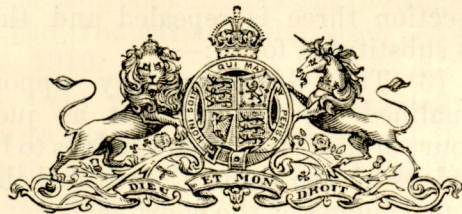


I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

W. S. MOWLE,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 14 December, 1916.*

New South Wales.



ANNO SEPTIMO

GEORGI V REGIS.

Act No. 81, 1916.

An Act to amend the law with regard to the conditions of industries and industrial arbitration ; to amend the Industrial Arbitration Act, 1912 ; and for purposes consequent thereon or incidental thereto. [Assented to, 20th December, 1916.]

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

1. This Act may be cited as the "Industrial Arbitration (Amendment) Act, 1916," and shall be construed with the Industrial Arbitration Act, 1912, hereinafter referred to as the Principal Act. **2.** Short title.

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

THOS. H. THROWER,
Chairman of Committees of the Legislative Assembly.

Industrial Arbitration (Amendment).

Amendment
of s. 5.

2. Section five of the Principal Act is amended as follows :— In the definition of “ industry ” after “ means ” insert the word “ craft ”, and at the end of such definition add the words “ and unless otherwise indicated by the context or any provisions of this Act any division of an industry or combination, arrangement, or grouping of industries ”.

Amendment
of s. 13.

3. Section thirteen of the Principal Act is amended as follows :—

(a) Subsection three is repealed and the following is substituted for it :—

(3) The Governor may appoint persons qualified for appointment as judges of the court or as district court judges to be additional judges of the court: Provided that the additional judges of the court shall not at any time exceed three in number. Any additional judge so appointed shall except as hereinafter provided have the same rights, powers, jurisdiction, and privileges as the judge of the court.

(b) Subsection four is repealed and the following is substituted for it :—

(4) The Governor may, upon a report by the court that a judge is prevented by any cause from attending to his duties as judge, or that the judge or judges of the court is or are unable to cope promptly and expeditiously with the matters in the court's lists or with the demand for judicial services made upon the court, or is or are from considerations of natural justice averse to adjudicating upon any specific matter, appoint a deputy judge or deputy judges to act temporarily as a judge or judges of the court from amongst persons qualified to be judges of the court, and such person or persons shall while so acting have all the jurisdiction and powers of a judge of the court.

(c) Subsection five is repealed and the following is substituted for it :—

(5) The court shall be constituted by the judge or an additional or deputy judge, or
where

Industrial Arbitration (Amendment).

where and as prescribed any two or more of them together. There may be two or more sittings of the court held at the same time.

(d) Subsection seven is repealed and the following is inserted in its place:—

(7) (a) The Governor may from time to time from among persons qualified to be judges appoint judges of the court in succession to the senior judge holding office at the commencement of the Industrial Arbitration (Amendment) Act, 1916.

(b) Any judge so appointed in succession to the said senior judge shall, if a Supreme Court judge, have the same rank, title, status, and precedence and the same salary and rights as judges of the Supreme Court, or if a district court judge or barrister-at-law the status, salary, and rights of such senior judge prior to the passing of the Industrial Arbitration (Amendment) Act, 1916. The additional judges other than the first additional judge holding office at the commencement of the Industrial Arbitration (Amendment) Act, 1916, shall, except as hereinafter provided, have the same rank, title, status, and precedence and the same salary and rights as judges of district courts. Such rights and precedence shall count from the date of appointment unless in the case of a senior judge he is already a Supreme Court judge, or in the case of an additional judge he is already a district court judge, when they shall count from the date of appointment as Supreme Court or district court judge as the case may be.

(c) The said senior judge and first additional judge holding office at the commencement of the Industrial Arbitration (Amendment) Act, 1916, shall have the same status, salary, and rights as if the said Act had not passed.

Industrial Arbitration (Amendment).

Amendment
of s. 14.

4. Section fourteen of the Principal Act is amended by the addition to it of the following paragraphs :—

(2) The court may exercise the powers, jurisdictions, and functions of an industrial board or of a special board for demarcation purposes in respect of any industry or industries, notwithstanding that a board or boards may not have been constituted for such industry or industries.

(3) Upon any reference or application to a board under the provisions of section thirty-one of this Act the jurisdiction and functions of such board thereupon may be exercised by the court, and shall not be exercised by the board until a direction to that effect shall be given by the Court.

(4) The judge may, if he thinks fit, assume the powers, functions, and jurisdiction of the chairman of any board which may be directed to operate.

(5) The court may on the application of the Minister, or an employer, or an industrial union, determine any question as to the demarcation of the industrial interests of trade unions and industrial unions, and may also codify into one award, subject to such amendments as it may deem expedient to make, all awards binding or affecting any employer or class or section of employers in any industry or group of industries or the members of an industrial union employed by the same employer or class or section of employers.

Amendment
of s. 16.

5. Section sixteen of the Principal Act is amended as follows :—

(a) Omit subsection one and substitute therefor the following :—

(1) Industrial boards shall, on the recommendation of the court, be constituted by the Minister for any industry or division of any industry, or any combination, arrangement, or grouping of industries, as the Minister on the recommendation of the court may direct.

(b)

Industrial Arbitration (Amendment).

- (b) In subsection two omit "for all of the boards which may be constituted under each of the board designations mentioned in the first column of Schedule One" and insert the words "for any one or more of the boards which may be recommended for constitution".
- (c) In subsection three insert at the end of the subsection the words "from persons nominated as prescribed by the employers and by the industrial unions of employees concerned respectively, or where either employers or employees fail to so nominate from persons nominated by the Minister"

6. Section seventeen of the Principal Act and Schedules One and Two of such Act are repealed.

Repeal of s. 17
and Schedules
One and Two.

