

INDUSTRIAL ARBITRATION (AMENDMENT) BILL.

*Schedule of Amendments referred to in Legislative Council's
Message of 15 October, 1964.*

No. 1.—Page 10, clause 4. *After line 28 insert—*

Sec. 61P.
(Existing
basic wage
for adult
females.)

(a) by inserting in section 61P after the figure and letter “2C” the words, figure and letter “, or referred to in Division 2D,”;

No. 2.—Page 18, First Schedule, lines 32-45 inclusive. *Omit all words on these lines. Insert—*

No. 15, 1926.

**Workers’ Compens-
ation Act, 1926.**

Section 14, subsection (2).—Omit “assessed and calculated under and in accordance with paragraph (a) or (b) of subsection two of section 61V of the Industrial Arbitration Act, 1940-1961”, insert “referred to in paragraph (a) or (b) of subsection two of section 61AA of the Industrial Arbitration Act, 1940, as amended by subsequent Acts, and as last adjusted in accordance with the provisions of section 61AB of that Act, as so amended”.

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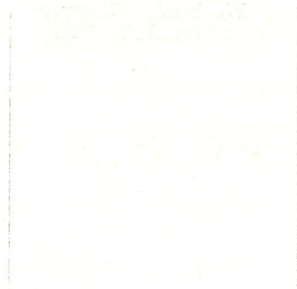
CHICAGO, ILLINOIS

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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.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 29 September, 1964.*

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

J. R. STEVENSON,
Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, 15 October, 1964.*

New South Wales



ANNO TERTIO DECIMO

ELIZABETHÆ II REGINÆ

Act No. , 1964.

An Act to make further provisions with respect to the basic wage, illegal strikes, industrial tribunals and certain other industrial matters; for these and other purposes to amend the Industrial Arbitration Act, 1940-1961, and certain other Acts; and for purposes connected therewith.

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

1. (1) This Act may be cited as the "Industrial Arbitration (Amendment) Act, 1964".

Short title
and
citation.

77581

30—A

(2)

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 Principal Act, as amended by this Act, may be cited as the Industrial Arbitration Act, 1940-1964.

2. The Principal Act is amended—

Amendment
of Act No.
2, 1940.

(a) by inserting in the definition of "Employee" in subsection one of section five after the words "of a butty-gang," the words "and includes any person who is, pursuant to any provision of this Act, deemed to be an employee for the purposes of this Act,";

(b) (i) by inserting next after subsection three of section 17A the following new subsection :—
(3A) A special commissioner may require any person attending a conference at which the special commissioner presides to give evidence on oath and for that purpose shall have authority to administer an oath to any such person.

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

(c) (i) by omitting from subsection six of section eighteen the words "the expiration of three years from the date of his appointment, unless he sooner resigns his office" and by inserting in lieu thereof the words "he resigns or the employer

Industrial Arbitration (Amendment).

employer or industrial union who or which nominated such person to be such a member has notified the registrar that such nomination has been withdrawn”;

- 5 (ii) by omitting from subsection eight of the same section the words “to his office for the residue of the period for which such member was appointed” and by inserting in lieu thereof the words “to the vacancy so created”;

- 10 (d) (i) by inserting next after subsection three of section twenty-five the following new subsection :— (Compulsory conferences.)

15 (3A) Where a compulsory conference has been called pursuant to subsection one of this section, the conciliation commissioner or the committee, as the case may be, shall investigate the merits of the question, dispute or difficulty irrespective of whether or not the employees concerned therein may be on strike.

- 20 (ii) by inserting next after subsection five of the same section the following new subsection :—

25 (5A) No order or award or interim order or award shall be made pursuant to the provisions of subsection four or five of this section unless the causes of and the circumstances appertaining to the question, dispute or difficulty have been investigated by the conciliation commissioner or committee concerned or by another industrial tribunal and the conciliation commissioner or committee concerned is
30 satisfied that all reasonable steps have been taken to effect an amicable settlement of such question, dispute or difficulty.

- 35 (e) by inserting in paragraph (e) of subsection one of section 30B after the word “Act” the words “, section one hundred and one excepted”. (Jurisdiction of the commission.)

Industrial Arbitration (Amendment).

3. The Principal Act is further amended by inserting next after section 61x the following new Division : —

Further amendment of Act No. 2, 1940. New Division 2b.

DIVISION 2D.—*Provisions applicable after the commencement of the Industrial Arbitration (Amendment) Act, 1964.*

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

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

PASTORAL INDUSTRY AWARD, 1956
(Application by The Australian Workers Union to vary the said award in respect of the basic wage) (C. No. 10 of 1964) AND In the matter of—

THE AMALGAMATED ENGINEERING UNION (AUSTRALIAN SECTION) AND OTHERS—AND METAL TRADES EMPLOYERS’ ASSOCIATION AND OTHERS
(Notification pursuant to Section 28 of the Act of an industrial dispute re claims for increased basic wage in the Metal industry) (C. No. 821 of 1964)”.
“Consumer Price Index” has the meaning ascribed thereto in Division 2c of this Part.

61Z. (1) This section shall apply to and in respect of all awards and industrial agreements—

Existing awards and industrial agreements.

(a) in force immediately before the commencement of the Industrial Arbitration (Amendment) Act, 1964, or

(b)

Industrial Arbitration (Amendment).

- (b) which were made or entered into before such commencement but come into force after such commencement.

5 (2) (a) For the purposes of this section the expression "appointed day", in respect of—

- 10 (i) awards and industrial agreements in force at the beginning of the first pay period which commenced on or after the nineteenth day of June, one thousand nine hundred and sixty-four, means the day on which such pay period commenced; and

- 15 (ii) awards and industrial agreements the provisions of which, affecting rates of wages, came into force after the beginning of such pay period, or which were made before but come into force after the commencement of the Industrial Arbitration (Amendment) Act, 1964, means the day on which such provisions came or come into force.

20 (b) An award or industrial agreement to which this section applies shall as on and from the appointed day applicable thereto have and take effect as if—

- 25 (i) in so far as it fixes rates of wages for adult male employees by reference or in relation to a basic wage for adult males assessed on an index number contained in the Consumer Price Index, such basic wage had, immediately before the appointed day, been adjusted to the amount of
30 fifteen pounds fifteen shillings per week;

- (ii) in so far as it fixes rates of wages for adult female employees by reference or in relation to a basic wage for adult females based upon seventy-five per centum of a basic wage for adult males, such
basic

Industrial Arbitration (Amendment).

basic wage for adult female employees had, immediately before the appointed day, been adjusted to the amount of eleven pounds sixteen shillings per week; and

- 5 (iii) any provisions therein relating to adjustment at stated periods of the rates of pay prescribed therein, upon any variation of the basic wage for adult males or the basic wage for adult females in accordance with fluctuations of index numbers
10 in the Consumer Price Index, had been deleted.

- (3) The terms of each award or industrial agreement to which this section applies, affecting rates of pay, shall, as from the commencement of the Industrial Arbitration (Amendment) Act, 1964, be deemed
15 to be varied to the extent necessary to give effect to the provisions of subsection two of this section.

- (4) As soon as practicable after the commencement of the Industrial Arbitration (Amendment) Act, 1964, the registrar, subject to appeal to the commission,
20 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
25 be given to the provisions of this section.

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

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

Industrial Arbitration (Amendment).

61AA. (1) This section shall apply to and in respect of all awards made or industrial agreements entered into on or after the commencement of the Industrial Arbitration (Amendment) Act, 1964. Future awards and industrial agreements.

5 (2) Subject to the provisions of subsection three of this section, all awards or industrial agreements to which this section applies shall, in so far as they fix rates of wages by reference or in relation to—

10 (a) a basic wage for adult males, be made by reference or in relation to a basic wage for adult males of fifteen pounds fifteen shillings per week; or

15 (b) a basic wage for adult females, be made by reference or in relation to a basic wage for adult females of eleven pounds sixteen shillings per week :

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

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

This

Industrial Arbitration (Amendment).

This subsection shall not apply to an award made, or industrial agreement entered into, for wages of apprentices or trainee apprentices.

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

61AB. (1) In this section "award or industrial
agreement" means award or industrial agreement which
fixes rates of wages by reference or in relation to a basic
15 wage for adult males or a basic wage for adult females.
Provisions for variation of the basic wage in awards and industrial agreements.

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

(b) The Governor may by proclamation
published in the Gazette direct that for the purposes
35 of this section the name or title of such award made by
the

Industrial Arbitration (Amendment).

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

(3) (a) As soon as practicable after the Commonwealth Conciliation and Arbitration Commission has at any time varied the Federal Metal Trades Award in relation to the basic wage for adult males or the basic wage for adult females, which is applicable to employees in Sydney, the registrar shall, for the purposes of subsection two of this section, by notification published in the Gazette notify the amount of the basic wage for adult males or the basic wage for adult females, as the case may require, which, from the date such variation takes effect, shall be the basic wage for adult males or the basic wage for adult females for the purposes of awards or industrial agreements in force at such date or which were made before but come into force after such date.

(b) Any such notification by the registrar shall on publication in the Gazette—

- (i) supersede and replace any such notification published theretofore and continue in force until the date upon which a subsequent like notification takes effect; and
- (ii) be conclusive evidence for all purposes of the matters stated therein.

(4) As from the date upon which any variation pursuant to subsection two of this section takes effect—

- (a) the amount as so notified of the basic wage for adult males or the basic wage for adult females shall be the basic wage for adult males or

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or the basic wage for adult females (as the case may be) for the purposes of all awards or industrial agreements in force at such date or which were made before but come into force after such date; and

(b) the terms of all such awards or industrial agreements shall as from such date be deemed to be varied to the extent necessary to give effect to the provisions of paragraph (a) of this subsection.

(5) The provisions of this section relating to the variation of the amount of the basic wage shall apply to the exclusion of section 61X of this Act or any other like provision contained in any other Act or any award or industrial agreement.

(6) The registrar may (subject to appeal to the commission), upon application made as prescribed or of his own motion, vary the terms of any award or industrial agreement affecting rates of wages to the extent necessary to give full effect to the provisions of this section.

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

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

4. The Principal Act is further amended—

(a) by inserting in section 61P after the figure and letter "2C" the words, figure and letter "2D", or referred to in Division 2D,";

(b) (i) by omitting from subsection five of section 88D the figure and symbol "2C" and by inserting in lieu thereof the figure and symbol "2D";

Further amendment of Act No. 2, 1940.

Sec. 61P. (Existing basic wage for adult females.)

Sec. 88D. (Equal pay for males and females in certain circumstances.)

(ii)

Industrial Arbitration (Amendment).

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

- (b) (c) by inserting next after section 88F the following new section :—

New
sec. 88G.

- 88G. (1) Notwithstanding any other provision of this Act the commission, a committee or an apprenticeship council shall upon application therefor insert (by way of variation or otherwise) in an award or industrial agreement whether made before or after the commencement of the Industrial Arbitration (Amendment) Act, 1964, provisions relating to the matters set out in subsection two of this section.

Provisions
relevant to
automation.

(2) The matters referred to in subsection one of this section shall be—

- (a) the obligations, duties and responsibilities of an employer upon the introduction or proposed introduction of mechanisation or technological changes in the industry in which he is engaged;
- (b) the employees to whom notices of termination of services (being not less than three months) are to be given on account of such introduction or proposed introduction and the form and effect of such notices and the consequences (including requirements that the ordinary rate of pay shall be paid for a specified period, being the difference between the notice given and that required to be given under the provisions inserted

Industrial Arbitration (Amendment).

- 5 inserted in the award or industrial agree-
ment pursuant to this section, and the period
of notice to be given shall be deemed to be
service with the employer for the purpose of
the Long Service Leave Act, 1955, the
Annual Holidays Act, 1944, the Long
Service Leave (Metalliferous Mining
Industry) Act, 1963, or any Act amending
or replacing any of those Acts) of failure
10 to give such notices;
- 15 (c) the notifications to be given by the
employer to the registrar, the Director of
the Vocational Guidance Bureau and the
Director of Technical Education of or per-
taining to such notices of termination of
services;
- 20 (d) such other matters as the commission,
committee or apprenticeship council deems
relevant to or consequential upon the
matters referred to in paragraphs (a), (b)
and (c) of this subsection.
- (e) (d) (i) by inserting at the end of subsection one of Sec. 92.
section ninety-two the following new para- (Recovery
graph : — of wages.)
- 25 (b) Where any such award, industrial
agreement or permit fixes a price, rate or
amount (not being a price or rate for work
done) to be paid in the circumstances set out
therein in relation to any other matter the
30 employer shall in such circumstances be liable
to pay such price, rate or amount in full in
money to the person entitled thereto without
any deduction except such as may be
authorised by such award or industrial agree-
35 ment or permit as the case may be.
- (ii)

Industrial Arbitration (Amendment).

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

5 "due—

10 (a) in respect of a price or rate referred to in paragraph (a) of subsection one of this section or a price, rate or amount referred to in paragraph (b) of the said subsection ; or

15 (b) to such person in relation to any provision of an award or industrial agreement providing that the employer shall bear or defray the cost or extra cost to the employee of doing any act or thing described in the award or industrial agreement or that upon the
20 occurrence of events or happenings described in the award or industrial agreement the employer shall reimburse, compensate or recompense the employee to the
25 extent of any loss sustained or expense incurred by him,

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

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

Industrial Arbitration (Amendment).

- thereof the words "where proceedings may be taken under subsection two or three of this section the proceedings may with the consent in writing of the person so authorised";
- 5 (iv) by inserting in subsection seven of the same section after the word "rate" the words "or upon conditions less favourable than those";
- (d) (e) (i) by inserting in subsection two of section Sec. 93.
 10 ninety-three after the word "agreement" the (Penalty for breach of award.)
 words "or any other moneys due to or recoverable by an employee in terms of an award or industrial agreement";
- (ii) by inserting in the same subsection after the
 15 word "wages" where thirdly and fourthly occurring the words "or moneys".
5. The Principal Act is further amended—
- (a) by inserting in section one hundred after the word Further amendment of Act No. 2, 1940.
 "abetting" the words "or have taken part in or Sec. 100. (Penalty for illegal strike.)
 aided or abetted";
- 20 (b) by omitting section one hundred and one and by Subst. sec. 101 and new secs. 101A, 101B.
 inserting in lieu thereof the following sections :—
101. (1) No proceedings for an order under Proceedings for penalty under sec. 100.
 25 section one hundred of this Act shall be commenced except by leave of the commission, and no such leave shall be granted unless—
- (a) the commission is satisfied that the employer concerned in the illegal strike has—
- (i) not himself taken part in any lock-out which has either wholly or in
 30 part given rise to the strike;
- (ii)

Industrial Arbitration (Amendment).

5 (ii) in a case where a lock-out or strike
has taken place, notified the registrar
in accordance with section 25A of
this Act of the commencement of
such lock-out or strike, or upon
becoming aware of any question,
dispute or difficulty of the nature
referred to in paragraph (a), (b) or
10 (c) of subsection one of section
twenty-five of this Act which gave
rise to the strike, notified the regis-
trar in accordance with the said
section 25A of such question, dispute
or difficulty; and

15 (iii) to the extent to which the circum-
stances permitted, made a bona fide
attempt to negotiate a settlement of
the question, dispute or difficulty
which gave rise to the strike before
20 the strike took place or of the strike
after it had taken place; and

(b) the causes of and the circumstances which
gave rise to the question, dispute or
difficulty referred to as aforesaid have been
25 investigated or adjudicated upon by some
industrial tribunal, other than the commis-
sion, or where such causes and circum-
stances have not been so investigated or
adjudicated upon the commission has inves-
30 tigated such causes and circumstances.

(2) An application for leave to commence
proceedings for an order under section one hundred
of this Act shall be lodged with the registrar not
later than fourteen days after the cessation of the
35 strike to which the application refers.

Industrial Arbitration (Amendment).

101A. It shall be a defence to any proceedings under section one hundred of this Act that—

Defence to proceedings under sec. 100.

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

20 101B. Costs shall not be awarded in any proceedings under this Part of this Act.

Costs in proceedings under this Part.

6. The Acts (as amended by subsequent Acts, if any) specified in the first and second columns of the First Schedule to this Act are amended as respectively specified in the third column of the said Schedule.

Amendment of Acts specified in First Schedule.

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

Citation of amended Acts.

Industrial Arbitration (Amendment).

FIRST SCHEDULE.

Sec. 6.

Reference to Act.	Short title.	Amendment.
5 10	No. 20, 1899 Police Regulation Act, 1899.	Section 12D, subsection (4).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.
15 20	No. 21, 1899 Common Law Procedure Act, 1899.	Section 181, subsection (3).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.
25	No. 31, 1902. Public Service Act, 1902.	Section 48, subsection (3); and section 56A, subsection (3A).— Omit "assessed and calculated in accordance with the provisions of", wherever occurring, insert "referred to in". Omit "61v" and "61x", wherever occurring, insert "61AA" and "61AB" respectively.
30 35	No. 23, 1912. District Courts Act, 1912.	Section 117, subsection (2).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.
40 45	No. 30, 1912. Government Railways Act, 1912.	Section 107A, subsection (3A).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.

Industrial Arbitration (Amendment).

FIRST SCHEDULE—continued.

