

INDUSTRIAL ARBITRATION (AMENDMENT) ACT.

Act No. 29, 1959.

Elizabeth II, An
No. 29, 1959.

Act relating to the exercise of the powers of the Industrial Commission of New South Wales and other industrial tribunals; the status of certain persons as employees for the purposes of certain Acts; the holding of strikes by industrial unions and members thereof; and absolute preference of employment to members of industrial unions; for these and other purposes to amend the Industrial Arbitration Act, 1940, the Trade Union Act 1881, and certain other Acts; and for purposes connected therewith. [Assented to, 7th December, 1959.]

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
and
citation.

1. (1) This Act may be cited as the "Industrial Arbitration (Amendment) Act, 1959."

(2) The Industrial Arbitration Act, 1940, as amended by subsequent Acts and by this Act, may be cited as the Industrial Arbitration Act, 1940-1959.

(3) The Industrial Arbitration Act, 1940-1958, is in this Act referred to as the Principal Act.

(4) The Trade Union Act 1881, as amended by subsequent Acts and by this Act, may be cited as the Trade Union Act, 1881-1959.

2.

2. This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette,

No. 29, 1959.
Commence-
ment.

3. The Principal Act is amended—

Amendment
of Act No.
2, 1940.

- (a) (i) by omitting from the matter relating to Division 2 of Part II in section two the figures “17” and by inserting in lieu thereof the figures and letter “17A”; Sec. 2.
(Division
into Parts.)
- (ii) by omitting from the matter relating to Division 1 of Part III in the same section the figures “23” and by inserting in lieu thereof the figures and letter “23A”;
- (iii) by omitting from the same section the matter relating to Part IV;
- (iv) by omitting from the matter relating to Part X in the same section the figures “106” and by inserting in lieu thereof the figures “101”;
- (v) by omitting from the same section the matter relating to Division 1 of Part XIV;
- (vi) by omitting from the same section the matter relating to Part XV;
- (b) (i) by omitting from the definition of “Agreement” in subsection one of section five the words “and includes an agreement filed under section twelve of this Act”;
- (ii) by inserting in subsection one of section five next after the definition of “Commission” the following new definition :— Sec. 5.
the (Interpre-
tation.)
- “Commission in court session” means the commission constituted as provided by subsection (7A) of section fourteen of this Act.
- (iii)

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- (iii) by inserting in the same subsection at the end of the definition of "Employee" the following new paragraph :—

In determining whether a person who, in performing work, drives a motor vehicle, is an employee, if the person would be held to be an employee if the motor vehicle which he was driving in the performance of such work was owned by the person alleged to be his employer then such person shall be held to be an employee of such alleged employer although he is owner or lessee of the vehicle or has the use of the vehicle under a hire purchase agreement or other arrangement whatsoever.

Sec. 8.
(Registration of industrial union of employees.)

- (c) (i) by inserting in subsection eight of section eight after the words "of the commission" the words ", or a conciliation commissioner";
- (ii) by inserting at the end of the same subsection the following new proviso :—

Provided further that nothing in this subsection shall be construed as empowering the commission to cancel the registration of any industrial union on the ground that such industrial union is instigating to or aiding any other union or any of its members in a lock-out or strike for which such other union or any of its members are liable to a penalty under this Act.

Subst.
sec. 9.

- (d) by omitting section nine and by inserting in lieu thereof the following section :—

Cancellation of registration after issue of certificate of withdrawal.

9. (1) The registration of an industrial union of employees shall be cancelled upon the expiration of a period of twenty-eight days from the issue by the registrar of a certificate of withdrawal in respect of such industrial union in accordance with subsection two of this section.

(2)

(2) The registrar may issue a certificate of No. 29, 1959. withdrawal in respect of any industrial union of employees upon proof to his satisfaction that—

- (a) an application for such certificate has been made in the manner prescribed;
- (b) written notice of the intention to apply for such certificate has been given within the time and in the manner prescribed; and
- (c) such other conditions as may be prescribed have been complied with.

(3) The commission may cancel any award or industrial agreement relating to any industrial union, whose registration as an industrial union of employees has been cancelled pursuant to subsection one of this section, or relating to the members thereof.

(4) The cancellation of the registration of any industrial union pursuant to subsection one of this section or the cancellation of any award or industrial agreement pursuant to subsection three of this section shall not relieve such industrial union or any member thereof from the obligation of any award or industrial agreement, or order of the commission, or a conciliation commissioner, or a committee or the apprenticeship council or from any penalty or liability incurred prior to such cancellation.

(e) by omitting section ten;

Sec. 10.
(The commission may cancel registration.)

(f) by omitting section twelve.

Sec. 12.
(Industrial agreements filed in office of registrar.)

No. 29, 1959. 4. The Principal Act is further amended—

Further
amendment
of Act
No. 2, 1940.

Sec. 14.
(Industrial
commis-
sion.)

