

INDUSTRIAL ARBITRATION (AMENDMENT) BILL.

Schedule of the Legislative Council's Amendments referred to in Message of 16th June, 1943.

- No. 1.—Page 2, clause 2, lines 20 to 35 inclusive. *Omit* all words on these lines.
- No. 2.—Page 4, clause 2, line 5. *Omit* "such" insert **"except where the principal forthwith notifies the contractor in writing that his offer to accept timber so delivered or supplied has been withdrawn, the"**
- No. 3.—Page 4, clause 2, line 19. *After* "shall" insert **"be in or to the effect of the prescribed form and shall"**
- No. 4.—Page 4, clause 2, line 22. *After* "undertaken" insert **"and also the locality where and the time within which the actual work is to be carried out"**
- No. 5.—Pages 4 and 5, clause 3, lines 38 to 40 inclusive on page 4 and lines 1 to 13 inclusive on page 5. *Omit* all words on these lines.
- No. 6.—Pages 5 and 6, clause 3, lines 25 to 41 inclusive on page 5 and lines 1 to 15 inclusive on page 6. *Omit* all words on these lines.
- No. 7.—Pages 6, 7 and 8, clause 3, lines 32 to 41 inclusive on page 6, lines 1 to 41 inclusive on page 7, and lines 1 to 33 inclusive on page 8. *Omit* all words on these lines.
- No. 8.—Page 9, clause 4, line 23. *Omit* "senior conciliation commissioner" insert "commission."
- No. 9.—Page 9, clause 4, lines 27 and 28. *Omit* all words on these lines.
- No. 10.—Page 10, clause 4. *After* line 15 insert—

(ix) by inserting next after subsection seven of the same section the following new subsection:—

(8) Where an officer of a Crown corporation is appointed a conciliation commissioner he shall be entitled to have his service as conciliation commissioner reckoned as service for the purposes of the Act or regulations governing his service as such officer, and if, as such officer, he was an employee within the meaning of the Superannuation Act, 1916, as amended by subsequent Acts, he shall, while he holds office as conciliation commissioner, be deemed to be an employee within the meaning of the said Act, as so amended. Upon the termination of his appointment as conciliation commissioner, if he has not already attained the age of sixty-five years, he shall be entitled to be reappointed to the service of the Crown corporation in some position corresponding in classification and salary to that which he held at the date of his appointment as conciliation commissioner.

In this subsection the expression "Crown corporation" means any of the following corporations that is to say:—The Commissioner for Railways, the Commissioner for Road Transport and Tramways, the Commissioner for Main Roads, the Metropolitan Meat Industry Commissioner, the Maritime Services Board of New South Wales, the Metropolitan Water, Sewerage and Drainage Board, the Water Conservation and Irrigation Commission, the Board of Fire Commissioners of New South Wales, the Hunter District Water Board, and the Hospitals Commission of New South Wales.

No. 11.—Page 11, clause 4, lines 19 to 34 inclusive. *Omit* all words on these lines.

No. 12.—Page 14, clause 5, lines 18 to 26 inclusive. *Omit* all words on these lines,
insert—

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

(4) In framing any award granting preference in employment a committee shall have regard to the provisions of the Returned Soldiers and Sailors Employment Act, 1919, as amended by subsequent Acts and shall give a like preference in employment to persons who are competent for the work required and who have been members of the Forces during the war.

In this subsection:—

“Auxiliary Service” means Army Medical Corps, Nursing Service of the Crown, Australian Army Medical Nursing Service, Australian Women’s Army Service, Women’s Royal Australian Naval Service, Women’s Australian Auxiliary Air Force, or such other organisation as the Governor may by proclamation from time to time declare to be an auxiliary service for the purpose of this subsection.

“Combat Area” means an area prescribed as such for the purposes of the Australian Repatriation Act, 1920-1943, of the Commonwealth of Australia.

“Enlistment” means an engagement whether by appointment enlistment or otherwise rendering a person liable to be employed on active service abroad or in a combat area as a member of the Forces or of an auxiliary service.

“Member of the Forces” means any person who was at the time of his enlistment a resident in the Commonwealth of Australia or in a mandated territory of the Commonwealth or in any territory under the jurisdiction of the Commonwealth or who was domiciled in any State of the Commonwealth or in any such territory and who during the war served abroad or within a combat area as a member of any Australian Military Force or of the Royal Australian Naval Forces or as a member of the Royal Australian Air Force or as a member of an auxiliary service and who has been duly discharged from such service.

“War” means the war against Germany which commenced on the third day of September one thousand nine hundred and thirty-nine and the subsequent war against Italy and other allies of Germany and the war against Japan.

Save as provided in this subsection nothing contained in this Act shall affect the operation of the Returned Soldiers and Sailors Employment Act, 1919, as amended by subsequent Acts.

No. 13.—Pages 16 and 17, clause 5, lines 15 to 39 inclusive on page 16 and lines 1 and 2 inclusive on page 17. *Omit* all words on these lines.

No. 14.—Page 17, clause 5, lines 6 to 8 inclusive. *Omit* all words on these lines.

No. 15.—Page 19, clause 5, lines 26 to 38 inclusive. *Omit* all words on these lines.

No. 16.—Pages 20 to 24, clause 6. *Omit* clause.

No. 17.—Pages 24 and 25, clause 7. *Omit* clause.

No. 18.—Page 28, clause 6. *After* line 13 *insert*—

“(b) a quorum of the committee shall be three comprising the chairman, a representative of the employers, and a representative of the employees”;

No. 19.—Page 28, clause 6, line 21. *Omit* “shall” *insert* **“may with the consent of all the members or if so specially authorised by the commission.”**

No. 20.—Page 28, clause 6, line 30. *Omit* the words “and determine”

No. 21.—Page 28, clause 6, lines 31 to 33 inclusive. *After* “committee” on line 31 *omit* all words on these lines.

No. 22.—Page 28, clause 6. *After* line 33 *insert*—

77F. Where agreement has been reached by the members of a committee as to some matters at issue before it an award may, if the committee so decides, be made as to such matters and, unless all the members consent to the chairman deciding any particular matter as to which no agreement can be reached, such matter may be reserved for the further consideration of the committee or may be referred forthwith to the commission for determination or for directions.

No. 23.—Page 29, clause 6, lines 24 to 28 inclusive. *After* “commission” on line 24 *omit* all words on these lines.

No. 24.—Page 30, clause 6, lines 10 to 13. *Omit* all words on these lines, *insert*—

“(f) by omitting section eighty-one”;

No. 25.—Page 30, clause 6, lines 15 to 28 inclusive. *Omit* all words on these lines.

No. 26.—Page 31, clause 7. *After* line 27 *insert*—

“This section shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.”

No. 27.—Page 31, clause 7, lines 31 to 40 inclusive. *Omit* all words on these lines.

No. 28.—Pages 35 and 36, clause 8, line 41 on page 35, and line 1 on page 36. *Omit* “the payment of wages or the supply of” *insert* **“the supply for reward of any”**

No. 29.—Page 36, clause 8, line 23. *After* “female” where secondly occurring *insert* **“pending variation of such award or industrial agreement in consequence of such female work being performed”**

No. 30.—Page 36, clause 8, line 28. *After* “her” *insert* **“Nothing in the foregoing provisions of this subsection shall be construed as a direction that any variation of the award or industrial agreement shall necessarily be made.”**

No. 31.—Page 37, clause 9, lines 3 and 4. *Omit* “of not less than two pounds and”

No. 32.—Page 38, clause 9, lines 29 to 32 inclusive. *Omit* all words on these lines.

No. 33.—Page 38, clause 9, line 37. *After* “words” where secondly occurring *insert* **“It shall be a sufficient compliance with the foregoing provisions of this subsection if such records are kept by means of some mechanical device of a type approved by the commission;”**

No. 34.—Page 39, clause 9, lines 10 and 11. *Omit* “of not less than two pounds and”

- No. 35.—Page 35, clause 9, lines 13 and 14. *Omit* “of not less than five pounds and”
- No. 36.—Page 40, clause 9, line 21. After “from” insert **“subsection one of”**
- No. 37.—Pages 41 to 43, inclusive, clause 9, lines 17 to 40 inclusive on page 41, lines 1 to 39 inclusive on page 42, and lines 1 to 7 inclusive on page 43. *Omit* all words on these lines.
- No. 38.—Page 44, clause 10, line 6. After “Part VI” insert **“but no award relating to any such rural industry shall take effect unless the commission after public inquiry to which the Crown shall be a party certify to the Governor that the employers generally in the industry are then presently able to pay the wages set out in the award and will in all probability be able to continue to pay such wages during the currency of the award from the proceeds of the sale of the products of the industry together with any subsidy payable in respect thereof after making due allowance for a fair return upon the capital invested therein, a fair remuneration for the work and supervision of the employer, and all other proper outgoings. Upon the publication of such certificate in the Gazette the award shall have effect in such industry but not sooner.”**
- No. 39.—Title.—*Omit* “for the reconstitution of the Industrial Commission of New South Wales, and”
- No. 40.—Title.—*Omit* “these” insert **“this”**

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, 6 April, 1943.

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

W. K. CHARLTON,
Clerk of the Parliaments.
Legislative Council Chamber,
Sydney, 16th June, 1943.

New South Wales.



ANNO SEPTIMO

GEORGII VI REGIS.

Act No. , 1943.

An Act to provide for the reconstitution of the Industrial Commission of New South Wales and for the appointment of not more than five conciliation commissioners; for these this and other purposes to amend the Industrial Arbitration Act, 1940, as amended by subsequent Acts; and for purposes connected therewith.

BE 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 5 the same, as follows:—

1. (1) This Act may be cited as the "Industrial Arbitration (Amendment) Act, 1943."

14961

46—A

(2)

Short title,
citation
and com-
mencement.

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

Industrial Arbitration (Amendment).

(2) The Industrial Arbitration Act, 1940, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

(3) The Industrial Arbitration Act, 1940, as amended by subsequent Acts and by this Act, may be cited as the Industrial Arbitration Act, 1940-1943.

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

10 **2.** The Principal Act is amended—

(a) (i) by omitting from the definition of “Employee” in section five the words “or any vehicle used in the delivery of goods,” and by inserting in lieu thereof the words

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“or as an outworker, or is working as a salesman, canvasser, collector, commercial traveller, insurance agent or in any other capacity in which he is paid wholly or partly by commission”;

20

(ii) by omitting from paragraph (e) of the definition of “Industrial matters” in the same section, the words “but not so as to give preference of employment to members of industrial unions, except in accordance with the provisions of paragraph (g) of subsection one of section twenty of this Act”;

25

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

30

(e1) a claim that as between members of any industrial union or unions of employees and other persons offering or desiring service or employment at the same time preference shall be given to such members;

35

(iv) (ii) by inserting after the definition of “Minister” in the same section the following new definition:—

40

“Outworker” means a person to whom articles or materials are given out to be made

Amendment
of Act No.
2, 1940.
Sec. 5.
(Defini-
tions.)

cf. Act No.
15, 1926,
s. 6 (1).

Industrial Arbitration (Amendment).

made up, cleaned, washed, altered, ornamented, finished, or repaired or adapted for sale, in his own home or on other premises not under the control or management of the person who gives out the materials or articles.

(v) (iii) by inserting at the end of the same section the following new subsections:—

(2) A person who is engaged in plying for hire or in the delivery of goods with any vehicle or vessel the use of which is obtained by that person under a contract of bailment (other than a hire purchase agreement) in consideration of the payment of a fixed sum or a share in the earnings or otherwise shall, where the work in which such person is so engaged is work for which, by an award or industrial agreement, a price or rate has been fixed for persons performing such work, be deemed, for the purposes of this Act, to be an employee employed by the person from whom the use of the vehicle or vessel is so obtained, and such last mentioned person shall, for the purposes of this Act, be deemed to be the employer of such employee unless such persons or either of them establishes to the satisfaction of the tribunal in which proceedings for a breach of the award or industrial agreement are instituted that the contract of bailment was a bona fide contract and was not entered into for the purpose of avoiding the operation of the award or industrial agreement.

cf. Act No.
15, 1926,
s. 6 (11).

(3) (a) Where any person (in this subsection referred to as "the principal") advertises or otherwise notifies that he will accept timber delivered or supplied to him or his agent or other person in accordance with such advertisement or notification or advertises or otherwise notifies to the abovementioned

cf. *Ibid.*
s. 6 (5) (b).

Industrial Arbitration (Amendment).

5 abovementioned effect and any person (in
this subsection hereinafter referred to as
the "contractor") gives notice to the prin-
cipal that he will deliver or supply such
timber or any part thereof, then ~~such~~
except where the principal forthwith
notifies the contractor in writing that his
offer to accept timber so delivered or
10 supplied has been withdrawn, the con-
tractor, whilst engaged in or about the
work of cutting, delivering or supplying
such timber or part thereof shall, for the
purposes of this Act, be deemed to be an
15 employee employed by the principal, and
the principal shall, for the purposes of this
Act, be deemed to be the employer of such
contractor.

20 Notice of intention to deliver or supply
timber as aforesaid shall be in or to the
effect of the prescribed form and shall
indicate the nature of the actual work to
be undertaken and also the locality where
and the time within which the actual work
is to be carried out.

25 The notice may be given personally or
by letter posted to the principal at his place
of business or usual address.

(b) For the purposes of this subsec-
tion:—

30 "Timber" includes sleepers, piles, poles,
girders, logs or pit timber;

"Cutting" includes felling, sawing,
obtaining, preparing or doing any
work in connection with timber.

35 (b) by omitting the proviso to subsection three of
section eight.

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

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

Further
amendment
of Act No. 2,
1940.

40 (a) by omitting from subsection one of section
fourteen the words "not more than six" and by
inserting in lieu thereof the word "three";

Sec. 14.
(Industrial
com-
mission.)

(b)

Industrial Arbitration (Amendment).

- (b) by omitting from the same subsection the words
“by his commission”;
- 5 (c) by omitting from subsection two of the same
section the words “The persons who, immedi-
ately before the commencement of this Act,
were President and other members of the indus-
trial commission of New South Wales as consti-
tuted immediately before the commencement of
10 this Act shall continue to hold office as President
and members of the commission under this
Act”;
- (d) by omitting from subsection six of the same
section the words “of two or more of them”;
- 15 (e) (a) (i) by omitting from subsection seven of section
fourteen the words “the conciliation com-
missioner” where firstly occurring and by
inserting in lieu thereof the words “a
conciliation commissioner”;
- 20 (ii) by omitting from the same subsection the
words “The conciliation commissioner,
committee, or” wherever occurring and by
inserting in lieu thereof the words “A con-
ciliation commissioner or committee or
the”;
- 25 (f) by omitting subsection eight of the same section
and by inserting in lieu thereof the following
subsection:—
- 30 (8) (a) Except as provided by paragraph (b)
of this subsection the commission shall be con-
stituted by three members.
- At sittings of the commission at which three
members are present any question shall be
decided according to the opinion of the majority.
- 35 (b) Where the commission directs that
any matter shall be heard and determined by
one member the commission shall, for all pur-
poses of or relating to the hearing and
determination of that matter, be duly constituted
by any one member.
- 40 More than one sitting of the commission may
be held at the same time. (c)

Industrial Arbitration (Amendment).