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

G. STRICKLAND,

Government House,

Governor.

Sydney, 20th December, 1916.



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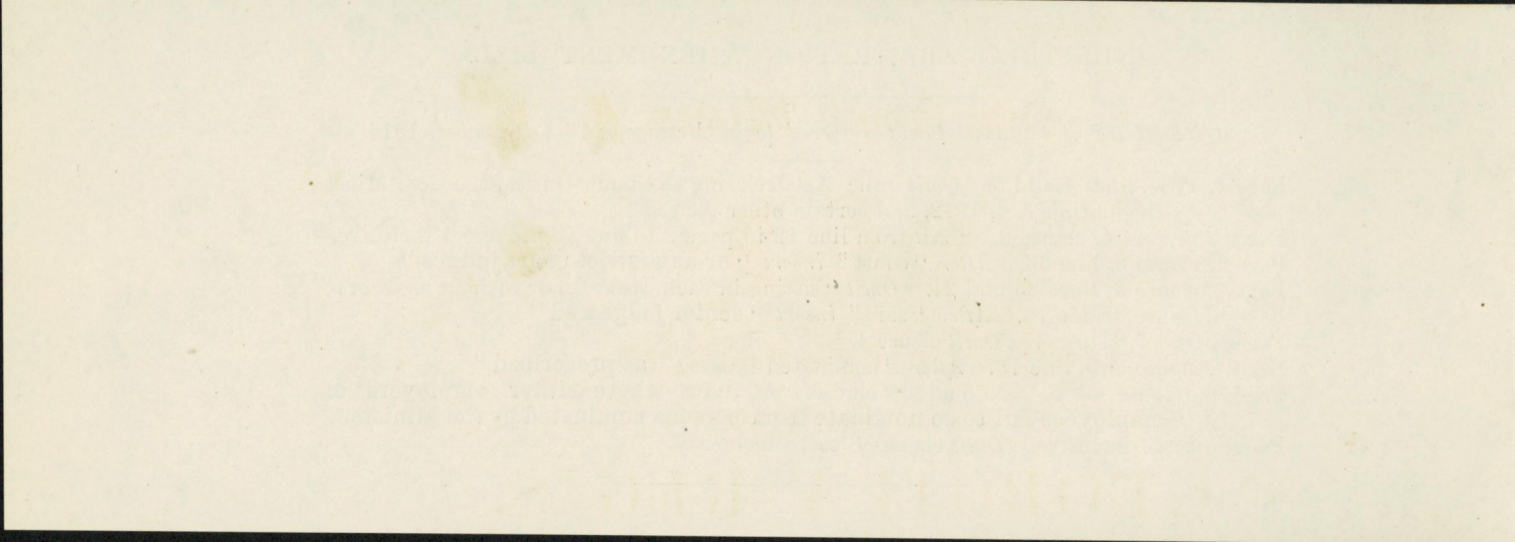
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INDUSTRIAL ARBITRATION (AMENDMENT) BILL.

SCHEDULE of the Amendments referred to in Message of 13th December, 1916.

- Page 1, Title, lines 4 and 5. *Omit* "the Acts relating to Stamp Duties, the Coal Mines
"Regulation Act, 1912, and certain other Acts"
- Pages 2, 3, and 4, clause 2. *Omit* from line 12 in page 2 to line 19 in page 4 inclusive.
- Page 4, clause 3, line 33. *After* "court" *insert* "or as district court judges"
- Page 5, clause 3, lines 23 and 24. *Omit* "sitting in each case with or without assessors"
- Page 6, clause 3, line 16. *After* "said" *insert* "senior judge and"
- Pages 6 and 7, clause 4. *Omit* clause 4.
- Page 8, clause ~~6~~ 5, line 19. *After* "nominated" *insert* "as prescribed"
- Page 8, clause ~~6~~ 5. At end of clause *add* "or where either employers or
"employees fail to so nominate from persons nominated by the Minister"
- Pages 8 to 13 inclusive. *Omit* clauses 8 to 18 inclusive
-



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

W. S. MOWLE,
Clerk of the Legislative Assembly.

Legislative Assembly Chamber,
Sydney, 18 August, 1916.

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

W. L. S. COOPER,
Clerk of the Parliaments.

Legislative Council Chamber,
Sydney, 13th December, 1916.

New South Wales.



ANNO SEPTIMO

GEORGII V REGIS.

Act No. , 1916.

An Act to amend the law with regard to the conditions of industries and industrial arbitration; to amend the Industrial Arbitration Act, 1912, the Acts relating to Stamp Duties, the Coal Mines Regulation Act, 1912, and certain other Acts; and for purposes consequent thereon or incidental thereto.

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

Industrial Arbitration (Amendment).

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

1. This Act may be cited as the "Industrial Arbitration (Amendment) Act, 1916," and shall be construed with the Industrial Arbitration Act, 1912, hereinafter referred to as the Principal Act.