Reference to Act.	Short title.	Amendment.
5 10 15 20 25 30 35 40 45 50 55 60 65	<p>No. 33, 1912. Small Debts Recovery Act, 1912.</p> <p>No. 36, 1920. Workmen's Compensation (Broken Hill) Act, 1920.</p> <p>No. 24, 1924. Main Roads Act, 1924.</p> <p>No. 17, 1926. Workers' Compensation Act, 1926.</p> <p>No. 15, 1926. Workers' Compensation Act, 1926.</p> <p>No. 18, 1930. Transport Act, 1930.</p>	<p>Section 56, subsection (5).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in".</p> <p>Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.</p> <p>Schedule, Part II, paragraphs 3 and 6.—Omit "assessed and calculated under and in accordance with paragraph (a) of subsection two of section 61v of the Industrial Arbitration Act, 1940-1961" wherever occurring, insert "referred to in paragraph (a) of subsection two of section 61AA of the Industrial Arbitration Act, 1940, as amended by subsequent Acts".</p> <p>Section 7B, subsection (4).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in".</p> <p>Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.</p> <p>Section 9, subsection (1A), paragraph (c); section 11, subsection (1), paragraph (d); and section 14, subsection (2). Omit "assessed and calculated under and in accordance with paragraph (a) or (b) of subsection two of section 61v of the Industrial Arbitration Act, 1940-1961" wherever occurring, insert "referred to in paragraph (a) or (b) of subsection two of section 61AA of the Industrial Arbitration Act, 1940, as amended by subsequent Acts."</p> <p>Section 14, subsection (2).—Omit "assessed and calculated under and in accordance with paragraph (a) or (b) of subsection two of section 61v of the Industrial Arbitration Act, 1940-1961", insert "referred to in paragraph (a) or (b) of subsection two of section 61AA of the Industrial Arbitration Act, 1940, as amended by subsequent Acts, and as last adjusted in accordance with the provisions of section 61AB of that Act, as so amended".</p> <p>Section 128A, subsection (4).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in".</p> <p>Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.</p>

*Industrial Arbitration (Amendment).*FIRST SCHEDULE—*continued.*

Reference to Act.	Short title.	Amendment.
5 No. 17, 1943.	Legal Assistance Act, 1943.	Section 6, subsection (4), paragraph (c).— Omit “assessed and calculated in accordance with the provisions of”, insert “referred to in”. Omit “61v” and “61x”, insert “61AA” and “61AB” respectively.
10 No. 25, 1948.	Landlord and Tenant (Amendment) Act, 1948.	Section 62, subsection (6), paragraph (c).— Omit “assessed and calculated in accordance with the provisions of”, insert “referred to in”. Omit “61v” and “61x”, insert “61AA” and “61AB” respectively.
15 No. 28, 1957.	Attachment of Wages Limitation Act, 1957.	Section 10, subsection (4).— Omit “assessed and calculated in accordance with the provisions of” wherever occurring, insert “referred to in”. Omit “61v” and “61x” wherever occurring, insert “61AA” and “61AB” respectively.
20 No. 59, 1963.	State Planning Authority Act, 1963.	Section 27, subsection (1), paragraph (b); and section 27, subsection (2), paragraph (c), subparagraph (i).— Omit “as assessed and calculated in accordance with the provisions of section 61v” wherever occurring, insert “referred to in section 61AA”. Omit “61x” wherever occurring, insert “61AB”.
25 No. 9, 1964.	Constitution and Police Regulation (Amendment) Act, 1964.	Section 1.—Omit subsection (2).
30 No. 23, 1964.	Government Railways and Transport (Amendment) Act, 1964.	Section 2.—Omit subsection (2). Section 3.—Omit subsection (2).
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Industrial Arbitration (Amendment).

SECOND SCHEDULE.

Sec. 7.

Reference to Act.	Short title.	Citation.
5 No. 20, 1899.	Police Regulation Act, 1899.	Police Regulation Act, 1899-1964.
No. 21, 1899.	Common Law Procedure Act, 1899.	Common Law Procedure Act, 1899-1964.
10 No. 23, 1912.	District Courts Act, 1912.	District Courts Act, 1912-1964.
No. 30, 1912.	Government Railways Act, 1912.	Government Railways Act, 1912-1964.
No. 33, 1912.	Small Debts Recovery Act, 1912.	Small Debts Recovery Act, 1912-1964.
15 No. 36, 1920.	Workmen's Compensation (Broken Hill) Act, 1920.	Workmen's Compensation (Broken Hill) Act, 1920-1964.
No. 24, 1924.	Main Roads Act, 1924.	Main Roads Act, 1924-1964.
20 No. 15, 1926.	Workers' Compensation Act, 1926.	Workers' Compensation Act, 1926-1964.
No. 18, 1930.	Transport Act, 1930.	Transport Act, 1930-1964.
No. 17, 1943.	Legal Assistance Act, 1943.	Legal Assistance Act, 1943-1964.
25 No. 25, 1948.	Landlord and Tenant (Amendment) Act, 1948.	Landlord and Tenant (Amendment) Act, 1948-1964.
No. 28, 1957.	Attachment of Wages Limitation Act, 1957.	Attachment of Wages Limitation Act, 1957-1964.
30 No. 59, 1963.	State Planning Authority Act, 1963.	State Planning Authority Act, 1963-1964.

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, SYDNEY, NEW SOUTH WALES—1964
[1s. 8d.]

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.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 29 September, 1964.*

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

Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, October, 1964.*

New South Wales



ANNO TERTIO DECIMO

ELIZABETHÆ II REGINÆ

Act No. , 1964.

An Act to make further provisions with respect to the basic wage, illegal strikes, industrial tribunals and certain other industrial matters; for these and other purposes to amend the Industrial Arbitration Act, 1940–1961, and certain other Acts; and for purposes connected therewith.

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

1. (1) This Act may be cited as the "Industrial Arbitration (Amendment) Act, 1964".

Short title
and
citation.

77581

30—A

(2)

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 Principal Act, as amended by this Act, may be cited as the Industrial Arbitration Act, 1940-1964.

2. The Principal Act is amended—

Amendment
of Act No.
2, 1940.

(a) by inserting in the definition of "Employee" in subsection one of section five after the words "of a butty-gang," the words "and includes any person who is, pursuant to any provision of this Act, deemed to be an employee for the purposes of this Act,";

(b) (i) by inserting next after subsection three of section 17A the following new subsection :—
(3A) A special commissioner may require any person attending a conference at which the special commissioner presides to give evidence on oath and for that purpose shall have authority to administer an oath to any such person.

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

(5) An appeal from any decision of a special commissioner pursuant to subsection four of this section shall be by way of rehearing and the commission may call for or receive further information or evidence.

(c) (i) by omitting from subsection six of section eighteen the words "the expiration of three years from the date of his appointment, unless he sooner resigns his office" and by inserting in lieu thereof the words "he resigns or the employer

Industrial Arbitration (Amendment).

employer or industrial union who or which nominated such person to be such a member has notified the registrar that such nomination has been withdrawn”;

- 5 (ii) by omitting from subsection eight of the same section the words “to his office for the residue of the period for which such member was appointed” and by inserting in lieu thereof the words “to the vacancy so created”;

- 10 (d) (i) by inserting next after subsection three of Sec. 25. section twenty-five the following new (Compul- sory con- ferences.) subsection : —

15 (3A) Where a compulsory conference has been called pursuant to subsection one of this section, the conciliation commissioner or the committee, as the case may be, shall investigate the merits of the question, dispute or difficulty irrespective of whether or not the employees concerned therein may be on strike.

- 20 (ii) by inserting next after subsection five of the same section the following new subsection : —

25 (5A) No order or award or interim order or award shall be made pursuant to the provisions of subsection four or five of this section unless the causes of and the circumstances appertaining to the question, dispute or difficulty have been investigated by the conciliation commissioner or committee concerned or by another industrial tribunal and the conciliation commissioner or committee concerned is
30 satisfied that all reasonable steps have been taken to effect an amicable settlement of such question, dispute or difficulty.

- 35 (e) by inserting in paragraph (e) of subsection one Sec. 30B. of section 30B after the word “Act” the words (Jurisdiction of the commis- sion.) “, section one hundred and one excepted”.

Industrial Arbitration (Amendment).

3. The Principal Act is further amended by inserting next after section 61X the following new Division :—

Further amendment of Act No. 2, 1940. New Division 2D.

DIVISION 2D.—*Provisions applicable after the commencement of the Industrial Arbitration (Amendment) Act, 1964.*

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

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

PASTORAL INDUSTRY AWARD, 1956

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

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

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

“Consumer Price Index” has the meaning ascribed thereto in Division 2C of this Part.

61Z. (1) This section shall apply to and in respect of all awards and industrial agreements—

Existing awards and industrial agreements.

(a) in force immediately before the commencement of the Industrial Arbitration (Amendment) Act, 1964, or

(b)

Industrial Arbitration (Amendment).

- (b) which were made or entered into before such commencement but come into force after such commencement.

5 (2) (a) For the purposes of this section the expression "appointed day", in respect of—

- 10 (i) awards and industrial agreements in force at the beginning of the first pay period which commenced on or after the nineteenth day of June, one thousand nine hundred and sixty-four, means the day on which such pay period commenced; and

- 15 (ii) awards and industrial agreements the provisions of which, affecting rates of wages, came into force after the beginning of such pay period, or which were made before but come into force after the commencement of the Industrial Arbitration (Amendment) Act, 1964, means the day on which such provisions came or come into force.

20 (b) An award or industrial agreement to which this section applies shall as on and from the appointed day applicable thereto have and take effect as if—

- 25 (i) in so far as it fixes rates of wages for adult male employees by reference or in relation to a basic wage for adult males assessed on an index number contained in the Consumer Price Index, such basic wage had, immediately before the appointed day, been adjusted to the amount of
30 fifteen pounds fifteen shillings per week;

- (ii) in so far as it fixes rates of wages for adult female employees by reference or in relation to a basic wage for adult females based upon seventy-five per centum of a basic wage for adult males, such
basic

Industrial Arbitration (Amendment).

basic wage for adult female employees had, immediately before the appointed day, been adjusted to the amount of eleven pounds sixteen shillings per week; and

- 5 (iii) any provisions therein relating to adjustment at stated periods of the rates of pay prescribed therein, upon any variation of the basic wage for adult males or the basic wage for adult females in accordance with fluctuations of index numbers
10 in the Consumer Price Index, had been deleted.

(3) The terms of each award or industrial agreement to which this section applies, affecting rates of pay, shall, as from the commencement of the Industrial Arbitration (Amendment) Act, 1964, be deemed
15 to be varied to the extent necessary to give effect to the provisions of subsection two of this section.

(4) As soon as practicable after the commencement of the Industrial Arbitration (Amendment) Act, 1964, the registrar, subject to appeal to the commission,
20 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
25 be given to the provisions of this section.

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

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

Industrial Arbitration (Amendment).

61AA. (1) This section shall apply to and in respect of all awards made or industrial agreements entered into on or after the commencement of the Industrial Arbitration (Amendment) Act, 1964. Future awards and industrial agreements.

5 (2) Subject to the provisions of subsection three of this section, all awards or industrial agreements to which this section applies shall, in so far as they fix rates of wages by reference or in relation to—

10 (a) a basic wage for adult males, be made by reference or in relation to a basic wage for adult males of fifteen pounds fifteen shillings per week; or

15 (b) a basic wage for adult females, be made by reference or in relation to a basic wage for adult females of eleven pounds sixteen shillings per week :

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

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

This

Industrial Arbitration (Amendment).

This subsection shall not apply to an award made, or industrial agreement entered into, for wages of apprentices or trainee apprentices.

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

61AB. (1) In this section "award or industrial agreement" means award or industrial agreement which fixes rates of wages by reference or in relation to a basic wage for adult males or a basic wage for adult females.

Provisions for variation of the basic wage in awards and industrial agreements.

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

(b) The Governor may by proclamation published in the Gazette direct that for the purposes of this section the name or title of such award made by the

Industrial Arbitration (Amendment).

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

(3) (a) As soon as practicable after the Commonwealth Conciliation and Arbitration Commission has at any time varied the Federal Metal Trades Award in relation to the basic wage for adult males or the basic wage for adult females, which is applicable to employees in Sydney, the registrar shall, for the purposes of subsection two of this section, by notification published in the Gazette notify the amount of the basic wage for adult males or the basic wage for adult females, as the case may require, which, from the date such variation takes effect, shall be the basic wage for adult males or the basic wage for adult females for the purposes of awards or industrial agreements in force at such date or which were made before but come into force after such date.

(b) Any such notification by the registrar shall on publication in the Gazette—

- (i) supersede and replace any such notification published theretofore and continue in force until the date upon which a subsequent like notification takes effect; and
- (ii) be conclusive evidence for all purposes of the matters stated therein.

(4) As from the date upon which any variation pursuant to subsection two of this section takes effect—

- (a) the amount as so notified of the basic wage for adult males or the basic wage for adult females shall be the basic wage for adult males or

Industrial Arbitration (Amendment).

or the basic wage for adult females (as the case may be) for the purposes of all awards or industrial agreements in force at such date or which were made before but come into force after such date; and

(b) the terms of all such awards or industrial agreements shall as from such date be deemed to be varied to the extent necessary to give effect to the provisions of paragraph (a) of this subsection.

(5) The provisions of this section relating to the variation of the amount of the basic wage shall apply to the exclusion of section 61X of this Act or any other like provision contained in any other Act or any award or industrial agreement.

(6) The registrar may (subject to appeal to the commission), upon application made as prescribed or of his own motion, vary the terms of any award or industrial agreement affecting rates of wages to the extent necessary to give full effect to the provisions of this section.

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

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

4. The Principal Act is further amended—

(a) by inserting in section 61P after the figure and letter "2C" the words, figure and letter "2D", or referred to in Division 2D,";

(b) (i) by omitting from subsection five of section 88D the figure and symbol "2C" and by inserting in lieu thereof the figure and symbol "2D";

Further amendment of Act No. 2, 1940.

Sec. 61P.
(Existing basic wage for adult females.)

Sec. 88D.
(Equal pay for males and females in certain circumstances.)

(ii)

Industrial Arbitration (Amendment).

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

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

88G. (1) Notwithstanding any other provision of this Act the commission, a committee or an apprenticeship council shall upon application therefor insert (by way of variation or otherwise) in an award or industrial agreement whether made before or after the commencement of the Industrial Arbitration (Amendment) Act, 1964, provisions relating to the matters set out in subsection two of this section. Provisions relevant to automation.

(2) The matters referred to in subsection one of this section shall be—

(a) the obligations, duties and responsibilities of an employer upon the introduction or proposed introduction of mechanisation or technological changes in the industry in which he is engaged;

(b) the employees to whom notices of termination of services (being not less than three months) are to be given on account of such introduction or proposed introduction and the form and effect of such notices and the consequences (including requirements that the ordinary rate of pay shall be paid for a specified period, being the difference between the notice given and that required to be given under the provisions inserted

Industrial Arbitration (Amendment).

5 inserted in the award or industrial agree-
ment pursuant to this section, and the period
of notice to be given shall be deemed to be
service with the employer for the purpose of
the Long Service Leave Act, 1955, the
Annual Holidays Act, 1944, the Long
Service Leave (Metalliferous Mining
Industry) Act, 1963, or any Act amending
or replacing any of those Acts) of failure
10 to give such notices;

15 (c) the notifications to be given by the
employer to the registrar, the Director of
the Vocational Guidance Bureau and the
Director of Technical Education of or per-
taining to such notices of termination of
services;

20 (d) such other matters as the commission,
committee or apprenticeship council deems
relevant to or consequential upon the
matters referred to in paragraphs (a), (b)
and (c) of this subsection.

(e) (d) (i) by inserting at the end of subsection one of Sec. 92.
section ninety-two the following new para- (Recovery
graph : — of wages.)

25 (b) Where any such award, industrial
agreement or permit fixes a price, rate or
amount (not being a price or rate for work
done) to be paid in the circumstances set out
therein in relation to any other matter the
30 employer shall in such circumstances be liable
to pay such price, rate or amount in full in
money to the person entitled thereto without
any deduction except such as may be
authorised by such award or industrial agree-
35 ment or permit as the case may be.

(ii)

Industrial Arbitration (Amendment).

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

5 "due—

(a) in respect of a price or rate referred to in paragraph (a) of subsection one of this section or a price, rate or amount referred to in paragraph (b) of the said subsection ; or

(b) to such person in relation to any provision of an award or industrial agreement providing that the employer shall bear or defray the cost or extra cost to the employee of doing any act or thing described in the award or industrial agreement or that upon the occurrence of events or happenings described in the award or industrial agreement the employer shall reimburse, compensate or recompense the employee to the extent of any loss sustained or expense incurred by him,

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

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

Industrial Arbitration (Amendment).

- thereof the words "where proceedings may be taken under subsection two or three of this section the proceedings may with the consent in writing of the person so authorised";
- 5 (iv) by inserting in subsection seven of the same section after the word "rate" the words "or upon conditions less favourable than those";
- (d) (e) (i) by inserting in subsection two of section Sec. 93.
 10 ninety-three after the word "agreement" the (Penalty for breach of award.)
 words "or any other moneys due to or recoverable by an employee in terms of an award or industrial agreement";
- (ii) by inserting in the same subsection after the
 15 word "wages" where thirdly and fourthly occurring the words "or moneys".
- 5. The Principal Act is further amended—**
- (a) by inserting in section one hundred after the word Further amendment of Act No. 2, 1940.
 "abetting" the words "or have taken part in or Sec. 100. (Penalty for illegal strike.)
 aided or abetted";
- 20 (b) by omitting section one hundred and one and by Subst. sec. 101 and new secs. 101A, 101B.
 inserting in lieu thereof the following sections:—
101. (1) No proceedings for an order under Proceedings for penalty under sec. 100.
 25 section one hundred of this Act shall be commenced except by leave of the commission, and no such leave shall be granted unless—
- (a) the commission is satisfied that the employer concerned in the illegal strike has—
- (i) not himself taken part in any lock-out which has either wholly or in
 30 part given rise to the strike;
- (ii)

Industrial Arbitration (Amendment).

5 (ii) in a case where a lock-out or strike has taken place, notified the registrar in accordance with section 25A of this Act of the commencement of such lock-out or strike, or upon becoming aware of any question, dispute or difficulty of the nature referred to in paragraph (a), (b) or (c) of subsection one of section twenty-five of this Act which gave rise to the strike, notified the registrar in accordance with the said section 25A of such question, dispute or difficulty; and

15 (iii) to the extent to which the circumstances permitted, made a bona fide attempt to negotiate a settlement of the question, dispute or difficulty which gave rise to the strike before the strike took place or of the strike after it had taken place; and

25 (b) the causes of and the circumstances which gave rise to the question, dispute or difficulty referred to as aforesaid have been investigated or adjudicated upon by some industrial tribunal, other than the commission, or where such causes and circumstances have not been so investigated or adjudicated upon the commission has investigated such causes and circumstances.