(e) Where the commission is duly constituted by any one member, such member may state any case or reserve any question for the consideration of the commission as constituted by all three members or direct any case or question to be argued before the commission as so constituted:

Provided that such member shall not, where a request in that behalf is made by any party to the proceedings, refuse to exercise his powers under this section where the request is made in relation to a question of law which arises in the proceedings.

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

(g) (b) by omitting from subsection ten of the same section the word "commissioner" and by inserting in lieu thereof the word "commissioners";

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

(13) Where any question or application is referred or any appeal is made to the commission under this Act, the commission may, before proceeding with the hearing of such question, application or appeal, call a conference of the parties with a view to effecting a settlement of the matters in dispute.

At such conference the members of the conciliation committee established for the industry or calling concerned shall, if the commission so directs, sit with the commission.

(2) The Principal Act is further amended by omitting from subsection three of section forty-two all words after the words "three members".

(3) (a) The persons who, immediately before the commencement of this Act, were President and other members of the industrial commission of New South Wales shall, as from such commencement, cease to hold office as such President and members, but shall be eligible for appointment under the Principal Act as amended by this Act as President and members respectively.

Where

Further
amendment
of Act No. 2,
1940, s. 42.
(Consequential.)

Industrial Arbitration (Amendment).

Where any such person is so appointed any period during which he has served as President or member before the commencement of this Act shall be computed as portion of his service for the purpose of ascertaining
5 his pension rights under the Principal Act as amended by this Act.

(b) Any such person who is not so appointed shall be eligible for appointment to any other office in the State having the like rank, title, status and precedence
10 and the like salary, pension and other rights as those attaching to his office immediately before the commencement of this Act.

Where any such person is appointed to any such office any period during which he has served as President or
15 member before the commencement of this Act shall be computed as portion of his service for the purpose of ascertaining his pension rights in respect of the office to which he is so appointed.

(c) If any such person is not appointed pursuant to paragraph (a) or paragraph (b) of this subsection he shall retain the rank, title, status and precedence and the salary, pension and other rights to which he would have been entitled if this Act had not been enacted, and shall so retain the same for the like period
20 as if he had continued to be a member of the industrial commission of New South Wales.

Any such person shall, at all times, hold himself available for appointment to act temporarily as a member of the commission or for appointment as an acting judge
25 of the Supreme Court.

Any period during which such person has served as President or member before the commencement of this Act, and any period after such commencement and before the day upon which he attains the age of seventy years
35 (whether or not during such period he acts temporarily as a member of the commission or as an acting judge of the Supreme Court) shall count as service for the purpose of ascertaining his pension rights under this paragraph.

40 This paragraph shall not apply to and in respect of any such person who refuses, without just cause, to accept appointment

Industrial Arbitration (Amendment).

appointment pursuant to paragraph (a) or paragraph (b) of this subsection.

(4) (a) Nothing in this Act shall prejudice or affect the continuity of the commission, but the same shall continue notwithstanding the provisions of this Act.

(b) Without prejudice to the generality of paragraph (a) of this subsection the commission shall continue notwithstanding that there are at any time or times vacancies in the offices of all the members or of any one or more of them.

(5) The Principal Act is further amended by inserting next after section four the following new section:—

Further amendment of Act No. 2, 1940.
New sec 4A.
Matters pending and part heard before commission.

15 4A. (1) Any matter pending or part heard before the commission at the commencement of the Industrial Arbitration (Amendment) Act, 1943, may be heard and continued before the commission as reconstituted under section fourteen of this Act (as amended by the Industrial Arbitration (Amendment) Act, 1943).

20 (2) Any matter pending or part heard before any member of the commission at the commencement of the Industrial Arbitration (Amendment) Act, 1943, may be heard and continued before the commission as reconstituted under section fourteen of this Act (as amended by the Industrial Arbitration (Amendment) Act, 1943):

25 Provided that, where the commission directs that such matter be heard and continued before one member, the commission shall, for all purposes of or relating to the hearing and continuation of such matter, be duly constituted by any one member.

30 4. (1) The Principal Act is further amended—

35 (a) (i) by omitting subsection one of section fifteen and by inserting in lieu thereof the following subsections:—

(1) The Governor may appoint not more than five persons each of whom shall be a conciliation

Further amendment of Act No. 2, 1940.
Sec. 15.
(Conciliation commissioner.)

Industrial Arbitration (Amendment).

conciliation commissioner, and may appoint one of the conciliation commissioners to be the senior conciliation commissioner.

5 (1A) (a) The conciliation commissioners, other than the senior conciliation commissioner, shall have seniority according to the dates of their appointments, or, where the appointments of two or more of them were
10 made on the same date, according to such order of precedence as may be assigned to them by the Governor.

(b) In the case of the absence of the senior conciliation commissioner or of his inability to perform the duties of his
15 office, or in the case of any vacancy in the office of senior conciliation commissioner, all the duties and powers of the senior conciliation commissioner shall devolve upon the conciliation commissioner who is next
20 in order of seniority.

(1B) A conciliation commissioner shall be chairman of each committee.

The ~~senior conciliation commissioner~~ **commission** shall, from time to time, determine the committees of which each conciliation commissioner is to be chairman.
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~~Every such determination shall be subject to the approval of the Minister.~~

(ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection:—
30

(2) Each conciliation commissioner shall be paid such salary as the Governor may determine.

(iii) by omitting from subsection three of the same section the word "The" and by inserting in lieu thereof the word "A";
35

(iv) by omitting from subsection four of the same section the word "The" where firstly occurring and by inserting in lieu thereof the word "A";
40

(v)

Industrial Arbitration (Amendment).

5 (v) by omitting from paragraph (b) of the same subsection the words "The commissioner suspended" and by inserting in lieu thereof the words "A conciliation commissioner suspended";

(vi) by omitting from the same paragraph the words "the commissioner" wherever occurring and by inserting in lieu thereof the words "such conciliation commissioner";

10 (vii) by omitting from subsection five of the same section the word "The" where firstly occurring and by inserting in lieu thereof the word "A";

15 (viii) by omitting subsection six of the same section;

(ix) by inserting next after subsection seven of the same section the following new subsection:—

20 (8) Where an officer of a Crown corporation is appointed a conciliation commissioner he shall be entitled to have his service as conciliation commissioner reckoned as service for the purposes of the Act or regulations governing his service as such
25 officer, and if, as such officer, he was an employee within the meaning of the Superannuation Act, 1916, as amended by subsequent Acts, he shall, while he holds office as conciliation commissioner, be deemed to be
30 an employee within the meaning of the said Act, as so amended. Upon the termination of his appointment as conciliation commissioner, if he has not already attained the age of sixty-five years, he shall be entitled
35 to be reappointed to the service of the Crown corporation in some position corresponding in classification and salary to that which he held at the date of his appointment as conciliation commissioner.

In

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In this subsection the expression "Crown corporation" means any of the following corporations, that is to say:—The Commissioner for Railways, the Commissioner for Road Transport and Tramways, the Commissioner for Main Roads, the Metropolitan Meat Industry Commissioner, the Maritime Services Board of New South Wales, the Metropolitan Water, Sewerage and Drainage Board, the Water Conservation and Irrigation Commission, the Board of Fire Commissioners of New South Wales, the Hunter District Water Board, and the Hospitals Commission of New South Wales.

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10
15 (b) by omitting from section sixteen the words "the conciliation commissioner" wherever occurring and by inserting in lieu thereof the words "a conciliation commissioner"; Sec. 16.
(Additional
conciliation
commis-
sioners.)
- 20 ~~(c)~~ by inserting after section seventeen the following new section:— New sec.
17A.
- 17A. (1) The Minister may appoint any person to be a special conciliation commissioner.
- (2) Where a special conciliation commissioner is of the opinion that an industrial dispute has arisen or is threatened or impending he may require the attendance of any persons to meet in conference. At such conference the special conciliation commissioner shall preside and endeavour to induce the parties to come to an agreement.
- 25
30 (3) If any person so required to attend does not attend in conference as aforesaid he shall be liable to a penalty not exceeding fifty pounds.
- 35 ~~(d)~~ (c) (i) by inserting next after subsection one of section eighteen the following new subsection:— Sec. 18.
(Concilia-
tion com-
mittees.)
- 40 (1A) (a) In the establishment of a committee no exception shall be made from the industry or calling or combination, arrangement or grouping of industries or callings for

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for which the committee is established, which will have the effect of excluding the employees of any one or more specified employers or any one or more specified groups of employers engaged in such industry or calling or combination, arrangement or grouping of industries or callings, unless such employees are engaged in an industry or calling or combination, arrangement or grouping of industries or callings for which some other committee is established.

(b) Where, in the establishment of any committee which is in existence at the commencement of the Industrial Arbitration (Amendment) Act, 1943, any exception was made which contravenes the provisions of paragraph (a) of this subsection, then, as from such commencement, the instrument establishing such committee shall be read and construed as if such exception were omitted therefrom, and the committee shall, after such commencement, be deemed to be established accordingly.

The Minister shall, as soon as practicable after such commencement, make such alterations and amendments of the instrument establishing such committee as may be necessary to give effect to this subsection.

(ii) by omitting from subsection two of the same section the words "the conciliation commissioner" and by inserting in lieu thereof the words "a chairman, who shall be one of the conciliation commissioners";

(iii) by inserting in the same subsection after the words "Such representatives" the words and symbols "(in this section hereinafter referred to as 'members')";

(e) (d) (i) by inserting at the end of subsection one of section nineteen the words "The person so appointed shall be one of the conciliation commissioners"; (ii) (Apprenticeship commissioners.)

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(ii) by omitting subsection two of the same section;

(iii) by omitting subsections seven and eight of the same section.

5 (2) (a) The persons who immediately before the commencement of this Act held office as the conciliation commissioner and the apprenticeship commissioner respectively shall as from such commencement cease to hold office but each of such persons shall be eligible for
10 appointment under the Principal Act as amended by this Act, as a conciliation commissioner.

(b) If any such person is not so appointed he shall receive such compensation as he would have been entitled to had his services been dispensed with other-
15 wise than according to law.

(3) The Principal Act is further amended by inserting next after section 4A (as inserted by subsection five of section three of this Act) the following new section:—

Further amendment of Act No. 2, 1940.
New sec. 4B.

20 4B. (1) After the commencement of the Industrial Arbitration (Amendment) Act, 1943, a reference in any Act, award, industrial agreement, regulation or other instrument whatsoever, to the conciliation commissioner shall be construed as a reference to
25 a conciliation commissioner appointed under section fifteen of this Act (as amended by the Industrial Arbitration (Amendment) Act, 1943).

References in Acts, etc., and matters pending.
cf. Act No. 39, 1932, s. 7 (2) (3).

(2) Any matter pending or part heard before the conciliation commissioner or a committee or an
30 apprenticeship council at the commencement of the Industrial Arbitration (Amendment) Act, 1943, may be heard or continued before a conciliation commissioner appointed under section fifteen of this Act (as amended by the Industrial Arbitration (Amendment) Act, 1943), or, as the case may be, by a
35 committee constituted in accordance with section eighteen of this Act (as amended by the Industrial Arbitration (Amendment) Act, 1943) or by an apprenticeship council of which the apprenticeship commissioner

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commissioner appointed under section nineteen of this Act (as amended by the Industrial Arbitration (Amendment) Act, 1943) is the chairman.

5. The Principal Act is further amended—

- 5 (a) (i) by omitting from paragraph (a) of subsection one of section twenty the words "fifteen pounds" and by inserting in lieu thereof the words "twenty pounds";
- 10 (ii) by omitting from the same paragraph the words "seven hundred and fifty pounds" and by inserting in lieu thereof the words "one thousand pounds";
- 15 (iii) by omitting from the same paragraph the words "the Hunter District Water Supply and Sewerage Board" and by inserting in lieu thereof the words "The Hunter District Water Board";
- (iv) ~~by omitting paragraph (g) of the same subsection;~~
- 20 (v) ~~by omitting from the first proviso to the same subsection the words "(g) and (h)" and by inserting in lieu thereof the words "and (h) of this subsection and in section 88B of this Act";~~
- 25 (vi) ~~by omitting subsection two of the same section;~~
- (iv) by inserting at the end of the same section the following new subsection:—
- 30 (4) In framing any award granting preference in employment a committee shall have regard to the provisions of the Returned Soldiers and Sailors Employment Act, 1919, as amended by subsequent Acts and shall give a like preference in employment to persons who are competent for the
- 35 work required and who have been members of the Forces during the war.
- In this subsection—
- 40 "Auxiliary Service" means Army Medical Corps, Nursing Service of the Crown

of Act No. 2,
1940.
Further
amendment
Sec. 20.
(Original
jurisdiction.)

Industrial Arbitration (Amendment).

5 Crown, Australian Army Medical Nursing Service, Australian Women's Army Service, Women's Royal Australian Naval Service, Women's Australian Auxiliary Air Force, or such other organisation as the Governor may by proclamation from time to time declare to be an auxiliary service for the purpose of this subsection.

10 "Combat Area" means an area prescribed as such for the purposes of the Australian Repatriation Act, 1920-1943, of the Commonwealth of Australia.

15 "Enlistment" means an engagement whether by appointment, enlistment or otherwise rendering a person liable to be employed on active service abroad or in a combat area as a member of the Forces or of an auxiliary service.

20 "Member of the Forces" means any person who was at the time of his enlistment a resident in the Commonwealth of Australia or in a mandated territory of the Commonwealth or in any territory under the jurisdiction of the Commonwealth or
25 who was domiciled in any State of the Commonwealth or in any such territory and who during the war served abroad or within a combat area as a member of any Australian Military Force or of the Royal Australian Naval Forces or as a member
30 of the Royal Australian Air Force or as a member of an auxiliary service and who has been duly discharged from such service.

35 "War" means the war against Germany which commenced on the third day of September one thousand nine hundred and thirty-nine and the subsequent war against Italy and other allies of Germany and the war against Japan.

Save

Industrial Arbitration (Amendment).

Save as provided in this subsection nothing contained in this Act shall affect the operation of the Returned Soldiers and Sailors Employment Act, 1919, as amended by subsequent Acts.

5

- (b) (i) by omitting subsections one to six inclusive and subsection ten of section twenty-four; Sec. 24. (Powers of conciliation commissioner.)
 (ii) by omitting from subsections seven, eight and nine the words "under this section" wherever occurring;

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- (c) ~~(i)~~ by omitting from subsection one of section twenty-five the word "The" where firstly occurring and by inserting in lieu thereof the word "A"; Sec. 25. (Compulsory conferences.)

15

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

~~(1) If the parties are unable to come to an agreement the following provisions shall have effect:—~~

20

- ~~(a) where the conciliation commissioner is sitting alone he may make an order or award in relation to the question, dispute or difficulty, or may refer the question, dispute or difficulty to the commission; and any award so made shall have the like effect as an award made by a committee;~~

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30

- ~~(b) where the members of the conciliation committee established for the particular industry concerned are summoned to sit with the conciliation commissioner they, together with the conciliation commissioner as chairman, may sit as a committee and may make an order or award in relation to the question, dispute or difficulty or may~~

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Industrial Arbitration (Amendment).

may refer the question, dispute or difficulty to the commission.