2. Section five of the Principal Act is amended as follows:—

- (a) In the definition of "employee" insert after "member of a family" the words "of minor age".
- 15 (b) In the definition of "employer", after "means" insert the words "the Crown or any", and after "includes", where first appearing in the said definition, insert the words "the Public Service Board in respect of, or in relation to persons employed under the provisions of the Public Service Act, 1902, or any statute passed in substitution for, or amendment of the same".
- 20 (c) Add at the end of paragraph (a) of the definition of "industrial matters" the words "including the questions whether piecework shall be allowed, forbidden, or exclusively prescribed in and for an industry; whether and under what conditions employees shall or may board and lodge with their employers; whether monetary allowance shall be made by employers to employees in respect of standing back or waiting time imposed upon such employees by the conditions of the employer's enterprise or because of intermittency of industrial operations or other causes, and whether the relationship of employer and employee in effect subsists between persons who are parties to contracts which purport to be other than contracts of service or for labour."
- 25 30 35 40 (d) After "employment" where first occurring in paragraph (b) of the definition of "industrial matters"

Industrial Arbitration (Amendment).

- 5 matters" insert the words "including claims to prohibit or restrict work before or after certain hours in any industry and claims to prescribe means whereby questions between employers and employees as to the quantity, quality, or adequacy of work performed or of material received, supplied, treated, manufactured, delivered, or rendered may be determined";
- 10 and add at the end of the paragraph the words "or non-employment including claims to have protective appliances, clothing, hot or cold water, and sanitary and bathing accommodation provided for the use of employees in any industry, the fixing
- 15 of standards of normal temperature and atmospheric purity in working places below or above ground, the fixing of the number or proportionate number of females to males, of junior to adult workers, and of apprentices and improvers to journeymen or employers in any industry; and notwithstanding the effect of any custom of, or against apprenticeship, the conditions in all respects of the apprenticeship of minors or adults in any industry."
- 20 (e) Omit paragraph (c) of the definition of "industrial matters" and substitute therefor the following:—
- 25 (c) The employment of juniors or of any persons or class of persons in any industry, including the disqualification of any persons for employment in any industry by reason of sex or age or disease, or the right to dismiss or to refuse to employ any particular person or persons or class of persons, or the question whether any particular person or persons or class of persons ought, having regard to the public interests and notwithstanding the common law rights of employers or employees, and notwithstanding the provisions of the Coal Mines Regulation Act,
- 30 1912,
- 35
- 40

Industrial Arbitration (Amendment).

1912, or any colliery rules authorised thereby, to be continued or re-instated in the employment of any particular employer.

- 5 (f) At the end of the definition of " industrial matters " add the following paragraphs :—
- (f) any question which has caused or in the opinion of the court is likely to cause friction in such industry ;
- 10 (g) generally all questions as to what is fair and right according to the standard of the average good employer and the average competent and honest employee in all matters pertaining to the relations of employers and employees, whether or not the relationship of employer and employee exists or existed
- 15 at or before the time of any application to the court or at the time of the making or enforcement of any order or award by the court ;
- 20 (g) In the definition of " industry " after " means " insert the word " craft ", and at the end of such definition add the words " and unless otherwise indicated by the context or any provisions of this Act any division of an industry or combination, arrangement, or grouping of industries ".
- 25

3. Section thirteen of the Principal Act is amended as follows :— Amendment
of s. 13.

- 30 (a) Subsection three is repealed and the following is substituted for it :—
- (3) The Governor may appoint persons qualified for appointment as judges of the court or as district court judges to be additional judges of the court : Provided that the additional judges of the court shall not at any time
- 35 exceed three in number. Any additional judge so appointed shall except as hereinafter provided have the same rights, powers, jurisdiction, and privileges as the judge of the court.

(b)

Industrial Arbitration (Amendment).

(b) Subsection four is repealed and the following is substituted for it :—

5 (4) The Governor may, upon a report by the court that a judge is prevented by any cause from attending to his duties as judge, or that the judge or judges of the court is or are unable to cope promptly and expeditiously with the matters in the court's lists or with the demand for judicial services made upon the court, or is or are from considerations of natural justice averse to adjudicating upon any specific matter, appoint a deputy judge or deputy judges to act temporarily as a judge or judges of the court from amongst persons qualified to be judges of the court, and such person or persons shall while so acting have all the jurisdiction and powers of a judge of the court.

10 (c) Subsection five is repealed and the following is substituted for it :—

15 (5) The court shall be constituted by the judge or an additional or deputy judge, or where and as prescribed any two or more of them together ~~sitting in each case with or without accessors.~~ There may be two or more sittings of the court held at the same time.

20 (d) Subsection seven is repealed and the following is inserted in its place :—

25 (7) (a) The Governor may from time to time from among persons qualified to be judges appoint judges of the court in succession to the senior judge holding office at the commencement of the Industrial Arbitration (Amendment) Act, 1916.

30 (b) Any judge so appointed in succession to the said senior judge shall, if a Supreme Court judge, have the same rank, title, status, and precedence and the same salary and rights as judges of the Supreme Court, or if a district court judge or barrister-at-law the status, salary, and rights of such senior judge prior to the passing of the Industrial Arbitration (Amendment)

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40

Industrial Arbitration (Amendment).

5 (Amendment) Act, 1916. The additional
 judges other than the first additional judge
 holding office at the commencement of the In-
 10 dustrial Arbitration (Amendment) Act, 1916,
 shall, except as hereinafter provided, have the
 same rank, title, status, and precedence and
 the same salary and rights as judges of district
 courts. Such rights and precedence shall count
 15 from the date of appointment unless in the case
 of a senior judge he is already a Supreme Court
 judge, or in the case of an additional judge he is
 already a district court judge, when they shall
 count from the date of appointment as Supreme
 Court or district court judge as the case may
 be.

20 (c) The said senior judge and first ad-
 ditional judge holding office at the commence-
 ment of the Industrial Arbitration (Amend-
 ment) Act, 1916, shall have the same status,
 salary, and rights as if the said Act had not
 passed.

