Act No. 37, 1964.

An Act to make further provisions with respect to Elizabeth II, the basic wage, illegal strikes, industrial tribunals and certain other industrial matters; for these and other purposes to amend the Industrial Arbitration Act, 1940–1961, and certain other Acts; and for purposes connected therewith. [Assented to, 16th October, 1964.]

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 Arbitra-Short title and citation.
- (2) The Industrial Arbitration Act, 1940, as amended by subsequent Acts, is in this Act referred to as the Principal Act.
- (3) The Principal Act, as amended by this Act, may be cited as the Industrial Arbitration Act, 1940-1964.

2. The Principal Act is amended—

Amendment of Act No. 2 1940

- (a) by inserting in the definition of "Employee" in Sec. 5. subsection one of section five after the words "of (Interprea butty-gang," the words "and includes any person tation.) who is, pursuant to any provision of this Act, deemed to be an employee for the purposes of this Act,";
- (b) (i) by inserting next after subsection three of Sec. 17a. section 17a the following new subsection: (Special commissioner may require sioners.)
 - any person attending a conference at which the special commissioner presides to give evidence

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evidence on oath and for that purpose shall have authority to administer an oath to any such person.

- (ii) by inserting next after subsection four of the same section the following new subsection:—
 - (5) An appeal from any decision of a special commissioner pursuant to subsection four of this section shall be by way of rehearing and the commission may call for or receive further information or evidence.

Sec. 18. (Conciliation committees.)

- (c) (i) by omitting from subsection six of section eighteen the words "the expiration of three years from the date of his appointment, unless he sooner resigns his office" and by inserting in lieu thereof the words "he resigns or the employer or industrial union who or which nominated such person to be such a member has notified the registrar that such nomination has been withdrawn";
 - (ii) by omitting from subsection eight of the same section the words "to his office for the residue of the period for which such member was appointed" and by inserting in lieu thereof the words "to the vacancy so created";

Sec. 25. (Compulsory conferences.)

- (d) (i) by inserting next after subsection three of section twenty-five the following new subsection:—
 - (3A) Where a compulsory conference has been called pursuant to subsection one of this section, the conciliation commissioner or the committee, as the case may be, shall investigate the merits of the question, dispute or difficulty irrespective of whether or not the employees concerned therein may be on strike.
 - (ii) by inserting next after subsection five of the same section the following new subsection:—
 - (5A) No order or award or interim order or award shall be made pursuant to the provisions of subsection four or five of this section unless

the

the causes of and the circumstances appertaining to the question, dispute or difficulty have
been investigated by the conciliation commissioner or committee concerned or by
another industrial tribunal and the conciliation
commissioner or committee concerned is
satisfied that all reasonable steps have been
taken to effect an amicable settlement of such
question, dispute or difficulty.

- (e) by inserting in paragraph (e) of subsection one Sec. 30B. of section 30B after the word "Act" the words (Jurisdiction of the commission.)
- 3. The Principal Act is further amended by inserting next Further amendment of Act No. 2, 1940.

DIVISION 2D.—Provisions applicable after the commence-sion 2D.

ment of the Industrial Arbitration (Amendment)

Act, 1964.

61Y. In this Division, unless the context or subject Definitions. matter otherwise indicates or requires—

"Commonwealth Judgment" means the judgment delivered by the Commonwealth Conciliation and Arbitration Commission on the ninth day of June one thousand nine hundred and sixty-four intituled "In the matter of—

PASTORAL INDUSTRY AWARD, 1956

(Application by The Australian Workers Union to vary the said award in respect of the basic wage) (C. No. 10 of 1964) AND In the matter of—

THE AMALGAMATED ENGINEERING UNION (AUSTRALIAN SECTION) AND OTHERS—AND METAL TRADES EMPLOYERS' ASSOCIATION AND OTHERS

(Notification pursuant to Section 28 of the Act of an industrial dispute re claims for increased basic wage in the Metal industry) (C. No. 821 of 1964)".