- 5 (d) (i) by omitting from section twenty-six the word "The" where firstly occurring and by inserting in lieu thereof the word "A"; Sec. 26. (Powers of conciliation commissioner.)
- (ii) ~~by omitting from the same section the words "at the request of any party he shall, or, of his own motion";~~
- 10 (iii) (ii) by omitting from the same section the words "but as assessors only and without vote" and by inserting in lieu thereof the words "and when so sitting they, together with the conciliation commissioner as chairman, shall constitute a committee";
- 15 (iv) (iii) by omitting from the same section the words "the conciliation commissioner" where lastly occurring and by inserting in lieu thereof the words "a conciliation commissioner or a committee upon any matter referred under this section";
- 20 (e) (i) by omitting from section twenty-seven the words "the conciliation commissioner" wherever occurring and by inserting in lieu thereof the words "a conciliation commissioner or a committee"; Sec. 27. (Decision of conciliation commissioner final.)
- 25 (ii) by inserting in the same section after the words "upon him" the words "or it";
- (iii) by omitting from the same section the word "twenty-four" where lastly occurring;
- 30 (f) (i) by inserting next after subsection one of section twenty-eight the following new subsection:— Sec. 28. (Jurisdiction of apprenticeship councils.)
- 35 (1A) Without prejudice to the generality of subsection one of this section the apprenticeship council shall—
- (a) determine what facilities are available for the training of apprentices and trainee apprentices in any industry;
- 46-F (b)

Industrial Arbitration (Amendment).

- 5 (b) where it determines that such facilities are available in any trade, technical or other training school, require that such number of apprentices and trainee apprentices as it may determine, having regard to the facilities available, shall attend thereat for such classes or courses of instruction as may be specified;
- 10 (c) where it determines that no such facilities or no sufficient such facilities as are mentioned in paragraph (b) of this subsection are available, but that facilities are available for providing instruction by correspondence or otherwise, require that such number of apprentices and trainee apprentices as it may determine, having regard to the facilities available, shall obtain such instruction as may be specified;
- 15 (d) determine that the employer of every apprentice or trainee apprentice required to attend any trade, technical or other training school, shall allow him such time as the apprenticeship council may deem reasonable during ordinary working hours to attend such school;
- 20 (e) determine that the employer of every apprentice or trainee apprentice who is required to obtain instruction by correspondence or otherwise shall allow him such time as the apprenticeship council may deem reasonable during ordinary working hours for the purpose of taking full advantage of the instruction so obtained,

(ii)

Industrial Arbitration (Amendment).

(ii) by inserting after subsection four of the same section the following new subsection:—

(4A) No employer shall, directly or indirectly or by any pretence or device—

5 (a) require or permit any person to pay or give; or

(b) demand or receive from any person, any premium, fee, gift, reward, bonus or consideration for entering into any indenture or other contract of apprenticeship (whether with such person or any other person) or for training any employee or prospective employee in any industry without having first obtained the consent of the apprenticeship council for such industry.

Any person who contravenes any provision of this subsection shall be liable, on conviction, to a penalty not exceeding one hundred pounds.

20 Upon any such conviction the industrial or other magistrate or justices may also make an order directing the employer to refund such premium, fee, gift, reward, bonus or consideration or the value thereof to the person from whom it was received.

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

30 30A. Notwithstanding anything contained in this Act the commission shall not entertain an application for a new award or for the variation or renewal of an award relating to any industry for which a committee has been established unless the commission is satisfied that proceedings before such committee have failed to result in the making of an award.

This section shall not be construed as limiting the jurisdiction of the commission in respect of any appeal or reference made under this Act.

New sec.
30A.

Certain matters to be dealt with by committee in first instance. cf. C'wta Conciliation and Arbitration Act 1904-1934, s. 33.

Industrial Arbitration (Amendment).

6. The Principal Act is further amended—

(a) by inserting next after section fifty-four the following new section:—

5 54A. (1) This section shall apply to and in respect of—

(a) all awards and industrial agreements made or deemed to have been made under this Act which were in force at the commencement of the Industrial Arbitration (Amendment) Act, 1943, and which—

(i) fix rates of wages for employees by reference to the needs basic wage assessed on the index number for Sydney contained in the Retail Price Index Numbers, but with the differentiation in the rates for different districts approved and adopted by the Commonwealth Court of Conciliation and Arbitration in the Commonwealth Judgment, and the fixed loading addition determined in the Commonwealth Judgment as being applicable to the needs basic wage so assessed; or

(ii) fix rates of wages exclusively for employees of the Crown (as defined in section fifty-four of this Act) and for such employees only whether or not such rates are fixed on an annual basis; and

(b) any other award or industrial agreement (not being an award or industrial agreement which fixes rates of wages exclusively for employees within the county of Yancowinna and for such employees

Further
amendment
of
Act No. ,
1940.
New s. 54A.

Awards and
agreements
existing at
commencement
of Industrial
Arbitration
(Amendment)
Act, 1943.

Industrial Arbitration (Amendment).

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employees only) made or deemed to have been made under this Act, which is in force at the commencement of the Industrial Arbitration (Amendment) Act, 1943; and which the Commission, upon application made as prescribed, declares to be an award or industrial agreement to which this section applies.

10

In dealing with any such application the commission shall, as far as practicable, adopt the principles which, under subsection one of section fifty-seven of this Act, are applicable to and in respect of awards made after the commencement of the Industrial Arbitration (Amendment) Act, 1943.

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(2) Every award or industrial agreement to which this section applies shall be deemed to be varied so as to provide that the needs basic wage which shall apply to that award or industrial agreement shall be the needs basic wage assessed on the index number for Sydney contained in the Retail Price Index Numbers (but without the differentiation in the rates for different districts approved and adopted by the Commonwealth Court of Conciliation and Arbitration in the Commonwealth Judgment) and the fixed loading addition determined in the Commonwealth Judgment as being applicable to the needs basic wage so assessed.

Such variation shall—

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(a) in the case of awards and industrial agreements of the nature referred to in paragraph (a) of subsection one of this section take effect as from the commencement of the first pay period to commence after the commencement of the Industrial Arbitration (Amendment) Act, 1943; and

(b)

Industrial Arbitration (Amendment).

5 (b) in the case of any awards or industrial agreements of the nature referred to in paragraph (b) of subsection one of this section as from such date as the commission may specify in the declaration made under that paragraph in respect of the award or industrial agreement.

10 (3) As soon as practicable after the commencement of the Industrial Arbitration (Amendment) Act, 1943, the registrar shall vary the terms of each award to which this section applies, affecting rates of pay, to the extent necessary to give effect to the provisions of this section and may make such alterations in the form of any such award as he may think necessary or desirable to enable full effect to be given to the provisions of this Act.

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

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

30 (b) (i) by omitting paragraph (a) of subsection one of section fifty-five; (ii) by omitting from paragraph (a) of subsection two of the same section the words "paragraph (a) or"; (iii) by omitting paragraph (b) of the same subsection;

35 (c) (i) by omitting section fifty-six;

Sec. 55
(Unifor-
mit.)

Sec. 56.
(Power to
alter basis of
awards.)

(ii)

Industrial Arbitration (Amendment).

(ii) by omitting from subsection eight of section fifty four the words "or section fifty six";

Sec. 54
(Conse
quential.)

(d) (i) by omitting subsection one of section fifty seven and by inserting in lieu thereof the following subsection:—

Sec. 57
(Future
award and
industrial
agree-
ments.)

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(1) (a) This subsection shall apply to and in respect of all awards and industrial agreements made after the commencement of the Industrial Arbitration (Amendment) Act, 1943.

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(b) Subject to paragraph (d) of this subsection all awards and industrial agreements to which this subsection applies (other than awards or industrial agreements which fix rates of wages exclusively for employees within the county of Yancowinna and for such employees only), shall, insofar as they fix rates of wages by reference or in relation to a needs basic wage with the appropriate fixed loading, be made by reference or in relation to the needs basic wage assessed on the index number for Sydney contained in the Retail Price Index Numbers (but without the differentiation in the rates for different districts approved and adopted by the Commonwealth Court of Conciliation and Arbitration in the Commonwealth Judgment) and the fixed loading addition determined in the Commonwealth Judgment as being applicable to the needs basic wage so assessed.

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(c) Subject to paragraph (d) of this subsection all awards or industrial agreements to which this subsection applies which fix rates of wages exclusively for employees within the county of Yancowinna and for such employees only shall, insofar as they fix rates of wages by reference or in relation to a needs basic wage with the appropriate fixed loading, be made

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by

Industrial Arbitration (Amendment).

by reference or in relation to the needs
 basic wage assessed on the index number
 for Broken Hill contained in the Retail
 Price Index Numbers and the fixed loading
 addition determined in the Commonwealth
 Judgment as being applicable to the needs
 basic wage so assessed.

(d) Notwithstanding anything con-
 tained in paragraph (b) or paragraph (c)
 of this subsection the parties to any award
 or industrial agreement to which this sub-
 section applies and which fixes rates of
 wages by reference or in relation to a needs
 basic wage with the appropriate fixed load-
 ing addition, may by consent, at the time
 the award or industrial agreement is made
 or upon any application for a variation of
 the award or industrial agreement, adopt
 the needs basic wage assessed on the index
 number for such place within New South
 Wales or such combination of places (of
 which Sydney or some other town in New
 South Wales is one) contained in the Retail
 Price Index Numbers as may be specified
 in the award or industrial agreement with
 the fixed loading addition determined by
 the Commonwealth Court of Conciliation
 and arbitration as being applicable to the
 needs basic wage assessed on the index
 number for such place or combination of
 places.

(e) by omitting section fifty-nine.

7. The Principal Act is further amended—

(a) by inserting next after paragraph (c) of section
 sixty-three the following new paragraph:—

(e1) The commission or a committee may, in
 any case where the parties agree, reduce the
 ordinary

Sec. 59.
 (Provision for
 applying s. 54
 to certain
 awards and
 agreements.)

Further
 amendment of
 Act No. 2
 1940.

Sec. 63.
 (Directions
 re hours.)

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Industrial Arbitration (Amendment).

ordinary working hours of employees below the number of hours specified in this section.

- (b) (i) by inserting next after paragraph (c) of subsection one of section sixty-four the following new paragraph:—

Sec. 64.
(Standard hours.)

(c1) The commission may, in respect of any employees or class of employees who are bound by an award made by agreement in accordance with paragraph (c1) of section sixty-three of this Act—

(i) declare a lesser number of ordinary working hours than the standard hours about to be declared; or

(ii) declare a lesser number of ordinary working hours than the standard hours already declared;

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

(11) Notwithstanding anything contained in this section, an award or industrial agreement may be made, where the parties agree, prescribing a lesser number of ordinary working hours for employees bound by such award or industrial agreement than the standard hours determined and declared under this section and applicable with respect to such employees.

8. 6. The Principal Act is further amended—

- (a) by omitting from section seventy-five the words “conciliation commissioner” and by inserting in lieu thereof the word “chairman”;

Further amendment of Act No. 2, 1940.
Sec. 75.
(Convening of meetings of committees.)

- (b) by omitting from subsection one of section seventy-seven the words “Subject to section twenty-four of this Act”;

Sec. 77.
(Evidence on oath.)

- (c) by inserting after section seventy-seven the following new sections:—

New secs
77A-77F.

77A. The chairman of a committee shall keep notes of the proceedings before such committee, which

Notes of proceedings,

Industrial Arbitration (Amendment).

which notes shall be forwarded to the registrar with the committee's award, order or determination.

5 77B. In every case where an application or reference to a committee is made, it shall be the duty of the chairman to endeavour to bring the parties to an agreement with respect to the matters referred to in such application or reference, and to this end the committee shall, in such manner as it thinks fit, expeditiously and carefully inquire into such matters and anything affecting the merits thereof.

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15 In the course of such inquiry, the chairman may make all such suggestions and do all such things as he deems right and proper for inducing the parties to come to a fair and amicable settlement of such matters.

20 77c. A committee may confer with any persons as to anything affecting the settlement of an industrial matter and may summon any person before it for the purpose of conference or of giving evidence. Such summons shall be signed by the chairman or by the registrar.

25 Every person so summoned shall be bound to attend upon such summons and shall for disobedience thereto be liable to a penalty not exceeding fifty pounds.

77d. A committee may—

- 30 (a) conduct its proceedings in public or private as it may think fit;
(b) adjourn the proceedings to any time or place;
35 (c) exercise in respect of witnesses and documents and persons summoned or giving evidence before it, or on affidavit, the same powers as were by section one hundred and thirty-six of the Parliamentary Electorates and Elections Act, 1902, conferred on a committee of elections and qualifications, and
40 the

Inquiry by committee.
cf. Act No. 17, 1912, s. 32.

Persons may be summoned.

Conduct of proceedings.
cf. Ibid. s. 34.

Industrial Arbitration (Amendment).

the provisions of the said section shall apply in respect of the proceedings of the committee:

5

Provided that unless a person raises the objection that the profits of an industry are not sufficient to enable him to pay the wages or grant the conditions claimed, no person shall be required without his consent to produce his books, or to give evidence with regard to the trade secrets, profits, losses, receipts, and outgoings of his business, or his financial position.

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Where a person raises such objection he may be required, on the order of the chairman, to produce the books used in connection with the carrying on of the industry in respect of which the claim is made, and to give evidence with regard to the profits, losses, receipts, and outgoings in connection with such industry, but he shall not be required to give evidence regarding any trade secret, or, saving as hereinbefore provided, his financial position. No such evidence shall be given without his consent except in the presence of the committee alone, and no person shall inspect such books except the chairman or an accountant appointed by the committee, who may report to the committee whether or not his examination of such books supports the evidence so given, but shall not otherwise disclose the contents of such books. Such accountant shall, before acting under this paragraph, take an oath not to disclose any matter or evidence before the committee relating to—

trade secrets;

the

Industrial Arbitration (Amendment).

the profits or losses or the receipts
and outgoings of any em-
ployer;
5 the books of any employer or wit-
ness produced before the com-
mittee; or
the financial position of any em-
ployer or of any witness,
10 and if he violates his oath he shall be
liable to a penalty not exceeding five
hundred pounds.

77E. At any meeting of a committee—

(a) the chairman shall preside;

15 (b) **a quorum of the committee shall be
three comprising the chairman, a rep-
resentative of the employers and a
representative of the employees;**

20 ~~(b)~~ (c) each member, except the chairman,
shall have one vote; and where the
votes for and against any matter are
equal, the chairman ~~shall~~ **may with the
consent of all the members or if so
specially authorised by the commission
decide the question;**

25 ~~(c)~~ (d) if any of the members, other than the
chairman, are absent from a duly con-
vened meeting of a committee, the
chairman may, together with such mem-
bers as may be present, proceed to
30 hear ~~and determine~~ any matter before
the committee. ~~Such determination
shall be deemed to be a decision of the
committee.~~

35 77F. Where agreement has been reached by
the members of a committee as to some matters
at issue before it an award may, if the com-
mittee so decides, be made as to such matters
and, unless all the members consent to the chair-
man deciding any particular matter as to which

Proceedings
at meetings.
cf. Act No.
17, 1912,
s. 36.

Awards as
to part
of claims.