4. Section thirteen is further amended by adding
 thereto the following subsection :—

Further
 amend-
 ment
 of s. 13.

25 (8) The court constituted by the judge and
 two assessors who shall be elected in the manner
 prescribed to represent the interests of employers
 and employees respectively shall have jurisdiction
 and power to hold inquiries into the questions of—

- 30 (a) the cost of living in the State or any portion
 of it;
- (b) the average standard of living of the com-
 munity as a whole;
- 35 (c) the minimum rate of wage necessary to enable
 an adult male employee to maintain himself
 and his wife and a family of three children
 in becoming relation to the average standard
 of living of the community as a whole;
- 40 (d) the minimum rate of wage necessary to enable
 an adult female employee to support herself
 in becoming relation to the average standard
 of living of the community as a whole;

and

Industrial Arbitration (Amendment).

and from time to time to make and declare general
 rulings upon such questions for the guidance of the
 court and boards, and of suitors before the court and
 boards. Such rulings may be made by a majority of
 5 the members of the court as so constituted, and shall
 when made, and until altered, withdrawn, or
 replaced, be binding upon and be given effect by
 the court and boards. The Minister shall have the
 right to call for such general rulings from the
 10 court.

5. 4. Section fourteen of the Principal Act is amended Amendment
of s. 14.
 by the addition to it of the following paragraphs:—

(2) The court may exercise the powers,
 15 jurisdictions, and functions of an industrial board
 or of a special board for demarcation purposes in
 respect of any industry or industries, notwith-
 standing that a board or boards may not have been
 constituted for such industry or industries.

(3) Upon any reference or application to a
 20 board under the provisions of section thirty-one
 of this Act the jurisdiction and functions of
 such board thereupon may be exercised by the
 court, and shall not be exercised by the board until
 a direction to that effect shall be given by the
 25 Court.

(4) The judge may, if he thinks fit, assume
 the powers, functions, and jurisdiction of the chair-
 man of any board which may be directed to operate.

(5) The court may on the application of the
 30 Minister, or an employer, or an industrial union,
 determine any question as to the demarcation of
 the industrial interests of trade unions and indus-
 trial unions, and may also codify into one award,
 subject to such amendments as it may deem
 35 expedient to make, all awards binding or affecting
 any employer or class or section of employers in any
 industry or group of industries or the members of
 an industrial union employed by the same employer
 or class or section of employers.

Industrial Arbitration (Amendment).

6. **5.** Section sixteen of the Principal Act is amended Amendment of s. 16.
as follows:—

(a) Omit subsection one and substitute therefor the following:—

5 (1) Industrial boards shall, on the recommendation of the court, be constituted by the Minister for any industry or division of any industry, or any combination, arrangement, or grouping of industries, as the Minister
10 on the recommendation of the court may direct.

(b) In subsection two omit “for all of the boards which may be constituted under each of the board designations mentioned in the first column of Schedule One” and insert the words
15 “for any one or more of the boards which may be recommended for constitution”.

(c) In subsection three insert at the end of the subsection the words “from persons nominated
20 as prescribed by the employers and by the industrial unions of employees concerned respectively”, or where either employers or employees fail to so nominate from persons nominated by the Minister”

25 **7. 6.** Section seventeen of the Principal Act and Schedules One and Two of such Act are repealed. Repeal of s. 17 and Schedules One and Two.

8. Subsection one of section twenty-four of the Principal Act is amended by the substitution for paragraph (g) of the subsection of the following
30 paragraph:—

(g) declaring that preference of employment shall be given to the members of any industrial union of employees. An industrial union or members thereof shall be entitled to such preference, if no other industrial union is also
35 registered in respect of the same industry, so long as such industrial union be not involved in any strike;

and by the addition to it of the following new paragraphs after paragraph (g):—

(h) declaring with regard to such industries or callings that an authorised representative of any union shall have the powers of an inspector under this Act; (i)

Industrial Arbitration (Amendment).

- (i) abrogating or varying absolutely or conditionally contracts of service or for labour, including contracts of apprenticeship, made at any time before or after the commencement of this Act in any case in which the board is satisfied that the intention or effect of such contracts is to defeat the terms of any award or the operations of the board ;
- (j) giving such retrospective effect as may be right, fair, and honest, or as may be consented to by the parties to the whole or any part of its award ;

9. Section twenty-six of the Principal Act is repealed ^{Amendment of s. 26.} and the following is substituted for it :—

26. Employees of the Crown, that is persons employed in any capacity whatsoever, and whether on salary or wages or at piece-work rates, by the Government of New South Wales through the Public Service Board, or any Minister, Trust, Commission, or Board exercising executive or administrative functions on behalf of the Government of the State, including the Chief Commissioner for Railways and Tramways, the Sydney Harbour Trust, the Metropolitan Board of Water Supply and Sewerage, the Water Conservation and Irrigation Commission constituted under the Irrigation (Amendment) Act, 1916, and the Hunter District Board of Water Supply and Sewerage, shall be paid rates and prices not less than the highest rates and prices prescribed by awards or industrial agreements to be paid to workers of the same industrial class who are not employees of the Crown ; or if there be no such awards or agreements not less than the rates and prices prescribed by awards under the authority of the Commonwealth Conciliation and Arbitration Act, 1904-1914, or of any Act amending the same and operating within the State. This provision shall apply at all times, and notwithstanding the fact that rates may previously have been specially fixed by the court or a board, for any of such first-mentioned employees.

Industrial Arbitration (Amendment).

