

INDUSTRIAL ARBITRATION AND WORKERS' COMPENSATION  
(AMENDMENT) BILL, 1938.

*Schedule of the Amendments referred to in Message of 15th December, 1938.*

No. 1.—Page 3, clause 2, lines 27 to 35 inclusive. *Omit* all words on these lines  
*insert—*

“(a) by omitting paragraph (e) of section eighty-two and by inserting  
in lieu thereof the following paragraph:—

(e) To investigate and report on any matter referred to it by  
the Minister as to the prices of commodities or services,  
other than a commodity or service the price of which is  
fixed or determined or is liable to be fixed or determined  
under any other Act, and as to whether or not monopolies  
or trade rings exist for the purpose of unfairly keeping up  
the prices of any such commodities or services.”

No. 2.—Page 5, clause 3, lines 8 to 16 inclusive. *Omit* subclause (1).

No. 3.—Page 5, clause 3, line 28. *Omit* “(b) Paragraph (a) of this subsection” *insert*

“(2) Subsection one of this section”

No. 4.—Pages 9 and 10, clause 4. *Omit* all words on lines 28 to 40 inclusive on page 9  
and all words on lines 1 to 30 inclusive on page 10 *insert* “receive such com-  
pensation as he would have been entitled to had his services as a member of  
The Workers' Compensation Commission been dispensed with at the commence-  
ment of this section otherwise than according to law. Such compensation shall  
be paid out of the fund.”

No. 5.—Page 11, clause 5, line 35. *After* “worker” *insert* “But where such proceed-  
ings are proceedings which, by reason of the provisions of any other Act,  
cannot be instituted until the expiration of a specified period after notice in  
writing has been served on or delivered or given to the employer, the period of  
six months referred to in the foregoing provisions of this paragraph shall be  
increased by such specified period.

The period within which proceedings are to be instituted as prescribed in the  
foregoing provisions of this paragraph, is in this paragraph referred to as the  
‘prescribed period’.”

No. 6.—Page 12, clause 5, lines 10 and 11. *Omit* “period of six months specified in  
this subsection” *insert* “prescribed period”

No. 7.—Page 12, clause 5, line 13. *Omit* “and” *insert* “or”

No. 8.—Page 12, clause 5, line 15. *Omit* “said” *insert* “prescribed”

No. 9.—Page 12, clause 5. *After* line 18 *insert* “Such application for extension may  
be made either within the prescribed period or at any time within six months  
thereafter”

No. 10.—Pages 13 and 14, clause 5. *Omit* “and” on line 32 and all words on lines  
33 to 35 inclusive on page 13 and all words on lines 1 to 3 inclusive on page 14.

No. 11.—Page 14, clause 5, line 11. *Omit* “named in the application”

No. 12.—Page 14, clause 5. *After* line 18 *insert—*

“In this paragraph the word ‘agent’ shall mean the secretary or authorised  
officer of any trade union or industrial union registered under the Industrial  
Arbitration Act, 1912, as amended, or the secretary or branch secretary or  
other person authorised by the secretary of any organisation of employees  
registered under the Commonwealth Conciliation and Arbitration Act, 1904, as  
amended.”

No. 13.—Page 14, clause 5. *After* line 33 *insert* “the signature of such next friend  
shall be witnessed as in the preceding paragraph mentioned and the notice of  
election so signed by such next friend shall in all other respects be subject to  
the provisions of this section.”







*This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

W. R. McCOURT,  
*Clerk of the Legislative Assembly.*

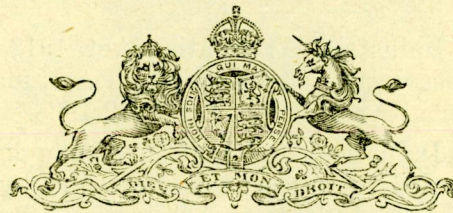
*Legislative Assembly Chamber,  
Sydney, 8 December, 1938.*

*The LEGISLATIVE COUNCIL has this day agreed to this Bill with  
Amendments.*

C. H. H. CALVERT,  
*Clerk of the Parliaments.*

*Legislative Council Chamber,  
Sydney, 15th December, 1938.*

## **New South Wales.**



ANNO TERTIO

## **GEORGII VI REGIS.**

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**Act No. , 1938.**

An Act to make further provisions in relation to the constitution of the Industrial Commission of New South Wales and The Workers' Compensation Commission of New South Wales; to make provisions in relation to the investigation of the rents of certain premises and of the prices of certain commodities and in relation to the fixation of the prices of certain products, commodities and services; to validate certain matters; to amend the Industrial Arbitration Act, 1912-1935, the Industrial Arbitration (Amendment) Act, 1926, the Workers' Compensation Act, 1926-1929, and certain other Acts in certain respects; and for purposes connected therewith.

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NOTE.—The words to be *omitted* are ruled through; those to be *inserted* are printed in **black letter**.



*Industrial Arbitration and Workers' Compensation (Amendment).*

**B**E it enacted by the King's Most Excellent Majesty,  
by and with the advice and consent of the Legis-  
lative Council and Legislative Assembly of New South  
Wales in Parliament assembled, and by the authority of  
5 the same, as follows :—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Industrial Arbitration and Workers' Compensation (Amendment) Act, 1938." Short title, citation and division into Parts.

(2) (a) The Industrial Arbitration Act, 1912-1935, as amended by subsequent Acts and by this Act, may be cited as the Industrial Arbitration Act, 1912-1938.

(b) The Industrial Arbitration (Amendment) Act, 1926, as amended by subsequent Acts and by this Act, may be cited as the Industrial Arbitration (Amendment) Act, 1926-1938.

(c) The Workers' Compensation Act, 1926-1929, as amended by subsequent Acts and by this Act, may be cited as the Workers' Compensation Act, 1926-1938.

(3) This Act is divided into Parts as follows:—

PART I.—PRELIMINARY.

PART II.—AMENDMENTS OF THE INDUSTRIAL ARBITRATION ACTS.

25 PART III.—AMENDMENTS OF THE WORKERS' COMPENSATION ACT, 1926-1929.

PART II.

AMENDMENTS OF THE INDUSTRIAL ARBITRATION ACTS.

2. (1) This section shall commence upon a date to be appointed by the Governor and notified by proclamation published in the Gazette. Commence-ment.

(2)



Industrial Arbitration and Workers' Compensation (Amendment).

(2) (a) The Industrial Arbitration (Amendment) Act, 1926, as amended by subsequent Acts, is amended—

Amendment  
of Act No.  
14, 1926.

5 (i) by omitting from subsection one of section six the word "four" and by inserting in lieu thereof the words "not less than five and not more than six";

Sec. 6 (1).  
(Commis-  
sion.)

(ii) by inserting in subsection two of the same section immediately before the word "barrister" the word "practising";

10 (iii) by inserting in the same subsection immediately before the word "solicitor" the word "practising."

(b) The persons who, immediately before the commencement of this Part, were President and other  
15 members of the Commission shall continue to hold office as President and members of the Commission in all respects as if the amendment made by subparagraph (i) of paragraph (a) of this subsection had been in force at the date of their respective appointments, and sub-  
20 paragraphs (ii) and (iii) of that paragraph had not been enacted.

(c) This subsection shall be read and construed with the Industrial Arbitration (Amendment) Act, 1926, as amended by subsequent Acts.

25 (3) The Industrial Arbitration Act, 1912-1935, as amended by subsequent Acts, is amended—

Amendment  
of Act No.  
17, 1912.

30 (a) (i) by omitting from paragraph (c) of section eighty-two the words "To report on any matter referred to as to" and by inserting in lieu thereof the words "To investigate and report on any matter referred to it by the Minister as to";

Sec. 82.  
(Prices.)

35 (ii) by inserting in the same paragraph after the word "commodities" wherever occurring the words "or services";

(a)



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- (a) by omitting paragraph (e) of section eighty-two and by inserting in lieu thereof the following paragraph:—

5

- (e) To investigate and report on any matter referred to it by the Minister as to the prices of commodities or services, other than a commodity or service the price of which is fixed or determined or is liable to be fixed or determined under any other Act, and as to whether or not monopolies or trade rings exist for the purpose of unfairly keeping up the prices of any such commodities or services.

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- (b) by inserting after the same paragraph the following new paragraph:—

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30

- (e1) To investigate and report on any matter referred to it by the Minister as to the rents or increases in rents of premises which are leased or let, either wholly or partially, as dwelling-houses, or as shops, or partly as a dwelling-house and partly as a shop, or of any class of such premises defined by the Minister in the reference; and for the purposes of such reference a class may be defined in relation to the rental of the premises, the value of the premises, the purpose or mode of user of the premises, the locality in which the premises are situate, or any other circumstance whatsoever;

- (c) by inserting at the end of section eighty-two the following new subsection:—

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- (2) In subsection one of this section "commodities" means any of the following:—

- (a) any article of food (other than eggs, milk and butter);  
(b) any article of clothing or apparel;  
(c) any building material;

(d)



*Industrial Arbitration and Workers' Compensation (Amendment).*

- (d) any article which enters into or is used in the composition or preparation of any of the foregoing commodities;
- 5 (e) any other goods or articles which the Governor, upon the recommendation of the Minister, declares in the Gazette to be a commodity.

3. (1) (a) The Industrial Arbitration Act, 1912-1935, as amended by subsequent Acts, is amended by omitting from subsection four of section fifty the words "accord-  
10 ing to a scale to be fixed by the court" and by inserting in lieu thereof the words "of such amount or according to such scale as may be prescribed by the regulations."

Amendment of Act No. 17, 1912. Sec. 50 (4). (Costs).

(b) Paragraph (a) of this subsection shall  
15 commence on the first day of January, one thousand nine hundred and thirty-nine.

(2) (a) (1) The Industrial Arbitration (Amendment) Act, 1926, as amended by subsequent Acts is amended by inserting after subsection one of section  
20 twenty-five the following new subsection:—

Amendment of Act No. 14, 1926. Sec. 25.

(1A) Any regulations made under section seventy-two of the Principal Act and in force immediately before the fifteenth day of April, one thousand nine hundred and twenty-six, shall continue in force until  
25 varied, rescinded or amended by regulations made under that section as amended by subsection one of this section.

(Regulations—validation.)

(b) Paragraph (a) of this subsection (2) Subsection one of this section shall be deemed to have commenced upon the fifteenth day of April, one thousand  
30 nine hundred and twenty-six.



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PART III.

AMENDMENTS OF THE WORKERS' COMPENSATION ACT,  
1926-1929.

4. (1) This section shall commence upon the first day  
5 of January, one thousand nine hundred and thirty-nine. Commence-  
ment.

(2) The Workers' Compensation Act, 1926-1929, Amendment  
as amended by subsequent Acts, is amended— of  
Act No. 15,  
1926.

10 (a) (i) by omitting from subsection one of section  
thirty-one the words "which shall consist  
of a chairman and two other members  
appointed from time to time by the  
Governor" and by inserting in lieu there-  
of the words "The Governor may appoint  
such number of persons, being not less  
15 than three and not more than four, as  
he may, from time to time, determine by  
notification published in the Gazette, to be  
members of the Commission.

20 One of such persons shall be by his com-  
mission appointed chairman";

(ii) by omitting subsections two, three, four, five  
and six of the same section, and by inserting  
in lieu thereof the following subsections:—

25 (2) (a) A person to be qualified for  
appointment as a member shall be a District  
Court judge or a practising barrister of not  
less than five years' standing, or a practising  
solicitor of not less than seven years' stand-  
ing.

30 (b) Notwithstanding the provisions of  
paragraph (a) of this subsection, a person  
who has, at any time before the commence-  
ment of section four of the Industrial  
Arbitration and Workers' Compensation  
35 (Amendment) Act, 1938, held the office of  
deputy-chairman of the Commission shall be  
qualified for appointment under this section  
as a member.

(3).