Industrial Arbitration (Amendment).

no agreement can be reached, such matter may be reserved for the further consideration of the committee or may be referred forthwith to the commission for determination or for directions.

5 ~~77F.G.~~ Any award or order of a committee shall, after settlement by the registrar in the manner prescribed, be signed by the chairman: Awards and orders.

10 Provided that upon any settlement the registrar may submit any question of law to the commission for its determination.

Subject to this section the registrar shall publish the award or order, when signed, in the Gazette, and shall notify the parties in the prescribed manner.

15 (d) by omitting from section seventy-eight the words "the conciliation commissioner" and by inserting in lieu thereof the words "a conciliation commissioner"; Sec. 78. (Intervention by Crown.)

20 (e) by omitting section eighty and by inserting in lieu thereof the following section— Subst. sec. 80.

25 80. (1) In proceedings before the commission, if the matter is an industrial matter no party shall be represented by a barrister or a solicitor except by the consent of the commission; but such consent shall not be given in any case where, in the opinion of the commission, the questions to be determined in such proceedings are exclusively questions of fact. Legal representation.

30 (2) In proceedings before a conciliation commissioner or a committee no party shall, except by consent of the conciliation commissioner or the committee, as the case may be, and all the parties, be represented by a barrister or a solicitor or by a person who has qualified for admission as a barrister or a solicitor.

35 (3) Nothing in this section shall preclude any permanent employee of the Crown from appearing on behalf of the Crown in any proceedings before the commission, a conciliation commissioner

Industrial Arbitration (Amendment).

commissioner or a committee; but in any case where the permanent employee of the Crown so appearing is a barrister or a solicitor, the Crown shall be deemed to have consented to the representation of any other party to the proceedings by a barrister or a solicitor and the consent of the commission, conciliation commissioner, or committee, as the case may be, to such representation shall not be refused.

- 5
10 (f) by omitting from section eighty-one the words "the conciliation commissioner" where firstly occurring and by inserting in lieu thereof the words "a conciliation commissioner";

Sec. 81
(Appearance of parties by advocate or agent.)

(f) by omitting section eighty-one;

- 15 (g) (i) by omitting from paragraph (a) of subsection one of section eighty-four the words "or of any member thereof in the exercise of any power or function delegated to him by the commission" and by inserting in lieu thereof the words and symbols "(whether constituted by three members or by any one member)";
- 20

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

- 25 (ii) by omitting subparagraphs (i) and (ii) of paragraph (b) of the same subsection and by inserting in lieu thereof the words and symbols "the commission (whether constituted by three members or by any one member)".

9. 7. The Principal Act is further amended—

- 30 (a) by inserting next after section eighty-eight the following new sections:—

Further amendment of Act No. 2, 1940.

New secs. 88A, 88B.

- 35 88A. The commission or a committee shall not award any conditions nor fix rates of wages or other payments for employees of the Crown less favourable than the conditions granted or the wages paid or other payments made to employees (other than employees of the Crown) who are doing substantially the same class of work

Crown employees.

Industrial Arbitration (Amendment).

work, but the fact that employment is permanent or that additional privileges are allowed to employees of the Crown shall not of itself be regarded as a substantial difference in the nature of the work.

In this section the expression "employees of the Crown" includes employees of the Government or of any department of the Government or of any of the following corporations, that is to say—

The Commissioner for Railways.
 The Commissioner for Road Transport and Tramways.
 The Commissioner for Main Roads,
 The Metropolitan Meat Industry Commissioner,
 The Maritime Services Board of New South Wales,
 The Metropolitan Water, Sewerage and Drainage Board,
 The Water Conservation and Irrigation Commission,
 Board of Fire Commissioners of New South Wales,
 The Hunter District Water Board, and
 The Hospitals Commission of New South Wales.

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

~~88a. The commission or a committee may on an application or reference to it in that behalf prescribe by award that absolute preference of employment shall be given to the financial members of the industrial union or unions specified in the award.~~

Absolute
 preference
 to unionists.

Nothing in this section shall affect the operation of the Returned Soldiers and Sailors Employment Act, 1919, as amended by subsequent Acts.

Industrial Arbitration (Amendment).

5 88e.B. (1) Where by an award a price or rate is fixed for persons performing work in any industry the commission or a committee may, on an application or reference to it in that behalf, prescribe by award that no contract to which this section applies shall be valid unless the consent of the commission or the committee is obtained.

Restriction
as to
contracts
in certain
cases.

10 (2) If any person acting or purporting to act in the execution of any contract which is rendered invalid by this section, performs any work for which by an award a price or rate has been fixed for persons performing such work, then for the purposes of this Act the person so performing such work shall be deemed to be an employee, and the person with whom the contract so rendered invalid was made shall be deemed to be the employer of such employee.

20 (3) This section shall apply to any contract made by two or more persons being or alleging themselves to be partners working in association in any industry whereby such persons undertake the performance of work for which by an award a price or rate has been fixed for persons performing such work, and under which such persons or any of them engage personally in the performance of the work whether with or without the assistance of other persons employed by them.

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

New sec.
90A.

35 90A. Where an award made or deemed to have been made under this Act has been varied (whether such variation was made before or after the commencement of the Industrial Arbitration (Amendment) Act, 1943) the Government Printer shall, if and when directed so to do by the registrar, reprint the award in a form certified as correct by the registrar.

Incorporation
of
variation in
reprint of
awards.

Industrial Arbitration (Amendment).

~~10.~~ 8. The Principal Act is further amended—

Further
amendment
of Act No. 2,
1940.

Sec. 92.
(Recovery
of wages.)

- 5 (a) by inserting in subsection one of section ninety-two after the word "Act" the words "or by the conditions of a permit issued under section eighty-nine of this Act";
- (b) by inserting at the end of the same subsection the words "or permit as the case may be";
- 10 (c) by omitting from subsection two of the same section the words "within six months after such money has become due";
- (d) by omitting from the same subsection the words "to the registrar or";
- 15 (e) by inserting in the same subsection after the words "price or rate" the words "which became due during the period of twelve months immediately preceding the date of the application (where such person is still in the employment of such employer at that date) or within the last twelve months of the employment with such
- 20 employer (where the employment was terminated before the date of the application).
- An application under this subsection made after the termination of the employment shall be made not later than six months after the
- 25 date of such termination.
- (f) by omitting from the same subsection the words "The registrar or magistrate" and by inserting in lieu thereof the words "The industrial magistrate";
- 30 (g) by inserting at the end of the same subsection the following words: "Where, in any proceedings under this section, it is made to appear that the employer has committed a breach of section ninety-three or section ninety-six of this Act, the industrial magistrate may, in addition to
- 35 any order made under this section, impose any penalty

Industrial Arbitration (Amendment).

penalty which he might have imposed in proceedings for a penalty under section ninety-three or section ninety-six of this Act as the case may be”;

5 (h) by omitting from subsection three of the same section the words “within the said period of six months”;

(i) by inserting next after subsection four of the same section the following new subsection:—

10 (4A) In any case where the person authorised to take proceedings under subsection two or subsection three of this section is a person employed to do any work for which the price or rate has
15 been fixed by an award or by an industrial agreement made under this Act, the proceedings may, with the consent in writing of such person, be taken by the secretary or other officer of an industrial union concerned in the industry to
20 which such award or industrial agreement relates, in the name and on behalf of such person.

Any amount ordered to be paid in proceedings under this section may be paid to such secretary or other officer and the receipt of such secretary
25 or other officer shall be a sufficient discharge to the employer for the amount mentioned in the receipt.

Any amount so paid to such secretary or other officer (less any costs properly incurred in connection with the proceedings and not paid by
30 the employer) shall be held by him on trust for the person on whose behalf the proceedings were taken.

35 (j) by omitting from subsection five of the same section the words “final payment made” and by inserting in lieu thereof the words “each payment made after the commencement of the Industrial Arbitration (Amendment) Act, 1943”;

(k)

Industrial Arbitration (Amendment).

(k) by inserting at the end of the same section the following new subsections:—

5 (6) In every case where an employee has left
the employment of an employer without being
paid the full amount due to him in respect of such
employment, and the employer has been unable,
10 during a period of thirty days after the termina-
tion of employment, to make such payment
because the whereabouts of such employee are
unknown to him, and cannot with reasonable
15 diligence be found, such employer shall, forth-
with after the expiration of such period, pay the
full amount aforesaid to the Under Secretary of
the Department of Labour and Industry and
Social Services. A receipt issued on behalf of
the said Under Secretary for money so paid to
him shall be a sufficient discharge to the
employer for the amount mentioned in the
receipt.

cf. 23 Geo.
V, No. 36
(Qld.), s. 50
(3).

20 Any amount so paid to the Under Secretary
shall be held by him in trust for the employee.

Any employer who fails to comply with this
subsection shall be liable to a penalty not exceed-
ing fifty pounds.

25 (7) Whosoever inserts or causes to be inserted
in a newspaper any advertisement in which he
offers or seeks employment at a wage lower than
the price or rate fixed by any award or indus-
trial agreement applicable to such employment
30 shall be liable to a penalty not exceeding fifty
pounds.

The printer or publisher of any newspaper
in which any such advertisement is published
shall, upon demand, furnish an inspector
35 appointed under this Act or the secretary of the
industrial union for the industry to which the
award or industrial agreement relates, with the
name and address of the person who inserted,
or caused to be inserted, such advertisement.

40 (8) (a) In any contract for the performance
of any work involving the payment of wages or
the

Industrial Arbitration (Amendment).

the supply of the supply for reward of any musical entertainment, the consideration for such contract shall not be less than a sum sufficient to pay to each person engaged in the performance of such work, or the supply of the musical entertainment, the price or rate fixed by any award or industrial agreement for a person performing such work or so engage¹

(b) Any person who offers, enters into, or is in any way concerned with a contract which does not comply with paragraph (a) of this subsection or who knowingly performs work or engages or takes part in a musical performance in pursuance of a contract which does not comply with that paragraph shall be guilty of an offence against this Act, and shall be liable to a penalty not exceeding twenty pounds.

(9) (a) Where any female performs work under any award or industrial agreement, whether made before or after the commencement of the Industrial Arbitration (Amendment) Act, 1943, which does not prescribe rates of pay for female employees, such female pending variation of such award or industrial agreement in consequence of such female work being performed shall be paid the price or rate prescribed by that award or agreement for employees engaged on the class of work performed by her. Nothing in the foregoing provisions of this subsection shall be construed as a direction that any variation of the award or industrial agreement shall necessarily be made.

(b) This subsection shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

11. 9. The Principal Act is further amended—

- (a) (i) by omitting from subsection one of section ninety-three the words “the registrar or an industrial magistrate may order him to pay a

Further amendment of Act No. 2, 1943. Sec. 93. (Penalty for breach of award.)

Industrial Arbitration (Amendment).

- 5 a penalty not exceeding fifty pounds" and
by inserting in lieu thereof the words "he
shall be liable to a penalty of ~~not less than~~
~~two pounds and~~ not exceeding one hundred
pounds. Proceedings for the recovery of
any such penalty shall be taken before an
industrial magistrate";
- 10 (ii) by omitting from subsection two of the same
section the words "Where on making such
order" and by inserting in lieu thereof the
words "Where in proceedings for the
recovery of any such penalty";
- 15 (iii) by omitting from the same subsection the
words "the registrar or magistrate" and by
inserting in lieu thereof the words "the
industrial magistrate";
- 20 (iv) by omitting from subsection three of the
same section the words "Where an order is
made under subsection one of this section
against any person, and the registrar or
magistrate" and by inserting in lieu thereof
the words "Where a penalty is imposed
upon any person under subsection one of
this section and the industrial magistrate";
- 25 (v) by omitting from the same subsection the
words "any order made" and by inserting
in lieu thereof the words "any penalty
imposed";
- 30 (vi) by omitting from subsection four of the same
section the words "The costs of any such
proceedings shall be paid by the complain-
ant if the order is not made, and by the
defendant if the order is made" and by
inserting in lieu thereof the words "The
industrial magistrate may award costs to
either party and assess the amount of such
costs";
- 35 (b) by inserting next after section ninety-three the
following new section:—
- 40 93A. (1) Any proceedings under section
ninety-two or section ninety-three of this Act
against

New sec.
93A.

Proceed-
ings against
unincorpor-
ated clubs.

Industrial Arbitration (Amendment).

against an employer which is an unincorporated club may be taken against the secretary or the managing committee of the club as nominal defendants on behalf of the club and its members.

5

(2) Any property of the club, whether in the hands of trustees or not, shall be available to answer any order made or penalty imposed in such proceedings.

10

(c) (i) by inserting after paragraph (b) of section ninety-five the following new paragraphs:—

Sec. 95.

(Penalty for unlawful dismissal.)

(b1) has informed any person that a breach or a suspected breach of an award or industrial agreement has been committed by such employer; or

15

(b2) has engaged or contemplates being engaged in any public or political activity (not being an activity which interferes with the performance of the duties of his employment); or

20

(ii) by omitting from the same section the words "or a similar position" and by inserting in lieu thereof the words "position or a position not less advantageous to the employee than that held by him prior to such dismissal, injury or prejudice";

25

~~(iii) by omitting from the same section the words "No prosecution for an offence under this section shall be commenced except by leave of the commission";~~

30

(d) (i) by inserting in subsection one of section ninety-six after the word "factory" the words "or place";

Sec. 96.

(Time sheets and pay sheets.)

35

(ii) by inserting in the same subsection after the words "written up in ink" the words "It shall be a sufficient compliance with the foregoing provisions of this subsection if such

Industrial Arbitration (Amendment).

5 such records are kept by means of some mechanical device of a type approved by the commission; such daily records shall be preserved in good order and condition and kept available for inspection for a period of eighteen months”;

10 (iii) by omitting from the same subsection the words “to a penalty not exceeding ten pounds” and by inserting in lieu thereof the words “for the first offence to a penalty of not less than two pounds and not exceeding twenty pounds, and for a second or subsequent offence to a penalty of not less than five pounds and not exceeding fifty pounds”;

15 (iv) by inserting after the same subsection the following new subsection:—

cf. Act. No.
39, 1912,
s. 97 (5).

20 (1A) Every person who aids, abets, counsels, or procures or by act or omission is in any way directly or indirectly knowingly concerned in the commission of any offence under subsection one of this section, shall be deemed to have committed that offence and shall be liable to the penalty provided in that subsection.

25 (v) by inserting at the end of subsection two of the same section the words—

30 It shall be a sufficient compliance with the provisions of this subsection if the employer exhibits and keeps exhibited the copy of the award as last reprinted under section 90A of this Act.

35 (e) by inserting after section ninety-six the following new section:—

New sec.
96A.

96A. (1) Where in any proceedings under section ninety-two, section ninety-three or section ninety-six of this Act it appears that the award or industrial agreement referred to in the application or information, as the case may be, is

Power to
amend.
cf. Act No.
27, 1902,
s. 65 (3).

Industrial Arbitration (Amendment).

is not the award or industrial agreement appropriate to the proceedings and that some other award or agreement by which the employer is bound is appropriate to such proceedings, the industrial or other magistrate or justices may amend the application or information and proceed to deal with the matter as though proceedings had been instituted under the application or information as so amended:

Provided that where the defect or variance appears to the industrial or other magistrate or justices before whom such proceedings are taken to be such that the employer has been thereby deceived or misled such industrial or other magistrate or justices may, upon such terms as he or they think fit, adjourn the hearing of the case to some future day.