The court or an industrial board shall not fix rates and prices for employees of the Crown lower than those fixed for persons of the same industrial class who are not employees of the Crown, notwithstanding the fact that the employment of such first-mentioned employees is permanent or that additional privileges are ordinarily allowed to them.

The provisions of this section may be enforced in the same manner as if they were the provisions of an award for each industry.

10. Section twenty-seven of the Principal Act is amended as follows:— Amendment of s. 27.

- (a) After "award" where occurring in subsection one insert the words "or industrial agreement".
- (b) After "registrar" where occurring in subsections two and five insert the words "or an industrial magistrate"; and after the word "registrar" where occurring in subsection three insert the words "or industrial magistrate".
- (c) Insert the following new subsection next after subsection five:—

(6) Any person affected by the permit who pays or receives a less sum than that authorised by such permit or otherwise offends against its conditions shall be liable to a penalty as for a breach of an award.

11. The following new section is inserted after section twenty-nine of the Principal Act:— New s. 29a.

29A. On and after the publication of an award declaring that preference of employment in any industry shall be given to members of an industrial union of employees, all persons not members of such union, but by the nature of their employment qualified to be members thereof, who may then be or may subsequently become during the operation of such award employed in the said industries, shall be liable to pay in full to the said union the amount of the entrance fee and annual subscription provided by the rules of the union to be paid on account of membership in such union; and the court or an industrial

Obligations following preference.

Industrial Arbitration (Amendment).

- industrial or other magistrate shall, upon application made by the secretary of the union in the manner prescribed, make an order directing such persons to pay the full amount of such entrance fee and subscription to the said union: Provided that if any person so liable shall have once paid the amount of entrance fee for such union his liability hereunder shall be reduced to a liability for the amount of annual subscription only.
- 5
- 10 **12.** Section thirty-one of the Principal Act is amended by omitting from subsection two, paragraph (a), the words "of not less than twenty employees". Amendment of s. 31.
- 13.** After section thirty-two of the Principal Act New s. 32a. add a new section as follows:—
- 15 **32A.** No application to a board shall be refused because of a similar application having previously been made and dealt with by the board or because of the rule of courts of law that it is for the public good that there should be an end to litigation. Reasons for refusing applications
- 20 **14.** Paragraph (c) of section thirty-six of the Principal Act is amended by inserting after "may" the words "with the consent of the chairman". Amendment of s. 36.
- 15.** Section forty-eight of the Principal Act and the short heading thereto are repealed and the following Amendment of s. 48. is substituted:—
- 25 **48.** Any employees of the Crown, as defined by section twenty-six, who appear to have been or to be engaged or actively concerned in a strike against the Crown as employer may by order of the court be deprived of all or any of the rights and privileges to which, by the terms of their appointment or the rules of the service or any Act of Parliament or award, they may be or may become entitled, including rights of seniority, promotion, and gratuity, and the same shall not be restored to them or any of them except by a further order or orders of the court: Provided that no such order of deprivation shall in any case have effect for any greater period than three years.
- 30
- 35

Industrial Arbitration (Amendment).

16. Section fifty of the Principal Act is amended as follows:— Amendment
of s. 50.

Omit subsection two and substitute the following:—

5 (2) Where on making such order it appears that the breach complained of relates to the failure of the defendant to pay in full, at due date, any wages (including wages for overtime) or other earnings due to an employee for any specific period or work, at the rate or price fixed by the award or agreement, the registrar or magistrate shall thereupon direct the defendant to produce proof of the payments made by him to such employee for the period of his service or varied services under the award or agreement not exceeding one year prior to the date of such direction, and if upon such proof it appear that the defendant has failed to pay in full in money to such employee the price or rate fixed for his said service or varied services by the said award or agreement, the registrar or industrial magistrate shall without motion order that the amount of wages or earnings so unpaid to such employee shall be paid into court on behalf of such employee.

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Every such order shall have the effect of a judgment of the court in favour of such employee, and shall be a bar to proceedings under this section in respect of the wages or earnings affected.

30 **17.** Section fifty-four of the Principal Act is amended by the omission of the words "forty-four, forty-six, forty-seven," and by the addition to the section of a third subsection to read as follows:— Amendment
of s. 54.

35 (3) Whenever during the course of proceedings brought before him under the provisions of sections forty-nine, fifty, fifty-three, or sixty-one, the registrar or an industrial magistrate is called upon to determine any question of law, or of mixed law and fact, he shall, irrespective of the result of such proceedings, record such question, and his determination thereupon, and shall forthwith transmit

40

the

Industrial Arbitration (Amendment).

the record so made by him to the Minister for publication in the Industrial Gazette or for public reference in such other manner as the Minister may deem proper.

5 **18.** The following section is inserted next after ~~New s. 69a.~~ section sixty-nine of the Principal Act:—

10 69A. No stamp duty shall be payable on or in respect of any indentures of apprenticeship, assignment, certificate, agreement, order, statutory declaration, power of attorney, receipt for wages paid under awards, or other instrument executed in pursuance of or to give effect to the provisions of this Act.

Stamp duty not payable on certain instruments.

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

W. S. MOWLE,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 18 August, 1916.*

New South Wales.



ANNO SEPTIMO

GEORGI V REGIS.

Act No. , 1916.

An Act to amend the law with regard to the conditions of industries and industrial arbitration ; to amend the Industrial Arbitration Act, 1912, the Acts relating to Stamp Duties, the Coal Mines Regulation Act, 1912, and certain other Acts ; and for purposes consequent thereon or incidental thereto.

Industrial Arbitration (Amendment).