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*Industrial Arbitration and Workers' Compensation (Amendment).*

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5 (3) (a) Each member shall, subject to this section, hold his office during ability and good behaviour, shall have the same rank, title, status and precedence, and the same salary, pension and other rights as a District Court judge, and shall be removable from office in the same manner only as a District Court judge is by law liable to be removed from his office.

10 (b) Each member shall retire on the day on which he attains the age of seventy years unless he is granted retiring leave, in which case he shall retire on the expiration of such leave.

15 (4) The Governor may, upon a report by the Commission that any member is prevented by any cause from attending to any of the duties of his office, or that the Commission is unable to cope promptly and expeditiously with the matters in the Commission's list, appoint some person qualified to be appointed a member to act temporarily as an additional member of the Commission, and such person shall, while so acting, be  
20 deemed to be a member of the Commission.  
25

(5) On appointment the members of the Commission shall take the oath of allegiance and the judicial oath.

30 This subsection extends to a person appointed to act temporarily as a member.

35 (6) The members other than the chairman shall have seniority according to the dates of their commissions, or, when the commissions of two or more of them bear the same date, according to the precedence assigned to them by their commissions, or, failing such assignment, according to the order of their being sworn.



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*Industrial Arbitration and Workers' Compensation (Amendment).*

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5 (6A) (a) Subject to such limitations and exceptions as may be prescribed by the regulations made by the Governor under this Act, the jurisdiction, powers and authorities conferred on the Commission by this Act may be exercised by any single member of the Commission.

10 (b) Where a single member exercises any jurisdiction, powers or authorities under this subsection, the Commission shall be duly constituted by such single member.

(c) More than one sitting of the Commission may be held at the same time.

15 (d) Sitzings of the Commission shall be arranged by the chairman.

20 (6B) (a) In case of the absence of the chairman or of his inability to perform the duties of his office, all the duties and powers of the chairman shall, during such absence or disability, devolve upon the senior member.

25 (b) In case of the absence or inability of any member upon whom such duties and powers devolve they shall, during such absence or inability, devolve upon the member who is next in seniority.

30 (6c) The person who, immediately before the commencement of section four of the Industrial Arbitration and Workers' Compensation (Amendment) Act, 1938, was chairman of the Commission, shall continue to hold office as chairman and as a member of the Commission in all respects as if the provisions of this section (other than subsection two) had been in force at the date of his appointment.

(b)



*Industrial Arbitration and Workers' Compensation (Amendment).*

- (b) (i) by omitting subsections two, three and four of section thirty-two and by inserting in lieu thereof the following subsections:—

Sec. 32.  
(Body  
corporate.)

5 (2) The Governor may, from time to time, by notification in the Gazette, fix the number of members which shall constitute a quorum for the purposes of meetings of the Commission, and may, from time to time, alter or rescind any such notification by a further notification published in the Gazette.

10 (3) Any meeting of the Commission at which a quorum is present shall have all the powers and authority by this Act conferred upon the Commission.

15 (ii) by omitting subsections seven, eight, nine and ten of the same section;

- (c) by inserting in subsection two of section thirty-three after the words "Public Service Act, 1902," the words "and the Chairman of the Commission shall be the 'permanent head' within the meaning of the said Act and any Act amending the same."

Sec. 33 (2)  
(c).  
(Permanent  
head.)

25 (3) ~~(a)~~ Each member of The Workers' Compensation Commission (other than the chairman and the deputy-chairman) who held office as such member immediately before the commencement of this section shall, on such commencement, cease to hold such office, but shall be eligible to be appointed by The Workers' Compensation Commission to the staff of the Commission for a period expiring on the date upon which his term of office as a member of The Workers' Compensation Commission would have expired if this section had not been enacted.

Retiring  
members.

30 (b) The provisions of the Public Service Act, 1902, as amended by subsequent Acts, shall not apply to or in respect of any such appointment, nor shall a person so appointed be subject to the said Act as so amended during the period of his appointment.

35 (c) A person appointed under this subsection shall, during the period of his office on the staff of The Workers' Compensation Commission, be entitled to receive



*Industrial Arbitration and Workers' Compensation (Amendment).*

receive a salary at a rate not less than the rate paid to him as a member of The Workers' Compensation Commission immediately before the commencement of this section.

5 (d) A person appointed under this subsection shall be deemed to have vacated his office if he—

(i) engages in New South Wales during his period of office in any paid employment outside the duties of his office;

10 (ii) becomes bankrupt, compounds with his creditors or makes an assignment of his salary for their benefit;

15 (iii) absents himself from duty except on leave granted by The Workers' Compensation Commission. No such leave for a period exceeding fourteen days shall be granted except with the approval of the Governor;

(iv) becomes incapable of performing his duties;

20 (v) resigns his office by writing under his hand addressed to The Workers' Compensation Commission.

25 (e) If any person eligible to be appointed under this subsection to the staff of the Workers' Compensation Commission is not so appointed within three months after the commencement of this section, he shall receive such compensation as he would have been entitled to had his services as a member of The Workers' Compensation Commission been dispensed with at the commencement of this section otherwise than according to law.

30 Such compensation shall be paid out of the fund.  
receive such compensation as he would have been entitled to had his services as a member of The Workers' Compensation Commission been dispensed with at the commencement of this section otherwise than according to law. Such compensation  
35 shall be paid out of the fund.

(4) Nothing contained in this section shall pre-  
judice or affect in any way the continuity of the body  
corporate constituted under section thirty-two of the  
Workers'

Continuity  
of body  
corporate.



*Industrial Arbitration and Workers' Compensation (Amendment).*

Workers' Compensation Act, 1926, under the name of The Workers' Compensation Commission of New South Wales, but the same shall continue notwithstanding the provisions of this section.

- 5 (5) Where the examination, hearing or determination of any matter or question has, before the commencement of this section, been commenced before The Workers' Compensation Commission as constituted by the chairman and one other member, or by the deputy-  
10 chairman and one other member, but has not been completed at such commencement, such examination, hearing or determination may be continued and completed by The Workers' Compensation Commission as constituted by the chairman sitting alone or by that member sitting  
15 alone who was before the commencement of this section the deputy-chairman, as the case may be.

Proceedings  
pending.

5. (1) The Workers' Compensation Act, 1926-1929, as amended by subsequent Acts, is further amended by inserting at the end of section sixty-three the following  
20 new subsections:—

Further  
amendment  
of Act  
No. 15, 1926.  
Sec. 63.  
(Negli-  
gence.)

- (3) (a) Where any payment by way of compensation under this Act in respect of the injury is received by the worker after the date upon which the assent of His Majesty to the Industrial Arbitration and Workers' Compensation (Amendment) Act, 1938, is signified, no proceedings against the employer, independently of this Act, in respect of the injury, shall be maintainable by any person whomsoever unless such proceedings are instituted within  
25 six months after the date upon which such payment was so received by the worker, or where more payments than one have been so received by the worker, unless such proceedings are instituted within six months after the date upon which the first of such  
30 payments was so received by the worker. **But where such proceedings are proceedings which, by reason of the provisions of any other Act, cannot be instituted until the expiration of a specified period after notice in writing has been served on or delivered or given to the employer, the**  
35 **period**



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*Industrial Arbitration and Workers' Compensation (Amendment).*

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period of six months referred to in the foregoing provisions of this paragraph shall be increased by such specified period.

5       The period within which proceedings are to be instituted as prescribed in the foregoing provisions of this paragraph, is in this paragraph referred to as the "prescribed period":

10       Provided that where an application is made to a judge of the Supreme Court in accordance with rules of court for an extension of the ~~period of six months specified in this subsection,~~ **prescribed period** the judge may, if he is satisfied that sufficient cause has been shown, ~~and~~ **or** that having regard to all the circumstances of the case, it would be reasonable so to do,  
15       make an order for extension of the ~~said~~ **prescribed** period for such further period and subject to such terms and conditions (if any) as may be set out in the order.

20       Such application for extension may be made either within the prescribed period or at any time within six months thereafter.

25       (b) This subsection shall apply to and in respect of any case where the injury was received before the date upon which such assent is signified, as well as to and in respect of any case where the injury is received after such date.

(c) Nothing in this subsection shall affect the operation of section 63A of this Act.

30       (4) (a) Where the injury was received before the date upon which the assent of His Majesty to the Industrial Arbitration and Workers' Compensation (Amendment) Act, 1938, is signified, and before such date—

35       (i) any payment by way of compensation under this Act in respect of the injury was received by the worker; or

(ii) any award, order or determination relating to compensation under this Act in respect of the injury was made by the Commission,

no



*Industrial Arbitration and Workers' Compensation (Amendment).*

no proceedings against the employer independently of this Act in respect of the injury shall be maintainable by any person whomsoever unless such proceedings are instituted within twelve months after the date upon which such assent is signified.

(b) Nothing in this subsection shall affect the operation of subsection three of this section or of section 63A of this Act.

(5) Where judgment is obtained against an employer independently of this Act, in respect of the injury any payments by way of compensation under this Act in respect of the injury, whether made before or after the date upon which the assent of His Majesty to the Industrial Arbitration and Workers' Compensation (Amendment) Act, 1938, is signified, shall be, to the extent of such payments, a satisfaction of the judgment.

(2) The enactment of subsection one of this section shall not be construed to entitle a worker to proceed independently of the Workers' Compensation Act, 1926-1938, in any case where he would not have been entitled so to proceed if that subsection had not been enacted.

(3) The Workers' Compensation Act, 1926-1929, as amended by subsequent Acts, is further amended by inserting next after section sixty-three the following new section:—

Further amendment of Act No. 15, 1926. New s. 63A.

63A. (1) This section shall apply to—

Notice of election.

(a) any application by a worker for the determination by the Commission of any question relating to the liability of his employer to pay compensation under this Act in respect of an injury; and

(b) any application by a worker for a determination by the Commission relating to the investment, application or other dealing with



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*Industrial Arbitration and Workers' Compensation (Amendment).*

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with any sum paid into the office of the  
Commission under section fifty eight of this  
Act.

5 (2) An application to which this section  
applies shall not be filed unless there is endorsed  
thereon or annexed thereto a written statement, in  
this section referred to as the "notice of election."

10 (3) (a) The notice of election shall be signed  
by the applicant, and the signature of the applicant  
shall be witnessed by the applicant's solicitor or  
agent named in the application, or by any other  
solicitor (not being the solicitor for the employer  
or the solicitor for the employer's insurer) or by  
15 any clerk of petty sessions or by any officer of the  
staff of the Commission authorised in writing in  
that behalf by the Commission or any member  
thereof, either generally or for any particular case  
or class of cases.

20 In this paragraph the word "agent" shall mean the  
secretary or authorised officer of any trade union or indus-  
trial union registered under the Industrial Arbitration Act,  
1912, as amended, or the secretary or branch secretary  
or other person authorised by the secretary of any  
25 organisation of employees registered under the Common-  
wealth Conciliation and Arbitration Act, 1904, as  
amended.

30 (b) Where an application to which this  
section applies is made by an infant by his next  
friend, the notice of election shall be signed by such  
next friend and, in such case, the notice of election  
shall have the same force and effect as if the infant  
had been of full age and had personally signed the  
same.

35 The signature of such next friend shall be witnessed as  
in the preceding paragraph mentioned and the notice of  
election so signed by such next friend shall in all other  
respects be subject to the provisions of this section.

(4)



*Industrial Arbitration and Workers' Compensation (Amendment).*

(4) The notice of election shall be in or to the effect of the following form:—

I ..... being the applicant  
in (*here insert particulars sufficient to identify the*  
5 *application*) .....  
.....  
do hereby state as follows:—

10 (1) I am aware that if the injury in respect of which the said application is made was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible, I may, at my option, proceed under the Workers' Compensation Act, 1926-1938, or independently of that Act.

15 (2) I do not desire to proceed independently of the said Act in respect of the injury.

(3) I elect to proceed under the said Act in respect of the injury.

Dated this ..... day of ..... 19 ....  
20 .....  
(Signature)

I, the witness to the above signature, certify that I am not the solicitor for the employer or the solicitor for the employer's insurer.