(2) Nothing in this section shall be construed as limiting the operation of section sixty-five of the Justices Act, 1902-1940.

- (f) (i) by omitting from **subsection one of section** one hundred and nineteen the words "or any penalty" and by inserting in lieu thereof the words "or where an order is made under subsection (4A) of section twenty-eight of this Act for the refund of any premium, fee, gift, reward, bonus or consideration or the value thereof";
- (ii) by omitting from the same subsection the words "or of such penalty" and by inserting in lieu thereof the words "or for the amount of the value of such premium, fee, gift, reward, bonus or consideration";

- (g) by inserting at the end of section one hundred and twenty-one the following new paragraph:—

The provisions of section eighty-two of the Justices Act, 1902-1940, shall, mutatis mutandis, apply to and in respect of any penalty adjudged to be paid by any such conviction and the persons against whom the conviction is made.

(h)

Sec. 119.
(Enforcement of certain orders.)

Sec. 121.
(Recovery of penalties.)

Industrial Arbitration (Amendment).

- (h) by inserting next after section one hundred and twenty-one the following new section:—

New sec.
121A.

5 121A. If any person shall, during any proceeding before an industrial magistrate, be guilty of contempt, such person may be punished in a summary way by such industrial magistrate by fine not exceeding forty shillings or by imprisonment for a period not exceeding fourteen days.

Contempt.
cf. Act No
27, 1902,
s. 152.

- 10 (i) by inserting at the end of section one hundred and twenty-two the following words:—

Sec. 122.
(Penalties
to be paid
to Consoli-
dated
Revenue.)

15 Provided that where such penalty has been recovered upon complaint or information of the secretary or other officer of an industrial union, the commission or an industrial or other magistrate or justices may order that the penalty or any part thereof be paid to such union;

- (j) ~~(i)~~ by omitting from subsection one of section one hundred and twenty-seven all words after the words "powers and duties prescribed" down to and including the words "section ninety-three of this Act" and by inserting in lieu thereof the following words: "An inspector may—

Sec. 127.
(Appoint-
ment and
powers of
inspectors.)

25 (a) at any reasonable time enter, inspect and examine any premises where he has reasonable cause to believe that any person is employed therein or any work is being done therein;

30 (b) examine either alone or in the presence of any other person as he thinks fit with respect to matters arising under this Act or any award or industrial agreement, any person whom he finds in such premises and require any person so examined to sign a statement of the truth of his answers to any question asked of him on such examination;

cf. Act No.
39, 1912,
s. 123.

(c)

Industrial Arbitration (Amendment).

5

(c) make such examination and inquiries as he thinks necessary to ascertain whether the requirements of this Act or any award or industrial agreement are being or have been complied with;

10

(d) require the production of any time sheets or pay sheets or award required to be kept or exhibited under this Act, or any indenture of apprenticeship and may inspect, examine and take copies of the same;

15

(e) when authorised in that behalf by the Minister institute proceedings in the name and on behalf of the Minister for a penalty under section ninety-three of this Act."

20

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

25

(2) Any person who—

(a) refuses or wilfully delays the admission to any premises of an inspector; or

(b) obstructs any inspector in the exercise of the powers conferred upon him by or under this Act; or

30

(c) fails to truly answer or reply to any question which the inspector is authorised to ask under this section; or omits to comply with any direction of an inspector to supply a statement of the truth of his answers; or

35

(d) fails to produce time and pay sheets or awards or other documents when duly required by an inspector; or

(e)

Industrial Arbitration (Amendment).

5 ~~(c) conceals or attempts to conceal any person from an inspector or prevents or attempts to prevent any person from appearing before or being examined by an inspector,~~

shall be liable to a penalty not exceeding twenty pounds.

10 ~~(k)~~ (j) by omitting from section one hundred and twenty-eight the words "conciliation commissioner" and by inserting in lieu thereof the word "chairman";

Sec. 128.
(Power of entry and inspection.)

15 ~~(l)~~ (k) by omitting section one hundred and twenty-nine and by inserting in lieu thereof the following new section:—

Subst.
sec. 129.

20 129. (1) The commission or a member thereof and every person authorised in writing by the commission or the registrar or a committee may at any time during working hours enter any building, mine, mine working, ship, vessel, place or premises of any kind wherein or in respect of which any industry is carried on or any work is being or has been done or commenced or any matter or thing is taking or has taken place in relation to which any industrial dispute is pending, or any award has been made, or any offence against this Act is suspected, and may, to the extent and for the purposes named in the authority, inspect and view any work, material, machinery, appliance, articles, book or document therein.

Power of entry.
cf. Act No. 13 of 1904 (Cwth), s. 41.

30 (2) No person authorised under subsection one of this section shall have any authority to enter a private dwelling-house, or the land used in connection therewith, unless some manufacture or trade in which labour is employed is carried on therein.

35 (3) Every person who hinders or obstructs the commission or a member thereof or any person authorised as aforesaid in the exercise of any power conferred by this section shall be liable to a penalty not exceeding fifty pounds.

Industrial Arbitration (Amendment).

- ~~12.~~ **10.** The Principal Act is further amended by omitting from subsection one of section one hundred and thirty-one the words "shall not be subject to the provisions of this Act other than Parts XIV and XV" and by inserting in lieu thereof the words "shall be subject to the provisions of this Act other than Part VI" **but no award relating to any such rural industry shall take effect unless the commission after public inquiry to which the Crown shall be a party certify to the Governor that the employers generally in the industry are then presently able to pay the wages set out in the award and will in all probability be able to continue to pay such wages during the currency of the award from the proceeds of the sale of the products of the industry together with any subsidy payable in respect thereof after making due allowance for a fair return upon the capital invested therein, a fair remuneration for the work and supervision of the employer, and all other proper outgoings. Upon the publication of such certificate in the Gazette the award shall have effect in such industry but not sooner.**

Further amendment of Act No. 2, 1940. Sec. 131. (Rural workers.)

- ~~13.~~ **11.** The Principal Act is further amended in the manner and to the extent set forth in the Schedule to this Act.

Further amendment of Act No. 2, 1940. (Revision.)

Industrial Arbitration (Amendment).

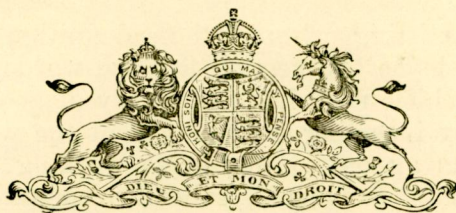
SCHEDULE.

Sections, headings, etc.	Amendment.
5 Sec. 2	(a) Omit the figures 17 and 77 , and insert the figures and letters 17A and 77F respectively 77F . (b) Omit the words "Conciliation Commissioner" wherever appearing and insert the words "Conciliation Commissioners."
10 Part II, Heading	Omit the words "Conciliation Commissioner" and insert the words "Conciliation Commissioners."
15 Part II, Division 2, Heading	Omit the words "Conciliation Commissioner" and insert the words "Conciliation Commissioners."
Sec. 16	Omit the words "subsections six and" and insert the word "subsection."
Part III, Heading	Omit the words "Conciliation Commissioner" and insert the words "Conciliation Commissioners."
20 Part III, Division 2, Heading	Omit the words "Conciliation Commissioner" and insert the words "Conciliation Commissioners."

*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, 6 April, 1943.

New South Wales.



ANNO SEPTIMO

GEORGII VI REGIS.

Act No. , 1943.

An Act to provide for the reconstitution of the Industrial Commission of New South Wales, and for the appointment of not more than five conciliation commissioners; for these and other purposes to amend the Industrial Arbitration Act, 1940, as amended by subsequent Acts; and for purposes connected therewith.

BE 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
5 the same, as follows :—

1. (1) This Act may be cited as the "Industrial Arbitration (Amendment) Act, 1943."

14961

46—A

(2)

Short title,
citation
and com-
mencement.

Industrial Arbitration (Amendment).

(2) The Industrial Arbitration Act, 1940, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

(3) The Industrial Arbitration Act, 1940, as amended by subsequent Acts and by this Act, may be cited as the Industrial Arbitration Act, 1940-1943.

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

10 2. The Principal Act is amended—

Amendment
of Act No.
2, 1940.
Sec. 5.
(Defini-
tions.)

(a) (i) by omitting from the definition of “Employee” in section five the words “or any vehicle used in the delivery of goods,” and by inserting in lieu thereof the words
15 “or as an outworker, or is working as a salesman, canvasser, collector, commercial traveller, insurance agent or in any other capacity in which he is paid wholly or partly by commission”;

20 (ii) by omitting from paragraph (c) of the definition of “Industrial matters” in the same section, the words “but not so as to give preference of employment to members of industrial unions, except in accordance
25 with the provisions of paragraph (g) of subsection one of section twenty of this Act”;

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

30 (c1) a claim that as between members of any industrial union or unions of employees and other persons offering or desiring service or employment at the same time preference shall be
35 given to such members;

(iv) by inserting after the definition of “Minister” in the same section the following new definition:—

40 “Outworker” means a person to whom articles or materials are given out to be made
cf. Act No.
15, 1926,
s. 6 (1).

Industrial Arbitration (Amendment).

made up, cleaned, washed, altered, ornamented, finished, or repaired or adapted for sale, in his own home or on other premises not under the control or management of the person who gives out the materials or articles.

5

(v) by inserting at the end of the same section the following new subsections:—

10

(2) A person who is engaged in plying for hire or in the delivery of goods with any vehicle or vessel the use of which is obtained by that person under a contract of bailment (other than a hire purchase agreement) in consideration of the payment of a fixed sum or a share in the earnings or otherwise shall, where the work in which such person is so engaged is work for which, by an award or industrial agreement, a price or rate has been fixed for persons performing such work, be deemed, for the purposes of this Act, to be an employee employed by the person from whom the use of the vehicle or vessel is so obtained, and such last mentioned person shall, for the purposes of this Act, be deemed to be the employer of such employee unless such persons or either of them establishes to the satisfaction of the tribunal in which proceedings for a breach of the award or industrial agreement are instituted that the contract of bailment was a bona fide contract and was not entered into for the purpose of avoiding the operation of the award or industrial agreement.

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(3) (a) Where any person (in this subsection referred to as "the principal") advertises or otherwise notifies that he will accept timber delivered or supplied to him or his agent or other person in accordance with such advertisement or notification or advertises or otherwise notifies to the abovementioned

40

cf. Act No.
15, 1926,
s. 6 (11).

cf. *Ibid.*
s. 6 (5) (b).

Industrial Arbitration (Amendment).

5 abovementioned effect and any person (in
this subsection hereinafter referred to as
the "contractor") gives notice to the prin-
cipal that he will deliver or supply such
timber or any part thereof, then such
contractor, whilst engaged in or about the
work of cutting, delivering or supplying
such timber or part thereof shall, for the
purposes of this Act, be deemed to be an
10 employee employed by the principal, and
the principal shall, for the purposes of this
Act, be deemed to be the employer of such
contractor.

15 Notice of intention to deliver or supply
timber as aforesaid shall indicate the
nature of the actual work to be undertaken.

The notice may be given personally or
by letter posted to the principal at his place
of business or usual address.

20 (b) For the purposes of this subsec-
tion:—

"Timber" includes sleepers, piles, poles,
girders, logs or pit timber;

25 "Cutting" includes felling, sawing,
obtaining, preparing or doing any
work in connection with timber.

(b) by omitting the proviso to subsection three of
section eight.

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

30 (a) by omitting from subsection one of section
fourteen the words "not more than six" and by
inserting in lieu thereof the word "three";

(b) by omitting from the same subsection the words
"by his commission";

35 (c) by omitting from subsection two of the same
section the words "The persons who, immedi-
ately before the commencement of this Act,
were

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

Further
amendment
of Act No. 2,
1940.

Sec. 14.
(Industrial
com-
mission.)

Industrial Arbitration (Amendment).

5 were President and other members of the industrial commission of New South Wales as constituted immediately before the commencement of this Act shall continue to hold office as President and members of the commission under this Act”;

(d) by omitting from subsection six of the same section the words “of two or more of them”;

10 (e) (i) by omitting from subsection seven of the same section the words “the conciliation commissioner” where firstly occurring and by inserting in lieu thereof the words “a conciliation commissioner”;

15 (ii) by omitting from the same subsection the words “The conciliation commissioner, committee, or” wherever occurring and by inserting in lieu thereof the words “A conciliation commissioner or committee or the”;

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

25 (8) (a) Except as provided by paragraph (b) of this subsection the commission shall be constituted by three members.

At sittings of the commission at which three members are present any question shall be decided according to the opinion of the majority.

30 (b) Where the commission directs that any matter shall be heard and determined by one member the commission shall, for all purposes of or relating to the hearing and determination of that matter, be duly constituted by any one member.

35 More than one sitting of the commission may be held at the same time.

40 (c) Where the commission is duly constituted by any one member, such member may state any case or reserve any question for the consideration of the commission as constituted by

Industrial Arbitration (Amendment).

by all three members or direct any case or question to be argued before the commission as so constituted:

5 Provided that such member shall not, where a request in that behalf is made by any party to the proceedings, refuse to exercise his powers under this section where the request is made in relation to a question of law which arises in the proceedings.

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

(g) by omitting from subsection ten of the same section the word "commissioner" and by inserting in lieu thereof the word "commissioners";

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

(13) Where any question or application is referred or any appeal is made to the commission under this Act, the commission may, before proceeding with the hearing of such question, application or appeal, call a conference of the parties with a view to effecting a settlement of the matters in dispute.

25 At such conference the members of the conciliation committee established for the industry or calling concerned shall, if the commission so directs, sit with the commission.

(2) The Principal Act is further amended by omitting from subsection three of section forty-two all words after the words "three members".

Further amendment of Act No. 2, 1940, s. 42. (Consequential.)

30 (3) (a) The persons who, immediately before the commencement of this Act, were President and other members of the industrial commission of New South Wales shall, as from such commencement, cease to hold office as such President and members, but shall be eligible for appointment under the Principal Act as amended by this Act as President and members respectively.

35 Where any such person is so appointed any period during which he has served as President or member before the commencement of this Act shall be computed as portion of his service for the purpose of ascertaining his

Industrial Arbitration (Amendment).

his pension rights under the Principal Act as amended by this Act.

(b) Any such person who is not so appointed shall be eligible for appointment to any other office in
5 the State having the like rank, title, status and precedence and the like salary, pension and other rights as those attaching to his office immediately before the commencement of this Act.

Where any such person is appointed to any such office
10 any period during which he has served as President or member before the commencement of this Act shall be computed as portion of his service for the purpose of ascertaining his pension rights in respect of the office to which he is so appointed.

(c) If any such person is not appointed pursuant to paragraph (a) or paragraph (b) of this subsection he shall retain the rank, title, status and precedence and the salary, pension and other rights to which he
15 would have been entitled if this Act had not been enacted, and shall so retain the same for the like period
20 as if he had continued to be a member of the industrial commission of New South Wales.