30 (2) An application for leave to commence proceedings for an order under section one hundred of this Act shall be lodged with the registrar not later than fourteen days after the cessation of the strike to which the application refers.

101A.

Industrial Arbitration (Amendment).

101A. It shall be a defence to any proceedings under section one hundred of this Act that—

Defence to proceedings under sec. 100.

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

20 101B. Costs shall not be awarded in any proceedings under this Part of this Act.

Costs in proceedings under this Part.

6. The Acts (as amended by subsequent Acts, if any) specified in the first and second columns of the First Schedule to this Act are amended as respectively specified in the third column of the said Schedule.

Amendment of Acts specified in First Schedule.

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

Citation of amended Acts.

Industrial Arbitration (Amendment).

FIRST SCHEDULE.

Sec. 6.

Reference to Act.	Short title.	Amendment.
5 10 15 20 25 30 35 40 45	No. 20, 1899 Police Regulation Act, 1899.	Section 12D, subsection (4).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.
No. 21, 1899	Common Law Procedure Act, 1899.	Section 181, subsection (3).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.
No. 31, 1902.	Public Service Act, 1902.	Section 48, subsection (3); and section 56A, subsection (3A).— Omit "assessed and calculated in accordance with the provisions of", wherever occurring, insert "referred to in". Omit "61v" and "61x", wherever occurring, insert "61AA" and "61AB" respectively.
No. 23, 1912.	District Courts Act, 1912.	Section 117, subsection (2).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.
No. 30, 1912.	Government Railways Act, 1912.	Section 107A, subsection (3A).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.

*Industrial Arbitration (Amendment).*FIRST SCHEDULE—*continued.*

Reference to Act.	Short title.	Amendment.
5 10 No. 36, 1920. 15 20 No. 24, 1924. 25 30 No. 17, 1926. 35 40 45 No. 15, 1926. 50 55 60 No. 18, 1930. 65	Small Debts Recovery Act, 1912. Workmen's Compensation (Broken Hill) Act, 1920. Main Roads Act, 1924. Workers' Compensation Act, 1926. Workers' Compensation Act, 1926. Transport Act, 1930.	Section 56, subsection (5).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively. Schedule, Part II, paragraphs 3 and 6.—Omit "assessed and calculated under and in accordance with paragraph (a) of subsection two of section 61v of the Industrial Arbitration Act, 1940-1961" wherever occurring, insert "referred to in paragraph (a) of subsection two of section 61AA of the Industrial Arbitration Act, 1940, as amended by subsequent Acts". Section 7B, subsection (4).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively. Section 9, subsection (1A), paragraph (c); section 11, subsection (1), paragraph (d); and section 14, subsection (2). Omit "assessed and calculated under and in accordance with paragraph (a) or (b) of subsection two of section 61v of the Industrial Arbitration Act, 1940-1961" wherever occurring, insert "referred to in paragraph (a) or (b) of subsection two of section 61AA of the Industrial Arbitration Act, 1940, as amended by subsequent Acts." Section 14, subsection (2).—Omit "assessed and calculated under and in accordance with paragraph (a) or (b) of subsection two of section 61v of the Industrial Arbitration Act, 1940-1961", insert "referred to in paragraph (a) or (b) of subsection two of section 61AA of the Industrial Arbitration Act, 1940, as amended by subsequent Acts, and as last adjusted in accordance with the provisions of section 61AB of that Act, as so amended". Section 128A, subsection (4).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.

Industrial Arbitration (Amendment).

FIRST SCHEDULE—continued.

Reference to Act.	Short title.	Amendment.
5 No. 17, 1943.	Legal Assistance Act, 1943.	Section 6, subsection (4), paragraph (c).— Omit “assessed and calculated in accordance with the provisions of”, insert “referred to in”. Omit “61v” and “61x”, insert “61AA” and “61AB” respectively.
10 No. 25, 1948.	Landlord and Tenant (Amendment) Act, 1948.	Section 62, subsection (6), paragraph (c).— Omit “assessed and calculated in accordance with the provisions of”, insert “referred to in”. Omit “61v” and “61x”, insert “61AA” and “61AB” respectively.
15 No. 28, 1957.	Attachment of Wages Limitation Act, 1957.	Section 10, subsection (4).— Omit “assessed and calculated in accordance with the provisions of” wherever occurring, insert “referred to in”. Omit “61v” and “61x” wherever occurring, insert “61AA” and “61AB” respectively.
20 No. 59, 1963.	State Planning Authority Act, 1963.	Section 27, subsection (1), paragraph (b); and section 27, subsection (2), paragraph (c), subparagraph (i).— Omit “as assessed and calculated in accordance with the provisions of section 61v” wherever occurring, insert “referred to in section 61AA”. Omit “61x” wherever occurring, insert “61AB”.
25 No. 9, 1964.	Constitution and Police Regulation (Amendment) Act, 1964.	Section 1.—Omit subsection (2).
30 No. 23, 1964.	Government Railways and Transport (Amendment) Act, 1964.	Section 2.—Omit subsection (2). Section 3.—Omit subsection (2).
35		
40		

SECOND

Industrial Arbitration (Amendment).

SECOND SCHEDULE.

Sec. 7.

Reference to Act.	Short title.	Citation.
5 No. 20, 1899.	Police Regulation Act, 1899.	Police Regulation Act, 1899-1964.
No. 21, 1899.	Common Law Procedure Act, 1899.	Common Law Procedure Act, 1899-1964.
10 No. 23, 1912.	District Courts Act, 1912.	District Courts Act, 1912-1964.
No. 30, 1912.	Government Railways Act, 1912.	Government Railways Act, 1912-1964.
No. 33, 1912.	Small Debts Recovery Act, 1912.	Small Debts Recovery Act, 1912-1964.
15 No. 36, 1920.	Workmen's Compensation (Broken Hill) Act, 1920.	Workmen's Compensation (Broken Hill) Act, 1920-1964.
No. 24, 1924.	Main Roads Act, 1924.	Main Roads Act, 1924-1964.
20 No. 15, 1926.	Workers' Compensation Act, 1926.	Workers' Compensation Act, 1926-1964.
No. 18, 1930.	Transport Act, 1930.	Transport Act, 1930-1964.
No. 17, 1943.	Legal Assistance Act, 1943.	Legal Assistance Act, 1943-1964.
25 No. 25, 1948.	Landlord and Tenant (Amendment) Act, 1948.	Landlord and Tenant (Amendment) Act, 1948-1964.
No. 28, 1957.	Attachment of Wages Limitation Act, 1957.	Attachment of Wages Limitation Act, 1957-1964.
30 No. 59, 1963.	State Planning Authority Act, 1963.	State Planning Authority Act, 1963-1964.

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, SYDNEY, NEW SOUTH WALES—1964

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.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 29 September, 1964.*

New South Wales



ANNO TERTIO DECIMO

ELIZABETHÆ II REGINÆ

Act No. , 1964.

An Act to make further provisions with respect to the basic wage, illegal strikes, industrial tribunals and certain other industrial matters; for these and other purposes to amend the Industrial Arbitration Act, 1940-1961, and certain other Acts; and for purposes connected therewith.

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

1. (1) This Act may be cited as the "Industrial Arbitration (Amendment) Act, 1964".

(2)

Short title
and
citation.

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 Principal Act, as amended by this Act, may be cited as the Industrial Arbitration Act, 1940-1964.

2. The Principal Act is amended—

Amendment
of Act No.
2, 1940.

10 (a) by inserting in the definition of "Employee" in subsection one of section five after the words "of a butty-gang," the words "and includes any person who is, pursuant to any provision of this Act, deemed to be an employee for the purposes of this Act,";

Sec. 5.
(Interpre-
tation.)

15 (b) (i) by inserting next after subsection three of section 17A the following new subsection :—
(3A) A special commissioner may require any person attending a conference at which the special commissioner presides to give evidence on oath and for that purpose shall have authority to administer an oath to any such person.

Sec. 17A.
(Special
commis-
sioners.)

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

25 (5) An appeal from any decision of a special commissioner pursuant to subsection four of this section shall be by way of rehearing and the commission may call for or receive further information or evidence.

30 (c) (i) by omitting from subsection six of section eighteen the words "the expiration of three years from the date of his appointment, unless he sooner resigns his office" and by inserting in lieu thereof the words "he resigns or the employer

Sec. 18.
(Concilia-
tion com-
mittees.)

Industrial Arbitration (Amendment).

- employer or industrial union who or which nominated such person to be such a member has notified the registrar that such nomination has been withdrawn”;
- 5 (ii) by omitting from subsection eight of the same section the words “to his office for the residue of the period for which such member was appointed” and by inserting in lieu thereof the words “to the vacancy so created”;
- 10 (d) (i) by inserting next after subsection three of Sec. 25. section twenty-five the following new (Compul-
subsection : — sory con-
ferences.)
- 15 (3A) Where a compulsory conference has been called pursuant to subsection one of this section, the conciliation commissioner or the committee, as the case may be, shall investigate the merits of the question, dispute or difficulty irrespective of whether or not the employees concerned therein may be on strike.
- 20 (ii) by inserting next after subsection five of the same section the following new subsection : —
- 25 (5A) No order or award or interim order or award shall be made pursuant to the provisions of subsection four or five of this section unless the causes of and the circumstances appertaining to the question, dispute or difficulty have been investigated by the conciliation commissioner or committee concerned or by
- 30 another industrial tribunal and the conciliation commissioner or committee concerned is satisfied that all reasonable steps have been taken to effect an amicable settlement of such question, dispute or difficulty.
- 35 (e) by inserting in paragraph (e) of subsection one Sec. 30B. of section 30B after the word “Act” the words (Jurisdic-
tion of the
commis-
sion.)
3. “, section one hundred and one excepted”.

Industrial Arbitration (Amendment).

3. The Principal Act is further amended by inserting next after section 61x the following new Division :—

Further
amendment
of Act No.
2, 1940.
New Divi-
sion 2D.

DIVISION 2D.—*Provisions applicable after the commence-
ment of the Industrial Arbitration (Amendment)
Act, 1964.*

5

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

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

15 PASTORAL INDUSTRY AWARD, 1956
(Application by The Australian Workers Union
to vary the said award in respect of the basic
wage) (C. No. 10 of 1964) AND In the matter
of—

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

25 (Notification pursuant to Section 28 of the Act
of an industrial dispute re claims for increased
basic wage in the Metal industry) (C. No. 821 of
1964)”.
30

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

61Z. (1) This section shall apply to and in respect Existing
of all awards and industrial agreements— awards and
industrial
agreements.

(a) in force immediately before the commencement
of the Industrial Arbitration (Amendment) Act,
1964, or

(b)

Industrial Arbitration (Amendment).

(b) which were made or entered into before such commencement but come into force after such commencement.

5 (2) (a) For the purposes of this section the expression "appointed day", in respect of—

10 (i) awards and industrial agreements in force at the beginning of the first pay period which commenced on or after the nineteenth day of June, one thousand nine hundred and sixty-four, means the day on which such pay period commenced; and

15 (ii) awards and industrial agreements the provisions of which, affecting rates of wages, came into force after the beginning of such pay period, or which were made before but come into force after the commencement of the Industrial Arbitration (Amendment) Act, 1964, means the day on which such provisions came or come into force.

20 (b) An award or industrial agreement to which this section applies shall as on and from the appointed day applicable thereto have and take effect as if—

25 (i) in so far as it fixes rates of wages for adult male employees by reference or in relation to a basic wage for adult males assessed on an index number contained in the Consumer Price Index, such basic wage had, immediately before the appointed day, been adjusted to the amount of
30 fifteen pounds fifteen shillings per week;

(ii) in so far as it fixes rates of wages for adult female employees by reference or in relation to a basic wage for adult females based upon seventy-five per centum of a basic wage for adult males, such
basic

Industrial Arbitration (Amendment).

basic wage for adult female employees had, immediately before the appointed day, been adjusted to the amount of eleven pounds sixteen shillings per week; and

- 5 (iii) any provisions therein relating to adjustment at stated periods of the rates of pay prescribed therein, upon any variation of the basic wage for adult males or the basic wage for adult females in accordance with fluctuations of index numbers
10 in the Consumer Price Index, had been deleted.

- (3) The terms of each award or industrial agreement to which this section applies, affecting rates of pay, shall, as from the commencement of the Industrial Arbitration (Amendment) Act, 1964, be deemed
15 to be varied to the extent necessary to give effect to the provisions of subsection two of this section.

- (4) As soon as practicable after the commencement of the Industrial Arbitration (Amendment) Act, 1964, the registrar, subject to appeal to the commission,
20 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
25 be given to the provisions of this section.

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

- The registrar may refer any matter arising out of this subsection to the commission for direction.
35

Industrial Arbitration (Amendment).

61AA. (1) This section shall apply to and in respect of all awards made or industrial agreements entered into on or after the commencement of the Industrial Arbitration (Amendment) Act, 1964. ^{Future awards and industrial agreements.}

5 (2) Subject to the provisions of subsection three of this section, all awards or industrial agreements to which this section applies shall, in so far as they fix rates of wages by reference or in relation to—

10 (a) a basic wage for adult males, be made by reference or in relation to a basic wage for adult males of fifteen pounds fifteen shillings per week; or

15 (b) a basic wage for adult females, be made by reference or in relation to a basic wage for adult females of eleven pounds sixteen shillings per week :

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

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

This

Industrial Arbitration (Amendment).

This subsection shall not apply to an award made, or industrial agreement entered into, for wages of apprentices or trainee apprentices.

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

- 15 61AB. (1) In this section "award or industrial
agreement" means award or industrial agreement which
fixes rates of wages by reference or in relation to a basic
wage for adult males or a basic wage for adult females.
- Provisions
for varia-
tion of the
basic wage
in awards
and in-
dustrial
agreements.

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

- 35 (b) The Governor may by proclamation
published in the Gazette direct that for the purposes
of this section the name or title of such award made by
the

Industrial Arbitration (Amendment).

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

(3) (a) As soon as practicable after the Commonwealth Conciliation and Arbitration Commission has at any time varied the Federal Metal Trades Award in relation to the basic wage for adult males or the basic wage for adult females, which is applicable to employees in Sydney, the registrar shall, for the purposes of subsection two of this section, by notification published in the Gazette notify the amount of the basic wage for adult males or the basic wage for adult females, as the case may require, which, from the date such variation takes effect, shall be the basic wage for adult males or the basic wage for adult females for the purposes of awards or industrial agreements in force at such date or which were made before but come into force after such date.

(b) Any such notification by the registrar shall on publication in the Gazette—

(i) supersede and replace any such notification published theretofore and continue in force until the date upon which a subsequent like notification takes effect; and

(ii) be conclusive evidence for all purposes of the matters stated therein.

(4) As from the date upon which any variation pursuant to subsection two of this section takes effect—

(a) the amount as so notified of the basic wage for adult males or the basic wage for adult females shall be the basic wage for adult males or

Industrial Arbitration (Amendment).

5 or the basic wage for adult females (as the case may be) for the purposes of all awards or industrial agreements in force at such date or which were made before but come into force after such date; and

10 (b) the terms of all such awards or industrial agreements shall as from such date be deemed to be varied to the extent necessary to give effect to the provisions of paragraph (a) of this subsection.

15 (5) The provisions of this section relating to the variation of the amount of the basic wage shall apply to the exclusion of section 61X of this Act or any other like provision contained in any other Act or any award or industrial agreement.

20 (6) The registrar may (subject to appeal to the commission), upon application made as prescribed or of his own motion, vary the terms of any award or industrial agreement affecting rates of wages to the extent necessary to give full effect to the provisions of this section.

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

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

4. The Principal Act is further amended—

30 (a) (i) by omitting from subsection five of section 88D the figure and symbol "2c" and by inserting in lieu thereof the figure and symbol "2D";

Further amendment of Act No. 2, 1940.

Sec. 88D. (Equal pay for males and females in certain circumstances.)

(ii)

Industrial Arbitration (Amendment).

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

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

10 88G. (1) Notwithstanding any other provision of this Act the commission, a committee or an apprenticeship council shall upon application there-
for insert (by way of variation or otherwise) in an award or industrial agreement whether made before or after the commencement of the Industrial
15 Arbitration (Amendment) Act, 1964, provisions relating to the matters set out in subsection two of this section. Provisions relevant to automation.

(2) The matters referred to in subsection one of this section shall be—

- 20 (a) the obligations, duties and responsibilities of an employer upon the introduction or proposed introduction of mechanisation or technological changes in the industry in which he is engaged;

- 25 (b) the employees to whom notices of termination of services (being not less than three months) are to be given on account of such introduction or proposed introduction and the form and effect of such notices
30 and the consequences (including requirements that the ordinary rate of pay shall be paid for a specified period, being the difference between the notice given and that required to be given under the provisions inserted

Industrial Arbitration (Amendment).

inserted in the award or industrial agreement pursuant to this section, and the period of notice to be given shall be deemed to be service with the employer for the purpose of the Long Service Leave Act, 1955, the Annual Holidays Act, 1944, the Long Service Leave (Metalliferous Mining Industry) Act, 1963, or any Act amending or replacing any of those Acts) of failure to give such notices;

(c) the notifications to be given by the employer to the registrar, the Director of the Vocational Guidance Bureau and the Director of Technical Education of or pertaining to such notices of termination of services;

(d) such other matters as the commission, committee or apprenticeship council deems relevant to or consequential upon the matters referred to in paragraphs (a), (b) and (c) of this subsection.

(c) (i) by inserting at the end of subsection one of Sec. 92. section ninety-two the following new paragraph: — (Recovery of wages.)

(b) Where any such award, industrial agreement or permit fixes a price, rate or amount (not being a price or rate for work done) to be paid in the circumstances set out therein in relation to any other matter the employer shall in such circumstances be liable to pay such price, rate or amount in full in money to the person entitled thereto without any deduction except such as may be authorised by such award or industrial agreement or permit as the case may be.

(ii)

Industrial Arbitration (Amendment).