25 .....  
(Signature of witness.)

.....  
.....  
(Address of witness and capacity in which he signs  
30 as witness.)

(5) In any case to which the provisions of subsection two of section sixty-three of this Act apply a notice of election, endorsed on or annexed  
to



*Industrial Arbitration and Workers' Compensation (Amendment).*

to an application in accordance with the requirements of this section, shall—

- 5 (a) constitute a final election by the worker, in pursuance of the option conferred by subsection two of section sixty-three of this Act, to proceed under this Act in respect of the injury;
- 10 (b) be a valid defence to any legal proceedings by any person whomsoever against the employer in respect of the injury other than proceedings under this Act.

Sydney: David Harold Paisley, Government Printer—1938.

[1s. 1d.]

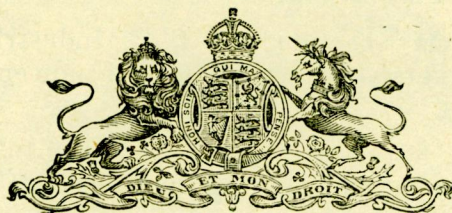


*This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY,  
and, having this day passed, is now ready for presentation to the  
LEGISLATIVE COUNCIL for its concurrence.*

W. R. McCOURT,  
*Clerk of the Legislative Assembly.*

*Legislative Assembly Chamber,  
Sydney, 8 December, 1938.*

## **New South Wales.**



ANNO SECUNDO

## **GEORGII VI REGIS.**

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Act No.     , 1938.

An Act to make further provisions in relation to the constitution of the Industrial Commission of New South Wales and The Workers' Compensation Commission of New South Wales; to make provisions in relation to the investigation of the rents of certain premises and of the prices of certain commodities and in relation to the fixation of the prices of certain products, commodities and services; to validate certain matters; to amend the Industrial Arbitration Act, 1912-1935, the Industrial Arbitration (Amendment) Act, 1926, the Workers' Compensation Act, 1926-1929, and certain other Acts in certain respects; and for purposes connected therewith.



*Industrial Arbitration and Workers' Compensation (Amendment).*

BE it enacted by the King's Most Excellent Majesty,  
by and with the advice and consent of the Legis-  
lative Council and Legislative Assembly of New South  
Wales in Parliament assembled, and by the authority of  
the same, as follows :—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Industrial  
Arbitration and Workers' Compensation (Amendment)  
Act, 1938." Short title,  
citation and  
division  
into Parts.

(2) (a) The Industrial Arbitration Act, 1912-1935,  
as amended by subsequent Acts and by this Act, may be  
cited as the Industrial Arbitration Act, 1912-1938.

(b) The Industrial Arbitration (Amendment)  
Act, 1926, as amended by subsequent Acts and by this  
Act, may be cited as the Industrial Arbitration (Amend-  
ment) Act, 1926-1938.

(c) The Workers' Compensation Act, 1926-  
1929, as amended by subsequent Acts and by this Act, may  
be cited as the Workers' Compensation Act, 1926-1938.

(3) This Act is divided into Parts as follows:—

PART I.—PRELIMINARY.

PART II.—AMENDMENTS OF THE INDUSTRIAL ARBITRA-  
TION ACTS.

PART III.—AMENDMENTS OF THE WORKERS' COM-  
PENSATION ACT, 1926-1929.

PART II.

AMENDMENTS OF THE INDUSTRIAL ARBITRATION ACTS.

2. (1) This section shall commence upon a date to be  
appointed by the Governor and notified by proclamation  
published in the Gazette. Commence-  
ment.

(2)



Industrial Arbitration and Workers' Compensation (Amendment).

(2) (a) The Industrial Arbitration (Amendment) Act, 1926, as amended by subsequent Acts, is amended—

Amendment  
of Act No.  
14, 1926.

- 5 (i) by omitting from subsection one of section six the word "four" and by inserting in lieu thereof the words "not less than five and not more than six";
- (ii) by inserting in subsection two of the same section immediately before the word "barrister" the word "practising";
- 10 (iii) by inserting in the same subsection immediately before the word "solicitor" the word "practising."

Sec. 6 (1).  
(Commis-  
sion.)

(b) The persons who, immediately before the commencement of this Part, were President and other  
15 members of the Commission shall continue to hold office as President and members of the Commission in all respects as if the amendment made by subparagraph (i) of paragraph (a) of this subsection had been in force at the date of their respective appointments, and sub-  
20 paragraphs (ii) and (iii) of that paragraph had not been enacted.

(c) This subsection shall be read and construed with the Industrial Arbitration (Amendment) Act, 1926, as amended by subsequent Acts.

25 (3) The Industrial Arbitration Act, 1912-1935, as amended by subsequent Acts, is amended—

Amendment  
of Act No.  
17, 1912.

- (a) (i) by omitting from paragraph (e) of section eighty-two the words "To report on any matter referred to as to" and by inserting  
30 in lieu thereof the words "To investigate and report on any matter referred to it by the Minister as to";
- (ii) by inserting in the same paragraph after the word "commodities" wherever occurring  
35 the words "or services";

Sec. 82.  
(Prices.)

(b)



*Industrial Arbitration and Workers' Compensation (Amendment).*

(b) by inserting after the same paragraph the following new paragraph:—

5 (e1) To investigate and report on any matter referred to it by the Minister as to the rents or increases in rents of premises which are leased or let, either wholly or partially, as dwelling-houses, or as shops, or partly as a dwelling-house and partly as a shop, or of any class of such premises defined by the Minister in the reference; and for the purposes of such reference a class may be defined in relation to the rental of the premises, the value of the premises, the purpose or mode of user of the premises, the locality in which the premises are situate, or any other circumstance whatsoever;

(c) by inserting at the end of section eighty-two the following new subsection:—

20 (2) In subsection one of this section "commodities" means any of the following:—

- (a) any article of food (other than eggs, milk and butter);
- (b) any article of clothing or apparel;
- 25 (c) any building material;
- (d) any article which enters into or is used in the composition or preparation of any of the foregoing commodities;
- 30 (e) any other goods or articles which the Governor, upon the recommendation of the Minister, declares in the Gazette to be a commodity.

3. (1) (a) The Industrial Arbitration Act, 1912-1935, as amended by subsequent Acts, is amended by omitting from subsection four of section fifty the words "according to a scale to be fixed by the court" and by inserting in lieu thereof the words "of such amount or according to such scale as may be prescribed by the regulations."

Amendment of Act No. 17, 1912. Sec. 50 (4). (Costs.)

(b)



*Industrial Arbitration and Workers' Compensation (Amendment).*

(b) Paragraph (a) of this subsection shall commence on the first day of January, one thousand nine hundred and thirty-nine.

5 (2) (a) The Industrial Arbitration (Amendment) Act, 1926, as amended by subsequent Acts, is amended by inserting after subsection one of section twenty-five the following new subsection:—

Amendment  
of  
Act No. 14,  
1926.  
Sec. 25.  
(Regulations  
—valida-  
tion.)

10 (1A) Any regulations made under section seventy-two of the Principal Act and in force immediately before the fifteenth day of April, one thousand nine hundred and twenty-six, shall continue in force until varied, rescinded or amended by regulations made under that section as amended by subsection one of this section.

15 (b) Paragraph (a) of this subsection shall be deemed to have commenced upon the fifteenth day of April, one thousand nine hundred and twenty-six.

PART III.

AMENDMENTS OF THE WORKERS' COMPENSATION ACT,  
1926-1929.

20 4. (1) This section shall commence upon the first day of January, one thousand nine hundred and thirty-nine.

Commence-  
ment.

(2) The Workers' Compensation Act, 1926-1929, as amended by subsequent Acts, is amended—

25 (a) (i) by omitting from subsection one of section thirty-one the words "which shall consist of a chairman and two other members appointed from time to time by the Governor" and by inserting in lieu thereof the words "The Governor may appoint such number of persons, being not less than three and not more than four, as he may, from time to time, determine by notification published in the Gazette, to be members of the Commission.

Amendment  
of  
Act No. 15,  
1926.  
Sec. 31.  
(Commis-  
sion.)

One



*Industrial Arbitration and Workers' Compensation (Amendment).*

One of such persons shall be by his commission appointed chairman”;

(ii) by omitting subsections two, three, four, five and six of the same section, and by inserting in lieu thereof the following subsections:—

5

(2) (a) A person to be qualified for appointment as a member shall be a District Court judge or a practising barrister of not less than five years' standing, or a practising solicitor of not less than seven years' standing.

10

(b) Notwithstanding the provisions of paragraph (a) of this subsection, a person who has, at any time before the commencement of section four of the Industrial Arbitration and Workers' Compensation (Amendment) Act, 1938, held the office of deputy-chairman of the Commission shall be qualified for appointment under this section as a member.

15

20

(3) (a) Each member shall, subject to this section, hold his office during ability and good behaviour, shall have the same rank, title, status and precedence, and the same salary, pension and other rights as a District Court judge, and shall be removable from office in the same manner only as a District Court judge is by law liable to be removed from his office.

25

(b) Each member shall retire on the day on which he attains the age of seventy years unless he is granted retiring leave, in which case he shall retire on the expiration of such leave.

30

(4) The Governor may, upon a report by the Commission that any member is prevented by any cause from attending to any of

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*Industrial Arbitration and Workers' Compensation (Amendment).*

5 of the duties of his office, or that the Commission is unable to cope promptly and expeditiously with the matters in the Commission's list, appoint some person qualified to be appointed a member to act temporarily as an additional member of the Commission, and such person shall, while so acting, be deemed to be a member of the Commission.

10 (5) On appointment the members of the Commission shall take the oath of allegiance and the judicial oath.

This subsection extends to a person appointed to act temporarily as a member.

15 (6) The members other than the chairman shall have seniority according to the dates of their commissions, or, when the commissions of two or more of them bear the same date, according to the precedence assigned to them by their commissions, or, failing such assignment, according to the order of their being sworn.

25 (6A) (a) Subject to such limitations and exceptions as may be prescribed by the regulations made by the Governor under this Act, the jurisdiction, powers and authorities conferred on the Commission by this Act may be exercised by any single member of the Commission.

30 (b) Where a single member exercises any jurisdiction, powers or authorities under this subsection, the Commission shall be duly constituted by such single member.

(c) More than one sitting of the Commission may be held at the same time.

35 (d) Sittings of the Commission shall be arranged by the chairman.

(6B)



Industrial Arbitration and Workers' Compensation (Amendment).

5 (6B) (a) In case of the absence of the chairman or of his inability to perform the duties of his office, all the duties and powers of the chairman shall, during such absence or disability, devolve upon the senior member.

10 (b) In case of the absence or inability of any member upon whom such duties and powers devolve they shall, during such absence or inability, devolve upon the member who is next in seniority.

15 (6c) The person who, immediately before the commencement of section four of the Industrial Arbitration and Workers' Compensation (Amendment) Act, 1938, was chairman of the Commission, shall continue to hold office as chairman and as a member of the Commission in all respects as if the provisions of this section (other than subsection two) had been in force at the date of his appointment.

20

(b) (i) by omitting subsections two, three and four of section thirty-two and by inserting in lieu thereof the following subsections:—

Sec. 32.  
(Body corporate.)

25 (2) The Governor may, from time to time, by notification in the Gazette, fix the number of members which shall constitute a quorum for the purposes of meetings of the Commission, and may, from time to time, alter or rescind any such notification by a further notification published in the Gazette.

30

35 (3) Any meeting of the Commission at which a quorum is present shall have all the powers and authority by this Act conferred upon the Commission.

(ii) by omitting subsections seven, eight, nine and ten of the same section;

(c)



*Industrial Arbitration and Workers' Compensation (Amendment).*

5 (c) by inserting in subsection two of section thirty-three after the words "Public Service Act, 1902," the words "and the Chairman of the Commission shall be the 'permanent head' within the meaning of the said Act and any Act amending the same."

Sec. 33 (2)  
(c).  
(Permanent head.)