- (a) (i) by inserting next after subsection seven of section fourteen the following new subsection :—

(7A) The commission in court session shall be constituted by the President and at least two other members of the commission as from time to time may be chosen by the President :

Provided that where the President is unable by reason of paragraph (d) of subsection eight of this section to sit on the hearing of an appeal, the commission in court session that hears the appeal shall be constituted by the next senior member, who is not absent or unable to perform the duties of his office, and at least two other members of the commission as may be chosen by such next senior member.

- (ii) by omitting subsection eight of the same section and by inserting in lieu thereof the following subsection :—

(8) (a) Subject to this Act the jurisdiction, powers and authorities of the commission under this Act in respect of any matter before the commission are exercisable by a member of the commission sitting alone and not otherwise.

For the purposes of the exercise by a member of the commission of the jurisdiction, powers and authorities of the commission as aforesaid the President shall allocate matters before the commission to individual members thereof.

Where a member of the commission exercises the jurisdiction, powers and authorities of the commission pursuant to this paragraph a reference in this Act to the commission shall be read and construed as a reference to such member.

(b)

(b) From any order, award, ruling or decision made by a member of the commission sitting alone, an appeal shall only lie to the commission in court session where any question of jurisdiction is involved. No. 29, 1959.

(c) On such appeal the commission in court session may vary any such order, award, ruling or decision in such manner as it thinks fit. On any such appeal further evidence shall be admitted on special grounds only and not without special leave of the commission in court session.

(d) No member of the commission shall sit on the hearing of an appeal from any order, award, ruling or decision made by him other than an appeal from an order, award, ruling or decision pronounced or made pro forma by consent of the parties.

(e) Any member of the commission sitting alone may reserve any question of jurisdiction arising in a matter before him for the consideration of the commission in court session or may direct any such question to be argued before the commission in court session.

(b) (i) by inserting next after paragraph (b) of subsection (1A) of section fifteen the following new paragraph :—

Sec. 15.
(Concilia-
tion
Commis-
sioners.)

(c) It shall be the duty of the senior conciliation commissioner to determine the committees of which each conciliation commissioner is to be chairman either generally or for the purpose of the hearing of a particular application, to allocate the work of conciliation commissioners and of the special commissioners, 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.

(ii)

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(ii) by omitting from subsection (1B) of the same section the words "The commission shall, from time to time, determine the committees of which each conciliation commissioner is to be chairman.";

(iii) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection :—

(3) A conciliation commissioner shall subject to this Act hold office until he attains the age of sixty-five years.

This subsection shall apply to persons appointed as conciliation commissioners before the commencement of the Industrial Arbitration (Amendment) Act, 1959, and holding office as such at such commencement as well as to persons appointed as conciliation commissioners after such commencement.

(iv) by omitting subsection (3A) of the same section;

(v) by omitting from subsection five of the same section the words "A conciliation commissioner shall be deemed to have vacated his office on the day upon which he attains the age of sixty-five years.";

(vi) by omitting from subsection seven of the same section the words "Upon the termination of his appointment as conciliation commissioner, if he has not attained the age of sixty-five years, he shall be entitled to be appointed to some position in the Public Service corresponding in classification and salary to that which he held at the date of his appointment as conciliation commissioner.";

(vii) by omitting from subsection eight of the same section the words "Upon the termination of his appointment as conciliation commissioner,
if

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if he has not already attained the age of sixty-five years, he shall be entitled to be reappointed to the service of the Crown corporation in some position corresponding in classification and salary to that which he held at the date of his appointment as conciliation commissioner.”; No. 29, 1959.

- (c) (i) by inserting at the end of subsection one of section 17A the following new paragraph : — Sec. 17A.
(Special
commis-
sioners.)

Each special commissioner shall keep himself—

- (a) generally acquainted with industrial conditions in all industries and callings; and
- (b) closely acquainted with the industries or callings in respect of which he has been allocated work under paragraph (c) of subsection (1A) of section fifteen of this Act.

- (ii) by inserting at the end of the same section the following new subsection : —

(4) Where a special commissioner is unable to induce the parties to an industrial dispute to come to an agreement which will settle the matters in dispute he may decide the matters in dispute. Any such decision shall be binding on the parties for such period not exceeding one month as may be specified therein. Every such decision shall, unless the parties to the industrial dispute have requested him to determine the matter and have agreed to abide by his decision, be subject to appeal to the commission. Upon such appeal the commission may vary in such manner as it thinks fit or rescind such decision or remit any matter to the special commissioner whose decision is the subject of such appeal for further determination and decision.

(d)

No. 29, 1959.

Sec. 18.

(Concilia-
tion
committees.)

- (d) by inserting at the end of subsection five of section eighteen the following new proviso :—

Provided that where a person upon appointment as a member of a committee has taken the oath prescribed such person shall not, upon any subsequent appointment as a member of a committee, be required to take a further oath where the oath originally taken by him has been recorded by the registrar. The registrar shall keep a register of oaths taken in accordance with this subsection.