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

1. This Act may be cited as the “Industrial Arbitration (Amendment) Act, 1916,” and shall be construed with the Industrial Arbitration Act, 1912, hereinafter referred to as the Principal Act. Short title.

2. Section five of the Principal Act is amended as follows :— Amendment of s. 5.

- (a) In the definition of “employee” insert after “member of a family” the words “of minor age”.
- 15 (b) In the definition of “employer”, after “means” insert the words “the Crown or any”, and after “includes”, where first appearing in the said definition, insert the words “the Public Service Board in respect of, or in relation to persons
 20 employed under the provisions of the Public Service Act, 1902, or any statute passed in substitution for, or amendment of the same”.
- (c) Add at the end of paragraph (a) of the definition of “industrial matters” the words
 25 “including the questions whether piecework shall be allowed, forbidden, or exclusively prescribed in and for an industry ; whether and under what conditions employees shall or may board and lodge with their employers ; whether
 30 monetary allowance shall be made by employers to employees in respect of standing back or waiting time imposed upon such employees by the conditions of the employer's enterprise or because of intermittency of industrial operations
 35 or other causes, and whether the relationship of employer and employee in effect subsists between persons who are parties to contracts which purport to be other than contracts of service or for labour.”
- 40 (d) After “employment” where first occurring in paragraph (b) of the definition of “industrial
 “matters”

Industrial Arbitration (Amendment).

- 5 matters" insert the words "including claims to
prohibit or restrict work before or after certain
hours in any industry and claims to prescribe
means whereby questions between employers
and employees as to the quantity, quality, or
adequacy of work performed or of material
received, supplied, treated, manufactured,
delivered, or rendered may be determined";
10 and add at the end of the paragraph the
words "or non-employment including claims
to have protective appliances, clothing,
hot or cold water, and sanitary and bath-
ing accommodation provided for the use
15 of employees in any industry, the fixing
of standards of normal temperature and at-
mospheric purity in working places below or
above ground, the fixing of the number or
proportionate number of females to males, of
20 junior to adult workers, and of apprentices
and improvers to journeymen or employers in
any industry; and notwithstanding the effect
of any custom of, or against apprenticeship,
the conditions in all respects of the apprentice-
ship of minors or adults in any industry."
- 25 (e) Omit paragraph (c) of the definition of "in-
dustrial matters" and substitute therefor the
following:—
- 30 (c) The employment of juniors or of any
persons or class of persons in any industry,
including the disqualification of any persons
for employment in any industry by reason
of sex or age or disease, or the right to
dismiss or to refuse to employ any particular
35 person or persons or class of persons, or the
question whether any particular person or
persons or class of persons ought, having
regard to the public interests and notwith-
standing the common law rights of employers
or employees, and notwithstanding the pro-
40 visions of the Coal Mines Regulation Act,
1912,

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1912, or any colliery rules authorised thereby, to be continued or re-instated in the employment of any particular employer.

5 (f) At the end of the definition of "industrial matters" add the following paragraphs:—

(f) any question which has caused or in the opinion of the court is likely to cause friction in such industry ;

10 (g) generally all questions as to what is fair and right according to the standard of the average good employer and the average competent and honest employee in all matters pertaining to the relations of employers and employees, whether or not the relationship of employer and employee exists or existed at or before the time of any application to the court or at the time of the making or enforcement of any order or award by the court ;

15 (g) In the definition of "industry" after "means" insert the word "craft", and at the end of such definition add the words "and unless otherwise indicated by the context or any provisions of this Act any division of an industry or combination, arrangement, or grouping of industries".

25 **3.** Section thirteen of the Principal Act is amended as follows:— Amendment
of s. 13.

30 (a) Subsection three is repealed and the following is substituted for it:—

35 (3) The Governor may appoint persons qualified for appointment as judges of the court to be additional judges of the court: Provided that the additional judges of the court shall not at any time exceed three in number. Any additional judge so appointed shall except as hereinafter provided have the same rights, powers, jurisdiction, and privileges as the judge of the court.

(b)

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(b) Subsection four is repealed and the following is substituted for it:—

5 (4) The Governor may, upon a report by the court that a judge is prevented by any cause from attending to his duties as judge, or that the judge or judges of the court is or are unable to cope promptly and expeditiously with the matters in the court's lists or with the demand for judicial services made upon the court, or is or are from considerations of natural justice averse to adjudicating upon any specific matter, appoint a deputy judge or deputy judges to act temporarily as a judge or judges of the court from amongst persons qualified to be judges of the court, and such person or persons shall while so acting have all the jurisdiction and powers of a judge of the court.

10 (c) Subsection five is repealed and the following is substituted for it:—

15 (5) The court shall be constituted by the judge or an additional or deputy judge, or where and as prescribed any two or more of them together sitting in each case with or without assessors. There may be two or more sittings of the court held at the same time.

20 (d) Subsection seven is repealed and the following is inserted in its place:—

25 (7) (a) The Governor may from time to time from among persons qualified to be judges appoint judges of the court in succession to the senior judge holding office at the commencement of the Industrial Arbitration (Amendment) Act, 1916.

30 (b) Any judge so appointed in succession to the said senior judge shall, if a Supreme Court judge, have the same rank, title, status, and precedence and the same salary and rights as judges of the Supreme Court, or if a district court judge or barrister-at-law the status, salary, and rights of such senior judge prior to the passing of the Industrial Arbitration (Amendment)

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(Amendment) Act, 1916. The additional judges other than the first additional judge holding office at the commencement of the Industrial Arbitration (Amendment) Act, 1916, shall, except as hereinafter provided, have the same rank, title, status, and precedence and the same salary and rights as judges of district courts. Such rights and precedence shall count from the date of appointment unless in the case of a senior judge he is already a Supreme Court judge, or in the case of an additional judge he is already a district court judge, when they shall count from the date of appointment as Supreme Court or district court judge as the case may be.