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

"due—

(a) in respect of a price or rate referred to in paragraph (a) of subsection one of this section or a price, rate or amount referred to in paragraph (b) of the said subsection; or

(b) to such person in relation to any provision of an award or industrial agreement providing that the employer shall bear or defray the cost or extra cost to the employee of doing any act or thing described in the award or industrial agreement or that upon the occurrence of events or happenings described in the award or industrial agreement the employer shall reimburse, compensate or recompense the employee to the extent of any loss sustained or expense incurred by him,

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

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

Industrial Arbitration (Amendment).

thereof the words "where proceedings may be taken under subsection two or three of this section the proceedings may with the consent in writing of the person so authorised";

- 5 (iv) by inserting in subsection seven of the same section after the word "rate" the words "or upon conditions less favourable than those";

- 10 (d) (i) by inserting in subsection two of section ninety-three after the word "agreement" the words "or any other moneys due to or recoverable by an employee in terms of an award or industrial agreement";

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

- 15 (ii) by inserting in the same subsection after the word "wages" where thirdly and fourthly occurring the words "or moneys".

5. The Principal Act is further amended—

Further amendment of Act No. 2, 1940.

- (a) by inserting in section one hundred after the word "abetting" the words "or have taken part in or aided or abetted";
- 20 (b) by omitting section one hundred and one and by inserting in lieu thereof the following sections :—

Sec. 100.
(Penalty for illegal strike.)

Subst. sec. 101 and new secs. 101A, 101B.

- 25 101. (1) No proceedings for an order under section one hundred of this Act shall be commenced except by leave of the commission, and no such leave shall be granted unless—

Proceedings for penalty under sec. 100.

- (a) the commission is satisfied that the employer concerned in the illegal strike has—

- 30 (i) not himself taken part in any lock-out which has either wholly or in part given rise to the strike;

(ii)

Industrial Arbitration (Amendment).

5 (ii) in a case where a lock-out or strike
has taken place, notified the registrar
in accordance with section 25A of
this Act of the commencement of
such lock-out or strike, or upon
becoming aware of any question,
dispute or difficulty of the nature
referred to in paragraph (a), (b) or
10 (c) of subsection one of section
twenty-five of this Act which gave
rise to the strike, notified the regis-
trar in accordance with the said
section 25A of such question, dispute
or difficulty; and

15 (iii) to the extent to which the circum-
stances permitted, made a bona fide
attempt to negotiate a settlement of
the question, dispute or difficulty
which gave rise to the strike before
20 the strike took place or of the strike
after it had taken place; and

(b) the causes of and the circumstances which
gave rise to the question, dispute or
difficulty referred to as aforesaid have been
25 investigated or adjudicated upon by some
industrial tribunal, other than the commis-
sion, or where such causes and circum-
stances have not been so investigated or
adjudicated upon the commission has inves-
30 tigated such causes and circumstances.

(2) An application for leave to commence
proceedings for an order under section one hundred
of this Act shall be lodged with the registrar not
later than fourteen days after the cessation of the
35 strike to which the application refers.

Industrial Arbitration (Amendment).

- 101A. It shall be a defence to any proceedings under section one hundred of this Act that—
- (a) an employer in the industry in which the illegal strike occurred or his servant or agent has by any unjust or unreasonable action provoked or incited the strike; or
- (b) the executive of the union, after becoming aware of the circumstances concerning the illegal strike, has not aided, abetted or supported or did not aid, abet or support members of the union who are or were engaged in the strike, and has endeavoured or did endeavour by means reasonable under the circumstances to prevent members of the union from taking part in or aiding or abetting or continuing to take part in, aid or abet the strike.
- 101B. Costs shall not be awarded in any proceedings under this Part of this Act.
6. The Acts (as amended by subsequent Acts, if any) specified in the first and second columns of the First Schedule to this Act are amended as respectively specified in the third column of the said Schedule.
7. The Acts (as amended by subsequent Acts, if any) specified in the first and second columns of the Second Schedule to this Act may be cited as respectively specified in the third column of the said Schedule.

Defence to
proceedings
under sec.
100.

Costs in
proceedings
under this
Part.

Amendment
of Acts
specified
in First
Schedule.

Citation
of amended
Acts.

Industrial Arbitration (Amendment).

FIRST SCHEDULE.

Sec. 6.

Reference to Act.	Short title.	Amendment.
5 10	No. 20, 1899 Police Regulation Act, 1899.	Section 12D, subsection (4).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.
15 20	No. 21, 1899 Common Law Procedure Act, 1899.	Section 181, subsection (3).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.
25	No. 31, 1902. Public Service Act, 1902.	Section 48, subsection (3); and section 56A, subsection (3A).— Omit "assessed and calculated in accordance with the provisions of", wherever occurring, insert "referred to in". Omit "61v" and "61x", wherever occurring, insert "61AA" and "61AB" respectively.
30 35	No. 23, 1912. District Courts Act, 1912.	Section 117, subsection (2).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.
40 45	No. 30, 1912. Government Railways Act, 1912.	Section 107A, subsection (3A).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.

*Industrial Arbitration (Amendment).*FIRST SCHEDULE—*continued.*

Reference to Act.	Short title.	Amendment.
5 10 15 20 25 30 35 40 45 50	<p>No. 33, 1912. Small Debts Recovery Act, 1912.</p> <p>No. 36, 1920. Workmen's Compensation (Broken Hill) Act, 1920.</p> <p>No. 24, 1924. Main Roads Act, 1924.</p> <p>No. 15, 1926. Workers' Compensation Act, 1926.</p> <p>No. 18, 1930. Transport Act, 1930.</p>	<p>Section 56, subsection (5).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.</p> <p>Schedule, Part II, paragraphs 3 and 6.—Omit "assessed and calculated under and in accordance with paragraph (a) of subsection two of section 61v of the Industrial Arbitration Act, 1940-1961" wherever occurring, insert "referred to in paragraph (a) of subsection two of section 61AA of the Industrial Arbitration Act, 1940, as amended by subsequent Acts".</p> <p>Section 7B, subsection (4).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.</p> <p>Section 9, subsection (1A), paragraph (c); section 11, subsection (1), paragraph (d); and section 14, subsection (2).—Omit "assessed and calculated under and in accordance with paragraph (a) or (b) of subsection two of section 61v of the Industrial Arbitration Act, 1940-1961" wherever occurring, insert "referred to in paragraph (a) or (b) of subsection two of section 61AA of the Industrial Arbitration Act, 1940, as amended by subsequent Acts."</p> <p>Section 128A, subsection (4).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.</p>

FIRST

Industrial Arbitration (Amendment).

FIRST SCHEDULE—continued.

Reference to Act.	Short title.	Amendment.
5 No. 17, 1943.	Legal Assistance Act, 1943.	Section 6, subsection (4), paragraph (c).— Omit “assessed and calculated in accordance with the provisions of”, insert “referred to in”. Omit “61v” and “61x”, insert “61AA” and “61AB” respectively.
10 No. 25, 1948.	Landlord and Tenant (Amendment) Act, 1948.	Section 62, subsection (6), paragraph (c).— Omit “assessed and calculated in accordance with the provisions of”, insert “referred to in”. Omit “61v” and “61x”, insert “61AA” and “61AB” respectively.
15 No. 28, 1957.	Attachment of Wages Limitation Act, 1957.	Section 10, subsection (4).— Omit “assessed and calculated in accordance with the provisions of” wherever occurring, insert “referred to in”. Omit “61v” and “61x” wherever occurring, insert “61AA” and “61AB” respectively.
20 No. 59, 1963.	State Planning Authority Act, 1963.	Section 27, subsection (1), paragraph (b); and section 27, subsection (2), paragraph (c), subparagraph (i).— Omit “as assessed and calculated in accordance with the provisions of section 61v” wherever occurring, insert “referred to in section 61AA”. Omit “61x” wherever occurring, insert “61AB”.
25 No. 9, 1964.	Constitution and Police Regulation (Amendment) Act, 1964.	Section 1.—Omit subsection (2).
30 No. 23, 1964.	Government Railways and Transport (Amendment) Act, 1964.	Section 2.—Omit subsection (2). Section 3.—Omit subsection (2).
35		
40		

Industrial Arbitration (Amendment).

SECOND SCHEDULE.

Sec. 7.

Reference to Act.	Short title.	Citation.
5 No. 20, 1899.	Police Regulation Act, 1899.	Police Regulation Act, 1899-1964.
No. 21, 1899.	Common Law Procedure Act, 1899.	Common Law Procedure Act, 1899-1964.
10 No. 23, 1912.	District Courts Act, 1912.	District Courts Act, 1912-1964.
No. 30, 1912.	Government Railways Act, 1912.	Government Railways Act, 1912-1964.
No. 33, 1912.	Small Debts Recovery Act, 1912.	Small Debts Recovery Act, 1912-1964.
15 No. 36, 1920.	Workmen's Compensation (Broken Hill) Act, 1920.	Workmen's Compensation (Broken Hill) Act, 1920-1964.
No. 24, 1924.	Main Roads Act, 1924.	Main Roads Act, 1924-1964.
20 No. 15, 1926.	Workers' Compensation Act, 1926.	Workers' Compensation Act, 1926-1964.
No. 18, 1930.	Transport Act, 1930.	Transport Act, 1930-1964.
No. 17, 1943.	Legal Assistance Act, 1943.	Legal Assistance Act, 1943-1964.
25 No. 25, 1948.	Landlord and Tenant (Amendment) Act, 1948.	Landlord and Tenant (Amendment) Act, 1948-1964.
No. 28, 1957.	Attachment of Wages Limitation Act, 1957.	Attachment of Wages Limitation Act, 1957-1964.
30 No. 59, 1963.	State Planning Authority Act, 1963.	State Planning Authority Act, 1963-1964.

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, SYDNEY, NEW SOUTH WALES—1964

[1s. 8d.]

No. , 1964.

A BILL

To make further provisions with respect to the basic wage, illegal strikes, industrial tribunals and certain other industrial matters; for these and other purposes to amend the Industrial Arbitration Act, 1940-1961, and certain other Acts; and for purposes connected therewith.

[Mr. LANDA;—17 September, 1964.]

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

1. (1) This Act may be cited as the "Industrial Arbitration (Amendment) Act, 1964".

(2)

Short title
and
citation.

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 Principal Act, as amended by this Act, may be cited as the Industrial Arbitration Act, 1940-1964.

2. The Principal Act is amended—

Amendment
of Act No.
2, 1940.

(a) by inserting in the definition of "Employee" in subsection one of section five after the words "of a butt-gang," the words "and includes any person who is, pursuant to any provision of this Act, deemed to be an employee for the purposes of this Act,";

Sec. 5.
(Interpre-
tation.)

(b) (i) by inserting next after subsection three of section 17A the following new subsection : —
(3A) A special commissioner may require any person attending a conference at which the special commissioner presides to give evidence on oath and for that purpose shall have authority to administer an oath to any such person.

Sec. 17A.
(Special
commis-
sioners.)

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

(5) An appeal from any decision of a special commissioner pursuant to subsection four of this section shall be by way of rehearing and the commission may call for or receive further information or evidence.

(c) (i) by omitting from subsection six of section eighteen the words "the expiration of three years from the date of his appointment, unless he sooner resigns his office" and by inserting in lieu thereof the words "he resigns or the employer

Sec. 18.
(Concilia-
tion com-
mittees.)

Industrial Arbitration (Amendment).

employer or industrial union who or which nominated such person to be such a member has notified the registrar that such nomination has been withdrawn”;

- 5 (ii) by omitting from subsection eight of the same section the words “to his office for the residue of the period for which such member was appointed” and by inserting in lieu thereof the words “to the vacancy so created”;
- 10 (d) (i) by inserting next after subsection three of section twenty-five the following new subsection : — (Compulsory conferences.)
- 15 (3A) Where a compulsory conference has been called pursuant to subsection one of this section, the conciliation commissioner or the committee, as the case may be, shall investigate the merits of the question, dispute or difficulty irrespective of whether or not the employees concerned therein may be on strike.
- 20 (ii) by inserting next after subsection five of the same section the following new subsection : —
- 25 (5A) No order or award or interim order or award shall be made pursuant to the provisions of subsection four or five of this section unless the causes of and the circumstances appertaining to the question, dispute or difficulty have been investigated by the conciliation commissioner or committee concerned or by another industrial tribunal and the conciliation commissioner or committee concerned is
- 30 satisfied that all reasonable steps have been taken to effect an amicable settlement of such question, dispute or difficulty.
- 35 (e) by inserting in paragraph (e) of subsection one of section 30B after the word “Act” the words “, section one hundred and one excepted”. (Jurisdiction of the commission.)

Industrial Arbitration (Amendment).

3. The Principal Act is further amended by inserting next after section 61x the following new Division :—

Further amendment of Act No. 2, 1940.
New Division 2d.

DIVISION 2D.—*Provisions applicable after the commencement of the Industrial Arbitration (Amendment) Act, 1964.*

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

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

PASTORAL INDUSTRY AWARD, 1956

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

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

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

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

61Z. (1) This section shall apply to and in respect of all awards and industrial agreements—

Existing awards and industrial agreements.

30 (a) in force immediately before the commencement of the Industrial Arbitration (Amendment) Act, 1964, or

(b)

Industrial Arbitration (Amendment).

(b) which were made or entered into before such commencement but come into force after such commencement.

5 (2) (a) For the purposes of this section the expression "appointed day", in respect of—

(i) awards and industrial agreements in force at the beginning of the first pay period which commenced on or after the nineteenth day of June, one thousand nine hundred and sixty-four, means
10 the day on which such pay period commenced; and

(ii) awards and industrial agreements the provisions of which, affecting rates of wages, came into force after the beginning of such pay period, or
15 which were made before but come into force after the commencement of the Industrial Arbitration (Amendment) Act, 1964, means the day on which such provisions came or come into force.

20 (b) An award or industrial agreement to which this section applies shall as on and from the appointed day applicable thereto have and take effect as if—

(i) in so far as it fixes rates of wages for adult male employees by reference or in relation to a basic wage for adult males assessed on an index number contained in the Consumer Price Index, such basic wage had, immediately before the
25 appointed day, been adjusted to the amount of fifteen pounds fifteen shillings per week;

(ii) in so far as it fixes rates of wages for adult female employees by reference or in relation to a basic wage for adult females based upon seventy-five per centum of a basic wage for adult males, such
30 basic

Industrial Arbitration (Amendment).

basic wage for adult female employees had, immediately before the appointed day, been adjusted to the amount of eleven pounds sixteen shillings per week; and

- 5 (iii) any provisions therein relating to adjustment at stated periods of the rates of pay prescribed therein, upon any variation of the basic wage for adult males or the basic wage for adult females in accordance with fluctuations of index numbers
10 in the Consumer Price Index, had been deleted.

(3) The terms of each award or industrial agreement to which this section applies, affecting rates of pay, shall, as from the commencement of the Industrial Arbitration (Amendment) Act, 1964, be deemed
15 to be varied to the extent necessary to give effect to the provisions of subsection two of this section.

(4) As soon as practicable after the commencement of the Industrial Arbitration (Amendment) Act, 1964, the registrar, subject to appeal to the commission,
20 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
25 be given to the provisions of this section.

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

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

Industrial Arbitration (Amendment).

61AA. (1) This section shall apply to and in respect of all awards made or industrial agreements entered into on or after the commencement of the Industrial Arbitration (Amendment) Act, 1964. Future awards and industrial agreements.

5 (2) Subject to the provisions of subsection three of this section, all awards or industrial agreements to which this section applies shall, in so far as they fix rates of wages by reference or in relation to—

10 (a) a basic wage for adult males, be made by reference or in relation to a basic wage for adult males of fifteen pounds fifteen shillings per week; or

15 (b) a basic wage for adult females, be made by reference or in relation to a basic wage for adult females of eleven pounds sixteen shillings per week :

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

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

This

Industrial Arbitration (Amendment).

This subsection shall not apply to an award made, or industrial agreement entered into, for wages of apprentices or trainee apprentices.

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

- 15 61AB. (1) In this section "award or industrial
agreement" means award or industrial agreement which
fixes rates of wages by reference or in relation to a basic
wage for adult males or a basic wage for adult females.
Provisions for variation of the basic wage in awards and industrial agreements.

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

- 35 (b) The Governor may by proclamation
published in the Gazette direct that for the purposes
of this section the name or title of such award made by
the

Industrial Arbitration (Amendment).

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

10 (3) (a) As soon as practicable after the Commonwealth Conciliation and Arbitration Commission has at any time varied the Federal Metal Trades Award in relation to the basic wage for adult males or the
15 basic wage for adult females, which is applicable to employees in Sydney, the registrar shall, for the purposes of subsection two of this section, by notification published in the Gazette notify the amount of the basic wage for
20 adult males or the basic wage for adult females, as the case may require, which, from the date such variation takes effect, shall be the basic wage for adult males or the basic wage for adult females for the purposes of awards or industrial agreements in force at such date or which were made before but come into force after such date.

25 (b) Any such notification by the registrar shall on publication in the Gazette—

- (i) supersede and replace any such notification published theretofore and continue in force until the date upon which a subsequent like notification takes effect; and
- 30 (ii) be conclusive evidence for all purposes of the matters stated therein.

(4) As from the date upon which any variation pursuant to subsection two of this section takes effect—

- 35 (a) the amount as so notified of the basic wage for adult males or the basic wage for adult females shall be the basic wage for adult males
or

Industrial Arbitration (Amendment).

5 or the basic wage for adult females (as the case may be) for the purposes of all awards or industrial agreements in force at such date or which were made before but come into force after such date; and

10 (b) the terms of all such awards or industrial agreements shall as from such date be deemed to be varied to the extent necessary to give effect to the provisions of paragraph (a) of this subsection.

15 (5) The provisions of this section relating to the variation of the amount of the basic wage shall apply to the exclusion of section 61X of this Act or any other like provision contained in any other Act or any award or industrial agreement.

20 (6) The registrar may (subject to appeal to the commission), upon application made as prescribed or of his own motion, vary the terms of any award or industrial agreement affecting rates of wages to the extent necessary to give full effect to the provisions of this section.

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

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

4. The Principal Act is further amended—

Further amendment of Act No. 2, 1940.