"Consumer

"Consumer Price Index" has the meaning ascribed thereto in Division 2c of this Part.

Existing awards and industrial agreements.

- 61z. (1) This section shall apply to and in respect of all awards and industrial agreements—
 - (a) in force immediately before the commencement of the Industrial Arbitration (Amendment) Act, 1964, or
 - (b) which were made or entered into before such commencement but come into force after such commencement.
- (2) (a) For the purposes of this section the expression "appointed day", in respect of—
 - (i) awards and industrial agreements in force at the beginning of the first pay period which commenced on or after the nineteenth day of June, one thousand nine hundred and sixty-four, means the day on which such pay period commenced; and
 - (ii) awards and industrial agreements the provisions of which, affecting rates of wages, came into force after the beginning of such pay period, or which were made before but come into force after the commencement of the Industrial Arbitration (Amendment) Act, 1964, means the day on which such provisions came or come into force.
- (b) An award or industrial agreement to which this section applies shall as on and from the appointed day applicable thereto have and take effect as if—
 - (i) in so far as it fixes rates of wages for adult male employees by reference or in relation to a basic wage for adult males assessed on an index number contained in the Consumer Price Index, such basic wage had, immediately before the appointed day, been adjusted to the amount of fifteen pounds fifteen shillings per week;

(ii)

- (ii) in so far as it fixes rates of wages for adult female No. 37, 1964 employees by reference or in relation to a basic wage for adult females based upon seventy-five per centum of a basic wage for adult males, such basic wage for adult female employees had, immediately before the appointed day, been adjusted to the amount of eleven pounds sixteen shillings per week; and
- (iii) any provisions therein relating to adjustment at stated periods of the rates of pay prescribed therein, upon any variation of the basic wage for adult males or the basic wage for adult females in accordance with fluctuations of index numbers in the Consumer Price Index, had been deleted.
- (3) The terms of each award or industrial agreement to which this section applies, affecting rates of pay, shall, as from the commencement of the Industrial Arbitration (Amendment) Act, 1964, be deemed to be varied to the extent necessary to give effect to the provisions of subsection two of this section.
- (4) As soon as practicable after the commencement of the Industrial Arbitration (Amendment) Act, 1964, the registrar, subject to appeal to the commission, shall vary the terms of each award to which this section applies, affecting rates of pay, to the extent necessary to give effect to the provisions of this section and may make such alterations in the form of any such award as he may think necessary or desirable to enable full effect to be given to the provisions of this section.

Upon application made as prescribed the registrar, subject to appeal to the commission, may vary the terms of any industrial agreement to which this section applies, affecting rates of pay, to the extent necessary to give effect to the provisions of this section and may make such alterations in the form of any such industrial agreement as he may think necessary or desirable to enable full effect to be given to the provisions of this section.

The registrar may refer any matter arising out of this subsection to the commission for direction.

61AA.

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Future awards and industrial agreements.

- 61AA. (1) This section shall apply to and in respect of all awards made or industrial agreements entered into on or after the commencement of the Industrial Arbitration (Amendment) Act, 1964.
- (2) Subject to the provisions of subsection three of this section, all awards or industrial agreements to which this section applies shall, in so far as they fix rates of wages by reference or in relation to—
 - (a) a basic wage for adult males, be made by reference or in relation to a basic wage for adult males of fifteen pounds fifteen shillings per week; or
 - (b) a basic wage for adult females, be made by reference or in relation to a basic wage for adult females of eleven pounds sixteen shillings per week:

Provided however that where a notification published pursuant to the provisions of section 61AB of this Act is in force at the date on which any award or industrial agreement to which this section applies is made or entered into, such award or industrial agreement in so far as it fixes rates of wages by reference or in relation to a basic wage for adult males or a basic wage for adult females shall be made by reference or in relation to the basic wage for adult males or the basic wage for adult females (as the case may require) specified in such notification.