10 (3) (a) Each member of The Workers' Compensation Commission (other than the chairman and the deputy-chairman) who held office as such member immediately before the commencement of this section shall, on such commencement, cease to hold such office, but shall be eligible to be appointed by The Workers' Compensation Commission to the staff of the Commission for a period expiring on the date upon which his term of office as a member of The Workers' Compensation Commission would have expired if this section had not been enacted.

Retiring members.

20 (b) The provisions of the Public Service Act, 1902, as amended by subsequent Acts, shall not apply to or in respect of any such appointment, nor shall a person so appointed be subject to the said Act as so amended during the period of his appointment.

25 (c) A person appointed under this subsection shall, during the period of his office on the staff of The Workers' Compensation Commission, be entitled to receive a salary at a rate not less than the rate paid to him as a member of The Workers' Compensation Commission immediately before the commencement of this section.

(d) A person appointed under this subsection shall be deemed to have vacated his office if he—

30 (i) engages in New South Wales during his period of office in any paid employment outside the duties of his office;

35 (ii) becomes bankrupt, compounds with his creditors or makes an assignment of his salary for their benefit;

40 (iii) absents himself from duty except on leave granted by The Workers' Compensation Commission. No such leave for a period exceeding fourteen days shall be granted except with the approval of the Governor;

(iv)



*Industrial Arbitration and Workers' Compensation (Amendment).*

- (iv) becomes incapable of performing his duties;
- (v) resigns his office by writing under his hand addressed to The Workers' Compensation Commission.

5 (e) If any person eligible to be appointed under this subsection to the staff of The Workers' Compensation Commission is not so appointed within three months after the commencement of this section, he shall receive such compensation as he would have been entitled to had  
 10 his services as a member of The Workers' Compensation Commission been dispensed with at the commencement of this section otherwise than according to law.

Such compensation shall be paid out of the fund.

15 (4) Nothing contained in this section shall pre-  
 judice or affect in any way the continuity of the body corporate constituted under section thirty-two of the Workers' Compensation Act, 1926, under the name of The Workers' Compensation Commission of New South Wales, but the same shall continue notwithstanding the  
 20 provisions of this section.

Continuity  
of body  
corporate.

(5) Where the examination, hearing or determination of any matter or question has, before the commencement of this section, been commenced before The Workers' Compensation Commission as constituted by  
 25 the chairman and one other member, or by the deputy-chairman and one other member, but has not been completed at such commencement, such examination, hearing or determination may be continued and completed by The Workers' Compensation Commission as constituted by  
 30 the chairman sitting alone or by that member sitting alone who was before the commencement of this section the deputy-chairman, as the case may be.

Proceedings  
pending.

5. (1) The Workers' Compensation Act, 1926-1929, as amended by subsequent Acts, is further amended by  
 35 inserting at the end of section sixty-three the following new subsections:—

Further  
amendment  
of Act  
No. 15, 1926.  
Sec. 63.

(3) (a) Where any payment by way of compensation under this Act in respect of the injury is received by the worker after the date upon which  
 40 the assent of His Majesty to the Industrial Arbitration and Workers' Compensation (Amendment) Act,

(Negli-  
gence.)

1938,



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*Industrial Arbitration and Workers' Compensation (Amendment).*

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1938, is signified, no proceedings against the employer, independently of this Act, in respect of the injury, shall be maintainable by any person whomsoever unless such proceedings are instituted within  
5 six months after the date upon which such payment was so received by the worker, or where more payments than one have been so received by the worker, unless such proceedings are instituted within six  
10 months after the date upon which the first of such payments was so received by the worker:

Provided that where an application is made to a judge of the Supreme Court in accordance with rules of court for an extension of the period of six months specified in this subsection, the judge may, if he is  
15 satisfied that sufficient cause has been shown, and that having regard to all the circumstances of the case, it would be reasonable so to do, make an order for extension of the said period for such further period and subject to such terms and conditions (if  
20 any) as may be set out in the order.

(b) This subsection shall apply to and in respect of any case where the injury was received before the date upon which such assent is signified, as well as to and in respect of any case where the  
25 injury is received after such date.

(c) Nothing in this subsection shall affect the operation of section 63A of this Act.

(4) (a) Where the injury was received before the date upon which the assent of His Majesty to the Industrial Arbitration and Workers' Compensation  
30 (Amendment) Act, 1938, is signified, and before such date—

(i) any payment by way of compensation under this Act in respect of the injury was received  
35 by the worker; or

(ii) any award, order or determination relating to compensation under this Act in respect of the injury was made by the Commission,

no



Industrial Arbitration and Workers' Compensation (Amendment).

5 no proceedings against the employer independently of this Act in respect of the injury shall be maintainable by any person whomsoever unless such proceedings are instituted within twelve months after the date upon which such assent is signified.

(b) Nothing in this subsection shall affect the operation of subsection three of this section or of section 63A of this Act.

10 (5) Where judgment is obtained against an employer independently of this Act, in respect of the injury any payments by way of compensation under this Act in respect of the injury, whether made before or after the date upon which the assent of His Majesty to the Industrial Arbitration and Workers' 15 Compensation (Amendment) Act, 1938, is signified, shall be, to the extent of such payments, a satisfaction of the judgment.

(2) The enactment of subsection one of this section shall not be construed to entitle a worker to proceed 20 independently of the Workers' Compensation Act, 1926-1938, in any case where he would not have been entitled so to proceed if that subsection had not been enacted.

(3) The Workers' Compensation Act, 1926-1929, as amended by subsequent Acts, is further amended by inserting next after section sixty-three the following new section:—

Further amendment of Act No. 15, 1926. New s. 63A.

63A. (1) This section shall apply to—

Notice of election.

30 (a) any application by a worker for the determination by the Commission of any question relating to the liability of his employer to pay compensation under this Act in respect of an injury; and

35 (b) any application by a worker for a determination by the Commission relating to the investment, application or other dealing with any sum paid into the office of the Commission under section fifty-eight of this Act.

(2)



*Industrial Arbitration and Workers' Compensation (Amendment).*

(2) An application to which this section applies shall not be filed unless there is endorsed thereon or annexed thereto a written statement, in this section referred to as the "notice of election."

5 (3) (a) The notice of election shall be signed by the applicant, and the signature of the applicant shall be witnessed by the applicant's solicitor or agent named in the application, or by any other  
10 solicitor (not being the solicitor for the employer or the solicitor for the employer's insurer) or by any clerk of petty sessions or by any officer of the staff of the Commission authorised in writing in that behalf by the Commission or any member thereof, either generally or for any particular case  
15 or class of cases.

(b) Where an application to which this section applies is made by an infant by his next friend, the notice of election shall be signed by such  
20 next friend and, in such case, the notice of election shall have the same force and effect as if the infant had been of full age and had personally signed the same.

(4) The notice of election shall be in or to the effect of the following form:—

25 I ..... being the applicant in (*here insert particulars sufficient to identify the application*) .....  
.....  
do hereby state as follows:—

30 (1) I am aware that if the injury in respect of which the said application is made was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible, I may, at my option, proceed under  
35 the Workers' Compensation Act, 1926-1938, or independently of that Act.

(2) I do not desire to proceed independently of the said Act in respect of the injury.

(3)



*Industrial Arbitration and Workers' Compensation (Amendment).*

(3) I elect to proceed under the said Act in respect of the injury.

Dated this ..... day of ..... 19 ....

5

(Signature)

I, the witness to the above signature, certify that I am not the solicitor for the employer or the solicitor for the employer's insurer.

10

(Signature of witness.)

(Address of witness and capacity in which he signs as witness.)

15

(5) In any case to which the provisions of subsection two of section sixty-three of this Act apply a notice of election, endorsed on or annexed to an application in accordance with the requirements of this section, shall—

20

(a) constitute a final election by the worker, in pursuance of the option conferred by subsection two of section sixty-three of this Act, to proceed under this Act in respect of the injury;

25

(b) be a valid defence to any legal proceedings by any person whomsoever against the employer in respect of the injury other than proceedings under this Act.











No. , 1938.

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## A BILL

To make further provisions in relation to the constitution of the Industrial Commission of New South Wales and The Workers' Compensation Commission of New South Wales; to make provisions in relation to the investigation of the rents of certain premises and of the prices of certain commodities and in relation to the fixation of the prices of certain products, commodities and services; to validate certain matters; to amend the Industrial Arbitration Act, 1912-1935, the Industrial Arbitration (Amendment) Act, 1926, the Workers' Compensation Act, 1926-1929, and certain other Acts in certain respects; and for purposes connected therewith.

[MR. RICHARDSON;—6 *December*, 1938.]

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**B**E it enacted by the King'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 :—

5

## PART I.

### PRELIMINARY.

Short title,  
citation and  
division  
into Parts.

**1.** (1) This Act may be cited as the "Industrial Arbitration and Workers' Compensation (Amendment) Act, 1938."

10

(2) (a) The Industrial Arbitration Act, 1912-1935, as amended by subsequent Acts and by this Act, may be cited as the Industrial Arbitration Act, 1912-1938.

(b) The Industrial Arbitration (Amendment) Act, 1926, as amended by subsequent Acts and by this Act, may be cited as the Industrial Arbitration (Amendment) Act, 1926-1938.

15

(c) The Workers' Compensation Act, 1926-1929, as amended by subsequent Acts and by this Act, may be cited as the Workers' Compensation Act, 1926-1938.

20

(3) This Act is divided into Parts as follows :—

PART I.—PRELIMINARY.

PART II.—AMENDMENTS OF THE INDUSTRIAL ARBITRATION ACTS.

PART III.—AMENDMENTS OF THE WORKERS' COMPENSATION ACT, 1926-1929.

25

## PART II.

### AMENDMENTS OF THE INDUSTRIAL ARBITRATION ACTS.

Commence-  
ment.

**2.** (1) This section shall commence upon a date to be appointed by the Governor and notified by proclamation published in the Gazette.

(2)



(2) (a) The Industrial Arbitration (Amendment) Act, 1926, as amended by subsequent Acts, is amended by omitting from subsection one of section six the word "four" and by inserting in lieu thereof the word "six."

Amendment  
of Act No.  
14, 1926.  
Sec. 6 (1).  
(Commis-  
sion.)

5 (b) The persons who, immediately before the commencement of this Part, were President and other members of the Commission shall continue to hold office as President and members of the Commission in all respects as if the amendment made by paragraph (a) of  
10 this subsection had been in force at the date of their respective appointments.

(c) This subsection shall be read and construed with the Industrial Arbitration (Amendment) Act, 1926, as amended by subsequent Acts.

15 (3) The Industrial Arbitration Act, 1912-1935, as amended by subsequent Acts, is amended—

Amendment  
of Act No.  
17, 1912.

(a) by omitting from paragraph (e) of section eighty-two the words "To report on any matter referred to as to" and by inserting in lieu  
20 thereof the words "To investigate and report on any matter referred to it by the Minister as to";

Sec. 82.  
(Prices.)

(b) by inserting after the same paragraph the following new paragraph:—

25 (e1) To investigate and report on any matter referred to it by the Minister as to the rents or increases in rents of premises which are leased or let, either wholly or  
30 partially, as dwelling-houses, or as shops, or partly as a dwelling-house and partly as a shop, or of any class of such premises defined by the Minister in the reference; and for the purposes of such reference a class may be defined in relation to the  
35 rental of the premises, the value of the premises, the purpose or mode of user of the premises, the locality in which the premises are situate, or any other circumstance whatsoever;

(c)



(c) by inserting at the end of section eighty-two the following new subsection:—

(2) In subsection one of this section "commodities" means any of the following:—

- (a) any article of food (other than eggs, milk and butter); 5
- (b) any article of clothing or apparel;
- (c) any building material;
- (d) any article which enters into or is used in the composition or preparation of 10 any of the foregoing commodities;
- (e) any other goods or articles which the Governor, upon the recommendation of the Minister, declares in the Gazette to be a commodity. 15

Amendment  
of  
Act No. 17,  
1912.  
Sec. 50 (4).  
(Costs.)