30 (a) (i) by omitting from subsection five of section 88D the figure and symbol "2C" and by inserting in lieu thereof the figure and symbol "2D";

Sec. 88D. (Equal pay for males and females in certain circumstances.)
(ii)

Industrial Arbitration (Amendment).

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

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

10 88G. (1) Notwithstanding any other provision of this Act the commission, a committee or an apprenticeship council shall upon application there-
for insert (by way of variation or otherwise) in an award or industrial agreement whether made before
15 or after the commencement of the Industrial Arbitration (Amendment) Act, 1964, provisions relating to the matters set out in subsection two of this section. Provisions relevant to automation.

(2) The matters referred to in subsection one of this section shall be—

- 20 (a) the obligations, duties and responsibilities of an employer upon the introduction or proposed introduction of mechanisation or technological changes in the industry in which he is engaged;
- 25 (b) the employees to whom notices of termination of services (being not less than three months) are to be given on account of such introduction or proposed introduction and the form and effect of such notices
30 and the consequences (including requirements that the ordinary rate of pay shall be paid for a specified period, being the difference between the notice given and that required to be given under the provisions inserted

Industrial Arbitration (Amendment).

- 5 inserted in the award or industrial agree-
ment pursuant to this section, and the period
of notice to be given shall be deemed to be
service with the employer for the purpose of
the Long Service Leave Act, 1955, the
Annual Holidays Act, 1944, the Long
Service Leave (Metalliferous Mining
Industry) Act, 1963, or any Act amending
or replacing any of those Acts) of failure
10 to give such notices;
- 15 (c) the notifications to be given by the
employer to the registrar, the Director of
the Vocational Guidance Bureau and the
Director of Technical Education of or per-
taining to such notices of termination of
services;
- 20 (d) such other matters as the commission,
committee or apprenticeship council deems
relevant to or consequential upon the
matters referred to in paragraphs (a), (b)
and (c) of this subsection.
- (c) (i) by inserting at the end of subsection one of Sec. 92.
section ninety-two the following new para- (Recovery
graph : — of wages.)
- 25 (b) Where any such award, industrial
agreement or permit fixes a price, rate or
amount (not being a price or rate for work
done) to be paid in the circumstances set out
therein in relation to any other matter the
30 employer shall in such circumstances be liable
to pay such price, rate or amount in full in
money to the person entitled thereto without
any deduction except such as may be
authorised by such award or industrial agree-
35 ment or permit as the case may be.
- (ii)

Industrial Arbitration (Amendment).

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

5 "due—

(a) in respect of a price or rate referred to in paragraph (a) of subsection one of this section or a price, rate or amount referred to in paragraph (b) of the said subsection; or

(b) to such person in relation to any provision of an award or industrial agreement providing that the employer shall bear or defray the cost or extra cost to the employee of doing any act or thing described in the award or industrial agreement or that upon the occurrence of events or happenings described in the award or industrial agreement the employer shall reimburse, compensate or recompense the employee to the extent of any loss sustained or expense incurred by him,

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

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

Industrial Arbitration (Amendment).

thereof the words "where proceedings may be taken under subsection two or three of this section the proceedings may with the consent in writing of the person so authorised";

- 5 (iv) by inserting in subsection seven of the same section after the word "rate" the words "or upon conditions less favourable than those";

- 10 (d) (i) by inserting in subsection two of section ninety-three after the word "agreement" the words "or any other moneys due to or recoverable by an employee in terms of an award or industrial agreement";

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

- 15 (ii) by inserting in the same subsection after the word "wages" where thirdly and fourthly occurring the words "or moneys".

5. The Principal Act is further amended—

Further amendment of Act No. 2, 1940.

- (a) by inserting in section one hundred after the word "abetting" the words "or have taken part in or aided or abetted";
- 20 (b) by omitting section one hundred and one and by inserting in lieu thereof the following sections :—

Sec. 100.
(Penalty for illegal strike.)

Subst. sec. 101 and new secs. 101A, 101B.

- 25 101. (1) No proceedings for an order under section one hundred of this Act shall be commenced except by leave of the commission, and no such leave shall be granted unless—

Proceedings for penalty under sec. 100.

- (a) the commission is satisfied that the employer concerned in the illegal strike has—
- (i) not himself taken part in any lock-out which has either wholly or in part given rise to the strike;
- 30

(ii)

Industrial Arbitration (Amendment).

5 (ii) in a case where a lock-out or strike
has taken place, notified the registrar
in accordance with section 25A of
this Act of the commencement of
such lock-out or strike, or upon
becoming aware of any question,
dispute or difficulty of the nature
referred to in paragraph (a), (b) or
10 (c) of subsection one of section
twenty-five of this Act which gave
rise to the strike, notified the regis-
trar in accordance with the said
section 25A of such question, dispute
or difficulty; and

15 (iii) to the extent to which the circum-
stances permitted, made a bona fide
attempt to negotiate a settlement of
the question, dispute or difficulty
which gave rise to the strike before
20 the strike took place or of the strike
after it had taken place; and

(b) the causes of and the circumstances which
gave rise to the question, dispute or
difficulty referred to as aforesaid have been
25 investigated or adjudicated upon by some
industrial tribunal, other than the commis-
sion, or where such causes and circum-
stances have not been so investigated or
adjudicated upon the commission has inves-
30 tigated such causes and circumstances.

(2) An application for leave to commence
proceedings for an order under section one hundred
of this Act shall be lodged with the registrar not
later than fourteen days after the cessation of the
35 strike to which the application refers.

101A.

Industrial Arbitration (Amendment).

101A. It shall be a defence to any proceedings under section one hundred of this Act that—

Defence to proceedings under sec. 100.

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

20 101B. Costs shall not be awarded in any proceedings under this Part of this Act.

Costs in proceedings under this Part.

6. The Acts (as amended by subsequent Acts, if any) specified in the first and second columns of the First Schedule to this Act are amended as respectively specified in the third column of the said Schedule.

Amendment of Acts specified in First Schedule.

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

Citation of amended Acts.

FIRST

Industrial Arbitration (Amendment).

FIRST SCHEDULE.

Sec. 6.

Reference to Act.	Short title.	Amendment.
5 10	No. 20, 1899 Police Regulation Act, 1899.	Section 12D, subsection (4).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.
15 20	No. 21, 1899 Common Law Procedure Act, 1899.	Section 181, subsection (3).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.
25	No. 31, 1902. Public Service Act, 1902.	Section 48, subsection (3); and section 56A, subsection (3A).— Omit "assessed and calculated in accordance with the provisions of", wherever occurring, insert "referred to in". Omit "61v" and "61x", wherever occurring, insert "61AA" and "61AB" respectively.
30 35	No. 23, 1912. District Courts Act, 1912.	Section 117, subsection (2).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.
40 45	No. 30, 1912. Government Railways Act, 1912.	Section 107A, subsection (3A).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.

*Industrial Arbitration (Amendment).*FIRST SCHEDULE—*continued.*

Reference to Act.	Short title.	Amendment.
5 10 15 20	No. 33, 1912. Small Debts Recovery Act, 1912.	Section 56, subsection (5).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.
25 30 35 40 45	No. 36, 1920. Workmen's Compensation (Broken Hill) Act, 1920.	Schedule, Part II, paragraphs 3 and 6.—Omit "assessed and calculated under and in accordance with paragraph (a) of subsection two of section 61v of the Industrial Arbitration Act, 1940-1961" wherever occurring, insert "referred to in paragraph (a) of subsection two of section 61AA of the Industrial Arbitration Act, 1940, as amended by subsequent Acts".
25 30 35 40 45	No. 24, 1924. Main Roads Act, 1924.	Section 7B, subsection (4).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.
35 40 45	No. 15, 1926. Workers' Compensation Act, 1926.	Section 9, subsection (1A), paragraph (c); section 11, subsection (1), paragraph (d); and section 14, subsection (2).—Omit "assessed and calculated under and in accordance with paragraph (a) or (b) of subsection two of section 61v of the Industrial Arbitration Act, 1940-1961" wherever occurring, insert "referred to in paragraph (a) or (b) of subsection two of section 61AA of the Industrial Arbitration Act, 1940, as amended by subsequent Acts."
50	No. 18, 1930. Transport Act, 1930.	Section 128A, subsection (4).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.

FIRST

Industrial Arbitration (Amendment).

FIRST SCHEDULE—continued.

Reference to Act.	Short title.	Amendment.
5 No. 17, 1943.	Legal Assistance Act, 1943.	Section 6, subsection (4), paragraph (c).— Omit "assessed and calculated in accordance with the provisions of", insert "referred to in". Omit "61v" and "61x", insert "61AA" and "61AB" respectively.
10 No. 25, 1948.	Landlord and Tenant (Amendment) Act, 1948.	Section 62, subsection (6), paragraph (c).— Omit "assessed and calculated in accordance with the provisions of", insert "referred to in". Omit "61v" and "61x", insert "61AA" and "61AB" respectively.
15 No. 28, 1957.	Attachment of Wages Limitation Act, 1957.	Section 10, subsection (4).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.
20 No. 59, 1963.	State Planning Authority Act, 1963.	Section 27, subsection (1), paragraph (b); and section 27, subsection (2), paragraph (c), subparagraph (i).— Omit "as assessed and calculated in accordance with the provisions of section 61v" wherever occurring, insert "referred to in section 61AA". Omit "61x" wherever occurring, insert "61AB".
25 No. 9, 1964.	Constitution and Police Regulation (Amendment) Act, 1964.	Section 1.—Omit subsection (2).
30 No. 23, 1964.	Government Railways and Transport (Amendment) Act, 1964.	Section 2.—Omit subsection (2). Section 3.—Omit subsection (2).
35		
40		

SECOND

Industrial Arbitration (Amendment).

SECOND SCHEDULE.

Sec. 7.

Reference to Act.	Short title.	Citation.
5 No. 20, 1899.	Police Regulation Act, 1899.	Police Regulation Act, 1899-1964.
No. 21, 1899.	Common Law Procedure Act, 1899.	Common Law Procedure Act, 1899-1964.
No. 23, 1912.	District Courts Act, 1912.	District Courts Act, 1912-1964.
10 No. 30, 1912.	Government Railways Act, 1912.	Government Railways Act, 1912-1964.
No. 33, 1912.	Small Debts Recovery Act, 1912.	Small Debts Recovery Act, 1912-1964.
15 No. 36, 1920.	Workmen's Compensation (Broken Hill) Act, 1920.	Workmen's Compensation (Broken Hill) Act, 1920-1964.
No. 24, 1924.	Main Roads Act, 1924.	Main Roads Act, 1924-1964.
20 No. 15, 1926.	Workers' Compensation Act, 1926.	Workers' Compensation Act, 1926-1964.
No. 18, 1930.	Transport Act, 1930.	Transport Act, 1930-1964.
No. 17, 1943.	Legal Assistance Act, 1943.	Legal Assistance Act, 1943-1964.
25 No. 25, 1948.	Landlord and Tenant (Amendment) Act, 1948.	Landlord and Tenant (Amendment) Act, 1948-1964.
No. 28, 1957.	Attachment of Wages Limitation Act, 1957.	Attachment of Wages Limitation Act, 1957-1964.
30 No. 59, 1963.	State Planning Authority Act, 1963.	State Planning Authority Act, 1963-1964.

BY AUTHORITY:

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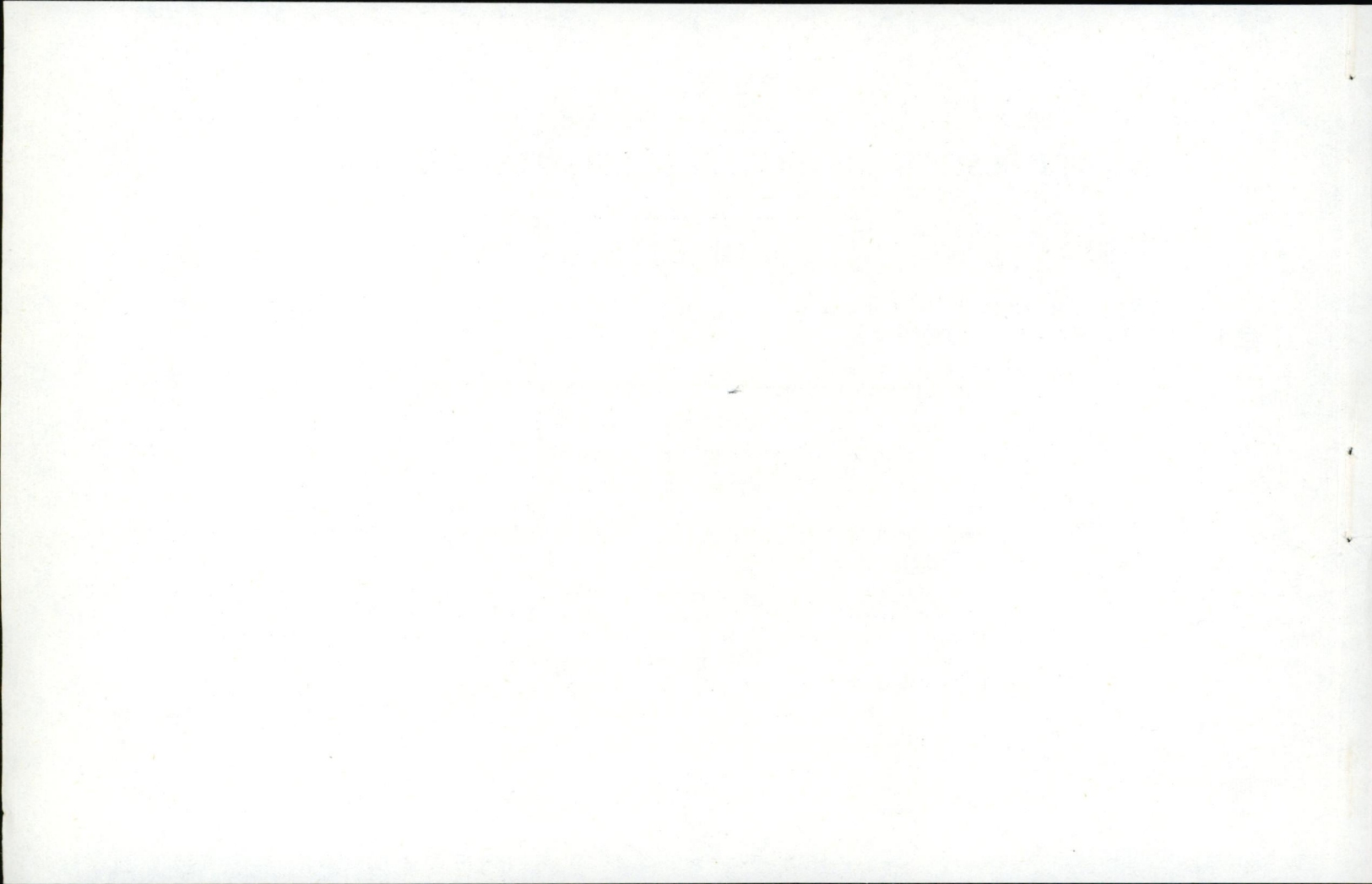
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INDUSTRIAL ARBITRATION (AMENDMENT) BILL, 1964.

EXPLANATORY NOTE.

THE object of this Bill is to amend the Industrial Arbitration Act, 1940-1961, for the following purposes:—

- (a) to provide a new basis for the fixation of the basic wage applicable to awards and industrial agreements; -
- (b) to amend the provisions of Part X of the Act with regard to proceedings in respect of illegal strikes;
- (c) to enable industrial tribunals to insert in awards and industrial agreements provision for the giving of notice to employees made redundant by the introduction of mechanisation or other technological changes, and matters associated therewith;
- (d) to amend the Act in other respects, including power of special commissioners to take evidence on oath, varying the tenure of office of members of conciliation committees and to enable the recovery by an employee, under sections 92 and 93 of the Act, of all moneys payable under an award or industrial agreement.



No. , 1964.

A BILL

To make further provisions with respect to the basic wage, illegal strikes, industrial tribunals and certain other industrial matters; for these and other purposes to amend the Industrial Arbitration Act, 1940-1961, and certain other Acts; and for purposes connected therewith.

[MR. LANDA;—17 September, 1964.]

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

1. (1) This Act may be cited as the "Industrial Arbitration (Amendment) Act, 1964".

(2) Short title and citation.

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 Principal Act, as amended by this Act, may be cited as the Industrial Arbitration Act, 1940-1964.

2. The Principal Act is amended—

Amendment
of Act No.
2, 1940.

(a) by inserting in the definition of "Employee" in subsection one of section five after the words "of a butty-gang," the words "and includes any person who is, pursuant to any provision of this Act, deemed to be an employee for the purposes of this Act,";

Sec. 5.
(Interpre-
tation.)

(b) (i) by inserting next after subsection three of section 17A the following new subsection :—

Sec. 17A.
(Special
commis-
sioners.)

(3A) A special commissioner may require any person attending a conference at which the special commissioner presides to give evidence on oath and for that purpose shall have authority to administer an oath to any such person.

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

(5) An appeal from any decision of a special commissioner pursuant to subsection four of this section shall be by way of rehearing and the commission may call for or receive further information or evidence.

(c) (i) by omitting from subsection six of section eighteen the words "the expiration of three years from the date of his appointment, unless he sooner resigns his office" and by inserting in lieu thereof the words "he resigns or the employer

Sec. 18.
(Concilia-
tion com-
mittees.)

Industrial Arbitration (Amendment).

employer or industrial union who or which nominated such person to be such a member has notified the registrar that such nomination has been withdrawn”;

- 5 (ii) by omitting from subsection eight of the same section the words “to his office for the residue of the period for which such member was appointed” and by inserting in lieu thereof the words “to the vacancy so created”;

- 10 (d) (i) by inserting next after subsection three of Sec. 25. section twenty-five the following new (Compul- sory con- ferences.) subsection :—

15 (3A) Where a compulsory conference has been called pursuant to subsection one of this section, the conciliation commissioner or the committee, as the case may be, shall investigate the merits of the question, dispute or difficulty irrespective of whether or not the employees concerned therein may be on strike.

