

INDUSTRIAL ARBITRATION (AMENDMENT) ACT, 1985, No. 7

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ



Act No. 7, 1985.

An Act to amend the Industrial Arbitration Act, 1940, with respect to summonses, appeals and the recovery of wages, and in certain other respects. [Assented to, 27th March, 1985.]

Industrial Arbitration (Amendment) 1985

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

Short title.

1. This Act may be cited as the "Industrial Arbitration (Amendment) Act, 1985".

Commencement.

2. (1) Except as provided by subsections (2) and (3), this Act shall commence on the date of assent to this Act.

(2) The several provisions of Schedules 1–4 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(3) Section 5, in its application to a provision of Schedules 1–4, shall commence on the day on which the provision commences.

Principal Act.

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

Schedules.

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO SUMMONSES.

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO APPEALS.

SCHEDULE 3.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO RECOVERY OF WAGES.

SCHEDULE 4.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

Amendment of Act No. 2, 1940.

5. The Industrial Arbitration Act, 1940, is amended in the manner set forth in Schedules 1–4.

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SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO SUMMONSES.

(1) (a) Section 14 (7)—

Omit “, administer oaths, and take affidavits and”, insert instead “for any one or more of the purposes referred to in section 79A (2), may administer oaths, may take affidavits and may”.

(b) Section 14 (7)—

Omit “Every person so summoned shall be bound to attend upon such summons and shall for disobedience thereto be liable to a penalty not exceeding \$500.”.

(2) (a) Section 25 (1)—

After “person to”, insert “attend”.

(b) Section 25 (2)—

Omit the subsection.

(3) Section 31 (c)—

Omit the paragraph, insert instead:—

(c) to summon a person for any one or more of the purposes referred to in section 79A (2).

(4) Section 77 (1)—

Omit the subsection, insert instead:—

(1) The chairman of a committee or tribunal shall require any person, including a member of the committee or tribunal, to give evidence on oath and a committee or tribunal may summon a person for any one or more of the purposes referred to in section 79A (2).

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO SUMMONSES—*continued.*

(5) Section 77C—

Omit the section, insert instead:—

Conference with committee or tribunal.

77C. A committee or tribunal may confer with any person as to anything affecting the settlement of an industrial matter or a matter arising under a contract to which Part VIIIA applies.

(6) Section 79A—

After section 79, insert:—

Signature and issue of, and obedience to, a summons.

79A. (1) Where, by a provision of this Act, a body or person is authorised to summon a person, the summons—

- (a) shall be a summons for such purpose or purposes referred to in subsection (2) as is or are specified by the provision conferring that authority;
- (b) shall be signed as provided by subsection (3); and
- (c) shall be issued by the registrar.

(2) The purposes for which a summons under subsection (1) may be issued are—

- (a) to attend and confer;
- (b) to attend and give evidence; or
- (c) to attend and produce documents.

(3) A summons shall be signed—

- (a) where it is a summons by the commission—by a member of the commission or by the registrar;

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO SUMMONSES—*continued.*

- (b) where it is a summons by a body other than the commission—by the person who presides at a sitting of the body or by the registrar;
- (c) where it is a summons by any other person—by that person or, where that person is not the registrar, by the registrar;
or
- (d) where the regulations provide for signature of the summons by another person—by that person.

(4) A person who—

- (a) fails to comply with the requirements of a summons; or
- (b) where the summons is, or includes, a summons to attend and confer—leaves the conference without the permission of the person presiding at the conference,

is liable to a penalty not exceeding \$500.

(7) (a) Section 91M (1)—

Omit “a conference”, insert instead “attend and confer”.

(b) Section 91M (2)—

Omit the subsection.

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SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO APPEALS.

(1) (a) Section 26—

Omit “or award”, insert instead “, award or decision”.

(b) Section 26—

Omit “award or”, insert instead “award, decision or”.