3. (1) (a) The Industrial Arbitration Act, 1912-1935, as amended by subsequent Acts, is amended by omitting from subsection four of section fifty the words "according to a scale to be fixed by the court" and by inserting in lieu thereof the words "of such amount or according to such scale as may be prescribed by the regulations." 20

(b) Paragraph (a) of this subsection shall commence on the first day of January, one thousand nine hundred and thirty-nine.

Amendment  
of  
Act No. 14,  
1926.  
Sec. 25.  
(Regulations  
—valida-  
tion.)

(2) (a) The Industrial Arbitration (Amendment) Act, 1926, as amended by subsequent Acts, is amended by inserting after subsection one of section twenty-five the following new subsection:— 25

(1A) Any regulations made under section seventy-two of the Principal Act and in force immediately before the fifteenth day of April, one thousand nine hundred and twenty-six, shall continue in force until varied, rescinded or amended by regulations made under that section as amended by subsection one of this section. 30

(b) Paragraph (a) of this subsection shall be deemed to have commenced upon the fifteenth day of April, one thousand nine hundred and twenty-six. 35



PART III.

AMENDMENTS OF THE WORKERS' COMPENSATION ACT,  
1926-1929.

4. (1) This section shall commence upon the first day  
5 of January, one thousand nine hundred and thirty-nine.

Commence-  
ment.

(2) The Workers' Compensation Act, 1926-1929,  
as amended by subsequent Acts, is amended—

Amendment  
of  
Act No. 15,  
1926.

10 (a) (i) by omitting from subsection one of section  
thirty-one the words "which shall consist  
of a chairman and two other members  
appointed from time to time by the  
Governor" and by inserting in lieu there-  
of the words "The Governor may appoint  
such number of persons, being not less  
15 than three and not more than four, as  
he may, from time to time, determine by  
notification published in the Gazette, to be  
members of the Commission.

Sec. 31.  
(Commis-  
sion.)

20 One of such persons shall be by his com-  
mission appointed chairman";

(ii) by omitting from paragraph (a) of sub-  
section two of the same section the words  
"The chairman" and by inserting in lieu  
thereof the words "Each member";

25 (iii) by inserting in the same paragraph after  
the word "court" the words "and shall be  
removable from office in the same manner  
only as a judge of the district court is by  
law liable to be removed from his office";

30 (iv) by omitting paragraph (b) of subsection  
two of the same section;

(v) by omitting subsections three, four, five  
and six of the same section, and by inserting  
in lieu thereof the following subsections:—

35 (3) The Governor may, upon a report by  
the Commission that any member is pre-  
vented by any cause from attending to any  
of



of the duties of his office, or that the Commission is unable to cope promptly and expeditiously with the matters in the Commission's list, appoint some person qualified to be appointed a member to act temporarily 5  
as an additional member of the Commission, and such person shall, while so acting, be deemed to be a member of the Commission.

(4) On appointment the members of the Commission shall take the oath of allegiance 10  
and the judicial oath.

This subsection extends to a person appointed to act temporarily as a member.

(5) The members other than the chairman shall have seniority according to the 15  
dates of their commissions, or, when the commissions of two or more of them bear the same date, according to the precedence assigned to them by their commissions, or, failing such assignment, according to the 20  
order of their being sworn.

(6) (a) Subject to such limitations and exceptions as may be prescribed by the regulations made by the Governor under this Act, the jurisdiction, powers and authorities 25  
conferred on the Commission by this Act may be exercised by any single member of the Commission.

(b) Where a single member exercises any jurisdiction, powers or authorities 30  
under this subsection, the Commission shall be duly constituted by such single member.

(c) More than one sitting of the Commission may be held at the same time.

(d) Sitzings of the Commission 35  
shall be arranged by the chairman.

(6A)



5 (6A) (a) In case of the absence of the chairman or of his inability to perform the duties of his office, all the duties and powers of the chairman shall, during such absence or disability, devolve upon the senior member.

10 (b) In case of the absence or inability of any member upon whom such duties and powers devolve they shall, during such absence or inability, devolve upon the member who is next in seniority.

15 (6B) The person who, immediately before the commencement of section four of the Industrial Arbitration and Workers' Compensation (Amendment) Act, 1938, was chairman of the Commission, shall continue to hold office as chairman and as a member of the Commission in all respects as if the provisions of this section had been in force at the date of his appointment.

20

(b) (i) by omitting subsections two, three and four of section thirty-two and by inserting in lieu thereof the following subsections:—

Sec. 32.  
(Body corporate.)

25 (2) The Governor may, from time to time, by notification in the Gazette, fix the number of members which shall constitute a quorum for the purposes of meetings of the Commission, and may, from time to time, alter or rescind any such notification by a further notification published in the Gazette.

30

(3) Any meeting of the Commission at which a quorum is present shall have all the powers and authority by this Act conferred upon the Commission.

35 (ii) by omitting subsections seven, eight, nine and ten of the same section;

(c).



Sec. 33 (2)  
(c).  
(Permanent  
head.)

(c) by inserting in subsection two of section thirty-three after the words "Public Service Act, 1902," the words "and the Under Secretary of the Department of Labour and Industry shall be the 'permanent head' within the meaning of the said Act and any Act amending the same." 5

Retiring  
members.

(3) (a) Each member of The Workers' Compensation Commission (other than the chairman and the deputy-chairman) who held office as such member immediately before the commencement of this section shall, 10  
on such commencement, cease to hold such office, but shall be eligible to be appointed by The Workers' Compensation Commission to the staff of the Commission for a period expiring on the date upon which his term of office as a member of The Workers' Compensation Commission 15  
would have expired if this section had not been enacted.

(b) The provisions of the Public Service Act, 1902, as amended by subsequent Acts, shall not apply to or in respect of any such appointment, nor shall a person so appointed be subject to the said Act as so amended 20  
during the period of his appointment.

(c) A person appointed under this subsection shall, during the period of his office on the staff of The Workers' Compensation Commission, be entitled to receive a salary at a rate not less than the rate paid to him 25  
as a member of The Workers' Compensation Commission immediately before the commencement of this section.

(d) A person appointed under this subsection shall be deemed to have vacated his office if he—

(i) engages in New South Wales during his period of office in any paid employment outside the duties of his office; 30

(ii) becomes bankrupt, compounds with his creditors or makes an assignment of his salary for their benefit; 35

(iii) absents himself from duty except on leave granted by The Workers' Compensation Commission. No such leave for a period exceeding fourteen days shall be granted except with the approval of the Governor;

(iv) 40



- (iv) becomes incapable of performing his duties;
- (v) resigns his office by writing under his hand addressed to The Workers' Compensation Commission.

5 (e) If any person eligible to be appointed under this subsection to the staff of The Workers' Compensation Commission is not so appointed within three months after the commencement of this section, he shall receive such compensation as he would have been entitled to had  
10 his services as a member of The Workers' Compensation Commission been dispensed with at the commencement of this section otherwise than according to law.

(4) Nothing contained in this section shall pre-  
15 judice or affect in any way the continuity of the body corporate constituted under section thirty-two of the Workers' Compensation Act, 1926, under the name of The Workers' Compensation Commission of New South Wales, but the same shall continue notwithstanding the provisions of this section.

20 (5) Where the examination, hearing or determination of any matter or question has, before the commencement of this section, been commenced before The Workers' Compensation Commission as constituted by the chairman and one other member, or by the deputy  
25 chairman and one other member, but has not been completed at such commencement, such examination, hearing or determination may be continued and completed by The Workers' Compensation Commission as constituted by the chairman sitting alone or by that member sitting  
30 alone who was before the commencement of this section the deputy chairman, as the case may be.

5. (1) The Workers' Compensation Act, 1926-1929, as amended by subsequent Acts, is further amended by inserting at the end of section sixty-three the following  
35 new subsections:—

(3) (a) Where any payment by way of compensation under this Act in respect of the injury is received by the worker after the date upon which the assent of His Majesty to the Industrial Arbitration and Workers' Compensation (Amendment) Act,  
40 1938,

Continuity  
of body  
corporate.

Proceedings  
pending.

Further  
amendment  
of Act  
No. 15, 1926.  
Sec. 63.  
(Negli-  
gence.)



1938, is signified, no proceedings against the employer, independently of this Act, in respect of the injury, shall be maintainable by any person whomsoever unless such proceedings are instituted within six months after the date upon which such payment was so received by the worker, or where more payments than one have been so received by the worker, unless such proceedings are instituted within six months after the date upon which the first of such payments was so received by the worker. 5 10

(b) This subsection shall apply to and in respect of any case where the injury was received before the date upon which such assent is signified, as well as to and in respect of any case where the injury is received after such date. 15

(c) Nothing in this subsection shall affect the operation of section 63A of this Act.

(4) (a) Where the injury was received before the date upon which the assent of His Majesty to the Industrial Arbitration and Workers' Compensation (Amendment) Act, 1938, is signified, and before such date— 20

(i) any payment by way of compensation under this Act in respect of the injury was received by the worker; or 25

(ii) any award, order or determination relating to compensation under this Act in respect of the injury was made by the Commission,

no proceedings against the employer independently of this Act in respect of the injury shall be maintainable by any person whomsoever unless such proceedings are instituted within twelve months after the date upon which such assent is signified. 30

(b) Nothing in this subsection shall affect the operation of subsection three of this section or of section 63A of this Act. 35

(5) Where judgment is obtained against an employer independently of this Act, in respect of the injury any payments by way of compensation under this Act in respect of the injury, whether made before 40

or



5 or after the date upon which the assent of His Majesty to the Industrial Arbitration and Workers' Compensation (Amendment) Act, 1938, is signified, shall be, to the extent of such payments, a satisfaction of the judgment.

(2) The enactment of subsection one of this section shall not be construed to entitle a worker to proceed independently of the Workers' Compensation Act, 1926-1938, in any case where he would not have been entitled  
10 so to proceed if that subsection had not been enacted.

(3) The Workers' Compensation Act, 1926-1929, as amended by subsequent Acts, is further amended by inserting next after section sixty-three the following new section:—

Further  
amendment  
of Act  
No. 15, 1926.  
New s. 63A.

15 63A. (1) This section shall apply to—

Notice of  
election.

(a) any application by a worker for the determination by the Commission of any question relating to the liability of his employer to pay compensation under this Act in respect  
20 of an injury; and

(b) any application by a worker for a determination by the Commission relating to the investment, application or other dealing with any sum paid into the office of the Commission under section fifty-seven or section  
25 fifty-eight of this Act.

(2) An application to which this section applies shall not be filed unless there is endorsed thereon or annexed thereto a written statement, in  
30 this section referred to as the "notice of election."

(3) (a) The notice of election shall be signed by the applicant, and the signature of the applicant shall be witnessed by the applicant's solicitor or agent named in the application, or by any other  
35 solicitor (not being the solicitor for the employer or the solicitor for the employer's insurer) or by any clerk of petty sessions or by any officer of the staff of the Commission authorised in writing in  
that



that behalf by the Commission or any member thereof, either generally or for any particular case or class of cases.

(b) Where an application to which this section applies is made by an infant by his next friend, the notice of election shall be signed by such next friend and, in such case, the notice of election shall have the same force and effect as if the infant had been of full age and had personally signed the same. 10

(4) The notice of election shall be in or to the effect of the following form:—

I ..... being the applicant  
in (*here insert particulars sufficient to identify the application*) ..... 15

do hereby state as follows:—

(1) I am aware that if the injury in respect of which the said application is made was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible, I may, at my option, proceed under the Workers' Compensation Act, 1926-1938, or independently of that Act. 20

(2) I do not desire to proceed independently of the said Act in respect of the injury. 25

(3) I elect to proceed under the said Act in respect of the injury.

Dated this ..... day of ..... 19 ....

..... 30  
(Signature)

I, the witness to the above signature, certify that I am not the solicitor for the employer or the solicitor for the employer's insurer.