Any such person shall, at all times, hold himself available for appointment to act temporarily as a member of
25 the commission or for appointment as an acting judge of the Supreme Court.

Any period during which such person has served as President or member before the commencement of this Act, and any period after such commencement and before
30 the day upon which he attains the age of seventy years (whether or not during such period he acts temporarily as a member of the commission or as an acting judge of the Supreme Court) shall count as service for the purpose of ascertaining his pension rights under this paragraph.

35 This paragraph shall not apply to and in respect of any such person who refuses, without just cause, to accept appointment pursuant to paragraph (a) or paragraph (b) of this subsection.

(4) (a) Nothing in this Act shall prejudice or
40 affect the continuity of the commission, but the same shall continue notwithstanding the provisions of this Act.

(b)

Industrial Arbitration (Amendment).

(b) Without prejudice to the generality of paragraph (a) of this subsection the commission shall continue notwithstanding that there are at any time or times vacancies in the offices of all the members or of
 5 any one or more of them.

(5) The Principal Act is further amended by inserting next after section four the following new section:—

Further amendment of Act No. 2, 1940.
 New sec. 4A.

10 4A. (1) Any matter pending or part heard before the commission at the commencement of the Industrial Arbitration (Amendment) Act, 1943, may be heard and continued before the commission as reconstituted under section fourteen of this Act (as amended by the Industrial Arbitration (Amendment) Act, 1943).
 15

Matters pending and part heard before commission.

(2) Any matter pending or part heard before any member of the commission at the commencement of the Industrial Arbitration (Amendment) Act, 1943, may be heard and continued before the
 20 commission as reconstituted under section fourteen of this Act (as amended by the Industrial Arbitration (Amendment) Act, 1943):

Provided that, where the commission directs that such matter be heard and continued before one
 25 member, the commission shall, for all purposes of or relating to the hearing and continuation of such matter, be duly constituted by any one member.

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

Further amendment of Act No. 2, 1940.
 Sec. 15.
 (Conciliation commissioner.)

30 (a) (i) by omitting subsection one of section fifteen and by inserting in lieu thereof the following subsections:—

(1) The Governor may appoint not more than five persons each of whom shall be a conciliation commissioner, and may appoint
 35 one of the conciliation commissioners to be the senior conciliation commissioner.

(1A) (a) The conciliation commissioners, other than the senior conciliation commissioner, shall have seniority according to the
 dates

Industrial Arbitration (Amendment).

dates of their appointments, or, where the appointments of two or more of them were made on the same date, according to such order of precedence as may be assigned to them by the Governor.

5

(b) In the case of the absence of the senior conciliation commissioner or of his inability to perform the duties of his office, or in the case of any vacancy in the office of senior conciliation commissioner, all the duties and powers of the senior conciliation commissioner shall devolve upon the conciliation commissioner who is next in order of seniority.

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(1B) A conciliation commissioner shall be chairman of each committee.

The senior conciliation commissioner shall, from time to time, determine the committees of which each conciliation commissioner is to be chairman.

20

Every such determination shall be subject to the approval of the Minister.

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

25

(2) Each conciliation commissioner shall be paid such salary as the Governor may determine.

(iii) by omitting from subsection three of the same section the word “The” and by inserting in lieu thereof the word “A”;

30

(iv) by omitting from subsection four of the same section the word “The” where firstly occurring and by inserting in lieu thereof the word “A”;

35

(v) by omitting from paragraph (b) of the same subsection the words “The commissioner suspended” and by inserting in lieu thereof the words “A conciliation commissioner suspended”;

40

(vi)

Industrial Arbitration (Amendment).

- (vi) by omitting from the same paragraph the words "the commissioner" wherever occurring and by inserting in lieu thereof the words "such conciliation commissioner";
- 5 (vii) by omitting from subsection five of the same section the word "The" where firstly occurring and by inserting in lieu thereof the word "A";
- 10 (viii) by omitting subsection six of the same section;
- (b) by omitting from section sixteen the words "the conciliation commissioner" wherever occurring and by inserting in lieu thereof the words "a conciliation commissioner"; Sec. 16. (Additional conciliation commissioners.)
- 15 (c) by inserting after section seventeen the following new section:—
- 17A. (1) The Minister may appoint any person to be a special conciliation commissioner.
- (2) Where a special conciliation commissioner is of the opinion that an industrial dispute has arisen or is threatened or impending he may require the attendance of any persons to meet in conference. At such conference the special conciliation commissioner shall preside and endeavour to induce the parties to come to an agreement.
- 20 (3) If any person so required to attend does not attend in conference as aforesaid he shall be liable to a penalty not exceeding fifty pounds.
- 25 (d) (i) by inserting next after subsection one of section eighteen the following new subsection:—
- (1A) (a) In the establishment of a committee no exception shall be made from the industry or calling or combination, arrangement or grouping of industries or callings for which the committee is established, which will have the effect of excluding the employees of any one or more specified employers or any one or more specified groups Sec. 18. (Conciliation committees.)
- 30
- 35
- 40

Industrial Arbitration (Amendment).

groups of employers engaged in such industry or calling or combination, arrangement or grouping of industries or callings, unless such employees are engaged in an industry or calling or combination, arrangement or grouping of industries or callings for which some other committee is established.

(b) Where, in the establishment of any committee which is in existence at the commencement of the Industrial Arbitration (Amendment) Act, 1943, any exception was made which contravenes the provisions of paragraph (a) of this subsection, then, as from such commencement, the instrument establishing such committee shall be read and construed as if such exception were omitted therefrom, and the committee shall, after such commencement, be deemed to be established accordingly.

The Minister shall, as soon as practicable after such commencement, make such alterations and amendments of the instrument establishing such committee as may be necessary to give effect to this subsection.

(ii) by omitting from subsection two of the same section the words "the conciliation commissioner" and by inserting in lieu thereof the words "a chairman, who shall be one of the conciliation commissioners";

(iii) by inserting in the same subsection after the words "Such representatives" the words and symbols "(in this section hereinafter referred to as 'members')";

(e) (i) by inserting at the end of subsection one of section nineteen the words "The person so appointed shall be one of the conciliation commissioners";

Sec. 19.
(Apprenticeship
commissioners.)

(ii) by omitting subsection two of the same section;

(iii)

Industrial Arbitration (Amendment).

(iii) by omitting subsections seven and eight of the same section.

(2) (a) The persons who immediately before the commencement of this Act held office as the conciliation
5 commissioner and the apprenticeship commissioner respectively shall as from such commencement cease to hold office but each of such persons shall be eligible for appointment under the Principal Act as amended by this Act, as a conciliation commissioner.

10 (b) If any such person is not so appointed he shall receive such compensation as he would have been entitled to had his services been dispensed with otherwise than according to law.

(3) The Principal Act is further amended by inserting next after section 4A (as inserted by subsection
15 five of section three of this Act) the following new section:—

Further amendment of Act No. 2, 1940.
New sec. 4B.

20 4B. (1) After the commencement of the Industrial Arbitration (Amendment) Act, 1943, a reference in any Act, award, industrial agreement, regulation or other instrument whatsoever, to the conciliation commissioner shall be construed as a reference to a conciliation commissioner appointed under section fifteen of this Act (as amended by the Industrial
25 Arbitration (Amendment) Act, 1943).

References in Acts, etc., and matters pending.
cf. Act No. 39, 1932, s. 7 (2) (3).

(2) Any matter pending or part heard before the conciliation commissioner or a committee or an apprenticeship council at the commencement of the Industrial Arbitration (Amendment) Act, 1943, may
30 be heard or continued before a conciliation commissioner appointed under section fifteen of this Act (as amended by the Industrial Arbitration (Amendment) Act, 1943), or, as the case may be, by a committee constituted in accordance with section
35 eighteen of this Act (as amended by the Industrial Arbitration (Amendment) Act, 1943) or by an apprenticeship council of which the apprenticeship commissioner appointed under section nineteen of this Act (as amended by the Industrial Arbitration
40 (Amendment) Act, 1943) is the chairman.

*Industrial Arbitration (Amendment).***5.** The Principal Act is further amended—

Further
amendment
of Act No. 2,
1940.
Sec. 20.
(Original
jurisdic-
tion.)

- 5 (a) (i) by omitting from paragraph (a) of sub-
section one of section twenty the words
“fifteen pounds” and by inserting in lieu
thereof the words “twenty pounds”;
- (ii) by omitting from the same paragraph the
words “seven hundred and fifty pounds”
and by inserting in lieu thereof the words
“one thousand pounds”;
- 10 (iii) by omitting from the same paragraph the
words “the Hunter District Water Supply
and Sewerage Board” and by inserting in
lieu thereof the words “The Hunter District
Water Board”;
- 15 (iv) by omitting paragraph (g) of the same
subsection;
- (v) by omitting from the first proviso to
the same subsection the words “(g) and
(h)” and by inserting in lieu thereof the
20 words “and (h) of this subsection and in
section 88B of this Act”;
- (vi) by omitting subsection two of the same
section;
- 25 (b) (i) by omitting subsections one to six inclusive
and subsection ten of section twenty-four;
- (ii) by omitting from subsections seven, eight
and nine the words “under this section”
wherever occurring;
- 30 (c) (i) by omitting from subsection one of section
twenty-five the word “The” where firstly
occurring and by inserting in lieu thereof
the word “A”;
- (ii) by omitting subsection four of the same
section and by inserting in lieu thereof the
35 following subsection:—
(4) If the parties are unable to come to
an agreement the following provisions shall
have effect:—
(a) where the conciliation commis-
40 sioner is sitting alone he may make
an order or award in relation to
the

Sec. 24.
(Powers of
conciliation
commis-
sioner.)

Sec. 25.
(Compulsory
confer-
ences.)

Industrial Arbitration (Amendment).

- the question, dispute or difficulty,
or may refer the question, dispute
or difficulty to the commission; and
any award so made shall have the
like effect as an award made by a
committee;
- (b) where the members of the concilia-
tion committee established for the
particular industry concerned are
summoned to sit with the con-
ciliation commissioner they, to-
gether with the conciliation com-
missioner as chairman, may sit as
a committee and may make an order
or award in relation to the ques-
tion, dispute or difficulty or may
refer the question, dispute or diffi-
culty to the commission.
- (d) (i) by omitting from section twenty-six the word "The" where firstly occurring and by inserting in lieu thereof the word "A";
- (ii) by omitting from the same section the words "at the request of any party he shall, or, of his own motion";
- (iii) by omitting from the same section the words "but as assessors only and without vote" and by inserting in lieu thereof the words "and when so sitting they, together with the conciliation commissioner as chairman, shall constitute a committee";
- (iv) by omitting from the same section the words "the conciliation commissioner" where lastly occurring and by inserting in lieu thereof the words "a conciliation commissioner or a committee upon any matter referred under this section";
- (e) (i) by omitting from section twenty-seven the words "the conciliation commissioner" wherever occurring and by inserting in lieu thereof the words "a conciliation commissioner or a committee";
- (ii)

Sec. 26.
(Powers of
conciliation
commis-
sioner.)

Sec. 27.
(Decision
of concilia-
tion commis-
sioner
final.)

Industrial Arbitration (Amendment).

- (ii) by inserting in the same section after the words "upon him" the words "or it";
- (iii) by omitting from the same section the word "twenty-four" where lastly occurring;
- 5 (f) (i) by inserting next after subsection one of section twenty-eight the following new subsection:—
- (1A) Without prejudice to the generality of subsection one of this section the apprenticeship council shall—
- 10 (a) determine what facilities are available for the training of apprentices and trainee apprentices in any industry;
- 15 (b) where it determines that such facilities are available in any trade, technical or other training school, require that such number of apprentices and trainee apprentices as it may determine, having regard to the facilities available, shall attend thereat for such classes or courses of instruction as may be specified;
- 20 (c) where it determines that no such facilities or no sufficient such facilities as are mentioned in paragraph (b) of this subsection are available, but that facilities are available for providing instruction by correspondence or otherwise, require that such number of apprentices and trainee apprentices as it may determine, having regard to the facilities available, shall obtain such instruction as may be specified;
- 25 (d) determine that the employer of every apprentice or trainee apprentice required to attend any trade, technical

Sec. 28.
(Jurisdiction of
apprenticeship
councils.)

Industrial Arbitration (Amendment).

- 5 technical or other training school,
shall allow him such time as the
apprenticeship council may deem
reasonable during ordinary work-
ing hours to attend such school;
- 10 (e) determine that the employer of
every apprentice or trainee appren-
tice who is required to obtain in-
struction by correspondence or
otherwise shall allow him such time
as the apprenticeship council may
deem reasonable during ordinary
working hours for the purpose of
taking full advantage of the instruc-
tion so obtained.
- 15 (ii) by inserting after subsection four of the
same section the following new subsection:—
(4A) No employer shall, directly or indi-
rectly or by any pretence or device—
- 20 (a) require or permit any person to
pay or give; or
(b) demand or receive from any person,
any premium, fee, gift, reward, bonus or
consideration for entering into any inden-
ture or other contract of apprenticeship
25 (whether with such person or any other
person) or for training any employee or
prospective employee in any industry with-
out having first obtained the consent of the
apprenticeship council for such industry.
- 30 Any person who contravenes any provi-
sion of this subsection shall be liable, on
conviction, to a penalty not exceeding one
hundred pounds.
- 35 Upon any such conviction the industrial
or other magistrate or justices may also
make an order directing the employer to
refund such premium, fee, gift, reward,
bonus or consideration or the value thereof
40 to the person from whom it was received.
- (g)

Industrial Arbitration (Amendment).

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

New sec.
30A.

5 30A. Notwithstanding anything contained in this Act the commission shall not entertain an application for a new award or for the variation or renewal of an award relating to any industry for which a committee has been established unless the commission is satisfied that proceedings before such committee have failed to result in the making of an award.

Certain matters to be dealt with by committee in first instance.
cf. C'with Conciliation and Arbitration Act 1904-1934, s. 33.

This section shall not be construed as limiting the jurisdiction of the commission in respect of any appeal or reference made under this Act.

6. The Principal Act is further amended—

Further amendment of Act No. 2, 1940.
New s. 54A.

15 (a) by inserting next after section fifty-four the following new section:—

54A. (1) This section shall apply to and in respect of—

Awards and agreements existing at commencement of Industrial Arbitration (Amendment) Act, 1943.

20 (a) all awards and industrial agreements made or deemed to have been made under this Act which were in force at the commencement of the Industrial Arbitration (Amendment) Act, 1943, and which—

25 (i) fix rates of wages for employees by reference to the needs basic wage assessed on the index number for Sydney contained in the Retail Price Index Numbers, but with the differentiation in the rates for different districts approved and adopted by the Commonwealth Court of Conciliation and Arbitration in the Commonwealth Judgment, and the fixed loading addition determined in the Commonwealth Judgment as being applicable to the needs basic wage so assessed;
30
35
40 or

Industrial Arbitration (Amendment).

5 (ii) fix rates of wages exclusively for employees of the Crown (as defined in section fifty-four of this Act) and for such employees only whether or not such rates are fixed on an annual basis; and

10 (b) any other award or industrial agreement (not being an award or industrial agreement which fixes rates of wages exclusively for employees within the county of Yancowinna and for such employees only) made or deemed to have been made under this Act, which is in force at the commencement of the Industrial Arbitration (Amendment) Act, 1943, and which the commission, upon application made as prescribed, declares to be an award or industrial agreement to which this section applies.