Further
amendment
of Act No.
2, 1940.

5. (1) The Principal Act is further amended—

Sec. 20.
(Original
jurisdic-
tion.)

- (a) (i) by omitting from paragraphs (a), (c) and (d) of subsection one of section twenty the word “lowest” wherever occurring;
- (ii) by omitting from paragraph (g) of the same subsection the words “preference of employment” and by inserting in lieu thereof the words “absolute preference of employment within the meaning of section 129B of this Act”;
- (iii) by omitting subsection two of the same section;
- (iv) by omitting from subsection four of the same section the words “preference in employment” where firstly occurring and by inserting in lieu thereof the words “absolute preference of employment within the meaning of section 129B of this Act”;
- (v) by omitting from the same subsection the words “preference in employment” where secondly occurring and by inserting in lieu thereof the words “absolute preference of employment”;

Sec. 21.
(Power to
review pre-
vious in-
quiries.)

- (b) by inserting at the end of section twenty-one the following new subsection :—

(2) Where an award is by virtue of section eighty-seven of this Act binding after the period specified therein as the period during which such award

award shall be binding a committee may, upon ~~No. 29, 1959.~~
application made therefor, vary the terms of such
award for any reason that appears to it to be proper.

- (c) by omitting from section twenty-two the word "minimum";

Sec. 22.
(Committee
may fix
quantity of
work to be
done.)

- (d) by inserting next after section twenty-three the following new section :—

New sec.
23A.

23A. Notwithstanding anything contained in this Act, a committee shall in exercising its powers under this Act, fix such prices for work done and rates of wages as the committee deems just and reasonable to meet the circumstances of the case.

Committee's
powers in
fixing wages.

- (e) (i) by omitting from subsection seven of section twenty-four the words "apply to the commission at any time for a suspension of the award, or may,";

Sec. 24.
(Appeal
from
committees.)

- (ii) by omitting paragraph (b) of subsection eight of the same section;

- (iii) by omitting subsection nine of the same section and by inserting in lieu thereof the following subsections :—

(9) An appeal shall not be by way of rehearing and, except as provided in paragraph (c) of this subsection, shall be determined solely on the evidence placed before the committee or conciliation commissioner and on any such appeal the commission may—

- (a) require the members of the committee, other than the conciliation commissioner, to sit with the commission but as assessors only and without a vote;
- (b) direct that its determination, order or award shall take effect as from any date subsequent to the lodging of the application or reference with the registrar;

(c)

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- (c) call for or receive further information or evidence which was not available at the time of hearing of the matter before the committee or conciliation commissioner. Such evidence shall be admitted on special grounds only and not without special leave of the commission.

(9A) Subject to subsection seven of this section, no appeal shall lie from any order, award or decision of a committee or a conciliation commissioner made by consent of all parties appearing in the proceedings and in respect of which a certificate in or to the effect of the prescribed form has been signed by the chairman of the committee or the conciliation commissioner, as the case may be, making the order, award or decision.

Sec. 25.
(Compul-
sory
confer-
ences.)

- (f) by inserting at the end of section twenty-five the following new subsections :—

(5) Where a conciliation commissioner or a committee considers that the public interest is or could be adversely affected by any question, dispute or difficulty of the nature referred to in paragraphs (a), (b) and (c) of subsection one of this section, the conciliation commissioner or the committee may make an interim order or award expressed to be made under this subsection, to have force and effect for such period not exceeding one month to be specified in such interim order or award, restoring or maintaining, as far as practicable, the conditions existing between the parties immediately before the occurrence of the events out of which the question, dispute or difficulty has arisen or might arise.

Any order or award made by the commission upon appeal under section twenty-four of this Act against any interim order or award expressed to be so made shall not have effect until a date specified in such order or award of the commission, such date being not earlier than the expiration of the period specified in such interim order or award.

(6)

(6) For the purposes of this section a conciliation commissioner or a committee may take evidence on oath. No. 29, 1959.

- (g) (i) by omitting paragraphs (d) and (e) of subsection (1A) of section twenty-eight; Sec. 28.
(Jurisdiction of
apprenticeship
council.)
- (ii) by inserting next after subsection two of the same section the following new subsection:—

(2A) (a) Where under paragraph (b) of subsection (1A) of this section the apprenticeship council requires that any apprentice or trainee apprentice shall attend any trade, technical or other training school for any classes or courses of instruction, the employer of such apprentice or trainee apprentice shall allow him such time as is necessary during ordinary working hours to attend such classes or courses of instruction. Daylight
training
of
apprentices.

(b) Where under paragraph (c) of subsection (1A) of this section the apprenticeship council requires that any apprentice or trainee apprentice shall obtain instruction by correspondence or otherwise, the employer of such apprentice or trainee apprentice shall allow him such time as the apprenticeship council deems necessary during ordinary working hours for the purpose of taking full advantage of such instruction.