..... 35  
(Signature of witness.)

.....  
(Address of witness and capacity in which he signs as witness.)

(5) 40



(5) In any case to which the provisions of subsection two of section sixty-three of this Act apply a notice of election, endorsed on or annexed to an application in accordance with the requirements of this section, shall—

5

(a) constitute a final election by the worker, in pursuance of the option conferred by subsection two of section sixty-three of this Act, to proceed under this Act in respect of the injury;

10

(b) be a valid defence to any legal proceedings by any person whomsoever against the employer in respect of the injury other than proceedings under this Act.







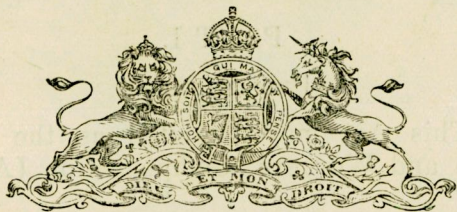








New South Wales.



ANNO TERTIO

GEORGII VI REGIS.

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Act No. 36, 1938.

An Act to make further provisions in relation to the constitution of the Industrial Commission of New South Wales and The Workers' Compensation Commission of New South Wales; to make provisions in relation to the investigation of the rents of certain premises and of the prices of certain commodities and in relation to the fixation of the prices of certain products, commodities and services; to validate certain matters; to amend the Industrial Arbitration Act, 1912-1935, the Industrial Arbitration (Amendment) Act, 1926, the Workers' Compensation Act, 1926-1929, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 22nd December, 1938.]



*Industrial Arbitration and Workers' Compensation (Amendment).*

**B**E it enacted by the King'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 :—

**PART I.****PRELIMINARY.**

Short title,  
citation and  
division  
into Parts.

**1.** (1) This Act may be cited as the "Industrial Arbitration and Workers' Compensation (Amendment) Act, 1938."

(2) (a) The Industrial Arbitration Act, 1912-1935, as amended by subsequent Acts and by this Act, may be cited as the Industrial Arbitration Act, 1912-1938.

(b) The Industrial Arbitration (Amendment) Act, 1926, as amended by subsequent Acts and by this Act, may be cited as the Industrial Arbitration (Amendment) Act, 1926-1938.

(c) The Workers' Compensation Act, 1926-1929, as amended by subsequent Acts and by this Act, may be cited as the Workers' Compensation Act, 1926-1938.

(3) This Act is divided into Parts as follows :—

**PART I.—PRELIMINARY.**

**PART II.—AMENDMENTS OF THE INDUSTRIAL ARBITRATION ACTS.**

**PART III.—AMENDMENTS OF THE WORKERS' COMPENSATION ACT, 1926-1929.**

**PART II.****AMENDMENTS OF THE INDUSTRIAL ARBITRATION ACTS.**

Commence-  
ment.

**2.** (1) This section shall commence upon a date to be appointed by the Governor and notified by proclamation published in the Gazette.

(2)



*Industrial Arbitration and Workers' Compensation (Amendment).*

(2) (a) The Industrial Arbitration (Amendment) Act, 1926, as amended by subsequent Acts, is amended—

Amendment  
of Act No.  
14, 1926.

(i) by omitting from subsection one of section six the word "four" and by inserting in lieu thereof the words "not less than five and not more than six";

Sec. 6 (1).  
(Commis-  
sion.)

(ii) by inserting in subsection two of the same section immediately before the word "barrister" the word "practising";

(iii) by inserting in the same subsection immediately before the word "solicitor" the word "practising."

(b) The persons who, immediately before the commencement of this Part, were President and other members of the Commission shall continue to hold office as President and members of the Commission in all respects as if the amendment made by subparagraph (i) of paragraph (a) of this subsection had been in force at the date of their respective appointments, and subparagraphs (ii) and (iii) of that paragraph had not been enacted.

(c) This subsection shall be read and construed with the Industrial Arbitration (Amendment) Act, 1926, as amended by subsequent Acts.

(3) The Industrial Arbitration Act, 1912-1935, as amended by subsequent Acts, is amended—

Amendment  
of Act No.  
17, 1912.

(a) (i) by omitting from paragraph (e) of section eighty-two the words "To report on any matter referred to as to" and by inserting in lieu thereof the words "To investigate and report on any matter referred to it by the Minister as to";

Sec. 82.  
(Prices.)

(ii) by inserting in the same paragraph after the word "commodities" wherever occurring the words "or services";

(b)



*Industrial Arbitration and Workers' Compensation (Amendment).*

(b) by inserting after the same paragraph the following new paragraph:—

(e1) To investigate and report on any matter referred to it by the Minister as to the rents or increases in rents of premises which are leased or let, either wholly or partially, as dwelling-houses, or as shops, or partly as a dwelling-house and partly as a shop, or of any class of such premises defined by the Minister in the reference; and for the purposes of such reference a class may be defined in relation to the rental of the premises, the value of the premises, the purpose or mode of user of the premises, the locality in which the premises are situate, or any other circumstance whatsoever;

(c) by inserting at the end of section eighty-two the following new subsection:—

(2) In subsection one of this section "commodities" means any of the following:—

- (a) any article of food (other than eggs, milk and butter);
- (b) any article of clothing or apparel;
- (c) any building material;
- (d) any article which enters into or is used in the composition or preparation of any of the foregoing commodities;
- (e) any other goods or articles which the Governor, upon the recommendation of the Minister, declares in the Gazette to be a commodity.

Amendment  
of  
Act No. 14,  
1926.

Sec. 25.

(Regulations  
—validation.)

3. (1) The Industrial Arbitration (Amendment) Act, 1926, as amended by subsequent Acts is amended by inserting after subsection one of section twenty-five the following new subsection:—

(1A) Any regulations made under section seventy-two of the Principal Act and in force immediately before the fifteenth day of April, one thousand nine hundred



*Industrial Arbitration and Workers' Compensation (Amendment).*

hundred and twenty-six, shall continue in force until varied, rescinded or amended by regulations made under that section as amended by subsection one of this section.

(2) Subsection one of this section shall be deemed to have commenced upon the fifteenth day of April, one thousand nine hundred and twenty-six.

## PART III.

AMENDMENTS OF THE WORKERS' COMPENSATION ACT,  
1926-1929.

4. (1) This section shall commence upon the first day of January, one thousand nine hundred and thirty-nine. Commence-  
ment.

(2) The Workers' Compensation Act, 1926-1929, as amended by subsequent Acts, is amended— Amendment  
of  
Act No. 15,  
1926.  
Sec. 31.  
(Commis-  
sion.)

(a) (i) by omitting from subsection one of section thirty-one the words "which shall consist of a chairman and two other members appointed from time to time by the Governor" and by inserting in lieu thereof the words "The Governor may appoint such number of persons, being not less than three and not more than four, as he may, from time to time, determine by notification published in the Gazette, to be members of the Commission.

One of such persons shall be by his commission appointed chairman";

(ii) by omitting subsections two, three, four, five and six of the same section, and by inserting in lieu thereof the following subsections:—

(2) (a) A person to be qualified for appointment as a member shall be a District Court judge or a practising barrister of not less than five years' standing, or a practising solicitor of not less than seven years' standing.

(b)



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*Industrial Arbitration and Workers' Compensation (Amendment).*

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(b) Notwithstanding the provisions of paragraph (a) of this subsection, a person who has, at any time before the commencement of section four of the Industrial Arbitration and Workers' Compensation (Amendment) Act, 1938, held the office of deputy-chairman of the Commission shall be qualified for appointment under this section as a member.

(3) (a) Each member shall, subject to this section, hold his office during ability and good behaviour, shall have the same rank, title, status and precedence, and the same salary, pension and other rights as a District Court judge, and shall be removable from office in the same manner only as a District Court judge is by law liable to be removed from his office.

(b) Each member shall retire on the day on which he attains the age of seventy years unless he is granted retiring leave, in which case he shall retire on the expiration of such leave.

(4) The Governor may, upon a report by the Commission that any member is prevented by any cause from attending to any of the duties of his office, or that the Commission is unable to cope promptly and expeditiously with the matters in the Commission's list, appoint some person qualified to be appointed a member to act temporarily as an additional member of the Commission, and such person shall, while so acting, be deemed to be a member of the Commission.

(5) On appointment the members of the Commission shall take the oath of allegiance and the judicial oath.

This subsection extends to a person appointed to act temporarily as a member.

(6)



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*Industrial Arbitration and Workers' Compensation (Amendment).*

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(6) The members other than the chairman shall have seniority according to the dates of their commissions, or, when the commissions of two or more of them bear the same date, according to the precedence assigned to them by their commissions, or, failing such assignment, according to the order of their being sworn.

(6A) (a) Subject to such limitations and exceptions as may be prescribed by the regulations made by the Governor under this Act, the jurisdiction, powers and authorities conferred on the Commission by this Act may be exercised by any single member of the Commission.

(b) Where a single member exercises any jurisdiction, powers or authorities under this subsection, the Commission shall be duly constituted by such single member.

(c) More than one sitting of the Commission may be held at the same time.

(d) Sittings of the Commission shall be arranged by the chairman.

(6B) (a) In case of the absence of the chairman or of his inability to perform the duties of his office, all the duties and powers of the chairman shall, during such absence or disability, devolve upon the senior member.

(b) In case of the absence or inability of any member upon whom such duties and powers devolve they shall, during such absence or inability, devolve upon the member who is next in seniority.

(6c) The person who, immediately before the commencement of section four of the Industrial Arbitration and Workers' Compensation (Amendment) Act, 1938, was chairman of the Commission, shall continue to hold office as chairman and as a member  
of



Industrial Arbitration and Workers' Compensation (Amendment).

of the Commission in all respects as if the provisions of this section (other than subsection two) had been in force at the date of his appointment.

Sec. 32.  
(Body  
corporate.)

- (b) (i) by omitting subsections two, three and four of section thirty-two and by inserting in lieu thereof the following subsections:—

(2) The Governor may, from time to time, by notification in the Gazette, fix the number of members which shall constitute a quorum for the purposes of meetings of the Commission, and may, from time to time, alter or rescind any such notification by a further notification published in the Gazette.

(3) Any meeting of the Commission at which a quorum is present shall have all the powers and authority by this Act conferred upon the Commission.

- (ii) by omitting subsections seven, eight, nine and ten of the same section;

Sec. 33 (2)  
(c).  
(Permanent  
head.)

- (c) by inserting in subsection two of section thirty-three after the words "Public Service Act, 1902," the words "and the Chairman of the Commission shall be the 'permanent head' within the meaning of the said Act and any Act amending the same."

Retiring  
members.

(3) Each member of The Workers' Compensation Commission (other than the chairman and the deputy-chairman) who held office as such member immediately before the commencement of this section shall, on such commencement, cease to hold such office, but shall receive such compensation as he would have been entitled to had his services as a member of The Workers' Compensation Commission been dispensed with at the commencement of this section otherwise than according to law. Such compensation shall be paid out of the fund.

Continuity  
of body  
corporate.

(4) Nothing contained in this section shall prejudice or affect in any way the continuity of the body corporate constituted under section thirty-two of the  
Workers'



*Industrial Arbitration and Workers' Compensation (Amendment).*

Workers' Compensation Act, 1926, under the name of The Workers' Compensation Commission of New South Wales, but the same shall continue notwithstanding the provisions of this section.

(5) Where the examination, hearing or determination of any matter or question has, before the commencement of this section, been commenced before The Workers' Compensation Commission as constituted by the chairman and one other member, or by the deputy-chairman and one other member, but has not been completed at such commencement, such examination, hearing or determination may be continued and completed by The Workers' Compensation Commission as constituted by the chairman sitting alone or by that member sitting alone who was before the commencement of this section the deputy-chairman, as the case may be.

Proceedings  
pending.

5. (1) The Workers' Compensation Act, 1926-1929, as amended by subsequent Acts, is further amended by inserting at the end of section sixty-three the following new subsections:—

Further  
amendment  
of Act  
No. 15, 1926.  
Sec. 63.  
(Negli-  
gence.)