- 20 (ii) by inserting next after subsection five of the same section the following new subsection :—

25 (5A) No order or award or interim order or award shall be made pursuant to the provisions of subsection four or five of this section unless the causes of and the circumstances appertain- ing to the question, dispute or difficulty have been investigated by the conciliation commis- sioner or committee concerned or by 30 another industrial tribunal and the conciliation commissioner or committee concerned is satisfied that all reasonable steps have been taken to effect an amicable settlement of such question, dispute or difficulty.

- 35 (e) by inserting in paragraph (e) of subsection one Sec. 30B. of section 30B after the word “Act” the words (Jurisdic- tion of the commis- sion.) “, section one hundred and one excepted”.

Industrial Arbitration (Amendment).

3. The Principal Act is further amended by inserting next after section 61x the following new Division :—

Further amendment of Act No. 2, 1940. New Division 2D.

DIVISION 2D.—*Provisions applicable after the commencement of the Industrial Arbitration (Amendment) Act, 1964.*

5

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

10

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

15

PASTORAL INDUSTRY AWARD, 1956
(Application by The Australian Workers Union to vary the said award in respect of the basic wage) (C. No. 10 of 1964) AND In the matter of—

20

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

25

(Notification pursuant to Section 28 of the Act of an industrial dispute re claims for increased basic wage in the Metal industry) (C. No. 821 of 1964)”.
“Consumer Price Index” has the meaning ascribed thereto in Division 2C of this Part.

30

61Z. (1) This section shall apply to and in respect of all awards and industrial agreements—

Existing awards and industrial agreements.

(a) in force immediately before the commencement of the Industrial Arbitration (Amendment) Act, 1964, or

(b)

Industrial Arbitration (Amendment).

(b) which were made or entered into before such commencement but come into force after such commencement.

5 (2) (a) For the purposes of this section the expression "appointed day", in respect of—

10 (i) awards and industrial agreements in force at the beginning of the first pay period which commenced on or after the nineteenth day of June, one thousand nine hundred and sixty-four, means the day on which such pay period commenced; and

15 (ii) awards and industrial agreements the provisions of which, affecting rates of wages, came into force after the beginning of such pay period, or which were made before but come into force after the commencement of the Industrial Arbitration (Amendment) Act, 1964, means the day on which such provisions came or come into force.

20 (b) An award or industrial agreement to which this section applies shall as on and from the appointed day applicable thereto have and take effect as if—

25 (i) in so far as it fixes rates of wages for adult male employees by reference or in relation to a basic wage for adult males assessed on an index number contained in the Consumer Price Index, such basic wage had, immediately before the appointed day, been adjusted to the amount of
30 fifteen pounds fifteen shillings per week;

(ii) in so far as it fixes rates of wages for adult female employees by reference or in relation to a basic wage for adult females based upon seventy-five per centum of a basic wage for adult males, such
basic

Industrial Arbitration (Amendment).

basic wage for adult female employees had, immediately before the appointed day, been adjusted to the amount of eleven pounds sixteen shillings per week ; and

- 5 (iii) any provisions therein relating to adjustment at stated periods of the rates of pay prescribed therein, upon any variation of the basic wage for adult males or the basic wage for adult females in accordance with fluctuations of index numbers
10 in the Consumer Price Index, had been deleted.

(3) The terms of each award or industrial agreement to which this section applies, affecting rates of pay, shall, as from the commencement of the Industrial Arbitration (Amendment) Act, 1964, be deemed
15 to be varied to the extent necessary to give effect to the provisions of subsection two of this section.

(4) As soon as practicable after the commencement of the Industrial Arbitration (Amendment) Act, 1964, the registrar, subject to appeal to the commission,
20 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
25 be given to the provisions of this section.

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

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

Industrial Arbitration (Amendment).

61AA. (1) This section shall apply to and in respect of all awards made or industrial agreements entered into on or after the commencement of the Industrial Arbitration (Amendment) Act, 1964. Future awards and industrial agreements.

5 (2) Subject to the provisions of subsection three of this section, all awards or industrial agreements to which this section applies shall, in so far as they fix rates of wages by reference or in relation to—

10 (a) a basic wage for adult males, be made by reference or in relation to a basic wage for adult males of fifteen pounds fifteen shillings per week; or

15 (b) a basic wage for adult females, be made by reference or in relation to a basic wage for adult females of eleven pounds sixteen shillings per week :

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

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

This

Industrial Arbitration (Amendment).

This subsection shall not apply to an award made, or industrial agreement entered into, for wages of apprentices or trainee apprentices.

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

15 61AB. (1) In this section "award or industrial agreement" means award or industrial agreement which fixes rates of wages by reference or in relation to a basic wage for adult males or a basic wage for adult females. Provisions for variation of the basic wage in awards and industrial agreements.

20 (2) (a) Where the Commonwealth Conciliation and Arbitration Commission varies the basic wage for adult males or the basic wage for adult females, applicable to employees in Sydney in the State of New South Wales, under the provisions of the Metal Trades Award, 1952, as subsequently varied, or any award varying or replacing that award, hereinafter in this section referred to as "the Federal Metal Trades Award", 25 (being one of the awards varied by the Commonwealth Judgment), then the amount of the basic wage for adult males and the amount of the basic wage for adult females, as so varied, shall, as from the date such variation takes effect, be the basic wage for adult males or the basic wage for adult females (as the case may require) for the purpose of awards or industrial agreements in force at such date or which were made before but come into force after such date.

35 (b) The Governor may by proclamation published in the Gazette direct that for the purposes of this section the name or title of such award made by the

Industrial Arbitration (Amendment).

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

(3) (a) As soon as practicable after the Commonwealth Conciliation and Arbitration Commission has at any time varied the Federal Metal Trades Award in relation to the basic wage for adult males or the basic wage for adult females, which is applicable to employees in Sydney, the registrar shall, for the purposes of subsection two of this section, by notification published in the Gazette notify the amount of the basic wage for adult males or the basic wage for adult females, as the case may require, which, from the date such variation takes effect, shall be the basic wage for adult males or the basic wage for adult females for the purposes of awards or industrial agreements in force at such date or which were made before but come into force after such date.

(b) Any such notification by the registrar shall on publication in the Gazette—

- (i) supersede and replace any such notification published theretofore and continue in force until the date upon which a subsequent like notification takes effect; and
- (ii) be conclusive evidence for all purposes of the matters stated therein.

(4) As from the date upon which any variation pursuant to subsection two of this section takes effect—

- (a) the amount as so notified of the basic wage for adult males or the basic wage for adult females shall be the basic wage for adult males
or

Industrial Arbitration (Amendment).

5 or the basic wage for adult females (as the case may be) for the purposes of all awards or industrial agreements in force at such date or which were made before but come into force after such date; and

10 (b) the terms of all such awards or industrial agreements shall as from such date be deemed to be varied to the extent necessary to give effect to the provisions of paragraph (a) of this subsection.

15 (5) The provisions of this section relating to the variation of the amount of the basic wage shall apply to the exclusion of section 61X of this Act or any other like provision contained in any other Act or any award or industrial agreement.

20 (6) The registrar may (subject to appeal to the commission), upon application made as prescribed or of his own motion, vary the terms of any award or industrial agreement affecting rates of wages to the extent necessary to give full effect to the provisions of this section.

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

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

4. The Principal Act is further amended—

Further amendment of Act No. 2, 1940.

30 (a) (i) by omitting from subsection five of section 88D the figure and symbol "2c" and by inserting in lieu thereof the figure and symbol "2D"; (ii) (Equal pay for males and females in certain circumstances.)

Industrial Arbitration (Amendment).

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

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

10 88G. (1) Notwithstanding any other provision of this Act the commission, a committee or an apprenticeship council shall upon application there-
for insert (by way of variation or otherwise) in an award or industrial agreement whether made before
15 or after the commencement of the Industrial Arbitration (Amendment) Act, 1964, provisions relating to the matters set out in subsection two of this section. Provisions relevant to automation.

(2) The matters referred to in subsection one of this section shall be—

- 20 (a) the obligations, duties and responsibilities of an employer upon the introduction or proposed introduction of mechanisation or technological changes in the industry in which he is engaged;
- 25 (b) the employees to whom notices of termination of services (being not less than three months) are to be given on account of such introduction or proposed introduction and the form and effect of such notices
- 30 and the consequences (including requirements that the ordinary rate of pay shall be paid for a specified period, being the difference between the notice given and that required to be given under the provisions inserted

Industrial Arbitration (Amendment).

- 5 inserted in the award or industrial agree-
ment pursuant to this section, and the period
of notice to be given shall be deemed to be
service with the employer for the purpose of
the Long Service Leave Act, 1955, the
Annual Holidays Act, 1944, the Long
Service Leave (Metalliferous Mining
Industry) Act, 1963, or any Act amending
or replacing any of those Acts) of failure
10 to give such notices;
- 15 (c) the notifications to be given by the
employer to the registrar, the Director of
the Vocational Guidance Bureau and the
Director of Technical Education of or per-
taining to such notices of termination of
services;
- 20 (d) such other matters as the commission,
committee or apprenticeship council deems
relevant to or consequential upon the
matters referred to in paragraphs (a), (b)
and (c) of this subsection.
- (c) (i) by inserting at the end of subsection one of Sec. 92.
section ninety-two the following new para- (Recovery
graph : — of wages.)
- 25 (b) Where any such award, industrial
agreement or permit fixes a price, rate or
amount (not being a price or rate for work
done) to be paid in the circumstances set out
therein in relation to any other matter the
30 employer shall in such circumstances be liable
to pay such price, rate or amount in full in
money to the person entitled thereto without
any deduction except such as may be
authorised by such award or industrial agree-
35 ment or permit as the case may be.
- (ii)

Industrial Arbitration (Amendment).

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

5

"due—

10

(a) in respect of a price or rate referred to in paragraph (a) of subsection one of this section or a price, rate or amount referred to in paragraph (b) of the said subsection; or

15

(b) to such person in relation to any provision of an award or industrial agreement providing that the employer shall bear or defray the cost or extra cost to the employee of doing any act or thing described in the award or industrial agreement or that upon the occurrence of events or happenings described in the award or industrial agreement the employer shall reimburse, compensate or recompense the employee to the extent of any loss sustained or expense incurred by him,

20

25

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

30

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

35

Industrial Arbitration (Amendment).

thereof the words "where proceedings may be taken under subsection two or three of this section the proceedings may with the consent in writing of the person so authorised";

- 5 (iv) by inserting in subsection seven of the same section after the word "rate" the words "or upon conditions less favourable than those";
- 10 (d) (i) by inserting in subsection two of section ninety-three after the word "agreement" the words "or any other moneys due to or recoverable by an employee in terms of an award or industrial agreement";
- 15 (ii) by inserting in the same subsection after the word "wages" where thirdly and fourthly occurring the words "or moneys".

5. The Principal Act is further amended—

Further
amendment
of Act No.
2, 1940.

- (a) by inserting in section one hundred after the word "abetting" the words "or have taken part in or aided or abetted";
- 20 (b) by omitting section one hundred and one and by inserting in lieu thereof the following sections : —
- 25 101. (1) No proceedings for an order under section one hundred of this Act shall be commenced except by leave of the commission, and no such leave shall be granted unless—
- (a) the commission is satisfied that the employer concerned in the illegal strike has—
- (i) not himself taken part in any lock-out which has either wholly or in part given rise to the strike;
- 30 (ii)

Sec. 100.
(Penalty
for illegal
strike.)

Subst. sec.
101 and
new secs.
101A, 101B.

Proceed-
ings for
penalty
under
sec. 100.

Industrial Arbitration (Amendment).

5 (ii) in a case where a lock-out or strike
has taken place, notified the registrar
in accordance with section 25A of
this Act of the commencement of
such lock-out or strike, or upon
becoming aware of any question,
dispute or difficulty of the nature
referred to in paragraph (a), (b) or
10 (c) of subsection one of section
twenty-five of this Act which gave
rise to the strike, notified the regis-
trar in accordance with the said
section 25A of such question, dispute
or difficulty; and

15 (iii) to the extent to which the circum-
stances permitted, made a bona fide
attempt to negotiate a settlement of
the question, dispute or difficulty
which gave rise to the strike before
20 the strike took place or of the strike
after it had taken place; and

(b) the causes of and the circumstances which
gave rise to the question, dispute or
difficulty referred to as aforesaid have been
25 investigated or adjudicated upon by some
industrial tribunal, other than the commis-
sion, or where such causes and circum-
stances have not been so investigated or
adjudicated upon the commission has inves-
30 tigated such causes and circumstances.

(2) An application for leave to commence
proceedings for an order under section one hundred
of this Act shall be lodged with the registrar not
later than fourteen days after the cessation of the
35 strike to which the application refers.

101A.

Industrial Arbitration (Amendment).

101A. It shall be a defence to any proceedings under section one hundred of this Act that—

Defence to proceedings under sec. 100.

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

20 101B. Costs shall not be awarded in any proceedings under this Part of this Act.

Costs in proceedings under this Part.

6. The Acts (as amended by subsequent Acts, if any) specified in the first and second columns of the First Schedule to this Act are amended as respectively specified in the third column of the said Schedule.

Amendment of Acts specified in First Schedule.

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

Citation of amended Acts.

FIRST

Industrial Arbitration (Amendment).

FIRST SCHEDULE.

Sec. 6.

Reference to Act.	Short title.	Amendment.
5 10	No. 20, 1899 Police Regulation Act, 1899.	Section 12D, subsection (4).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.
15 20	No. 21, 1899 Common Law Procedure Act, 1899.	Section 181, subsection (3).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.
25	No. 31, 1902. Public Service Act, 1902.	Section 48, subsection (3); and section 56A, subsection (3A).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x", wherever occurring, insert "61AA" and "61AB" respectively.
30 35	No. 23, 1912. District Courts Act, 1912.	Section 117, subsection (2).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.
40 45	No. 30, 1912. Government Railways Act, 1912.	Section 107A, subsection (3A).— Omit "assessed and calculated in accordance with the provisions of" wherever occurring, insert "referred to in". Omit "61v" and "61x" wherever occurring, insert "61AA" and "61AB" respectively.

Industrial Arbitration (Amendment).

FIRST SCHEDULE—continued.

Reference to Act.	Short title.	Amendment.
5 10 15 20	No. 33, 1912. Small Debts Recovery Act, 1912.	Section 56, subsection (5).— Omit “assessed and calculated in accordance with the provisions of” wherever occurring, insert “referred to in”. Omit “61v” and “61x” wherever occurring, insert “61AA” and “61AB” respectively.
25 30 35 40 45	No. 36, 1920. Workmen’s Compensation (Broken Hill) Act, 1920.	Schedule, Part II, paragraphs 3 and 6.—Omit “assessed and calculated under and in accordance with paragraph (a) of subsection two of section 61v of the Industrial Arbitration Act, 1940-1961” wherever occurring, insert “referred to in paragraph (a) of subsection two of section 61AA of the Industrial Arbitration Act, 1940, as amended by subsequent Acts”.
25 30	No. 24, 1924. Main Roads Act, 1924.	Section 7B, subsection (4).— Omit “assessed and calculated in accordance with the provisions of” wherever occurring, insert “referred to in”. Omit “61v” and “61x” wherever occurring, insert “61AA” and “61AB” respectively.
35 40 45	No. 15, 1926. Workers’ Compensation Act, 1926.	Section 9, subsection (1A), paragraph (c); section 11, subsection (1), paragraph (d); and section 14, subsection (2).—Omit “assessed and calculated under and in accordance with paragraph (a) or (b) of subsection two of section 61v of the Industrial Arbitration Act, 1940-1961” wherever occurring, insert “referred to in paragraph (a) or (b) of subsection two of section 61AA of the Industrial Arbitration Act, 1940, as amended by subsequent Acts.”
50	No. 18, 1930. Transport Act, 1930.	Section 128A, subsection (4).— Omit “assessed and calculated in accordance with the provisions of” wherever occurring, insert “referred to in”. Omit “61v” and “61x” wherever occurring, insert “61AA” and “61AB” respectively.

FIRST

*Industrial Arbitration (Amendment).*FIRST SCHEDULE—*continued.*

Reference to Act.	Short title.	Amendment.
5 No. 17, 1943.	Legal Assistance Act, 1943.	Section 6, subsection (4), paragraph (c).— Omit “assessed and calculated in accordance with the provisions of”, insert “referred to in”. Omit “61v” and “61x”, insert “61AA” and “61AB” respectively.
10 No. 25, 1948.	Landlord and Tenant (Amendment) Act, 1948.	Section 62, subsection (6), paragraph (c).— Omit “assessed and calculated in accordance with the provisions of”, insert “referred to in”. Omit “61v” and “61x”, insert “61AA” and “61AB” respectively.
15 No. 28, 1957.	Attachment of Wages Limitation Act, 1957.	Section 10, subsection (4).— Omit “assessed and calculated in accordance with the provisions of” wherever occurring, insert “referred to in”. Omit “61v” and “61x” wherever occurring, insert “61AA” and “61AB” respectively.
20 No. 59, 1963.	State Planning Authority Act, 1963.	Section 27, subsection (1), paragraph (b); and section 27, subsection (2), paragraph (c), subparagraph (i).— Omit “as assessed and calculated in accordance with the provisions of section 61v” wherever occurring, insert “referred to in section 61AA”. Omit “61x” wherever occurring, insert “61AB”.
25 No. 9, 1964.	Constitution and Police Regulation (Amendment) Act, 1964.	Section 1.—Omit subsection (2).
30 No. 23, 1964.	Government Railways and Transport (Amendment) Act, 1964.	Section 2.—Omit subsection (2). Section 3.—Omit subsection (2).
35		
40		

SECOND

Industrial Arbitration (Amendment).

SECOND SCHEDULE.

Sec. 7.

