or bread rolls for the pur-
pose of or with a view to such other
person carrying out or performing,
or causing to be carried out or per-
formed, or arranging for the carry-
ing out or performance of, the work
(in this section referred to as
“contract work”) of delivering
such bread or bread rolls, usually
carried out or performed by bread-
carters;

(b)

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(b) between a milk vendor (in this section referred to as "principal") and any other person—

(i) under which such other person agrees to carry out or perform, or to cause to be carried out or performed, or to arrange for the carrying out or performance of, the work (in this section referred to as "contract work") of delivering milk or cream, usually carried out or performed by milk-carters; or

(ii) under which such principal sells or agrees to sell to such other person milk or cream for the purpose of or with a view to such other person carrying out or performing, or causing to be carried out or performed, or arranging for the carrying out or performance of, the work (in this section referred to as "contract work") of delivering such milk or cream, usually carried out or performed by milk-carters;

(c) between the owner (in this section called "principal") of a motor vehicle and any other person—

(i) under which such other person agrees to carry out or perform, or to cause to be carried out or performed, or to arrange for the carrying out or performance of, the work (in this section referred to as "contract work") of driving, in the course of or for the purposes of any business carried on by such principal, such motor vehicle; or

(ii)

(ii) under which such principal gives ^{No. 23, 1957.} possession of such motor vehicle to such other person for the purpose of or with a view to such other person carrying out or performing, or causing to be carried out or performed, or arranging for the carrying out or performance of, the work (in this section referred to as "contract work") of driving, in the course of or for the purposes of any business carried on by such principal, such motor vehicle;

(d) under which a person (in this section referred to as "principal")—

(i) leases or agrees to lease to any other person any premises for the purpose of or with a view to such other person carrying out or performing, or causing to be carried out or performed, or arranging for the carrying out or performance of, the work (in this section referred to as "contract work") of hairdressing in or on such premises; or

(ii) grants to any other person a license or permit entitling such other person to occupy or use any premises or part of any premises or a chair in any premises, such license or permit having been granted for the purpose of or with a view to such other person carrying out or performing, or causing to be carried out or performed, or arranging for the carrying out or performance of, the work (in this section referred to as "contract work") of hairdressing in or on such premises or part, or using, or causing to be used, or arranging for
for

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for the use of, such chair for the purpose of the work (in this section referred to as "contract work") of hairdressing; or

- (e) which is one of a prescribed class of contracts,

where the contract work is of a class or type in respect of which a price or rate is for the time being fixed by an award or agreement for employees engaged therein, but does not apply to any such contract under or in pursuance of which the contract work is to be carried out or performed by employees of the principal and by such employees only.

The Governor may make regulations prescribing for the purposes of paragraph (e) of this subsection any class of contracts by reference to any description of that class specified in the regulations, and in particular but without limiting the generality of the foregoing provisions of this paragraph, by reference to any one or more matters similar to any one or more of the matters by reference to which any of the contracts referred to in paragraph (a), (b), (c) or (d) of this subsection is described.

Any such regulation shall specify in relation to any class of contracts so prescribed the party to contracts of that class who, for the purposes of this section, shall be regarded as the principal and the work which, for the purposes of this section, shall be regarded as contract work.

(2) (a) A contract to which this section applies shall not be entered into unless—

- (i) the commission; or
(ii) the committee established for the industry or calling in connection with which the contract work is to be carried out or performed, or if no committee is established for that industry or calling, such committee as may be nominated for the purpose by the registrar,

has

has approved, either absolutely or subject to conditions, of the terms and conditions of such contract. No. 23, 1957.

(b) The commission or committee shall refuse to approve of the terms and conditions of any such contract unless it is satisfied—

- (i) that the contract will be a bona fide contract and will not be entered into for the purpose of avoiding the operation of an award or agreement;
- (ii) that the benefits that might reasonably be expected to accrue under the contract, or in the course of the carrying out or performance of the contract work to be carried out or performed under or in pursuance of the contract, to the persons actually engaged in carrying out or performing such work would not be less favourable to them than the benefits provided for employees by an award or agreement applicable to work of the same class or type as such contract work and by the Annual Holidays Act, 1944, and the Long Service Leave Act, 1955, and any Act amending or replacing either of those Acts; and
- (iii) that it would be in the best interests of the persons who would be actually engaged in carrying out or performing the contract work to be carried out or performed under or in pursuance of the contract, that the contract be entered into.

(3) Where a contract to which this section applies is entered into without the approval of the commission or a committee or contrary to any conditions contained in any such approval—

- (a) every person who is a party to the contract shall be liable to a penalty not exceeding one hundred pounds;

(b)

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- (b) the contract shall be void; and
- (c) every person actually engaged in the carrying out or performance of the contract work to be carried out or performed under or in pursuance of the contract shall, for the purposes of this Act, be deemed to be an employee employed by the party to the contract who is the principal and, for the purposes of the Annual Holidays Act, 1944, the Long Service Leave Act, 1955, and the Workers' Compensation Act, 1926, and any Act amending or replacing any of those Acts, be deemed to be a worker employed by that party and that party shall, for the purposes of any such Act, be deemed to be the employer of such person.

(4) Proceedings for a breach of this section may be taken and prosecuted by the Minister, or an employer, or the secretary of an industrial union whose members are employed in the industry or calling in connection with which the contract work is carried out or performed.

(5) In this section—

“Bread manufacturer” means a bread manufacturer under the Bread Manufacture and Delivery Act, 1950-1953, and a bread distributor under the Bread Industry Act, 1946.

“Contract” means contract, agreement or arrangement, whether verbal or in writing.

“Hairdressing” has the meaning ascribed thereto in section 117A of the Factories and Shops Act, 1912-1957.

“Milk vendor” means a person who holds a certificate of registration as a milk vendor issued under the by-laws made under the Milk Act, 1931-1942.

“Motor

“Motor vehicle” and “registered” have the meanings respectively ascribed thereto in the Motor Vehicles (Third Party Insurance) Act, 1942-1951. No. 23, 1957.

“Owner” means, in relation to a motor vehicle which is registered, the person in whose name the vehicle is registered.

(c) by inserting in subsection one of section eighty-nine after the word “worker” the words “, and any person who holds a license as an outdoor worker issued pursuant to Division 2A of Part II of the Factories and Shops Act, 1912-1957,”; Sec. 89.
(Permits for aged, infirm or slow workers.)

(d) by inserting in paragraph (d) of subsection one of section one hundred and twenty-seven after the word “section” the figures, letter and word “88B or”. Sec. 127.
(Appointment and powers of inspectors.)

3. The Factories and Shops Act, 1912-1956, is amended by omitting section one hundred and twenty-six. Amendment of Act No. 39, 1912.

Sec. 126.
(Letting of chairs in hairdressers' shops.)