(3) (a) Where any payment by way of compensation under this Act in respect of the injury is received by the worker after the date upon which the assent of His Majesty to the Industrial Arbitration and Workers' Compensation (Amendment) Act, 1938, is signified, no proceedings against the employer, independently of this Act, in respect of the injury, shall be maintainable by any person whomsoever unless such proceedings are instituted within six months after the date upon which such payment was so received by the worker, or where more payments than one have been so received by the worker, unless such proceedings are instituted within six months after the date upon which the first of such payments was so received by the worker. But where such proceedings are proceedings which, by reason of the provisions of any other Act, cannot be instituted until the expiration of a specified period after notice in writing has been served on or delivered or given to the employer, the period of six months referred to in the foregoing provisions of this paragraph shall be increased by such specified period.

The



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*Industrial Arbitration and Workers' Compensation (Amendment).*

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The period within which proceedings are to be instituted as prescribed in the foregoing provisions of this paragraph, is in this paragraph referred to as the "prescribed period":

Provided that where an application is made to a judge of the Supreme Court in accordance with rules of court for an extension of the prescribed period the judge may, if he is satisfied that sufficient cause has been shown, or that having regard to all the circumstances of the case, it would be reasonable so to do, make an order for extension of the prescribed period for such further period and subject to such terms and conditions (if any) as may be set out in the order.

Such application for extension may be made either within the prescribed period or at any time within six months thereafter.

(b) This subsection shall apply to and in respect of any case where the injury was received before the date upon which such assent is signified, as well as to and in respect of any case where the injury is received after such date.

(c) Nothing in this subsection shall affect the operation of section 63A of this Act.

(4) (a) Where the injury was received before the date upon which the assent of His Majesty to the Industrial Arbitration and Workers' Compensation (Amendment) Act, 1938, is signified, and before such date—

(i) any payment by way of compensation under this Act in respect of the injury was received by the worker; or

(ii) any award, order or determination relating to compensation under this Act in respect of the injury was made by the Commission,

no proceedings against the employer independently of this Act in respect of the injury shall be maintainable by any person whomsoever unless such proceedings are instituted within twelve months after the date upon which such assent is signified.

(b)



*Industrial Arbitration and Workers' Compensation (Amendment).*

(b) Nothing in this subsection shall affect the operation of subsection three of this section or of section 63A of this Act.

(5) Where judgment is obtained against an employer independently of this Act, in respect of the injury any payments by way of compensation under this Act in respect of the injury, whether made before or after the date upon which the assent of His Majesty to the Industrial Arbitration and Workers' Compensation (Amendment) Act, 1938, is signified, shall be, to the extent of such payments, a satisfaction of the judgment.

(2) The enactment of subsection one of this section shall not be construed to entitle a worker to proceed independently of the Workers' Compensation Act, 1926-1938, in any case where he would not have been entitled so to proceed if that subsection had not been enacted.

(3) The Workers' Compensation Act, 1926-1929, as amended by subsequent Acts, is further amended by inserting next after section sixty-three the following new section:—

Further  
amendment  
of Act  
No. 15, 1926.  
New s. 63A.

63A. (1) This section shall apply to any application by a worker for the determination by the Commission of any question relating to the liability of his employer to pay compensation under this Act in respect of an injury.

Notice of  
election.

(2) An application to which this section applies shall not be filed unless there is endorsed thereon or annexed thereto a written statement, in this section referred to as the "notice of election."

(3) (a) The notice of election shall be signed by the applicant, and the signature of the applicant shall be witnessed by the applicant's solicitor or agent or by any other solicitor (not being the solicitor for the employer or the solicitor for the employer's insurer) or by any clerk of petty sessions or by any officer of the staff of the Commission authorised in writing in that behalf by the Commission or any member thereof, either generally or for any particular case or class of cases.

In



Industrial Arbitration and Workers' Compensation (Amendment).

In this paragraph the word "agent" shall mean the secretary or authorised officer of any trade union or industrial union registered under the Industrial Arbitration Act, 1912, as amended, or the secretary or branch secretary or other person authorised by the secretary of any organisation of employees registered under the Commonwealth Conciliation and Arbitration Act, 1904, as amended.

(b) Where an application to which this section applies is made by an infant by his next friend, the notice of election shall be signed by such next friend and, in such case, the notice of election shall have the same force and effect as if the infant had been of full age and had personally signed the same.

The signature of such next friend shall be witnessed as in the preceding paragraph mentioned and the notice of election so signed by such next friend shall in all other respects be subject to the provisions of this section.

(4) The notice of election shall be in or to the effect of the following form:—

I ..... being the applicant  
in (*here insert particulars sufficient to identify the  
application*) .....

.....  
do hereby state as follows:—

(1) I am aware that if the injury in respect of which the said application is made was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible, I may, at my option, proceed under the Workers' Compensation Act, 1926-1938, or independently of that Act.

(2) I do not desire to proceed independently of the said Act in respect of the injury.

(3)



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*Industrial Arbitration and Workers' Compensation (Amendment).*

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(3) I elect to proceed under the said Act in respect of the injury.

Dated this ..... day of ..... 19 ....

.....  
(Signature)

I, the witness to the above signature, certify that I am not the solicitor for the employer or the solicitor for the employer's insurer.

.....  
(Signature of witness.)

.....

.....  
(Address of witness and capacity in which he signs as witness.)

(5) In any case to which the provisions of subsection two of section sixty-three of this Act apply a notice of election, endorsed on or annexed to an application in accordance with the requirements of this section, shall—

- (a) constitute a final election by the worker, in pursuance of the option conferred by subsection two of section sixty-three of this Act, to proceed under this Act in respect of the injury;
- (b) be a valid defence to any legal proceedings by any person whomsoever against the employer in respect of the injury other than proceedings under this Act.













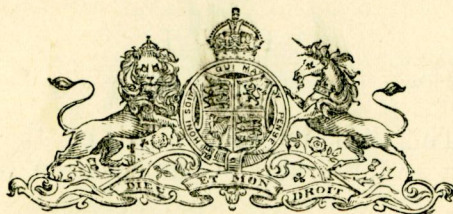


*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

W. R. McCOURT,  
*Clerk of the Legislative Assembly.*

*Legislative Assembly Chamber,  
Sydney, 16 December, 1938.*

## New South Wales.



ANNO TERTIO

## GEORGII VI REGIS.

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Act No. 36, 1938.

An Act to make further provisions in relation to the constitution of the Industrial Commission of New South Wales and The Workers' Compensation Commission of New South Wales; to make provisions in relation to the investigation of the rents of certain premises and of the prices of certain commodities and in relation to the fixation of the prices of certain products, commodities and services; to validate certain matters; to amend the Industrial Arbitration Act, 1912-1935, the Industrial Arbitration (Amendment) Act, 1926, the Workers' Compensation Act, 1926-1929, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 22nd December, 1938.]

BE

*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

W. W. HEDGES,  
*Chairman of Committees of the Legislative Assembly.*



*Industrial Arbitration and Workers' Compensation (Amendment).*

**B**E it enacted by the King'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 :—

**PART I.****PRELIMINARY.**

Short title,  
citation and  
division  
into Parts.

**1.** (1) This Act may be cited as the "Industrial Arbitration and Workers' Compensation (Amendment) Act, 1938."

(2) (a) The Industrial Arbitration Act, 1912-1935, as amended by subsequent Acts and by this Act, may be cited as the Industrial Arbitration Act, 1912-1938.

(b) The Industrial Arbitration (Amendment) Act, 1926, as amended by subsequent Acts and by this Act, may be cited as the Industrial Arbitration (Amendment) Act, 1926-1938.

(c) The Workers' Compensation Act, 1926-1929, as amended by subsequent Acts and by this Act, may be cited as the Workers' Compensation Act, 1926-1938.

(3) This Act is divided into Parts as follows:—

**PART I.—PRELIMINARY.**

**PART II.—AMENDMENTS OF THE INDUSTRIAL ARBITRATION ACTS.**

**PART III.—AMENDMENTS OF THE WORKERS' COMPENSATION ACT, 1926-1929.**

**PART II.****AMENDMENTS OF THE INDUSTRIAL ARBITRATION ACTS.**

Commence-  
ment.

**2.** (1) This section shall commence upon a date to be appointed by the Governor and notified by proclamation published in the Gazette.

(2)



Industrial Arbitration and Workers' Compensation (Amendment).

(2) (a) The Industrial Arbitration (Amendment) Act, 1926, as amended by subsequent Acts, is amended—

Amendment  
of Act No.  
14, 1926.

- (i) by omitting from subsection one of section six the word "four" and by inserting in lieu thereof the words "not less than five and not more than six";
- (ii) by inserting in subsection two of the same section immediately before the word "barrister" the word "practising";
- (iii) by inserting in the same subsection immediately before the word "solicitor" the word "practising."

Sec. 6 (1).  
(Commis-  
sion.)

(b) The persons who, immediately before the commencement of this Part, were President and other members of the Commission shall continue to hold office as President and members of the Commission in all respects as if the amendment made by subparagraph (i) of paragraph (a) of this subsection had been in force at the date of their respective appointments, and subparagraphs (ii) and (iii) of that paragraph had not been enacted.

(c) This subsection shall be read and construed with the Industrial Arbitration (Amendment) Act, 1926, as amended by subsequent Acts.

(3) The Industrial Arbitration Act, 1912-1935, as amended by subsequent Acts, is amended—

Amendment  
of Act No.  
17, 1912.

- (a) (i) by omitting from paragraph (e) of section eighty-two the words "To report on any matter referred to as to" and by inserting in lieu thereof the words "To investigate and report on any matter referred to it by the Minister as to";

Sec. 82.  
(Prices.)

- (ii) by inserting in the same paragraph after the word "commodities" wherever occurring the words "or services";

(b).



*Industrial Arbitration and Workers' Compensation (Amendment).*

(b) by inserting after the same paragraph the following new paragraph:—

(e1) To investigate and report on any matter referred to it by the Minister as to the rents or increases in rents of premises which are leased or let, either wholly or partially, as dwelling-houses, or as shops, or partly as a dwelling-house and partly as a shop, or of any class of such premises defined by the Minister in the reference; and for the purposes of such reference a class may be defined in relation to the rental of the premises, the value of the premises, the purpose or mode of user of the premises, the locality in which the premises are situate, or any other circumstance whatsoever;

(c) by inserting at the end of section eighty-two the following new subsection:—

(2) In subsection one of this section "commodities" means any of the following:—

- (a) any article of food (other than eggs, milk and butter);
- (b) any article of clothing or apparel;
- (c) any building material;
- (d) any article which enters into or is used in the composition or preparation of any of the foregoing commodities;
- (e) any other goods or articles which the Governor, upon the recommendation of the Minister, declares in the Gazette to be a commodity.

**Amendment**  
of  
Act No. 14,  
1926.  
Sec. 25.

(Regulations  
—valida-  
tion.)

**3.** (1) The Industrial Arbitration (Amendment) Act, 1926, as amended by subsequent Acts is amended by inserting after subsection one of section twenty-five the following new subsection:—

(1A) Any regulations made under section seventy-two of the Principal Act and in force immediately before the fifteenth day of April, one thousand nine hundred



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hundred and twenty-six, shall continue in force until varied, rescinded or amended by regulations made under that section as amended by subsection one of this section.

(2) Subsection one of this section shall be deemed to have commenced upon the fifteenth day of April, one thousand nine hundred and twenty-six.

PART III.

AMENDMENTS OF THE WORKERS' COMPENSATION ACT,  
1926-1929.

4. (1) This section shall commence upon the first day of January, one thousand nine hundred and thirty-nine.

Commence-  
ment.

(2) The Workers' Compensation Act, 1926-1929, as amended by subsequent Acts, is amended—

Amendment  
of  
Act No. 15,  
1926.  
Sec. 31.  
(Commis-  
sion.)