(c) Any person who fails to comply with the provisions of this subsection shall be liable to a penalty not exceeding one hundred pounds.

- (iii) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection:—

(3) (a) The employer of an apprentice shall prepare and execute an indenture or other contract of apprenticeship within three months of the receipt by him of a written notification of the approval of the apprenticeship by the apprenticeship council.

(b)

No. 29, 1959.

(b) A copy of all indentures or other contracts of apprenticeship shall be forwarded by the employer of the apprentice to the registrar within one month of the date of the execution.

(c) An employer shall not employ any apprentice or trainee apprentice without the consent of the apprenticeship council.

(d) Nothing contained in this section shall prevent an employer employing with a view to apprenticeship or trainee apprenticeship a person under the age of twenty-one years for a period of not more than three months, or where any other period has been specified by the apprenticeship council, for such other period. Any such period shall be counted as a period of training for the purposes of any apprenticeship or trainee apprenticeship which may be approved in respect of such person.

(e) Any person who contravenes or fails to carry out any provision of this subsection shall be liable to a penalty not exceeding fifty pounds.

Sec. 30.
(Jurisdiction.)

(h) by inserting in section thirty after the words "conferred on" where secondly occurring the words "a conciliation commissioner and";

New secs.
30A-30C.

(i) by inserting next after section thirty the following new sections :—

General
powers
and
functions
of the
commis-
sion.

30A. The commission—

(a) is empowered to endeavour, by all means which it deems proper and necessary, to settle industrial matters by means of conciliation;

(b) shall take all reasonable steps to effect an amicable settlement of industrial matters and for this purpose is empowered to adjourn any matter at any stage to enable the parties concerned to negotiate with a view to a settlement of the industrial matters in dispute by amicable arrangements.

30B.

30B. (1) Subject to subsection two of this section ~~No. 29, 1959.~~
the following powers, authorities and functions of
the commission shall be exercisable by the
commission in court session and not otherwise, that
is to say,—

Jurisdic-
tion
of the
commis-
sion.

- (a) to hear and determine an appeal from any order, award, decision or ruling of a member of the commission (except where he is sitting alone pursuant to subsection two of this section) where any question of jurisdiction is involved;
- (b) to hear and determine any question of jurisdiction reserved for the consideration of, or directed to be argued before, the commission in court session by a member of the commission or referred to it pursuant to section 30C of this Act;
- (c) to exercise any power conferred on the commission by any Act other than this Act;
- (d) to hear and determine any appeal made pursuant to section one hundred and twenty of this Act;
- (e) to hear and determine any proceedings instituted pursuant to Part X of this Act;
- (f) to hear and determine any question as to the cancellation of the registration of an industrial union of employees;
- (g) to hear and determine any appeals from the registrar other than matters arising from the settlement of minutes of orders, awards, rulings or decisions of a member of the commission;
- (h) to hear and determine any industrial matter which the Minister on his own motion or upon request of the President has referred to the commission in court session;

(i)

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- (i) to hear and determine any matter in any proceeding commenced or arising before a member of the commission which such member considers ought to be removed to the commission in court session and the removal of which to the commission in court session the Minister approves.

In any proceedings under this section the commission in court session may make such order, award, ruling or decision as to it seems fit in the circumstances of the case.

In any proceedings under this section any question shall be decided according to the decision of the majority of the members comprising the commission in court session, if there is a majority, but if such members are equally divided in opinion, the question shall be decided according to the opinion of the President, or, if the President is not a member of the commission in court session, according to the opinion of the senior member present.

(2) Notwithstanding any other provision contained in this Act the commission in court session may, in any particular matter, delegate any of its powers, authorities or functions in such matter to any one member of the commission sitting alone.

(3) Where the commission in court session exercises any powers, authorities or functions of the commission pursuant to subsection one of this section or where a member of the commission exercises any of the powers, authorities or functions of the commission in court session pursuant to subsection two of this section, a reference in this or any other Act to the commission shall be read and construed as a reference to the commission in court session, or to such member, as the case may be.

30C. Where during the hearing of any matter before a member of the commission sitting alone otherwise than in pursuance of a delegation under subsection two of section 30B of this Act, a conciliation commissioner, a conciliation committee, an

Questions
of
jurisdic-
tion
referable
to
commission
in court
session.

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an apprenticeship council or the registrar any question of jurisdiction arises the member of the commission, the conciliation commissioner, the chairman of the conciliation committee, the apprenticeship commissioner or the registrar, as the case may be, may decide the question of jurisdiction or may refer it to the commission in court session. No. 29, 1959.

- (j) by omitting section thirty-one and by inserting in lieu thereof the following section :— Subst.
sec. 31.