Reference to Act.	Short title.	Citation.
5 No. 20, 1899.	Police Regulation Act, 1899.	Police Regulation Act, 1899-1964.
No. 21, 1899.	Common Law Procedure Act, 1899.	Common Law Procedure Act, 1899-1964.
10 No. 23, 1912.	District Courts Act, 1912.	District Courts Act, 1912-1964.
No. 30, 1912.	Government Railways Act, 1912.	Government Railways Act, 1912-1964.
No. 33, 1912.	Small Debts Recovery Act, 1912.	Small Debts Recovery Act, 1912-1964.
15 No. 36, 1920.	Workmen's Compensation (Broken Hill) Act, 1920.	Workmen's Compensation (Broken Hill) Act, 1920-1964.
No. 24, 1924.	Main Roads Act, 1924.	Main Roads Act, 1924-1964.
20 No. 15, 1926.	Workers' Compensation Act, 1926.	Workers' Compensation Act, 1926-1964.
No. 18, 1930.	Transport Act, 1930.	Transport Act, 1930-1964.
No. 17, 1943.	Legal Assistance Act, 1943.	Legal Assistance Act, 1943-1964.
25 No. 25, 1948.	Landlord and Tenant (Amendment) Act, 1948.	Landlord and Tenant (Amendment) Act, 1948-1964.
No. 28, 1957.	Attachment of Wages Limitation Act, 1957.	Attachment of Wages Limitation Act, 1957-1964.
30 No. 59, 1963.	State Planning Authority Act, 1963.	State Planning Authority Act, 1963-1964.

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, SYDNEY, NEW SOUTH WALES—1964

New South Wales



ANNO TERTIO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 37, 1964.

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

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

1. (1) This Act may be cited as the "Industrial Arbitration (Amendment) Act, 1964".

Short title
and
citation.

(2)

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 Principal Act, as amended by this Act, may be cited as the Industrial Arbitration Act, 1940-1964.

Amendment
of Act No.
2, 1940.

Sec. 5.
(Interpre-
tation.)

2. The Principal Act is amended—

(a) by inserting in the definition of "Employee" in subsection one of section five after the words "of a butty-gang," the words "and includes any person who is, pursuant to any provision of this Act, deemed to be an employee for the purposes of this Act,";

Sec. 17A.
(Special
commissioners.)

(b) (i) by inserting next after subsection three of section 17A the following new subsection :—

(3A) A special commissioner may require any person attending a conference at which the special commissioner presides to give evidence on oath and for that purpose shall have authority to administer an oath to any such person.

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

(5) An appeal from any decision of a special commissioner pursuant to subsection four of this section shall be by way of rehearing and the commission may call for or receive further information or evidence.

Sec. 18.
(Concilia-
tion com-
mittees.)

(c) (i) by omitting from subsection six of section eighteen the words "the expiration of three years from the date of his appointment, unless he sooner resigns his office" and by inserting in lieu thereof the words "he resigns on the employer

Industrial Arbitration (Amendment).

employer or industrial union who or which nominated such person to be such a member has notified the registrar that such nomination has been withdrawn”;

- (ii) by omitting from subsection eight of the same section the words “to his office for the residue of the period for which such member was appointed” and by inserting in lieu thereof the words “to the vacancy so created”;
- (d) (i) by inserting next after subsection three of section twenty-five the following new subsection : —

Sec. 25.
(Compulsory conferences.)

(3A) Where a compulsory conference has been called pursuant to subsection one of this section, the conciliation commissioner or the committee, as the case may be, shall investigate the merits of the question, dispute or difficulty irrespective of whether or not the employees concerned therein may be on strike.

- (ii) by inserting next after subsection five of the same section the following new subsection : —

(5A) No order or award or interim order or award shall be made pursuant to the provisions of subsection four or five of this section unless the causes of and the circumstances appertaining to the question, dispute or difficulty have been investigated by the conciliation commissioner or committee concerned or by another industrial tribunal and the conciliation commissioner or committee concerned is satisfied that all reasonable steps have been taken to effect an amicable settlement of such question, dispute or difficulty.

- (e) by inserting in paragraph (e) of subsection one of section 30B after the word “Act” the words “, section one hundred and one excepted”.

Sec. 30B.
(Jurisdiction of the commission.)

Industrial Arbitration (Amendment).

Further
amendment
of Act No.
2, 1940.
New Divi-
sion 2D.

3. The Principal Act is further amended by inserting next after section 61X the following new Division :—

DIVISION 2D.—*Provisions applicable after the commence-
ment of the Industrial Arbitration (Amendment)
Act, 1964.*

Definitions.

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

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

PASTORAL INDUSTRY AWARD, 1956

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

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

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

“Consumer Price Index” has the meaning ascribed thereto in Division 2C of this Part.

Existing
awards and
industrial
agreements.

61Z. (1) This section shall apply to and in respect of all awards and industrial agreements—

(a) in force immediately before the commencement of the Industrial Arbitration (Amendment) Act, 1964, or

(b)

Industrial Arbitration (Amendment).

- (b) which were made or entered into before such commencement but come into force after such commencement.

(2) (a) For the purposes of this section the expression "appointed day", in respect of—

- (i) awards and industrial agreements in force at the beginning of the first pay period which commenced on or after the nineteenth day of June, one thousand nine hundred and sixty-four, means the day on which such pay period commenced; and
- (ii) awards and industrial agreements the provisions of which, affecting rates of wages, came into force after the beginning of such pay period, or which were made before but come into force after the commencement of the Industrial Arbitration (Amendment) Act, 1964, means the day on which such provisions came or come into force.

(b) An award or industrial agreement to which this section applies shall as on and from the appointed day applicable thereto have and take effect as if—

- (i) in so far as it fixes rates of wages for adult male employees by reference or in relation to a basic wage for adult males assessed on an index number contained in the Consumer Price Index, such basic wage had, immediately before the appointed day, been adjusted to the amount of fifteen pounds fifteen shillings per week;
- (ii) in so far as it fixes rates of wages for adult female employees by reference or in relation to a basic wage for adult females based upon seventy-five per centum of a basic wage for adult males, such
basic

Industrial Arbitration (Amendment).

basic wage for adult female employees had, immediately before the appointed day, been adjusted to the amount of eleven pounds sixteen shillings per week ; and

- (iii) any provisions therein relating to adjustment at stated periods of the rates of pay prescribed therein, upon any variation of the basic wage for adult males or the basic wage for adult females in accordance with fluctuations of index numbers in the Consumer Price Index, had been deleted.

(3) The terms of each award or industrial agreement to which this section applies, affecting rates of pay, shall, as from the commencement of the Industrial Arbitration (Amendment) Act, 1964, be deemed to be varied to the extent necessary to give effect to the provisions of subsection two of this section.

(4) As soon as practicable after the commencement of the Industrial Arbitration (Amendment) Act, 1964, the registrar, subject to appeal to the commission, shall vary the terms of each award to which this section applies, affecting rates of pay, to the extent necessary to give effect to the provisions of this section and may make such alterations in the form of any such award as he may think necessary or desirable to enable full effect to be given to the provisions of this section.

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

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

Industrial Arbitration (Amendment).

61AA. (1) This section shall apply to and in respect of all awards made or industrial agreements entered into on or after the commencement of the Industrial Arbitration (Amendment) Act, 1964. Future awards and industrial agreements.

(2) Subject to the provisions of subsection three of this section, all awards or industrial agreements to which this section applies shall, in so far as they fix rates of wages by reference or in relation to—

- (a) a basic wage for adult males, be made by reference or in relation to a basic wage for adult males of fifteen pounds fifteen shillings per week ; or
- (b) a basic wage for adult females, be made by reference or in relation to a basic wage for adult females of eleven pounds sixteen shillings per week :

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

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

This

Industrial Arbitration (Amendment).

This subsection shall not apply to an award made, or industrial agreement entered into, for wages of apprentices or trainee apprentices.

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

Provisions
for varia-
tion of the
basic wage
in awards
and in-
dustrial
agreements.

61AB. (1) In this section "award or industrial agreement" means award or industrial agreement which fixes rates of wages by reference or in relation to a basic wage for adult males or a basic wage for adult females.

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

(b) The Governor may by proclamation published in the Gazette direct that for the purposes of this section the name or title of such award made by
the

Industrial Arbitration (Amendment).

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

(3) (a) As soon as practicable after the Commonwealth Conciliation and Arbitration Commission has at any time varied the Federal Metal Trades Award in relation to the basic wage for adult males or the basic wage for adult females, which is applicable to employees in Sydney, the registrar shall, for the purposes of subsection two of this section, by notification published in the Gazette notify the amount of the basic wage for adult males or the basic wage for adult females, as the case may require, which, from the date such variation takes effect, shall be the basic wage for adult males or the basic wage for adult females for the purposes of awards or industrial agreements in force at such date or which were made before but come into force after such date.

(b) Any such notification by the registrar shall on publication in the Gazette—

- (i) supersede and replace any such notification published theretofore and continue in force until the date upon which a subsequent like notification takes effect; and
- (ii) be conclusive evidence for all purposes of the matters stated therein.

(4) As from the date upon which any variation pursuant to subsection two of this section takes effect—

- (a) the amount as so notified of the basic wage for adult males or the basic wage for adult females shall be the basic wage for adult males or the basic wage for adult females (as the case may be) for the purposes of all awards

or

Industrial Arbitration (Amendment).

or industrial agreements in force at such date or which were made before but come into force after such date; and

- (b) the terms of all such awards or industrial agreements shall as from such date be deemed to be varied to the extent necessary to give effect to the provisions of paragraph (a) of this subsection.

(5) The provisions of this section relating to the variation of the amount of the basic wage shall apply to the exclusion of section 61x of this Act or any other like provision contained in any other Act or any award or industrial agreement.

(6) The registrar may (subject to appeal to the commission), upon application made as prescribed or of his own motion, vary the terms of any award or industrial agreement affecting rates of wages to the extent necessary to give full effect to the provisions of this section.

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

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

Further amendment
of Act No.
2, 1940.

4. The Principal Act is further amended—

Sec. 61P.
(Existing
basic wage
for adult
females.)

- (a) by inserting in section 61P after the figure and letter “2C” the words, figure and letter “, or referred to in Division 2D,”;

Sec. 88D.
(Equal pay
for males
and
females
in certain
circum-
stances.)

- (b) (i) by omitting from subsection five of section 88D the figure and symbol “2C” and by inserting in lieu thereof the figure and symbol “2D”;

(ii)

Industrial Arbitration (Amendment).

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

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

88G. (1) Notwithstanding any other provision of this Act the commission, a committee or an apprenticeship council shall upon application therefor insert (by way of variation or otherwise) in an award or industrial agreement whether made before or after the commencement of the Industrial Arbitration (Amendment) Act, 1964, provisions relating to the matters set out in subsection two of this section. Provisions
relevant to
automation.

(2) The matters referred to in subsection one of this section shall be—

 - (a) the obligations, duties and responsibilities of an employer upon the introduction or proposed introduction of mechanisation or technological changes in the industry in which he is engaged;

 - (b) the employees to whom notices of termination of services (being not less than three months) are to be given on account of such introduction or proposed introduction and the form and effect of such notices and the consequences (including requirements that the ordinary rate of pay shall be paid for a specified period, being the difference between the notice given and that required to be given under the provisions inserted

Industrial Arbitration (Amendment).

inserted in the award or industrial agreement pursuant to this section, and the period of notice to be given shall be deemed to be service with the employer for the purpose of the Long Service Leave Act, 1955, the Annual Holidays Act, 1944, the Long Service Leave (Metalliferous Mining Industry) Act, 1963, or any Act amending or replacing any of those Acts) of failure to give such notices;

(c) the notifications to be given by the employer to the registrar, the Director of the Vocational Guidance Bureau and the Director of Technical Education of or pertaining to such notices of termination of services;

(d) such other matters as the commission, committee or apprenticeship council deems relevant to or consequential upon the matters referred to in paragraphs (a), (b) and (c) of this subsection.

Sec. 92.
(Recovery
of wages.)

(d) (i) by inserting at the end of subsection one of section ninety-two the following new paragraph :—

(b) Where any such award, industrial agreement or permit fixes a price, rate or amount (not being a price or rate for work done) to be paid in the circumstances set out therein in relation to any other matter the employer shall in such circumstances be liable to pay such price, rate or amount in full in money to the person entitled thereto without any deduction except such as may be authorised by such award or industrial agreement or permit as the case may be.

(ii)

Industrial Arbitration (Amendment).

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

“due—

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

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

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

Industrial Arbitration (Amendment).

thereof the words "where proceedings may be taken under subsection two or three of this section the proceedings may with the consent in writing of the person so authorised";

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

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

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

Further
amendment
of Act No.
2, 1940.

5. The Principal Act is further amended—

Sec. 100.
(Penalty
for illegal
strike.)

- (a) by inserting in section one hundred after the word "abetting" the words "or have taken part in or aided or abetted";

Subst. sec.
101 and
new secs.
101A, 101B.

- (b) by omitting section one hundred and one and by inserting in lieu thereof the following sections:—

Proceed-
ings for
penalty
under
sec. 100.

101. (1) No proceedings for an order under section one hundred of this Act shall be commenced except by leave of the commission, and no such leave shall be granted unless—

- (a) the commission is satisfied that the employer concerned in the illegal strike has—

- (i) not himself taken part in any lock-out which has either wholly or in part given rise to the strike;

(ii)

Industrial Arbitration (Amendment).

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

Industrial Arbitration (Amendment).

Defence to
proceedings
under sec.
100.

101A. It shall be a defence to any proceedings under section one hundred of this Act that—

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

Costs in
proceedings
under this
Part.

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

Amendment
of Acts
specified
in First
Schedule.

6. The Acts (as amended by subsequent Acts, if any) specified in the first and second columns of the First Schedule to this Act are amended as respectively specified in the third column of the said Schedule.

Citation
of amended
Acts.

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

Industrial Arbitration (Amendment).

FIRST SCHEDULE.

Sec. 6.

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

*Industrial Arbitration (Amendment).*FIRST SCHEDULE—*continued.*

Reference to Act.	Short title.	Amendment.
No. 33, 1912.	Small Debts Recovery Act, 1912.	Section 56, subsection (5).— Omit “assessed and calculated in accordance with the provisions of” wherever occurring, insert “referred to in”. Omit “61v” and “61x” wherever occurring, insert “61AA” and “61AB” respectively.
No. 36, 1920.	Workmen’s Compensation (Broken Hill) Act, 1920.	Schedule, Part II, paragraphs 3 and 6.—Omit “assessed and calculated under and in accordance with paragraph (a) of subsection two of section 61v of the Industrial Arbitration Act, 1940-1961” wherever occurring, insert “referred to in paragraph (a) of subsection two of section 61AA of the Industrial Arbitration Act, 1940, as amended by subsequent Acts”.
No. 24, 1924.	Main Roads Act, 1924.	Section 7B, subsection (4).— Omit “assessed and calculated in accordance with the provisions of” wherever occurring, insert “referred to in”. Omit “61v” and “61x” wherever occurring, insert “61AA” and “61AB” respectively.
No. 15, 1926.	Workers’ Compensation Act, 1926.	Section 14, subsection (2).—Omit “assessed and calculated under and in accordance with paragraph (a) or (b) of subsection two of section 61v of the Industrial Arbitration Act, 1940-1961”, insert “referred to in paragraph (a) or (b) of subsection two of section 61AA of the Industrial Arbitration Act, 1940, as amended by subsequent Acts, and as last adjusted in accordance with the provisions of section 61AB of that Act, as so amended”.
No. 18, 1930.	Transport Act, 1930.	Section 128A, subsection (4).— Omit “assessed and calculated in accordance with the provisions of” wherever occurring, insert “referred to in”. Omit “61v” and “61x” wherever occurring, insert “61AA” and “61AB” respectively.

*Industrial Arbitration (Amendment).*FIRST SCHEDULE—*continued.*

Reference to Act.	Short title.	Amendment.
No. 17, 1943.	Legal Assistance Act, 1943.	Section 6, subsection (4), paragraph (c).— Omit “assessed and calculated in accordance with the provisions of”, insert “referred to in”. Omit “61v” and “61x”, insert “61AA” and “61AB” respectively.
No. 25, 1948.	Landlord and Tenant (Amendment) Act, 1948.	Section 62, subsection (6), paragraph (c).— Omit “assessed and calculated in accordance with the provisions of”, insert “referred to in”. Omit “61v” and “61x”, insert “61AA” and “61AB” respectively.
No. 28, 1957.	Attachment of Wages Limitation Act, 1957.	Section 10, subsection (4).— Omit “assessed and calculated in accordance with the provisions of” wherever occurring, insert “referred to in”. Omit “61v” and “61x” wherever occurring, insert “61AA” and “61AB” respectively.
No. 59, 1963.	State Planning Authority Act, 1963.	Section 27, subsection (1), paragraph (b); and section 27, subsection (2), paragraph (c), subparagraph (i).— Omit “as assessed and calculated in accordance with the provisions of section 61v” wherever occurring, insert “referred to in section 61AA”. Omit “61x” wherever occurring, insert “61AB”.
No. 9, 1964.	Constitution and Police Regulation (Amendment) Act, 1964.	Section 1.—Omit subsection (2).
No. 23, 1964.	Government Railways and Transport (Amendment) Act, 1964.	Section 2.—Omit subsection (2). Section 3.—Omit subsection (2).

Industrial Arbitration (Amendment).

Sec. 7.

SECOND SCHEDULE.

Reference to Act.	Short title.	Citation.
No. 20, 1899.	Police Regulation Act, 1899.	Police Regulation Act, 1899-1964.
No. 21, 1899.	Common Law Procedure Act, 1899.	Common Law Procedure Act, 1899-1964.
No. 23, 1912.	District Courts Act, 1912.	District Courts Act, 1912-1964.
No. 30, 1912.	Government Railways Act, 1912.	Government Railways Act, 1912-1964.
No. 33, 1912.	Small Debts Recovery Act, 1912.	Small Debts Recovery Act, 1912-1964.
No. 36, 1920.	Workmen's Compensation (Broken Hill) Act, 1920.	Workmen's Compensation (Broken Hill) Act, 1920-1964.
No. 24, 1924.	Main Roads Act, 1924.	Main Roads Act, 1924-1964.
No. 15, 1926.	Workers' Compensation Act, 1926.	Workers' Compensation Act, 1926-1964.
No. 18, 1930.	Transport Act, 1930.	Transport Act, 1930-1964.
No. 17, 1943.	Legal Assistance Act, 1943.	Legal Assistance Act, 1943-1964.
No. 25, 1948.	Landlord and Tenant (Amendment) Act, 1948.	Landlord and Tenant (Amendment) Act, 1948-1964.
No. 28, 1957.	Attachment of Wages Limitation Act, 1957.	Attachment of Wages Limitation Act, 1957-1964.
No. 59, 1963.	State Planning Authority Act, 1963.	State Planning Authority Act, 1963-1964.