- (a) (i) by omitting from subsection one of section thirty-one the words "which shall consist of a chairman and two other members appointed from time to time by the Governor" and by inserting in lieu thereof the words "The Governor may appoint such number of persons, being not less than three and not more than four, as he may, from time to time, determine by notification published in the Gazette, to be members of the Commission.

One of such persons shall be by his commission appointed chairman";

- (ii) by omitting subsections two, three, four, five and six of the same section, and by inserting in lieu thereof the following subsections:—

(2) (a) A person to be qualified for appointment as a member shall be a District Court judge or a practising barrister of not less than five years' standing, or a practising solicitor of not less than seven years' standing.

Amendment  
to  
Act No. 15,  
1926.  
Sec. 31.  
(Regulations  
—varied—  
(Commis-  
sion.)

(b)



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*Industrial Arbitration and Workers' Compensation (Amendment).*

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(b) Notwithstanding the provisions of paragraph (a) of this subsection, a person who has, at any time before the commencement of section four of the Industrial Arbitration and Workers' Compensation (Amendment) Act, 1938, held the office of deputy-chairman of the Commission shall be qualified for appointment under this section as a member.

(3) (a) Each member shall, subject to this section, hold his office during ability and good behaviour, shall have the same rank, title, status and precedence, and the same salary, pension and other rights as a District Court judge, and shall be removable from office in the same manner only as a District Court judge is by law liable to be removed from his office.

(b) Each member shall retire on the day on which he attains the age of seventy years unless he is granted retiring leave, in which case he shall retire on the expiration of such leave.

(4) The Governor may, upon a report by the Commission that any member is prevented by any cause from attending to any of the duties of his office, or that the Commission is unable to cope promptly and expeditiously with the matters in the Commission's list, appoint some person qualified to be appointed a member to act temporarily as an additional member of the Commission, and such person shall, while so acting, be deemed to be a member of the Commission.

(5) On appointment the members of the Commission shall take the oath of allegiance and the judicial oath.

This subsection extends to a person appointed to act temporarily as a member.

(6)



*Industrial Arbitration and Workers' Compensation (Amendment).*

(6) The members other than the chairman shall have seniority according to the dates of their commissions, or, when the commissions of two or more of them bear the same date, according to the precedence assigned to them by their commissions, or, failing such assignment, according to the order of their being sworn.

(6A) (a) Subject to such limitations and exceptions as may be prescribed by the regulations made by the Governor under this Act, the jurisdiction, powers and authorities conferred on the Commission by this Act may be exercised by any single member of the Commission.

(b) Where a single member exercises any jurisdiction, powers or authorities under this subsection, the Commission shall be duly constituted by such single member.

(c) More than one sitting of the Commission may be held at the same time.

(d) Sitzings of the Commission shall be arranged by the chairman.

(6B) (a) In case of the absence of the chairman or of his inability to perform the duties of his office, all the duties and powers of the chairman shall, during such absence or disability, devolve upon the senior member.

(b) In case of the absence or inability of any member upon whom such duties and powers devolve they shall, during such absence or inability, devolve upon the member who is next in seniority.

(6c) The person who, immediately before the commencement of section four of the Industrial Arbitration and Workers' Compensation (Amendment) Act, 1938, was chairman of the Commission, shall continue to hold office as chairman and as a member of



Industrial Arbitration and Workers' Compensation (Amendment).

of the Commission in all respects as if the provisions of this section (other than subsection two) had been in force at the date of his appointment.

Sec. 32.  
(Body  
corporate.)

(b) (i) by omitting subsections two, three and four of section thirty-two and by inserting in lieu thereof the following subsections:—

(2) The Governor may, from time to time, by notification in the Gazette, fix the number of members which shall constitute a quorum for the purposes of meetings of the Commission, and may, from time to time, alter or rescind any such notification by a further notification published in the Gazette.

(3) Any meeting of the Commission at which a quorum is present shall have all the powers and authority by this Act conferred upon the Commission.

(ii) by omitting subsections seven, eight, nine and ten of the same section;

Sec. 33 (2)  
(c).  
(Permanent  
head.)

(c) by inserting in subsection two of section thirty-three after the words "Public Service Act, 1902," the words "and the Chairman of the Commission shall be the 'permanent head' within the meaning of the said Act and any Act amending the same."

Retiring  
members.

(3) Each member of The Workers' Compensation Commission (other than the chairman and the deputy-chairman) who held office as such member immediately before the commencement of this section shall, on such commencement, cease to hold such office, but shall receive such compensation as he would have been entitled to had his services as a member of The Workers' Compensation Commission been dispensed with at the commencement of this section otherwise than according to law. Such compensation shall be paid out of the fund.

Continuity  
of body  
corporate.

(4) Nothing contained in this section shall prejudice or affect in any way the continuity of the body corporate constituted under section thirty-two of the Workers'



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Workers' Compensation Act, 1926, under the name of The Workers' Compensation Commission of New South Wales, but the same shall continue notwithstanding the provisions of this section.

(5) Where the examination, hearing or determination of any matter or question has, before the commencement of this section, been commenced before The Workers' Compensation Commission as constituted by the chairman and one other member, or by the deputy-chairman and one other member, but has not been completed at such commencement, such examination, hearing or determination may be continued and completed by The Workers' Compensation Commission as constituted by the chairman sitting alone or by that member sitting alone who was before the commencement of this section the deputy-chairman, as the case may be.

Proceedings pending.

5. (1) The Workers' Compensation Act, 1926-1929, as amended by subsequent Acts, is further amended by inserting at the end of section sixty-three the following new subsections:—

Further amendment of Act No. 15, 1926. Sec. 63.

(3) (a) Where any payment by way of compensation under this Act in respect of the injury is received by the worker after the date upon which the assent of His Majesty to the Industrial Arbitration and Workers' Compensation (Amendment) Act, 1938, is signified, no proceedings against the employer, independently of this Act, in respect of the injury, shall be maintainable by any person whomsoever unless such proceedings are instituted within six months after the date upon which such payment was so received by the worker, or where more payments than one have been so received by the worker, unless such proceedings are instituted within six months after the date upon which the first of such payments was so received by the worker. But where such proceedings are proceedings which, by reason of the provisions of any other Act, cannot be instituted until the expiration of a specified period after notice in writing has been served on or delivered or given to the employer, the period of six months referred to in the foregoing provisions of this paragraph shall be increased by such specified period.

(Negligence.)

The



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*Industrial Arbitration and Workers' Compensation (Amendment).*

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The period within which proceedings are to be instituted as prescribed in the foregoing provisions of this paragraph, is in this paragraph referred to as the "prescribed period":

Provided that where an application is made to a judge of the Supreme Court in accordance with rules of court for an extension of the prescribed period the judge may, if he is satisfied that sufficient cause has been shown, or that having regard to all the circumstances of the case, it would be reasonable so to do, make an order for extension of the prescribed period for such further period and subject to such terms and conditions (if any) as may be set out in the order.

Such application for extension may be made either within the prescribed period or at any time within six months thereafter.

(b) This subsection shall apply to and in respect of any case where the injury was received before the date upon which such assent is signified, as well as to and in respect of any case where the injury is received after such date.

(c) Nothing in this subsection shall affect the operation of section 63A of this Act.

(4) (a) Where the injury was received before the date upon which the assent of His Majesty to the Industrial Arbitration and Workers' Compensation (Amendment) Act, 1938, is signified, and before such date—

(i) any payment by way of compensation under this Act in respect of the injury was received by the worker; or

(ii) any award, order or determination relating to compensation under this Act in respect of the injury was made by the Commission,

no proceedings against the employer independently of this Act in respect of the injury shall be maintainable by any person whomsoever unless such proceedings are instituted within twelve months after the date upon which such assent is signified.

(b)



*Industrial Arbitration and Workers' Compensation (Amendment).*

(b) Nothing in this subsection shall affect the operation of subsection three of this section or of section 63A of this Act.

(5) Where judgment is obtained against an employer independently of this Act, in respect of the injury any payments by way of compensation under this Act in respect of the injury, whether made before or after the date upon which the assent of His Majesty to the Industrial Arbitration and Workers' Compensation (Amendment) Act, 1938, is signified, shall be, to the extent of such payments, a satisfaction of the judgment.

(2) The enactment of subsection one of this section shall not be construed to entitle a worker to proceed independently of the Workers' Compensation Act, 1926-1938, in any case where he would not have been entitled so to proceed if that subsection had not been enacted.

(3) The Workers' Compensation Act, 1926-1929, as amended by subsequent Acts, is further amended by inserting next after section sixty-three the following new section:—

Further  
amendment  
of Act  
No. 15, 1926.  
New s. 63A.

63A. (1) This section shall apply to any application by a worker for the determination by the Commission of any question relating to the liability of his employer to pay compensation under this Act in respect of an injury.

Notice of  
election.

(2) An application to which this section applies shall not be filed unless there is endorsed thereon or annexed thereto a written statement, in this section referred to as the "notice of election."

(3) (a) The notice of election shall be signed by the applicant, and the signature of the applicant shall be witnessed by the applicant's solicitor or agent or by any other solicitor (not being the solicitor for the employer or the solicitor for the employer's insurer) or by any clerk of petty sessions or by any officer of the staff of the Commission authorised in writing in that behalf by the Commission or any member thereof, either generally or for any particular case or class of cases.

In



Industrial Arbitration and Workers' Compensation (Amendment).

In this paragraph the word "agent" shall mean the secretary or authorised officer of any trade union or industrial union registered under the Industrial Arbitration Act, 1912, as amended, or the secretary or branch secretary or other person authorised by the secretary of any organisation of employees registered under the Commonwealth Conciliation and Arbitration Act, 1904, as amended.

(b) Where an application to which this section applies is made by an infant by his next friend, the notice of election shall be signed by such next friend and, in such case, the notice of election shall have the same force and effect as if the infant had been of full age and had personally signed the same.

The signature of such next friend shall be witnessed as in the preceding paragraph mentioned and the notice of election so signed by such next friend shall in all other respects be subject to the provisions of this section.

(4) The notice of election shall be in or to the effect of the following form:—

I ..... being the applicant  
in (*here insert particulars sufficient to identify the*  
*application*) .....

do hereby state as follows:—

(1) I am aware that if the injury in respect of which the said application is made was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible, I may, at my option, proceed under the Workers' Compensation Act, 1926-1938, or independently of that Act.

(2) I do not desire to proceed independently of the said Act in respect of the injury.

(3)



Industrial Arbitration and Workers' Compensation (Amendment).

(3) I elect to proceed under the said Act in respect of the injury.

Dated this ..... day of ..... 19 ....

.....  
(Signature)

I, the witness to the above signature, certify that I am not the solicitor for the employer or the solicitor for the employer's insurer.

.....  
(Signature of witness.)

.....  
(Address of witness and capacity in which he signs as witness.)

(5) In any case to which the provisions of subsection two of section sixty-three of this Act apply a notice of election, endorsed on or annexed to an application in accordance with the requirements of this section, shall—

- (a) constitute a final election by the worker, in pursuance of the option conferred by subsection two of section sixty-three of this Act, to proceed under this Act in respect of the injury;
- (b) be a valid defence to any legal proceedings by any person whomsoever against the employer in respect of the injury other than proceedings under this Act.

*In the name and on behalf of His Majesty I assent to this Act.*

WAKEHURST,  
Governor.

Government House,  
Sydney, 22nd December, 1938.



THE UNIVERSITY OF CHICAGO

IN THE DEPARTMENT OF THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

(Continued)

THE UNIVERSITY OF CHICAGO

(Continued)

THE UNIVERSITY OF CHICAGO

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THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

(Continued)

THE UNIVERSITY OF CHICAGO







I certify that this Bill was introduced in the  
Legislative Assembly, and has been passed by the  
Legislative Assembly of New South Wales

W. L. MCQUEEN  
Speaker of the Legislative Assembly

I have examined this Bill and find it to correspond in all respects  
with the Bill as finally passed by both Houses

W. W. HENDERSON  
Chairman of the Committee of the Legislative Assembly