31. The commission shall have power—

- (a) to confer with any person or industrial union as to anything affecting the settlement of an industrial matter; Powers
of
commission.
- (b) at any time on its own initiative or on application made to it, to make an award or vary or rescind any award made by the commission, or to vary any award made by a committee or conciliation commissioner in so far as may be necessary to give effect to any ruling or decision which is to apply generally to other awards relating to any industry or any division of an industry or combination, arrangement or grouping of industries;
- (c) to summon any person before the commission for the purpose of conference or of giving evidence. Such summons shall be signed as prescribed.

- (k) by inserting at the end of section thirty-two the following new subsection :— Sec. 32.
(Power to
review
previous
inquiries.)

(2) Where an award is by virtue of section eighty-seven of this Act binding after the period specified therein as the period during which such award shall be binding the commission may, upon application made therefor, vary the terms of such award for any reason that appears to it to be proper.

(2) The Industrial Arbitration (Further Amendment) Act, 1957, is hereby repealed. Repeal
of
Act No. 33,
1957.

No. 29, 1959. 6. The Principal Act is further amended by omitting sections thirty-nine to fifty-two inclusive.

Further amendment of Act No. 2, 1940.

Part IV.

(Prices of commodities.)

Further amendment of Act No. 2, 1940.

Sec. 77 (3).
(Questions of jurisdiction.)

Sec. 77E.
(Proceedings at meetings.)

Sec. 84.
(Decision of commission or member final.)

7. The Principal Act is further amended—

(a) by omitting subsection three of section seventy-seven;

(b) by inserting at the end of paragraph (b) of section 77E the words “, and where the votes for and against any matter are not equal, the question shall be decided on the majority of votes”;

(c) (i) by omitting from paragraph (a) of subsection one of section eighty-four the words “sections fourteen and forty-two of this Act any decision of the commission or of any member thereof in the exercise of any power or function delegated to him by the commission,” and by inserting in lieu thereof the words “section fourteen of this Act any decision of the commission in court session or of any member of the commission sitting alone, whether pursuant to a delegation or otherwise,”;

(ii) by inserting in the same paragraph after the words “proceeding of the commission” the words “in court session”;

(iii) by omitting subparagraphs (i) and (ii) of paragraph (b) of the same subsection and by inserting in lieu thereof the following subparagraphs:—

(i) the commission in court session, or

(ii) any member of the commission sitting alone, whether pursuant to a delegation or otherwise.

8. The Principal Act is further amended—

No. 29, 1959.

Further
amendment
of Act No.
2, 1940.

(a) (i) by omitting paragraphs (b) and (c) of subsection one of section 88B;

Sec. 88B.
(Regulation
of certain
contracts.)

(ii) by omitting from the same subsection the words, symbols and letters “paragraph (a), (b), (c) or (d)” and by inserting in lieu thereof the words, symbols and letters “paragraph (a) or (d)”;

(iii) by inserting next after the same subsection the following new subsection :—

(1A) Paragraph (a) of subsection one of this section shall not apply to any contract of the nature referred to in the said paragraph (a) entered into after the commencement of the Industrial Arbitration (Amendment) Act, 1959, not being a renewal, transfer or assignment entered into after such commencement of any contract of the nature referred to in the said paragraph (a) entered into, and approved by the commission or a committee, before such commencement.

(b) by inserting next after section 88D the following new sections :—

New secs.
88E and
88F.

88E. (1) The following persons if not otherwise employees employed to do the work hereinafter referred to shall, for the purposes of this Act be deemed to be employees and for the purposes of the Annual Holidays Act, 1944, the Long Service Leave Act, 1955, and any Act amending or replacing any of those Acts be deemed to be workers :—

Certain
persons to
be em-
ployees.

(a) Any person not being the person in whose name a taxi cab, motor omnibus, private hire car or public motor vehicle respectively is registered who drives such taxi cab, motor omnibus, private hire car
or

No. 29, 1958.

or public motor vehicle. In such case the employer shall be deemed to be the person in whose name such vehicle is registered.

The expressions "taxi cab", "motor omnibus", "private hire car" and "public motor vehicle" and "registered" shall have the meanings respectively ascribed to them in the Transport Act, 1930, as amended by subsequent Acts.

- (b) Any person not being registered as a milk vendor to sell milk or cream from a vehicle or any other description of conveyance who sells or delivers for the purpose of sale milk or cream from any vehicle. In such case the employer shall be deemed to be any person whose milk or cream is so delivered or who supplies the milk or cream so delivered.

- (c) Any person, other than a common carrier who, under any kind of contract lease license or arrangement whatsoever, drives a motor lorry when the same is being used for deliveries of goods to the customers of a retail trader of such goods. In such case the employer shall be deemed to be the retail trader.

The expression "motor lorry" shall have the meaning ascribed thereto in the regulations under the Motor Traffic Act, 1909, as amended by subsequent Acts.