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, SYDNEY, NEW SOUTH WALES—1964

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

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 15 October, 1964.*

New South Wales



ANNO TERTIO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 37, 1964.

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

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

1. (1) This Act may be cited as the "Industrial Arbitration (Amendment) Act, 1964".

Short title
and
citation.

(2)

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

HOWARD T. FOWLES,
Chairman of Committees of the Legislative Assembly.

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 Principal Act, as amended by this Act, may be cited as the Industrial Arbitration Act, 1940-1964.

Amendment
of Act No.
2, 1940.

Sec. 5.
(Interpre-
tation.)

2. The Principal Act is amended—

- (a) by inserting in the definition of "Employee" in subsection one of section five after the words "of a butty-gang," the words "and includes any person who is, pursuant to any provision of this Act, deemed to be an employee for the purposes of this Act,";

Sec. 17A.
(Special
commis-
sioners.)

- (b) (i) by inserting next after subsection three of section 17A the following new subsection : —

(3A) A special commissioner may require any person attending a conference at which the special commissioner presides to give evidence on oath and for that purpose shall have authority to administer an oath to any such person.

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

(5) An appeal from any decision of a special commissioner pursuant to subsection four of this section shall be by way of rehearing and the commission may call for or receive further information or evidence.

Sec. 18.
(Concilia-
tion com-
mittees.)

- (c) (i) by omitting from subsection six of section eighteen the words "the expiration of three years from the date of his appointment, unless he sooner resigns his office" and by inserting in lieu thereof the words "he resigns or the employer

Industrial Arbitration (Amendment).

employer or industrial union who or which nominated such person to be such a member has notified the registrar that such nomination has been withdrawn”;

- (ii) by omitting from subsection eight of the same section the words “to his office for the residue of the period for which such member was appointed” and by inserting in lieu thereof the words “to the vacancy so created”;

- (d) (i) by inserting next after subsection three of Sec. 25. section twenty-five the following new (Compulsory conferences.) subsection : —

(3A) Where a compulsory conference has been called pursuant to subsection one of this section, the conciliation commissioner or the committee, as the case may be, shall investigate the merits of the question, dispute or difficulty irrespective of whether or not the employees concerned therein may be on strike.

- (ii) by inserting next after subsection five of the same section the following new subsection : —

(5A) No order or award or interim order or award shall be made pursuant to the provisions of subsection four or five of this section unless the causes of and the circumstances appertaining to the question, dispute or difficulty have been investigated by the conciliation commissioner or committee concerned or by another industrial tribunal and the conciliation commissioner or committee concerned is satisfied that all reasonable steps have been taken to effect an amicable settlement of such question, dispute or difficulty.

- (e) by inserting in paragraph (e) of subsection one of section 30B after the word “Act” the words “, section one hundred and one excepted”. (Jurisdiction of the commission.)

Industrial Arbitration (Amendment).

Further
amendment
of Act No.
2, 1940.
New Divi-
sion 2D.

3. The Principal Act is further amended by inserting next after section 61x the following new Division :—

DIVISION 2D.—*Provisions applicable after the commencement of the Industrial Arbitration (Amendment) Act, 1964.*

Definitions.

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

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

PASTORAL INDUSTRY AWARD, 1956

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

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

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

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

Existing
awards and
industrial
agreements.

61Z. (1) This section shall apply to and in respect of all awards and industrial agreements—

(a) in force immediately before the commencement of the Industrial Arbitration (Amendment) Act, 1964, or

(b)

Industrial Arbitration (Amendment).

- (b) which were made or entered into before such commencement but come into force after such commencement.

(2) (a) For the purposes of this section the expression "appointed day", in respect of—

- (i) awards and industrial agreements in force at the beginning of the first pay period which commenced on or after the nineteenth day of June, one thousand nine hundred and sixty-four, means the day on which such pay period commenced; and
- (ii) awards and industrial agreements the provisions of which, affecting rates of wages, came into force after the beginning of such pay period, or which were made before but come into force after the commencement of the Industrial Arbitration (Amendment) Act, 1964, means the day on which such provisions came or come into force.

(b) An award or industrial agreement to which this section applies shall as on and from the appointed day applicable thereto have and take effect as if—

- (i) in so far as it fixes rates of wages for adult male employees by reference or in relation to a basic wage for adult males assessed on an index number contained in the Consumer Price Index, such basic wage had, immediately before the appointed day, been adjusted to the amount of fifteen pounds fifteen shillings per week;
- (ii) in so far as it fixes rates of wages for adult female employees by reference or in relation to a basic wage for adult females based upon seventy-five per centum of a basic wage for adult males, such
basic

Industrial Arbitration (Amendment).

basic wage for adult female employees had, immediately before the appointed day, been adjusted to the amount of eleven pounds sixteen shillings per week; and

- (iii) any provisions therein relating to adjustment at stated periods of the rates of pay prescribed therein, upon any variation of the basic wage for adult males or the basic wage for adult females in accordance with fluctuations of index numbers in the Consumer Price Index, had been deleted.

(3) The terms of each award or industrial agreement to which this section applies, affecting rates of pay, shall, as from the commencement of the Industrial Arbitration (Amendment) Act, 1964, be deemed to be varied to the extent necessary to give effect to the provisions of subsection two of this section.

(4) As soon as practicable after the commencement of the Industrial Arbitration (Amendment) Act, 1964, the registrar, subject to appeal to the commission, shall vary the terms of each award to which this section applies, affecting rates of pay, to the extent necessary to give effect to the provisions of this section and may make such alterations in the form of any such award as he may think necessary or desirable to enable full effect to be given to the provisions of this section.

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

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

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61AA. (1) This section shall apply to and in respect of all awards made or industrial agreements entered into on or after the commencement of the Industrial Arbitration (Amendment) Act, 1964. Future awards and industrial agreements.

(2) Subject to the provisions of subsection three of this section, all awards or industrial agreements to which this section applies shall, in so far as they fix rates of wages by reference or in relation to—

- (a) a basic wage for adult males, be made by reference or in relation to a basic wage for adult males of fifteen pounds fifteen shillings per week; or
- (b) a basic wage for adult females, be made by reference or in relation to a basic wage for adult females of eleven pounds sixteen shillings per week :

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

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

This

Industrial Arbitration (Amendment).

This subsection shall not apply to an award made, or industrial agreement entered into, for wages of apprentices or trainee apprentices.

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

Provisions
for varia-
tion of the
basic wage
in awards
and in-
dustrial
agreements.

61AB. (1) In this section "award or industrial agreement" means award or industrial agreement which fixes rates of wages by reference or in relation to a basic wage for adult males or a basic wage for adult females.

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

(b) The Governor may by proclamation published in the Gazette direct that for the purposes of this section the name or title of such award made by the

Industrial Arbitration (Amendment).

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

(3) (a) As soon as practicable after the Commonwealth Conciliation and Arbitration Commission has at any time varied the Federal Metal Trades Award in relation to the basic wage for adult males or the basic wage for adult females, which is applicable to employees in Sydney, the registrar shall, for the purposes of subsection two of this section, by notification published in the Gazette notify the amount of the basic wage for adult males or the basic wage for adult females, as the case may require, which, from the date such variation takes effect, shall be the basic wage for adult males or the basic wage for adult females for the purposes of awards or industrial agreements in force at such date or which were made before but come into force after such date.

(b) Any such notification by the registrar shall on publication in the Gazette—

- (i) supersede and replace any such notification published theretofore and continue in force until the date upon which a subsequent like notification takes effect; and
- (ii) be conclusive evidence for all purposes of the matters stated therein.

(4) As from the date upon which any variation pursuant to subsection two of this section takes effect—

- (a) the amount as so notified of the basic wage for adult males or the basic wage for adult females shall be the basic wage for adult males or the basic wage for adult females (as the case may be) for the purposes of all awards
or

Industrial Arbitration (Amendment).

or industrial agreements in force at such date or which were made before but come into force after such date; and

- (b) the terms of all such awards or industrial agreements shall as from such date be deemed to be varied to the extent necessary to give effect to the provisions of paragraph (a) of this subsection.

(5) The provisions of this section relating to the variation of the amount of the basic wage shall apply to the exclusion of section 61x of this Act or any other like provision contained in any other Act or any award or industrial agreement.

(6) The registrar may (subject to appeal to the commission), upon application made as prescribed or of his own motion, vary the terms of any award or industrial agreement affecting rates of wages to the extent necessary to give full effect to the provisions of this section.

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

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

4. The Principal Act is further amended—

Further amendment of Act No. 2, 1940.

Sec. 61P.
(Existing basic wage for adult females.)

Sec. 88D.
(Equal pay for males and females in certain circumstances.)

- (a) by inserting in section 61P after the figure and letter "2C" the words, figure and letter "D", or referred to in Division 2D,";
- (b) (i) by omitting from subsection five of section 88D the figure and symbol "2C" and by inserting in lieu thereof the figure and symbol "2D";

(ii)

Industrial Arbitration (Amendment).

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

- (c) by inserting next after section 88F the following ^{New} section :— ^{sec. 88G.}

88G. (1) Notwithstanding any other provision of this Act the commission, a committee or an apprenticeship council shall upon application therefor insert (by way of variation or otherwise) in an award or industrial agreement whether made before or after the commencement of the Industrial Arbitration (Amendment) Act, 1964, provisions relating to the matters set out in subsection two of this section. ^{Provisions relevant to automation.}

(2) The matters referred to in subsection one of this section shall be—

 - (a) the obligations, duties and responsibilities of an employer upon the introduction or proposed introduction of mechanisation or technological changes in the industry in which he is engaged;

 - (b) the employees to whom notices of termination of services (being not less than three months) are to be given on account of such introduction or proposed introduction and the form and effect of such notices and the consequences (including requirements that the ordinary rate of pay shall be paid for a specified period, being the difference between the notice given and that required to be given under the provisions inserted

Industrial Arbitration (Amendment).

inserted in the award or industrial agreement pursuant to this section, and the period of notice to be given shall be deemed to be service with the employer for the purpose of the Long Service Leave Act, 1955, the Annual Holidays Act, 1944, the Long Service Leave (Metalliferous Mining Industry) Act, 1963, or any Act amending or replacing any of those Acts) of failure to give such notices;

- (c) the notifications to be given by the employer to the registrar, the Director of the Vocational Guidance Bureau and the Director of Technical Education of or pertaining to such notices of termination of services;
- (d) such other matters as the commission, committee or apprenticeship council deems relevant to or consequential upon the matters referred to in paragraphs (a), (b) and (c) of this subsection.

Sec. 92.
(Recovery
of wages.)

- (d) (i) by inserting at the end of subsection one of section ninety-two the following new paragraph :—

(b) Where any such award, industrial agreement or permit fixes a price, rate or amount (not being a price or rate for work done) to be paid in the circumstances set out therein in relation to any other matter the employer shall in such circumstances be liable to pay such price, rate or amount in full in money to the person entitled thereto without any deduction except such as may be authorised by such award or industrial agreement or permit as the case may be.

(ii)

Industrial Arbitration (Amendment).

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

"due—

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

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

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

Industrial Arbitration (Amendment).

thereof the words "where proceedings may be taken under subsection two or three of this section the proceedings may with the consent in writing of the person so authorised";

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

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

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

Further
amendment
of Act No.
2, 1940.

5. The Principal Act is further amended—

Sec. 100.
(Penalty
for illegal
strike.)

- (a) by inserting in section one hundred after the word "abetting" the words "or have taken part in or aided or abetted";

Subst. sec.
101 and
new secs.
101A, 101B.

- (b) by omitting section one hundred and one and by inserting in lieu thereof the following sections:—

Proceed-
ings for
penalty
under
sec. 100.

101. (1) No proceedings for an order under section one hundred of this Act shall be commenced except by leave of the commission, and no such leave shall be granted unless—

- (a) the commission is satisfied that the employer concerned in the illegal strike has—

- (i) not himself taken part in any lock-out which has either wholly or in part given rise to the strike;

(ii)

Industrial Arbitration (Amendment).

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

Industrial Arbitration (Amendment).

Defence to
proceedings
under sec.
100.

101A. It shall be a defence to any proceedings under section one hundred of this Act that—

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

Costs in
proceedings
under this
Part.

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

Amendment
of Acts
specified
in First
Schedule.

6. The Acts (as amended by subsequent Acts, if any) specified in the first and second columns of the First Schedule to this Act are amended as respectively specified in the third column of the said Schedule.

Citation
of amended
Acts.

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

FIRST

Industrial Arbitration (Amendment).

FIRST SCHEDULE.

Sec. 6.

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

FIRST

*Industrial Arbitration (Amendment).*FIRST SCHEDULE—*continued.*

Reference to Act.	Short title.	Amendment.
No. 33, 1912.	Small Debts Recovery Act, 1912.	Section 56, subsection (5).— Omit “assessed and calculated in accordance with the provisions of” wherever occurring, insert “referred to in”. Omit “61v” and “61x” wherever occurring, insert “61AA” and “61AB” respectively.
No. 36, 1920.	Workmen’s Compensation (Broken Hill) Act, 1920.	Schedule, Part II, paragraphs 3 and 6.—Omit “assessed and calculated under and in accordance with paragraph (a) of subsection two of section 61v of the Industrial Arbitration Act, 1940-1961” wherever occurring, insert “referred to in paragraph (a) of subsection two of section 61AA of the Industrial Arbitration Act, 1940, as amended by subsequent Acts”.
No. 24, 1924.	Main Roads Act, 1924.	Section 7B, subsection (4).— Omit “assessed and calculated in accordance with the provisions of” wherever occurring, insert “referred to in”. Omit “61v” and “61x” wherever occurring, insert “61AA” and “61AB” respectively.
No. 15, 1926.	Workers’ Compensation Act, 1926.	Section 14, subsection (2).—Omit “assessed and calculated under and in accordance with paragraph (a) or (b) of subsection two of section 61v of the Industrial Arbitration Act, 1940-1961”, insert “referred to in paragraph (a) or (b) of subsection two of section 61AA of the Industrial Arbitration Act, 1940, as amended by subsequent Acts, and as last adjusted in accordance with the provisions of section 61AB of that Act, as so amended”.
No. 18, 1930.	Transport Act, 1930.	Section 128A, subsection (4).— Omit “assessed and calculated in accordance with the provisions of” wherever occurring, insert “referred to in”. Omit “61v” and “61x” wherever occurring, insert “61AA” and “61AB” respectively.

FIRST

*Industrial Arbitration (Amendment).*FIRST SCHEDULE—*continued.*

Reference to Act.	Short title.	Amendment.
No. 17, 1943.	Legal Assistance Act, 1943.	Section 6, subsection (4), paragraph (c).— Omit “assessed and calculated in accordance with the provisions of”, insert “referred to in”. Omit “61v” and “61x”, insert “61AA” and “61AB” respectively.
No. 25, 1948.	Landlord and Tenant (Amendment) Act, 1948.	Section 62, subsection (6), paragraph (c).— Omit “assessed and calculated in accordance with the provisions of”, insert “referred to in”. Omit “61v” and “61x”, insert “61AA” and “61AB” respectively.
No. 28, 1957.	Attachment of Wages Limitation Act, 1957.	Section 10, subsection (4).— Omit “assessed and calculated in accordance with the provisions of” wherever occurring, insert “referred to in”. Omit “61v” and “61x” wherever occurring, insert “61AA” and “61AB” respectively.
No. 59, 1963.	State Planning Authority Act, 1963.	Section 27, subsection (1), paragraph (b); and section 27, subsection (2), paragraph (c), subparagraph (i).— Omit “as assessed and calculated in accordance with the provisions of section 61v” wherever occurring, insert “referred to in section 61AA”. Omit “61x” wherever occurring, insert “61AB”.
No. 9, 1964.	Constitution and Police Regulation (Amendment) Act, 1964.	Section 1.—Omit subsection (2).
No. 23, 1964.	Government Railways and Transport (Amendment) Act, 1964.	Section 2.—Omit subsection (2). Section 3.—Omit subsection (2).

SECOND

Industrial Arbitration (Amendment).

Sec. 7.

SECOND SCHEDULE.

Reference to Act.	Short title.	Citation.
No. 20, 1899.	Police Regulation Act, 1899.	Police Regulation Act, 1899-1964.
No. 21, 1899.	Common Law Procedure Act, 1899.	Common Law Procedure Act, 1899-1964.
No. 23, 1912.	District Courts Act, 1912.	District Courts Act, 1912-1964.
No. 30, 1912.	Government Railways Act, 1912.	Government Railways Act, 1912-1964.
No. 33, 1912.	Small Debts Recovery Act, 1912.	Small Debts Recovery Act, 1912-1964.
No. 36, 1920.	Workmen's Compensation (Broken Hill) Act, 1920.	Workmen's Compensation (Broken Hill) Act, 1920-1964.
No. 24, 1924.	Main Roads Act, 1924.	Main Roads Act, 1924-1964.
No. 15, 1926.	Workers' Compensation Act, 1926.	Workers' Compensation Act, 1926-1964.
No. 18, 1930.	Transport Act, 1930.	Transport Act, 1930-1964.
No. 17, 1943.	Legal Assistance Act, 1943.	Legal Assistance Act, 1943-1964.
No. 25, 1948.	Landlord and Tenant (Amendment) Act, 1948.	Landlord and Tenant (Amendment) Act, 1948-1964.
No. 28, 1957.	Attachment of Wages Limitation Act, 1957.	Attachment of Wages Limitation Act, 1957-1964.
No. 59, 1963.	State Planning Authority Act, 1963.	State Planning Authority Act, 1963-1964.

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

E. W. WOODWARD,
Governor.

Government House,
Sydney, 16th October, 1964.