(3) No award or industrial agreement to which this section applies shall be made or entered into in the case of adult male employees for a wage lower than the appropriate basic wage for adult males, or in the case of adult female employees for a wage lower than the appropriate basic wage for adult females, in force under the provisions of this section at the date of making or entering into the award or industrial agreement.

This

This subsection shall not apply to an award made, or No. 37, 1964 industrial agreement entered into, for wages of apprentices or trainee apprentices.

- (4) No award or industrial agreement to which this section applies shall contain any provision whereby the rates of wages prescribed therein shall be varied or altered by reference or in relation to the variation of a basic wage for adult males or a basic wage for adult females in accordance with fluctuations of index numbers contained in the Consumer Price Index.
- 61AB. (1) In this section "award or industrial Provisions agreement" means award or industrial agreement which for variation of the fixes rates of wages by reference or in relation to a basic basic wage wage for adult males or a basic wage for adult females. in awards

agreements.

- (2) (a) Where the Commonwealth Conciliation and Arbitration Commission varies the basic wage for adult males or the basic wage for adult females, applicable to employees in Sydney in the State of New South Wales, under the provisions of the Metal Trades Award, 1952, as subsequently varied, or any award varying or replacing that award, hereinafter in this section referred to as "the Federal Metal Trades Award", (being one of the awards varied by the Commonwealth Judgment), then the amount of the basic wage for adult males and the amount of the basic wage for adult females, as so varied, shall, as from the date such variation takes effect, be the basic wage for adult males or the basic wage for adult females (as the case may require) for the purpose of awards or industrial agreements in force at such date or which were made before but come into force after such date.
- (b) The Governor may by proclamation published in the Gazette direct that for the purposes of this section the name or title of such award made by the

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the Commonwealth Conciliation and Arbitration Commission, as may be specified in such proclamation, shall, as from such date as may be specified therein, be substituted for and in place of the Federal Metal Trades Award, and as from such date this section shall be read and construed as if a reference to the Federal Metal Trades Award were a reference to such other award so specified.

- (3) (a) As soon as practicable after the Commonwealth Conciliation and Arbitration Commission has at any time varied the Federal Metal Trades Award in relation to the basic wage for adult males or the basic wage for adult females, which is applicable to employees in Sydney, the registrar shall, for the purposes of subsection two of this section, by notification published in the Gazette notify the amount of the basic wage for adult males or the basic wage for adult females, as the case may require, which, from the date such variation takes effect, shall be the basic wage for adult males or the basic wage for adult females for the purposes of awards or industrial agreements in force at such date or which were made before but come into force after such date.
- (b) Any such notification by the registrar shall on publication in the Gazette—
 - (i) supersede and replace any such notification published theretofore and continue in force until the date upon which a subsequent like notification takes effect; and
 - (ii) be conclusive evidence for all purposes of the matters stated therein.
- (4) As from the date upon which any variation pursuant to subsection two of this section takes effect—
 - (a) the amount as so notified of the basic wage for adult males or the basic wage for adult females shall be the basic wage for adult males or the basic wage for adult females (as the case may be) for the purposes of all awards

or industrial agreements in force at such date No. 37, 1964 or which were made before but come into force after such date; and

- (b) the terms of all such awards or industrial agreements shall as from such date be deemed to be varied to the extent necessary to give effect to the provisions of paragraph (a) of this subsection.
- (5) The provisions of this section relating to the variation of the amount of the basic wage shall apply to the exclusion of section 61x of this Act or any other like provision contained in any other Act or any award or industrial agreement.
- (6) The registrar may (subject to appeal to the commission), upon application made as prescribed or of his own motion, vary the terms of any award or industrial agreement affecting rates of wages to the extent necessary to give full effect to the provisions of this section.

The registrar may refer any such application or any matter arising out of such application or arising under this subsection to the commission for direction.

(7) This section shall not apply to or in respect of any award or industrial agreement which contains a provision expressly excluding the application of this section.