- (d) Any person (other than the owner or occupier of the premises or a bona fide cleaning contractor employing labour for the purpose) who performs any work of cleaning premises or part thereof for which work if performed by an employee a price or rate is for the time being fixed by an award or agreement. In such case the owner or where there is an occupier other than

than the owner then the occupier of the premises shall be deemed to be the employer. **No. 29, 1959.**

- (e) Any person (other than the owner or where the owner is not occupying the building or premises then the occupier of any building or premises or a bona fide contractor employing labour for that purpose) who performs carpentry or joinery or brick-laying work upon any building or premises the erection, construction, repair, alteration or maintenance of which is being carried out under a contract between the owner or occupier and a contractor. In such case the lastmentioned contractor shall be deemed to be the employer: Provided that this shall not apply to work of repair, alteration or addition to existing premises used as residences.
- (f) Any person (other than the owner or where the owner is not the occupier then the occupier of any building or premises or a bona fide contractor employing labour for that purpose who has entered into a contract with such owner or occupier or with a bona fide contractor who has contracted to erect, renovate, repair or maintain such building or premises) who performs the work of house or general painting. In such case the owner or occupier shall be deemed to be the employer: Provided that this shall not apply to work of repair, alteration or addition to existing premises used as residences.
- (g) Any person, not being a bread manufacturer, who performs the work of delivery of bread or bread rolls on any bread round from a vehicle, conveyance or receptacle,
unless

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unless such work is performed outside the counties of Cumberland and Northumberland and the City of Greater Wollongong. In such case the employer shall be deemed to be the bread manufacturer who manufactured, prepared or baked the bread or bread rolls: Provided that nothing in this paragraph shall apply to any contract approved pursuant to subsection two of section 88B of this Act.

- (h) Any person who is one of a prescribed class of persons.

(2) The Governor may make regulations prescribing for the purposes of paragraph (h) of subsection one of this section any class of persons 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 classes of persons referred to in paragraphs (a) to (g) of subsection one of this section is described.

Any such regulation shall specify in relation to any class of persons so prescribed the person who for the purposes of this section shall be deemed to be the employer and the work which for the purposes of this section shall lead such person to be deemed to be the employer.

(3) This section shall not operate so as to require a person to be deemed to be the employer by virtue of this section—

- (a) of his spouse or a member of the family of whom he is the parent;
- (b) of any person who performs any work as a bona fide act of charity.

(4)

(4) It shall be a defence to any prosecution No. 29, 1959. in proceedings for a breach of this Act or for the recovery of monies under this Act brought against any person deemed by virtue of this section to be an employer, if such person deemed to be an employer joins in the manner prescribed as a party to the proceedings some other person whom he alleges to be the employer and proves in the course of the proceedings that apart from the operation of this section, such person was at the relevant time the employer. Such person shall have the right to make full answer and defence to the allegation by the person deemed to be an employer and, if held to be the employer, shall have the same rights and shall be liable to the same penalties and to have the same orders made against him and otherwise be in the same position as if the proceedings had been originally instituted against him at the time they were instituted against the person alleged to be the employer.

88F. The commission or a committee may make an order or award declaring void in whole or in part or varying in whole or in part and either ab initio or from some other time any contract or arrangement or any condition or collateral arrangement relating thereto whereby a person performs work in any industry on the grounds that the contract or arrangement or any condition or collateral arrangement relating thereto—

Power of
commission
or
committee
to declare
certain
contracts
void.

- (a) is unfair, or
- (b) is harsh or unconscionable, or
- (c) is against the public interest. Without limiting the generality of the words "public interest" regard shall be had in considering the question of public interest to the effect such a contract or a series of such contracts has had or may have on any system of apprenticeship and other methods of providing a sufficient and trained labour force, or

(d)

No. 29, 1959.

(d) provides or has provided a total remuneration less than a person performing the work would have received as an employee performing such work, or

(e) was designed to or does avoid the provisions of an award or agreement.

Further
amendment
of Act No.
2, 1940.
Sec. 92.
(Recovery
of wages.)

9. The Principal Act is further amended—

(a) by inserting next after subsection six of section ninety-two the following new subsection :—

(6A) If after the expiration of two years from the time any amount paid to the Under Secretary under subsection six of this section is still held by the Under Secretary such amount shall be paid by the Under Secretary to the Special Deposits Account referred to in section five of the Audit Act, 1902, as amended by subsequent Acts.

Sec. 93.
(Penalty for
breach of
award.)

(b) (i) by inserting in subsection four of section ninety-three after the words “industrial agreement” where secondly occurring the words “not later than twelve months after the date of such breach”;

(ii) by inserting at the end of the same section the following new subsection :—

(5) In this section unless the context otherwise indicates or requires “award” includes order made under this Act other than an order under this section, sections ninety-two, ninety-five, ninety-eight, one hundred and eighteen, one hundred and twenty-three or any section prescribed but does not include any order under any section of this Act for which a penalty is expressly provided by this Act.

10. The Principal Act is further amended—

No. 29, 1959.

Further
amendment
of Act No.
2, 1940.

(a) (i) by inserting in paragraph (b) of section ninety-nine after the word "strike" the words "(other than a strike to which section 99A of this Act applies)";

Sec. 99.
(Illegal
strikes.)