(c) The said first additional judge holding office at the commencement of the Industrial Arbitration (Amendment) Act, 1916, shall have the same status, salary, and rights as if the said Act had not passed.

4. Section thirteen is further amended by adding thereto the following subsection:—

(8) The court constituted by the judge and two assessors who shall be elected in the manner prescribed to represent the interests of employers and employees respectively shall have jurisdiction and power to hold inquiries into the questions of—

- (a) the cost of living in the State or any portion of it;
- (b) the average standard of living of the community as a whole;
- (c) the minimum rate of wage necessary to enable an adult male employee to maintain himself and his wife and a family of three children in becoming relation to the average standard of living of the community as a whole;
- (d) the minimum rate of wage necessary to enable an adult female employee to support herself in becoming relation to the average standard of living of the community as a whole;

and

Further
amendment
of s. 13.

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and from time to time to make and declare general rulings upon such questions for the guidance of the court and boards, and of suitors before the court and boards. Such rulings may be made by a majority of
5 the members of the court as so constituted, and shall when made, and until altered, withdrawn, or replaced, be binding upon and be given effect by the court and boards. The Minister shall have the
10 right to call for such general rulings from the court.

5. Section fourteen of the Principal Act is amended by the addition to it of the following paragraphs :— Amendment of s. 14.

(2) The court may exercise the powers, jurisdictions, and functions of an industrial board
15 or of a special board for demarcation purposes in respect of any industry or industries, notwithstanding that a board or boards may not have been constituted for such industry or industries.

(3) Upon any reference or application to a
20 board under the provisions of section thirty-one of this Act the jurisdiction and functions of such board thereupon may be exercised by the court, and shall not be exercised by the board until a direction to that effect shall be given by the
25 Court.

(4) The judge may, if he thinks fit, assume the powers, functions, and jurisdiction of the chairman of any board which may be directed to operate.

(5) The court may on the application of the
30 Minister, or an employer, or an industrial union, determine any question as to the demarcation of the industrial interests of trade unions and industrial unions, and may also codify into one award, subject to such amendments as it may deem
35 expedient to make, all awards binding or affecting any employer or class or section of employers in any industry or group of industries or the members of an industrial union employed by the same employer or class or section of employers.

Industrial Arbitration (Amendment).

6. Section sixteen of the Principal Act is amended as follows :— Amendment
of s. 16.

(a) Omit subsection one and substitute therefor the following :—

5 (1) Industrial boards shall, on the recommendation of the court, be constituted by the Minister for any industry or division of any industry, or any combination, arrangement, or grouping of industries, as the Minister
10 on the recommendation of the court may direct.

(b) In subsection two omit “for all of the boards which may be constituted under each of the board designations mentioned in the first
15 column of Schedule One” and insert the words “for any one or more of the boards which may be recommended for constitution”.

(c) In subsection three insert at the end of the subsection the words “from persons nominated
20 by the employers and by the industrial unions of employees concerned respectively”.

7. Section seventeen of the Principal Act and Schedules One and Two of such Act are repealed. Repeal of s. 17
and Schedules
One and Two.

8. Subsection one of section twenty-four of the Principal Act is amended by the substitution for
25 paragraph (g) of the subsection of the following paragraph :— Amendment
of s. 24.

(g) declaring that preference of employment shall be given to the members of any industrial
30 union of employees. An industrial union or members thereof shall be entitled to such preference, if no other industrial union is also registered in respect of the same industry, so long as such industrial union be not involved
35 in any strike;

and by the addition to it of the following new paragraphs after paragraph (g) :—

(h) declaring with regard to such industries or
35 callings that an authorised representative of any union shall have the powers of an inspector under this Act;

(i)

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- (i) abrogating or varying absolutely or conditionally contracts of service or for labour, including contracts of apprenticeship, made at any time before or after the commencement of this Act in any case in which the board is satisfied that the intention or effect of such contracts is to defeat the terms of any award or the operations of the board ;
- (j) giving such retrospective effect as may be right, fair, and honest, or as may be consented to by the parties to the whole or any part of its award ;

9. Section twenty-six of the Principal Act is repealed and the following is substituted for it :—

Amendment
of s. 26.

26. Employees of the Crown, that is persons employed in any capacity whatsoever, and whether on salary or wages or at piece-work rates, by the Government of New South Wales through the Public Service Board, or any Minister, Trust, Commission, or Board exercising executive or administrative functions on behalf of the Government of the State, including the Chief Commissioner for Railways and Tramways, the Sydney Harbour Trust, the Metropolitan Board of Water Supply and Sewerage, the Water Conservation and Irrigation Commission constituted under the Irrigation (Amendment) Act, 1916, and, the Hunter District Board of Water Supply and Sewerage, shall be paid rates and prices not less than the highest rates and prices prescribed by awards or industrial agreements to be paid to workers of the same industrial class who are not employees of the Crown ; or if there be no such awards or agreements not less than the rates and prices prescribed by awards under the authority of the Commonwealth Conciliation and Arbitration Act, 1904-1914, or of any Act amending the same and operating within the State. This provision shall apply at all times, and notwithstanding the fact that rates may previously have been specially fixed by the court or a board, for any of such first-mentioned employees.