4. The Principal Act is further amended—

Further amendment of Act No. 2, 1940.

- (a) by inserting in section 61P after the figure and letter Sec. 61P.

 "2c" the words, figure and letter ", or referred to (Existing basic wag for adult females.)
- (b) (i) by omitting from subsection five of section 88D Sec. 88D.

 the figure and symbol "2C" and by inserting (Equal pay in lieu thereof the figure and symbol "2D";

 for males and females in certain circumstances.)

(ii)

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(ii) by omitting from paragraph (c) of subsection nine of the same section the words "and assessed and calculated under and in accordance with the provisions of Division 2c" and by inserting in lieu thereof the words "the provisions of Division 2D";

New sec. 88G. (c) by inserting next after section 88F the following new section: ---

Provisions relevant to automation.

- 88G. (1) Notwithstanding any other provision of this Act the commission, a committee or an apprenticeship council shall upon application therefor insert (by way of variation or otherwise) in an award or industrial agreement whether made before or after the commencement of the Industrial Arbitration (Amendment) Act, 1964, provisions relating to the matters set out in subsection two of this section.
- (2) The matters referred to in subsection one of this section shall be-
 - (a) the obligations, duties and responsibilities of an employer upon the introduction or proposed introduction of mechanisation or technological changes in the industry in which he is engaged;
 - (b) the employees to whom notices of termination of services (being not less than three months) are to be given on account of such introduction or proposed introduction and the form and effect of such notices and the consequences (including requirements that the ordinary rate of pay shall be paid for a specified period, being the difference between the notice given and that required to be given under the provisions inserted

inserted in the award or industrial agree- No. 37, 1964 ment pursuant to this section, and the period of notice to be given shall be deemed to be service with the employer for the purpose of the Long Service Leave Act, 1955, the Annual Holidays Act, 1944, the Long Service Leave (Metalliferous Mining Industry) Act, 1963, or any Act amending or replacing any of those Acts) of failure to give such notices;

- (c) the notifications to be given by the employer to the registrar, the Director of the Vocational Guidance Bureau and the Director of Technical Education of or pertaining to such notices of termination of services;
- (d) such other matters as the commission, committee or apprenticeship council deems relevant to or consequential upon the matters referred to in paragraphs (a), (b) and (c) of this subsection.
- (d) (i) by inserting at the end of subsection one of Sec. 92. section ninety-two the following new para- (Recovery graph:—
 - (b) Where any such award, industrial agreement or permit fixes a price, rate or amount (not being a price or rate for work done) to be paid in the circumstances set out therein in relation to any other matter the employer shall in such circumstances be liable to pay such price, rate or amount in full in money to the person entitled thereto without any deduction except such as may be authorised by such award or industrial agreement or permit as the case may be.

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(ii) by omitting from subsection two of the same section the words "due in respect of such price or rate which became due" and by inserting in lieu thereof the following words:—

"due-

- (a) in respect of a price or rate referred to in paragraph (a) of subsection one of this section or a price, rate or amount referred to in paragraph (b) of the said subsection; or
- (b) to such person in relation to any provision of an award or industrial agreement providing that the employer shall bear or defray the cost or extra cost to the employee of doing any act or thing described in the award or industrial agreement or that upon the occurrence of events or happenings described in the award or industrial agreement the employer shall reimburse, compensate or recompense the employee to the extent of any loss sustained or expense incurred by him,

where such price or rate, or price, rate or amount, or liability became due";

(iii) by omitting from subsection (4A) of the same section the words "where the person authorised to take proceedings under subsection two or subsection three of this section is a person employed to do any work for which the price or rate has been fixed by an award or by an industrial agreement made under this Act, the proceedings may, with the consent in writing of such person," and by inserting in lieu thereof

thereof the words "where proceedings may be No. 37, 1964 taken under subsection two or three of this section the proceedings may with the consent in writing of the person so authorised";

- (iv) by inserting in subsection seven of the same section after the word "rate" the words "or upon conditions less favourable than those";
- (e) (i) by inserting in subsection two of section Sec. 93.

 ninety-three after the word "agreement" the (Penalty words "or any other moneys due to or for breach recoverable by an employee in terms of an award or industrial agreement";
 - (ii) by inserting in the same subsection after the word "wages" where thirdly and fourthly occurring the words "or moneys".