20 In dealing with any such application the commission shall, as far as practicable, adopt the principles which, under subsection one of section fifty-seven of this Act, are applicable to and in respect of awards made after the commencement of the Industrial Arbitration (Amendment) Act, 1943.

25 (2) Every award or industrial agreement to which this section applies shall be deemed to be varied so as to provide that the needs basic wage which shall apply to that award or industrial agreement shall be the needs basic wage assessed on the index number for Sydney contained in the Retail Price Index Numbers (but without the differentiation in the rates for different districts approved and adopted by the Commonwealth Court of Conciliation and Arbitration in the Commonwealth Judgment) and the fixed loading addition determined in the Commonwealth Judgment as being applicable to the needs basic wage so assessed.

Such

Industrial Arbitration (Amendment).

Such variation shall—

5 (a) in the case of awards and industrial agreements of the nature referred to in paragraph (a) of subsection one of this section take effect as from the commencement of the first pay period to commence after the commencement of the Industrial Arbitration (Amendment) Act, 1943; and

10 (b) in the case of any awards or industrial agreements of the nature referred to in paragraph (b) of subsection one of this section as from such date as the commission may specify in the declaration made under that paragraph in
15 respect of the award or industrial agreement.

(3) As soon as practicable after the commencement of the Industrial Arbitration (Amendment) Act, 1943, the registrar shall vary
20 the terms of each award to which this section applies, affecting rates of pay, to the extent necessary to give effect to the provisions of this section and may make such alterations in the form of any such award as he may think
25 necessary or desirable to enable full effect to be given to the provisions of this Act.

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

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

(b)

Industrial Arbitration (Amendment).

- (b) (i) by omitting paragraph (a) of subsection one of section fifty-five; Sec. 55.
(Uniformity.)
- 5 (ii) by omitting from paragraph (a) of subsection two of the same section the words "paragraph (a) or";
- (iii) by omitting paragraph (b) of the same subsection;
- (c) (i) by omitting section fifty-six; Sec. 56.
(Power to alter basis of awards.)
- 10 (ii) by omitting from subsection eight of section fifty-four the words "or section fifty-six"; Sec. 54.
(Consequential.)
- (d) (i) by omitting subsection one of section fifty-seven and by inserting in lieu thereof the following subsection:— Sec. 57.
(Future award and industrial agreements.)
- 15 (1) (a) This subsection shall apply to and in respect of all awards and industrial agreements made after the commencement of the Industrial Arbitration (Amendment) Act, 1943.
- 20 (b) Subject to paragraph (d) of this subsection all awards and industrial agreements to which this subsection applies (other than awards or industrial agreements which fix rates of wages exclusively for employees within the county of Yancowinna and for such employees only), shall, insofar
- 25 as they fix rates of wages by reference or in relation to a needs basic wage with the appropriate fixed loading, be made by reference or in relation to the needs basic wage assessed on the index number for Sydney contained in the Retail Price Index Numbers (but without the differentiation in the rates for different districts approved and adopted by the Commonwealth Court of Conciliation and Arbitration in the Commonwealth Judgment) and the fixed loading addition determined in the Commonwealth Judgment
- 30
- 35

Industrial Arbitration (Amendment).

as being applicable to the needs basic wage so assessed.

5 (c) Subject to paragraph (d) of this subsection all awards or industrial agree-
ments to which this subsection applies which
fix rates of wages exclusively for em-
ployees within the county of Yancowinna
and for such employees only shall, insofar
10 as they fix rates of wages by reference or in
relation to a needs basic wage with the
appropriate fixed loading, be made by ref-
erence or in relation to the needs basic wage
assessed on the index number for Broken
15 Hill contained in the Retail Price Index
Numbers and the fixed loading addition
determined in the Commonwealth Judgment
as being applicable to the needs basic wage
so assessed.

20 (d) Notwithstanding anything con-
tained in paragraph (b) or paragraph (c)
of this subsection the parties to any award
or industrial agreement to which this sub-
section applies and which fixes rates of
25 wages by reference or in relation to a needs
basic wage with the appropriate fixed load-
ing addition, may by consent, at the time the
award or industrial agreement is made or
upon any application for a variation of the
award or industrial agreement, adopt the
30 needs basic wage assessed on the index num-
ber for such place within New South Wales
or such combination of places (of which
Sydney or some other town in New South
Wales is one) contained in the Retail Price
35 Index Numbers as may be specified in the
award or industrial agreement with the
fixed loading addition determined by the
Commonwealth Court of Conciliation and
Arbitration as being applicable to the needs
40 basic wage assessed on the index number for
such place or combination of places.

(c)

Industrial Arbitration (Amendment).

(e) by omitting section fifty-nine.

Sec. 59.
(Provision for
applying s. 54
to certain
awards and
agreements.)

7. The Principal Act is further amended—

Further
amendment of
Act No. 2,
1940.

(a) by inserting next after paragraph (e) of section sixty-three the following new paragraph:—

Sec. 63.
(Directions
re hours.)

5 (e1) The commission or a committee may, in any case where the parties agree, reduce the ordinary working hours of employees below the number of hours specified in this section.

10 (b) (i) by inserting next after paragraph (c) of subsection one of section sixty-four the following new paragraph:—

Sec. 64.
(Standard
hours.)

15 (c1) The commission may, in respect of any employees or class of employees who are bound by an award made by agreement in accordance with paragraph (e1) of section sixty-three of this Act—

(i) declare a lesser number of ordinary working hours than the standard hours about to be declared; or

20 (ii) declare a lesser number of ordinary working hours than the standard hours already declared;

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

25 (11) Notwithstanding anything contained in this section, an award or industrial agreement may be made, where the parties agree, prescribing a lesser number of ordinary working hours for employees bound by such
30 award or industrial agreement than the standard hours determined and declared under this section and applicable with respect to such employees.

8. The Principal Act is further amended—

Further
amendment
of Act No. 2,
1940.

35 (a) by omitting from section seventy-five the words “conciliation commissioner” and by inserting in lieu thereof the word “chairman”; (b)

Sec. 75.
(Convening
of meetings
of commit-
tees.)

Industrial Arbitration (Amendment).

- (b) by omitting from subsection one of section seventy-seven the words "Subject to section twenty-four of this Act"; Sec. 77.
(Evidence on oath.)
- 5 (c) by inserting after section seventy-seven the following new sections:— New secs.
77A-77F.
- 77A. The chairman of a committee shall keep notes of the proceedings before such committee, which notes shall be forwarded to the registrar with the committee's award, order or determination. Notes of proceedings.
- 10 77B. In every case where an application or reference to a committee is made, it shall be the duty of the chairman to endeavour to bring the parties to an agreement with respect to the matters referred to in such application or reference, and to this end the committee shall, in such manner as it thinks fit, expeditiously and carefully inquire into such matters and anything affecting the merits thereof. Inquiry by committee.
cf. Act No. 17, 1912,
s. 32.
- 15 In the course of such inquiry, the chairman may make all such suggestions and do all such things as he deems right and proper for inducing the parties to come to a fair and amicable settlement of such matters.
- 20 77C. A committee may confer with any persons as to anything affecting the settlement of an industrial matter and may summon any person before it for the purpose of conference or of giving evidence. Such summons shall be signed by the chairman or by the registrar. Persons may be summoned.
- 25 Every person so summoned shall be bound to attend upon such summons and shall for disobedience thereto be liable to a penalty not exceeding fifty pounds.
- 30 77D. A committee may— Conduct of proceedings.
cf. *Ibid.*
s. 34.
- (a) conduct its proceedings in public or private as it may think fit;
- (b) adjourn the proceedings to any time or place;
- 35 (c) exercise in respect of witnesses and documents and persons summoned or giving
- 40

Industrial Arbitration (Amendment).

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giving evidence before it, or on affidavit, the same powers as were by section one hundred and thirty-six of the Parliamentary Electorates and Elections Act, 1902, conferred on a committee of elections and qualifications, and the provisions of the said section shall apply in respect of the proceedings of the committee:

10

15

Provided that unless a person raises the objection that the profits of an industry are not sufficient to enable him to pay the wages or grant the conditions claimed, no person shall be required without his consent to produce his books, or to give evidence with regard to the trade secrets, profits, losses, receipts, and outgoings of his business, or his financial position.

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Where a person raises such objection he may be required, on the order of the chairman, to produce the books used in connection with the carrying on of the industry in respect of which the claim is made, and to give evidence with regard to the profits, losses, receipts, and outgoings in connection with such industry, but he shall not be required to give evidence regarding any trade secret, or, saving as hereinbefore provided, his financial position. No such evidence shall be given without his consent except in the presence of the committee alone, and no person shall inspect such books except the chairman or an accountant appointed by the committee, who may report to the committee whether or not his examination of such books supports the evidence so given, but shall not otherwise disclose the contents of such books. Such accountant shall,

Industrial Arbitration (Amendment).

shall, before acting under this paragraph, take an oath not to disclose any matter or evidence before the committee relating to—

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trade secrets;

the profits or losses or the receipts and outgoings of any employer;

10

the books of any employer or witness produced before the committee; or

the financial position of any employer or of any witness,

15

and if he violates his oath he shall be liable to a penalty not exceeding five hundred pounds.

77E. At any meeting of a committee—

(a) the chairman shall preside;

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(b) each member, except the chairman, shall have one vote; and where the votes for and against any matter are equal, the chairman shall decide the question;

25

(c) if any of the members, other than the chairman, are absent from a duly convened meeting of a committee, the chairman may, together with such members as may be present, proceed to hear and determine any matter before the committee. Such determination shall be deemed to be a decision of the committee.

30

77F. Any award or order of a committee shall, after settlement by the registrar in the manner prescribed, be signed by the chairman:

35

Provided that upon any settlement the registrar may submit any question of law to the commission for its determination.

Proceedings
at meetings.
cf. Act No.
17, 1912,
s. 36.

Awards and
orders.

Subject

Industrial Arbitration (Amendment).

Subject to this section the registrar shall publish the award or order, when signed, in the Gazette, and shall notify the parties in the prescribed manner.

- 5 (d) by omitting from section seventy-eight the words "the conciliation commissioner" and by inserting in lieu thereof the words "a conciliation commissioner"; Sec. 78. (Intervention by Crown.)
- 10 (e) by omitting section eighty and by inserting in lieu thereof the following section— Subst. sec. 80.
- 15 80. (1) In proceedings before the commission, if the matter is an industrial matter no party shall be represented by a barrister or a solicitor except by the consent of the commission; but such consent shall not be given in any case where, in the opinion of the commission, the questions to be determined in such proceedings are exclusively questions of fact. Legal representation.
- 20 (2) In proceedings before a conciliation commissioner or a committee no party shall, except by consent of the conciliation commissioner or the committee, as the case may be, and all the parties, be represented by a barrister or a solicitor or by a person who has qualified for admission as a barrister or a solicitor.
- 25 (3) Nothing in this section shall preclude any permanent employee of the Crown from appearing on behalf of the Crown in any proceedings before the commission, a conciliation commissioner or a committee; but in any case where the permanent employee of the Crown so appearing is a barrister or a solicitor, the Crown shall be deemed to have consented to the representation of any other party to the proceedings by a barrister or a solicitor and the consent of the commission, conciliation commissioner, or committee, as the case may be, to such representation shall not be refused.
- 30
- 35
- 40 (f) by omitting from section eighty-one the words "the conciliation commissioner" where firstly occurring Sec. 81. (Appearance of parties by advocate or agent.)

Industrial Arbitration (Amendment).

occurring and by inserting in lieu thereof the words "a conciliation commissioner";

(g) (i) by omitting from paragraph (a) of sub-
section one of section eighty-four the words
"or of any member thereof in the exercise
of any power or function delegated to him
by the commission" and by inserting in lieu
thereof the words and symbols "(whether
constituted by three members or by any one
member)";

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

(ii) by omitting subparagraphs (i) and (ii) of
paragraph (b) of the same subsection and
by inserting in lieu thereof the words and
symbols "the commission (whether con-
stituted by three members or by any one
member)".

9. The Principal Act is further amended—

Further
amendment of
Act No. 2,
1940.

(a) by inserting next after section eighty-eight the
following new sections:—

New secs.
88A, 88B.

88A. The commission or a committee shall not
award any conditions nor fix rates of wages or
other payments for employees of the Crown
less favourable than the conditions granted or
the wages paid or other payments made to
employees (other than employees of the Crown)
who are doing substantially the same class of
work, but the fact that employment is perma-
nent or that additional privileges are allowed
to employees of the Crown shall not of itself
be regarded as a substantial difference in the
nature of the work.

Crown
employees.

In this section the expression "employees of
the Crown" includes employees of the Govern-
ment or of any department of the Government
or of any of the following corporations, that is
to say—

The Commissioner for Railways,
The Commissioner for Road Transport and
Tramways.

The

Industrial Arbitration (Amendment).

- 5 The Commissioner for Main Roads,
The Metropolitan Meat Industry Commis-
sioner,
The Maritime Services Board of New
South Wales,
The Metropolitan Water, Sewerage and
Drainage Board,
The Water Conservation and Irrigation
Commission,
10 Board of Fire Commissioners of New South
Wales,
The Hunter District Water Board, and
The Hospitals Commission of New South
Wales.
- 15 88B. The commission or a committee may on an
application or reference to it in that behalf pre-
scribe by award that absolute preference of
employment shall be given to the financial mem-
bers of the industrial union or unions specified
20 in the award. Absolute
preference
to unionists.
- Nothing in this section shall affect the opera-
tion of the Returned Soldiers and Sailors Em-
ployment Act, 1919, as amended by subsequent
Acts.
- 25 88c. (1) Where by an award a price or rate
is fixed for persons performing work in any
industry the commission or a committee may,
on an application or reference to it in that behalf,
30 prescribe by award that no contract to which
this section applies shall be valid unless the
consent of the commission or the committee is
obtained.
- (2) If any person acting or purporting
to act in the execution of any contract which
35 is rendered invalid by this section, performs
any work for which by an award a price or
rate has been fixed for persons performing such
work, then for the purposes of this Act the
person so performing such work shall be deemed
to

Industrial Arbitration (Amendment).

to be an employee, and the person with whom the contract so rendered invalid was made shall be deemed to be the employer of such employee.

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(3) This section shall apply to any contract made by two or more persons being or alleging themselves to be partners working in association in any industry whereby such persons undertake the performance of work for which by an award a price or rate has been fixed for persons performing such work, and under which such persons or any of them engage personally in the performance of the work whether with or without the assistance of other persons employed by them.

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

New sec.
90A.

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90A. Where an award made or deemed to have been made under this Act has been varied (whether such variation was made before or after the commencement of the Industrial Arbitration (Amendment) Act, 1943) the Government Printer shall, if and when directed so to do by the registrar, reprint the award in a form certified as correct by the registrar.

Incorporation of variation in reprint of awards.

- 25 10. The Principal Act is further amended—

Further amendment of Act No. 2, 1940.

- (a) by inserting in subsection one of section ninety-two after the word "Act" the words "or by the conditions of a permit issued under section eighty-nine of this Act";

Sec. 92.
(Recovery of wages.)