(ii) by omitting from the same paragraph the words "in accordance with the provisions for ballots contained in this Act and the regulations thereunder" and by inserting in lieu thereof the words "as prescribed";

(iii) by omitting paragraph (c) of the same section;

(b) by inserting next after section ninety-nine the following new section :—

New sec.
99A.

99A. (1) This section applies to any strike by an industrial union of employees or industrial unions of employees referred to in subsection two of this section in respect of which the conditions prescribed by the said subsection have been observed, but does not apply to any such strike which commences or continues after any matter in dispute referred to in the notice given to the Minister under the said subsection has been settled.

Notice of
intention
to strike.

(2) Any industrial union of employees, or industrial unions of employees, representing a majority of the employees engaged in the project, establishment or undertaking where the strike is to take place which intends or intend to commence a strike, shall observe the following conditions :—

(a) the executive of such industrial union or the executives of such industrial unions shall give notice in writing to the Minister of the intention of such industrial union or industrial unions to commence the strike;

(b)

No. 29, 1959.
—

(b) such strike shall not commence before the expiry of fourteen days from the date of the receipt by the Minister of the notice given pursuant to paragraph (a) of this subsection;

(c) such notice shall be in or to the effect of the form prescribed and shall contain such particulars relating to such strike and of action taken to settle such strike as may be prescribed. Without limiting the generality of this provision, such particulars shall include particulars of the matter or matters in dispute, the proposed date of commencement of such strike and a statement of the action already taken by such industrial union to negotiate a settlement of the matter or matters in dispute.

Sec. 100.
(Penalty for
illegal
strike.)

(c) by inserting in section one hundred after the words "trade union" the words "registered as an industrial union of employees";

Sec. 101.
(Defence to
proceedings
for illegal
strike.)

(d) by omitting from section one hundred and one the words "the enforcement of its rules and by other";

Sec. 102.
(Secret
ballot when
strike con-
templated.)

(e) by omitting section one hundred and two;

Sec. 103.
(Penalties
for illegal
strike or
obstructing
ballot.)

(f) by omitting section one hundred and three;

(g)

(g) by omitting section one hundred and four;

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Sec. 104.
(Penalty for newspaper publishing matter encouraging strike.)

(h) by omitting section one hundred and five;

Sec. 105.
(Penalty for illegal picketing.)

(i) by omitting section one hundred and six.

Sec. 106.
(Penalty for declaring any commodity black.)

11. The Principal Act is further amended—

Further amendment of Act No. 2, 1940.

(a) (i) by omitting paragraph (c) of subsection one of section one hundred and seven and by inserting in lieu thereof the following paragraph :—

Sec. 107.
(Powers of trade union with regard to its funds.)

(c) provide for the application of its money and property to the furtherance of political objects.

(ii) by inserting at the end of the same section the following new subsection :—

(4) Notwithstanding the provisions of this section a trade union shall not apply its money or property to any organisation for the furtherance of the political objects of that organisation unless such trade union is entitled to be affiliated with that organisation.

(b) by omitting from section one hundred and ten the word “such” where firstly occurring.

Sec. 110.
(Attachment of union funds.)

12.

No. 29, 1959. **12.** The Principal Act is further amended by omitting sections 129A and 129B and by inserting in lieu thereof the following sections :—

Further
amendment
of Act No.
2, 1940.

Subst.
secs. 129A,
129B.

Right of
entry.

129A. (1) Any officer of an industrial union of employees authorised in writing in that behalf by the registrar may, if such authority is for the time being in force—

- (a) enter any place or premises or any ship or vessel of any kind whatsoever wherein members of such industrial union or persons in the same calling as such members are engaged, for the purpose of conversing with or interviewing the employees in such place, premises, ship or vessel;
- (b) enter any place or premises or any ship or vessel of any kind whatsoever of any employer engaged in the industry in which members of such industrial union or persons in the same calling as such members are engaged during working hours for the purpose of investigating any suspected breach of this Act or of any award or industrial agreement in force in relation to such industry;
- (c) for the purpose of investigating any suspected breach of this Act or of any award or industrial agreement in force in relation to any industry, require any employer engaged in such industry to produce for his inspection during the usual office hours at the employer's office or other convenient place any time and pay sheets kept by him in regard to employees in such industry; and
- (d) make copies of the entries in such time and pay sheets relating to any such suspected breach.

(2)

(2) Any officer authorised as aforesaid shall not wilfully hamper or hinder the employees during their working time and may interview any employees or converse with them in any lunch time or non-working time. No. 29, 1959.

(3) Every person who hinders or obstructs any such officer in the exercise of any powers conferred by this section or who refuses entrance to such officer or unduly delays such officer in entrance during any time as aforesaid to any such place, premises, ship or vessel shall be liable to a penalty not exceeding fifty pounds.