5. The Principal Act is further amended—

Further amendment of Act No. 2, 1940.

- (a) by inserting in section one hundred after the word Sec. 100. "abetting" the words "or have taken part in or (Penalty for illegal aided or abetted";
- - 101. (1) No proceedings for an order under proceedsection one hundred of this Act shall be commenced ings for except by leave of the commission, and no such under leave shall be granted unless—sec. 100.
 - (a) the commission is satisfied that the employer concerned in the illegal strike has—
 - (i) not himself taken part in any lockout which has either wholly or in part given rise to the strike;

(ii)

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- (ii) in a case where a lock-out or strike has taken place, notified the registrar in accordance with section 25A of this Act of the commencement of such lock-out or strike, or upon becoming aware of 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 which gave rise to the strike, notified the registrar in accordance with the said section 25A of such question, dispute or difficulty; and
- (iii) to the extent to which the circumstances permitted, made a bona fide attempt to negotiate a settlement of the question, dispute or difficulty which gave rise to the strike before the strike took place or of the strike after it had taken place; and
- (b) the causes of and the circumstances which gave rise to the question, dispute or difficulty referred to as aforesaid have been investigated or adjudicated upon by some industrial tribunal, other than the commission, or where such causes and circumstances have not been so investigated or adjudicated upon the commission has investigated such causes and circumstances.
- (2) An application for leave to commence proceedings for an order under section one hundred of this Act shall be lodged with the registrar not later than fourteen days after the cessation of the strike to which the application refers.

101A. It shall be a defence to any proceedings No. 37, 1964 under section one hundred of this Act that—

- (a) an employer in the industry in which the proceedings illegal strike occurred or his servant or 100. agent has by any unjust or unreasonable action provoked or incited the strike; or
- (b) the executive of the union, after becoming aware of the circumstances concerning the illegal strike, has not aided, abetted or supported or did not aid, abet or support members of the union who are or were engaged in the strike, and has endeavoured or did endeavour by means reasonable under the circumstances to prevent members of the union from taking part in or aiding or abetting or continuing to take part in, aid or abet the strike.

101B. Costs shall not be awarded in any proceed-costs in proceedings under this Part of this Act.

Costs in proceedings under this Part.

- 6. The Acts (as amended by subsequent Acts, if any) Amendment specified in the first and second columns of the First Schedule of Acts specified to this Act are amended as respectively specified in the third in First column of the said Schedule.
- 7. The Acts (as amended by subsequent Acts, if any) Citation specified in the first and second columns of the Second of amended Schedule to this Act may be cited as respectively specified in Acts. the third column of the said Schedule.

FIRST

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FIRST SCHEDULE.

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Reference to Act.	Short title.	Amendment.
No. 20, 1899	Police Regulation Act, 1899.	Section 12D, subsection (4).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.
No. 21, 1899	Common Law Pro- cedure Act, 1899.	Section 181, subsection (3).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.
No. 31, 1902.	Public Service Act, 1902.	Section 48, subsection (3); and section 56A, subsection (3A).— Omit "assessed and calculated in accordance with the provisions of", wherever occurring, insert "referred to in". Omit "61v" and "61x", wherever occurring, insert "61AA" and "61AB" respectively.
No. 23, 1912.	District Courts Act, 1912.	Section 117, subsection (2).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.
No. 30, 1912.	Government Railways Act, 1912.	Section 107A, subsection (3A).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.
No. 33, 1912.	Small Debts Recovery Act, 1912.	Section 56, subsection (5).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.

FIRST SCHEDULE—continued.