(2) Section 30B (1) (c)—

After “this Act”, insert “, the Annual Holidays Act, 1944, the Long Service Leave Act, 1955, the Long Service Leave (Metalliferous Mining Industry) Act, 1963,”.

SCHEDULE 3.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO RECOVERY OF WAGES.

(1) (a) Section 92 (2A)–(2E)—

After section 92 (2), insert:—

(2A) Where—

(a) work is done by an employee for an employer;

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SCHEDULE 3—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO RECOVERY OF WAGES—
continued.

- (b) a price or rate is not fixed by an award or industrial agreement, or by the conditions of a permit issued under section 89, for that work done by that employee; and
- (c) a price or rate for work of that kind done otherwise than by that employee is fixed by an award or industrial agreement, or by the conditions of a permit issued under section 89, being an award, agreement or permit that is applicable to—
 - (i) other work done by that employee; or
 - (ii) the same work done by that employee in different circumstances,

under the contract of employment with the employer,

the employee may apply in the manner prescribed for the purposes of subsection (2) to an industrial magistrate for leave to recover remuneration for the work.

(2B) Leave under subsection (2A) shall not be granted unless the industrial magistrate is of the opinion that, in the circumstances, it would be just and equitable for the employer to remunerate the employee for the work, or any of the work, to which the application for leave relates and, if leave is granted, the industrial magistrate shall specify the work to which the leave relates.

(2C) Where leave is granted under subsection (2A), the industrial magistrate shall—

- (a) fix a price or rate for the work to which the leave relates, being a price or rate referred to in subsection (2A) (c); and

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SCHEDULE 3—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO RECOVERY OF WAGES—
continued.

- (b) treat the application for leave as an application for an order under subsection (2) in relation to the work to which the leave relates.

(2D) For the purposes of subsections (1) and (2C) (b), work in relation to which leave is granted under subsection (2A) shall be deemed to be—

- (a) work that the employer employed the employee to do; and
- (b) work for which the price or rate has been fixed by an award or industrial agreement, or by the conditions of a permit issued under section 89, that price or rate being the price or rate fixed under subsection (2C) (a).

(2E) A price or rate fixed under subsection (2C)—

- (a) has effect only in relation to the application pursuant to which it is fixed; and
- (b) is not an award within the meaning of this Act.

(b) Section 92 (4A)—

After “(2)”, insert “, (2A)”.

(c) Section 92 (4A)—

Omit “such award or industrial agreement relates”, insert instead “the proceedings relate”.

(2) Section 93 (4B)—

After section 93 (4A), insert:—

(4B) Evidence given in proceedings under section 92 (2A) is not admissible against an employee in proceedings under this section.

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SCHEDULE 4.

(Sec. 5.)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

(1) (a) Section 10A (1)—

Omit “in any proceedings in any court”.

(b) Section 10A (3)—

After section 10A (2), insert:—

(3) Except in proceedings instituted, heard and determined under section 8 (8) independently of any other proceedings, registration of an industrial union is conclusive evidence that all conditions and preliminary steps precedent to that registration have been complied with and performed.

(2) (a) Section 18 (2)—

Omit “such an equal number of representatives of employers and employees respectively as are appointed by the commission and upon nomination as prescribed”, insert instead “an equal number, determined by the commission, of representatives of employers and employees respectively who are nominated as prescribed and appointed by the registrar”.

(b) Section 18 (2)—

Omit “as prescribed” where secondly occurring.

(c) Section 18 (3), (8)—

Omit “commission” wherever occurring, insert instead “registrar”.

(d) Section 18 (3)—

Omit “it”, insert instead “the registrar”.

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SCHEDULE 4—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) Section 30A—

At the end of the section, insert:—

(2) No proceedings before the commission shall be open to objection on the ground that a merely declaratory order or award is sought thereby, and the commission may make binding declarations of right whether or not any consequential relief is, or could be, sought.

(4) Section 31 (b)—

Omit “on application made to it”, insert instead “in proceedings commenced before it in the same way as proceedings for the exercise of its jurisdiction under section 30”.