(4) No officer authorised as aforesaid shall have any authority to enter a private dwelling house or the land used in connection therewith unless some manufacture or trade in which labour is employed is carried on therein.

129B. (1) Notwithstanding any other provision of this Act the commission, a committee or an apprenticeship council shall upon application made 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, 1959, a provision providing— Preference to unionists.

- (a) for absolute preference of employment to the members of the industrial union or unions specified in the award or industrial agreement. Such preference to members of such industrial union or unions shall be limited to the point where such a member and person who is not such a member are offering for service or employment at the same time or, in the case of retrenchment, to the point where either such a member or a person who is not such a member is to be dismissed from service or employment;
- (b) that the provision inserted in any award or industrial agreement pursuant to paragraph (a) of this subsection shall not apply to or in respect of the employment in any industry or calling of a person who has been issued by the registrar with a certificate of exemption pursuant to

No. 29, 1959.

to subsection eleven of section 129B of this Act as enacted before the commencement of the Industrial Arbitration (Amendment) Act, 1959, or subsection two of this section, covering that industry or calling if the period specified in such certificate or any renewal thereof has not expired.

(2) (a) For the purposes of this subsection “conscientious belief” includes any conscientious belief whether the grounds thereof are or are not of a religious character and whether the belief is or is not part of the doctrine of any religion.

(b) Any person who—

- (i) objects on the grounds of conscientious belief to being a member of an industrial union of employees; and
- (ii) applies in the manner prescribed to the registrar for a certificate of exemption from membership of any such union; and
- (iii) satisfies the registrar that his objections on the grounds of conscientious belief are genuine; and
- (iv) pays to the registrar an amount equivalent to the subscription prescribed by the rules of the industrial union for membership of such union;

shall be issued by the registrar with a certificate of exemption from membership of the industrial union.

(c) Any such certificate shall remain in force for the period specified therein and may be renewed from time to time by the registrar upon payment of such amount, not exceeding the amount referred to in subparagraph (iv) of paragraph (b) of this subsection, as the registrar may require.

(d) Any amount received by the registrar pursuant to this subsection shall be paid by him to the credit of the Consolidated Revenue Fund.

(e) Any person whose application for a certificate of exemption from membership of an industrial union, or for any renewal thereof, under this subsection

subsection is refused, may within twenty-one days of the decision of the registrar refusing the application appeal in the manner prescribed to the commission from such decision. The commission may on such appeal make such order as it thinks fit.

(3) Nothing in this section shall limit or in any way affect any law relating to preference in employment to persons who have served as members of the Naval, Military or Air Forces of the Commonwealth.

13. The Principal Act is further amended by omitting sections one hundred and thirty-two, one hundred and thirty-three, one hundred and thirty-four and one hundred and thirty-five.

Further amendment of Act No. 2, 1940. Secs. 132-135. (State Labour Exchanges.)

14. The Principal Act is further amended by omitting section one hundred and fifty-four.

Further amendment of Act No. 2, 1940. Sec. 154. (Insurance against unemployment.)

15. The Trade Union Act, 1881-1936, is amended—

Amendment of 45 Vic. No. 12.

(a) (i) by inserting in paragraph (2) of section fourteen after the word "shall" the words "subject to this section,";

Sec. 14. (Regulations for registry.)

(ii) by inserting at the end of the same section the following new paragraph :—

(7) An application to register the trade union may, where such trade union in the opinion of the Registrar holds itself out to be or purports to be a trade union of employees, be refused by the Registrar—

(a) if he is of the opinion that such trade union is not a bona-fide trade union of employees, or

(b)

No. 29, 1959.

(b) to the extent to which, in his opinion, the persons entitled to become and remain members of the trade union may conveniently belong to an industrial union of employees registered under the Industrial Arbitration Act, 1940, as amended by subsequent Acts.

Sec. 15.
(Withdraw-
ing or
cancelling
of
certificate.)

(b) by inserting in section fifteen after the words "ceased to exist." the following new paragraph :—

(3) On proof to his satisfaction that a certificate of registration would not have been obtained had the provisions of paragraph (7) of section fourteen of this Act been in force at the time when the application for such registration was made.

New sec.
15A.

(c) by inserting next after section fifteen the following new section :—

Appeal to
commission
in
certain
cases.

15A. Any decision of the Registrar under paragraph (7) of section fourteen or paragraph (3) of section fifteen of this Act shall be subject to appeal to the commission in court session as defined in subsection one of section five of the Industrial Arbitration Act, 1940, as amended by subsequent Acts, in the manner prescribed by regulations made under this Act, which regulations the Governor is hereby authorised to make.

Savings.

16. All appeals from orders, awards, rulings or decisions made or given under the Principal Act and not part heard at the commencement of this Act shall be initiated, continued and completed, and all matters, investigations, inquiries or proceedings (including appeals from orders, awards, rulings or decisions made or given under the Principal Act) part heard under the Principal Act at such commencement shall be continued and completed, as if the amendments made by this Act had not been enacted.