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5 The court or an industrial board shall not fix rates and prices for employees of the Crown lower than those fixed for persons of the same industrial class who are not employees of the Crown, notwithstanding the fact that the employment of such first-mentioned employees is permanent or that additional privileges are ordinarily allowed to them.

10 The provisions of this section may be enforced in the same manner as if they were the provisions of an award for each industry.

10. Section twenty-seven of the Principal Act is amended as follows:— Amendment of s. 27.

- (a) After "award" where occurring in subsection one insert the words "or industrial agreement".
- 15 (b) After "registrar" where occurring in subsections two and five insert the words "or an industrial magistrate"; and after the word "registrar" where occurring in subsection three insert the words "or industrial magistrate".
- 20 (c) Insert the following new subsection next after subsection five:—

(6) Any person affected by the permit who pays or receives a less sum than that authorised by such permit or otherwise offends against its conditions shall be liable to a penalty as for a breach of an award.

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11. The following new section is inserted after section twenty-nine of the Principal Act:— New s. 29A.

30 29A. On and after the publication of an award declaring that preference of employment in any industry shall be given to members of an industrial union of employees, all persons not members of such union, but by the nature of their employment qualified to be members thereof, who may then be or may subsequently become during the operation of such award employed in the said industries, shall be liable to pay in full to the said union the amount of the entrance fee and annual subscription provided by the rules of the union to be paid on account of membership in such union; and the court or an industrial

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Obligations following preference.

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- industrial or other magistrate shall, upon application made by the secretary of the union in the manner prescribed, make an order directing such persons to pay the full amount of such entrance fee and subscription to the said union: Provided that if any person so liable shall have once paid the amount of entrance fee for such union his liability hereunder shall be reduced to a liability for the amount of annual subscription only.
- 5
- 10 **12.** Section thirty-one of the Principal Act is amended by omitting from subsection two, paragraph (a), the words "of not less than twenty employees". Amendment of s. 31.
- 13.** After section thirty-two of the Principal Act add a new section as follows:— New s. 32A.
- 15 **32A.** No application to a board shall be refused because of a similar application having previously been made and dealt with by the board or because of the rule of courts of law that it is for the public good that there should be an end to litigation. Reasons for refusing applications.
- 20 **14.** Paragraph (c) of section thirty-six of the Principal Act is amended by inserting after "may" the words "with the consent of the chairman". Amendment of s. 36.
- 15.** Section forty-eight of the Principal Act and the short heading thereto are repealed and the following is substituted:— Amendment of s. 48.
- 25 **48.** Any employees of the Crown, as defined by section twenty-six, who appear to have been or to be engaged or actively concerned in a strike against the Crown as employer may by order of the court be deprived of all or any of the rights and privileges to which, by the terms of their appointment or the rules of the service or any Act of Parliament or award, they may be or may become entitled, including rights of seniority, promotion, and gratuity, and the same shall not be restored to them or any of them except by a further order or orders of the court: Provided that no such order of deprivation shall in any case have effect for any greater period than three years.

Industrial Arbitration (Amendment).

16. Section fifty of the Principal Act is amended as follows :— Amendment of s. 50.

Omit subsection two and substitute the following :—

5 (2) Where on making such order it appears that the breach complained of relates to the failure of the defendant to pay in full, at due date, any wages (including wages for overtime) or other earnings due to an employee for any specific period or work, at the rate or price fixed by the award or agreement, the registrar or magistrate shall thereupon direct the defendant to produce proof of the payments made by him to such employee for the period of his service or varied services under the award or agreement not exceeding one year prior to the date of such direction, and if upon such proof it appear that the defendant has failed to pay in full in money to such employee the price or rate fixed for his said service or varied services by the said award or agreement, the registrar or industrial magistrate shall without motion order that the amount of wages or earnings so unpaid to such employee shall be paid into court on behalf of such employee. Every such order shall have the effect of a judgment of the court in favour of such employee, and shall be a bar to proceedings under this section in respect of the wages or earnings affected.

30 **17.** Section fifty-four of the Principal Act is amended by the omission of the words "forty-four, forty-six, forty-seven," and by the addition to the section of a third subsection to read as follows :— Amendment of s. 54.

35 (3) Whenever during the course of proceedings brought before him under the provisions of sections forty-nine, fifty, fifty-three, or sixty-one, the registrar or an industrial magistrate is called upon to determine any question of law, or of mixed law and fact, he shall, irrespective of the result of such proceedings, record such question, and his determination thereupon, and shall forthwith transmit the

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Industrial Arbitration (Amendment).

the record so made by him to the Minister for publication in the Industrial Gazette or for public reference in such other manner as the Minister may deem proper.

- 5 **18.** The following section is inserted next after New s. 69A.
section sixty-nine of the Principal Act:—

- 10 69A. No stamp duty shall be payable on or in Stamp duty not payable on certain instruments.
respect of any indentures of apprenticeship, assignment, certificate, agreement, order, statutory declaration, power of attorney, receipt for wages paid under awards, or other instrument executed in pursuance of or to give effect to the provisions of this Act.

Sydney : William Applegate Gullick, Government Printer.—1916.

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the price or rate fixed for his said services. [3] and to take into account the such employee such proof it appear that the defendant has prior to the date of such duration, and if upon award or agreement not exceeding one year of his service or varied services under the made by him to such employee, for any period

10 of his service or varied services under the award or agreement not exceeding one year prior to the date of such duration, and if upon such proof it appear that the defendant has varied services by the said award or agreement,

the registrar or industrial magistrate shall without motion order that the amount of wages or earnings so unpaid to such employee shall be paid into court on behalf of such employee, or earnings so unpaid to such employee shall

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