30

- (b) by inserting at the end of the same subsection the words "or permit as the case may be";

- (c) by omitting from subsection two of the same section the words "within six months after such money has become due";

35

- (d) by omitting from the same subsection the words "to the registrar or";

(e)

Industrial Arbitration (Amendment).

- 5 (e) by inserting in the same subsection after the words "price or rate" the words "which became due during the period of twelve months immediately preceding the date of the application (where such person is still in the employment of such employer at that date) or within the last twelve months of the employment with such employer (where the employment was terminated before the date of the application).
- 10 An application under this subsection made after the termination of the employment shall be made not later than six months after the date of such termination.
- 15 (f) by omitting from the same subsection the words "The registrar or magistrate" and by inserting in lieu thereof the words "The industrial magistrate";
- 20 (g) by inserting at the end of the same subsection the following words: "Where, in any proceedings under this section, it is made to appear that the employer has committed a breach of section ninety-three or section ninety-six of this Act, the industrial magistrate may, in addition to any order made under this section, impose any
- 25 penalty which he might have imposed in proceedings for a penalty under section ninety-three or section ninety-six of this Act as the case may be";
- 30 (h) by omitting from subsection three of the same section the words "within the said period of six months";
- (i) by inserting next after subsection four of the same section the following new subsection:—
- 35 (4A) In any case where the person authorised to take proceedings under subsection two or subsection three of this section is a person employed to do any work for which the price or rate has been fixed by an award or by an industrial agreement made under this Act, the proceedings may,
- 40 with the consent in writing of such person,
be

Industrial Arbitration (Amendment).

be taken by the secretary or other officer of an industrial union concerned in the industry to which such award or industrial agreement relates, in the name and on behalf of such person.

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Any amount ordered to be paid in proceedings under this section may be paid to such secretary or other officer and the receipt of such secretary or other officer shall be a sufficient discharge to the employer for the amount mentioned in the receipt.

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Any amount so paid to such secretary or other officer (less any costs properly incurred in connection with the proceedings and not paid by the employer) shall be held by him on trust for the person on whose behalf the proceedings were taken.

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(j) by omitting from subsection five of the same section the words "final payment made" and by inserting in lieu thereof the words "each payment made after the commencement of the Industrial Arbitration (Amendment) Act, 1943";

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(k) by inserting at the end of the same section the following new subsections:—

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(6) In every case where an employee has left the employment of an employer without being paid the full amount due to him in respect of such employment, and the employer has been unable, during a period of thirty days after the termination of employment, to make such payment because the whereabouts of such employee are unknown to him, and cannot with reasonable diligence be found, such employer shall, forthwith after the expiration of such period, pay the full amount aforesaid to the Under Secretary of the Department of Labour and Industry and Social Services. A receipt issued on behalf of the said Under Secretary for money so paid to him shall be a sufficient discharge to the employer

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cf. 23 Geo.
V. No. 36
(Qld.), s. 50
(3).

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employer for the amount mentioned in the receipt.

Any amount so paid to the Under Secretary shall be held by him in trust for the employee.

5 Any employer who fails to comply with this subsection shall be liable to a penalty not exceeding fifty pounds.

10 (7) Whosoever inserts or causes to be inserted in a newspaper any advertisement in which he offers or seeks employment at a wage lower than the price or rate fixed by any award or industrial agreement applicable to such employment shall be liable to a penalty not exceeding fifty pounds.

15 The printer or publisher of any newspaper in which any such advertisement is published shall, upon demand, furnish an inspector appointed under this Act or the secretary of the industrial union for the industry to which the award or industrial agreement relates, with the name and address of the person who inserted, or caused to be inserted, such advertisement.

20 (8) (a) In any contract for the performance of any work involving the payment of wages or the supply of musical entertainment, the consideration for such contract shall not be less than a sum sufficient to pay to each person engaged in the performance of such work, or the supply of the musical entertainment, the price or rate fixed by any award or industrial agreement for a person performing such work or so engaged.

25 (b) Any person who offers, enters into, or is in any way concerned with a contract which does not comply with paragraph (a) of this subsection or who knowingly performs work or engages or takes part in a musical performance in pursuance of a contract which does not comply with that paragraph shall be guilty of an offence against this Act, and shall be liable to a penalty not exceeding twenty pounds.

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(9)

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(9) (a) Where any female performs work under any award or industrial agreement, whether made before or after the commencement of the Industrial Arbitration (Amendment) Act, 1943, which does not prescribe rates of pay for female employees, such female shall be paid the price or rate prescribed by that award or agreement for employees engaged on the class of work performed by her.

(b) This subsection shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

11. The Principal Act is further amended—

- (a) (i) by omitting from subsection one of section ninety-three the words “the registrar or an industrial magistrate may order him to pay a penalty not exceeding fifty pounds” and by inserting in lieu thereof the words “he shall be liable to a penalty of not less than two pounds and not exceeding one hundred pounds. Proceedings for the recovery of any such penalty shall be taken before an industrial magistrate”;
- (ii) by omitting from subsection two of the same section the words “Where on making such order” and by inserting in lieu thereof the words “Where in proceedings for the recovery of any such penalty”;
- (iii) by omitting from the same subsection the words “the registrar or magistrate” and by inserting in lieu thereof the words “the industrial magistrate”;
- (iv) by omitting from subsection three of the same section the words “Where an order is made under subsection one of this section against any person, and the registrar or magistrate” and by inserting in lieu thereof the words “Where a penalty is imposed upon any person under subsection one of this section and the industrial magistrate”;

Further
amendment
of Act No. 2,
1940.
Sec. 93.
(Penalty
for breach
of award.)

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- (v) by omitting from the same subsection the words "any order made" and by inserting in lieu thereof the words "any penalty imposed";
- 5 (vi) by omitting from subsection four of the same section the words "The costs of any such proceedings shall be paid by the complainant if the order is not made, and by the defendant if the order is made" and by
- 10 inserting in lieu thereof the words "The industrial magistrate may award costs to either party and assess the amount of such costs";
- (b) by inserting next after section ninety-three the following new section:— New sec. 93A.
- 15 93A. (1) Any proceedings under section ninety-two or section ninety-three of this Act against an employer which is an unincorporated club may be taken against the secretary or the
- 20 managing committee of the club as nominal defendants on behalf of the club and its members.
- (2) Any property of the club, whether in the hands of trustees or not, shall be available to answer any order made or penalty imposed in such proceedings.
- 25 (c) (i) by inserting after paragraph (b) of section ninety-five the following new paragraphs:— Sec. 95. (Penalty for unlawful dismissal.)
- 30 (b1) has informed any person that a breach or a suspected breach of an award or industrial agreement has been committed by such employer; or
- 35 (b2) has engaged or contemplates being engaged in any public or political activity (not being an activity which interferes with the performance of the duties of his employment); or
- (ii)

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- 5 (ii) by omitting from the same section the words
“or a similar position” and by inserting in
lieu thereof the words “position or a posi-
tion not less advantageous to the employee
than that held by him prior to such dis-
missal, injury or prejudice”;
- 10 (iii) by omitting from the same section the words
“No prosecution for an offence under this
section shall be commenced except by leave
of the commission”;
- (d) (i) by inserting in subsection one of section Sec. 96.
(Time
sheets and
pay sheets.)
ninety-six after the word “factory” the
words “or place”;
- 15 (ii) by inserting in the same subsection after the
words “written up in ink” the words “Such
daily records shall be preserved in good
order and condition and kept available for
inspection for a period of eighteen
months”;
- 20 (iii) by omitting from the same subsection the
words “to a penalty not exceeding ten
pounds” and by inserting in lieu thereof the
words “for the first offence to a penalty of
not less than two pounds and not exceeding
25 twenty pounds, and for a second or subse-
quent offence to a penalty of not less than
five pounds and not exceeding fifty
pounds”;
- 30 (iv) by inserting after the same subsection the cf. Act. No.
39, 1912,
s. 97 (5).
following new subsection:—
- 35 (1A) Every person who aids, abets, coun-
sels, or procures or by act or omission is
in any way directly or indirectly knowingly
concerned in the commission of any offence
under subsection one of this section, shall
be deemed to have committed that offence
and shall be liable to the penalty provided
in that subsection.

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(v) by inserting at the end of subsection two of the same section the words—

5 It shall be a sufficient compliance with the provisions of this subsection if the employer exhibits and keeps exhibited the copy of the award as last reprinted under section 90A of this Act.

(e) by inserting after section ninety-six the following new section:—

10 96A. (1) Where in any proceedings under section ninety-two, section ninety-three or section ninety-six of this Act it appears that the award or industrial agreement referred to in the application or information, as the case may be,
15 is not the award or industrial agreement appropriate to the proceedings and that some other award or agreement by which the employer is bound is appropriate to such proceedings, the industrial or other magistrate or justices
20 may amend the application or information and proceed to deal with the matter as though proceedings had been instituted under the application or information as so amended:

25 Provided that where the defect or variance appears to the industrial or other magistrate or justices before whom such proceedings are taken to be such that the employer has been thereby deceived or misled such industrial or other
30 magistrate or justices may, upon such terms as he or they think fit, adjourn the hearing of the case to some future day.

(2) Nothing in this section shall be construed as limiting the operation of section sixty-five of the Justices Act, 1902-1940.

35 (f) (i) by omitting from section one hundred and nineteen the words “or any penalty” and by inserting in lieu thereof the words “or where an order is made under subsection (4A) of section twenty-eight of this Act for
40 the refund of any premium, fee, gift, reward

New sec.
96A.

Power to
amend.
cf. Act No.
27, 1902,
s. 65 (3).

Sec. 119.
(Enforce-
ment of
certain
orders.)

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- reward, bonus or consideration or the value thereof”;
- 5 (ii) by omitting from the same subsection the words “or of such penalty” and by inserting in lieu thereof the words “or for the amount of the value of such premium, fee, gift, reward, bonus or consideration”;
- 10 (g) by inserting at the end of section one hundred and twenty-one the following new paragraph:— Sec. 121. (Recovery of penalties.)
- The provisions of section eighty-two of the Justices Act, 1902-1940, shall, mutatis mutandis, apply to and in respect of any penalty adjudged to be paid by any such conviction and the persons against whom the conviction is made.
- 15 (h) by inserting next after section one hundred and twenty-one the following new section:— New sec. 121A.
- 20 121A. If any person shall, during any proceeding before an industrial magistrate, be guilty of contempt, such person may be punished in a summary way by such industrial magistrate by fine not exceeding forty shillings or by imprisonment for a period not exceeding fourteen days. Contempt. cf. Act No. 27, 1902, s. 152.
- (i) by inserting at the end of section one hundred and twenty-two the following words:— Sec. 122. (Penalties to be paid to Consolidated Revenue.)
- 25 Provided that where such penalty has been recovered upon complaint or information of the secretary or other officer of an industrial union, the commission or an industrial or other magistrate or justices may order that the penalty or any part thereof be paid to such union;
- 30 (j) (i) by omitting from subsection one of section one hundred and twenty-seven all words after the words “powers and duties prescribed” down to and including the words “section ninety-three of this Act” and by inserting in lieu thereof the following words:—“An inspector may—
- 35 (a) at any reasonable time enter, inspect and examine any premises where

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where he has reasonable cause to believe that any person is employed therein or any work is being done therein;

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- (b) examine either alone or in the presence of any other person as he thinks fit, with respect to matters arising under this Act or any award or industrial agreement, any person whom he finds in such premises and require any person so examined to sign a statement of the truth of his answers to any question asked of him on such examination;

cf. Act No.
39, 1912,
s. 123.

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- (c) make such examination and inquiries as he thinks necessary to ascertain whether the requirements of this Act or any award or industrial agreement are being or have been complied with;

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- (d) require the production of any time sheets or pay sheets or award required to be kept or exhibited under this Act, or any indenture of apprenticeship and may inspect, examine and take copies of the same;

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- (e) when authorised in that behalf by the Minister institute proceedings in the name and on behalf of the Minister for a penalty under section ninety-three of this Act."

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

(3) Any person who—

- (a) refuses or wilfully delays the admission to any premises of an inspector; or

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(b)

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- (b) obstructs any inspector in the exercise of the powers conferred upon him by or under this Act; or
- 5 (c) fails to truly answer or reply to any question which the inspector is authorised to ask under this section, or omits to comply with any direction of an inspector to supply a statement of the truth of his answers; or
- 10 (d) fails to produce time and pay sheets or awards or other documents when duly required by an inspector; or
- 15 (e) conceals or attempts to conceal any person from an inspector or prevents or attempts to prevent any person from appearing before or being examined by an inspector,
- 20 shall be liable to a penalty not exceeding twenty pounds.
- (k) by omitting from section one hundred and twenty-eight the words "conciliation commissioner" and by inserting in lieu thereof the word "chairman"; Sec. 128.
(Power of entry and inspection.)
- 25 (l) by omitting section one hundred and twenty-nine and by inserting in lieu thereof the following new section:— Subst.
sec. 129.
- 30 129. (1) The commission or a member thereof and every person authorised in writing by the commission or the registrar or a committee may at any time during working hours enter any building, mine, mine working, ship, vessel, place or premises of any kind wherein or in respect of Power of entry.
cf. Act No. 13 of 1904 (C'wth), s. 41.
- 35 which any industry is carried on or any work is being or has been done or commenced or any matter or thing is taking or has taken place in relation to which any industrial dispute is pending, or any award has been made, or any offence against

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5 against this Act is suspected, and may, to the extent and for the purposes named in the authority, inspect and view any work, material, machinery, appliance, articles, book or document therein.

10 (2) No person authorised under subsection one of this section shall have any authority to enter a private dwelling-house, or the land used in connection therewith, unless some manufacture or trade in which labour is employed is carried on therein.

15 (3) Every person who hinders or obstructs the commission or a member thereof or any person authorised as aforesaid in the exercise of any power conferred by this section shall be liable to a penalty not exceeding fifty pounds.

20 **12.** The Principal Act is further amended by omitting from subsection one of section one hundred and thirty-one the words "shall not be subject to the provisions of this Act other than Parts XIV and XV" and by inserting in lieu thereof the words "shall be subject to the provisions of this Act other than Part VI."

Further amendment of Act No. 2, 1940. Sec. 131. (Rural workers.)

25 **13.** The Principal Act is further amended in the manner and to the extent set forth in the Schedule to this Act.

Further amendment of Act No. 2, 1940. (Revision.)

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SCHEDULE.

Sections, headings, etc.	Amendment.
5 Sec. 2	(a) Omit the figures 17 and 77, and insert the figures and letters 17A and 77F respectively. (b) Omit the words "Conciliation Commissioner" wherever appearing and insert the words "Conciliation Commissioners."
10 Part II, Heading	Omit the words "Conciliation Commissioner" and insert the words "Conciliation Commissioners."
Part II, Division 2, Heading	Omit the words "Conciliation Commissioner" and insert the words "Conciliation Commissioners."
15 Sec. 16	Omit the words "subsections six and" and insert the word "subsection."
Part III, Heading	Omit the words "Conciliation Commissioner" and insert the words "Conciliation Commissioners."
20 Part III, Division 2, Heading	Omit the words "Conciliation Commissioner" and insert the words "Conciliation Commissioners."

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