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Reference to Act.	Short title.	Amendment.
No. 36, 1920.	Workmen's Compensation (Broken Hill) Act, 1920.	Schedule, Part II, paragraphs 3 and 6.—Omit "assessed and calculated under and in accordance with paragraph (a) of subsection two of section 61v of the Industrial Arbitration Act, 1940-1961" wherever occurring, insert "referred to in paragraph (a) of subsection two of section 61AA of the Industrial Arbitration Act, 1940, as amended by subsequent Acts".
No. 24, 1924.	Main Roads Act, 1924.	Section 7B, subsection (4).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.
No. 15, 1926.	Workers' Compensation Act, 1926.	Section 14, subsection (2).—Omit "assessed and calculated under and in accordance with paragraph (a) or (b) of subsection two of section 61v of the Industrial Arbitration Act, 1940-1961", insert "referred to in paragraph (a) or (b) of subsection two of section 61AA of the Industrial Arbitration Act, 1940, as amended by subsequent Acts, and as last adjusted in accordance with the provisions of section 61AB of that Act, as so amended".
No. 18, 1930.	Transport Act, 1930.	Section 128A, subsection (4).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.
No. 17, 1943.	Legal Assistance Act, 1943.	Section 6, subsection (4), paragraph (c).— Omit "assessed and calculated in accordance with the provisions of", insert "referred to in". Omit "61v" and "61x", insert "61AA" and "61AB" respectively.
No. 25, 1948.	Landlord and Tenant (Amendment) Act, 1948.	Section 62, subsection (6), paragraph (c).— Omit "assessed and calculated in accordance with the provisions of", insert "referred to in". Omit "61v" and "61x", insert "61AA" and "61AB" respectively.

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FIRST SCHEDULE—continued.

Reference to Act.	Short title.	Amendment.
No. 28, 1957.	Attachment of Wages Limitation Act, 1957.	
No. 59, 1963.	State Planning Authority Act, 1963.	Section 27, subsection (1), paragraph (b); and section 27, subsection (2), paragraph (c), subparagraph (i).— Omit "as assessed and calculated in accordance with the provisions of section 61v" wherever occurring, insert "referred to in section 61AA". Omit "61x" wherever occurring, insert "61AB".
No. 9, 1964.	Constitution and Police Regulation (Amendment) Act, 1964.	Section 1.—Omit subsection (2).
No. 23, 1964.	Government Rail- ways and Transport (Amendment) Act, 1964.	

Sec. 7.

SECOND SCHEDULE.

Reference to Act.	Short title.	Citation.
No. 20, 1899.	Police Regulation Act, 1899.	Police Regulation Act, 1899-1964.
No. 21, 1899.		Common Law Procedure Act, 1899-1964.
No. 23, 1912.		District Courts Act, 1912-1964.
No. 30, 1912.	Government Rail- ways Act, 1912.	Government Railways Act, 1912-1964.
No. 33, 1912.	Small Debts Recovery Act, 1912.	Small Debts Recovery Act, 1912-1964.

SECOND

Appropriation Act.

SECOND SCHEDULE—continued.

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Reference to Act.	Short title.	Citation.
No. 36, 1920.	Workmen's Compensation (Broken Hill) Act, 1920.	Workmen's Compensation (Broken Hill) Act, 1920-1964.
No. 24, 1924.	Main Roads Act, 1924.	Main Roads Act, 1924-1964.
No. 15, 1926.	Workers' Compensation Act, 1926.	Workers' Compensation Act, 1926-1964.
No. 18, 1930.		Transport Act, 1930-1964.
No. 17, 1943.		Legal Assistance Act, 1943-1964.
No. 25, 1948.		Landlord and Tenant (Amendment) Act, 1948-1964.
No. 28, 1957.	Attachment of Wages Limitation Act, 1957.	Attachment of Wages Limitation Act, 1957-1964.
No. 59, 1963.	State Planning Authority Act, 1963.	