

INDUSTRIAL ARBITRATION AND
WORKERS' COMPENSATION
(AMENDMENT) ACT.

Act No. 36, 1938.

George VI.
No. 36, 1938. An Act to make further provisions in relation to the constitution of the Industrial Commission of New South Wales and The Workers' Compensation Commission of New South Wales; to make provisions in relation to the investigation of the rents of certain premises and of the prices of certain commodities and in relation to the fixation of the prices of certain products, commodities and services; to validate certain matters; to amend

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amend the Industrial Arbitration Act, 1912-1935, the Industrial Arbitration (Amendment) Act, 1926, the Workers' Compensation Act, 1926-1929, and certain other Acts in certain respects; and for purposes connected therewith [Assented to, 22nd December, 1938.]

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

PART I.

PRELIMINARY.

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

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

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

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

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

PART I.—PRELIMINARY.

PART II.—AMENDMENTS OF THE INDUSTRIAL ARBITRATION ACTS.

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

PART

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PART II.

AMENDMENTS OF THE INDUSTRIAL ARBITRATION ACTS.

Commence-
ment.

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

Amendment
of Act No.
14, 1926.

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

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

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

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

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

Amendment
of Act No.
17, 1912.

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

Sec. 82.
(Prices.)

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

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

(c1) To investigate and report on any matter referred to it by the Minister as to the rents or increases in rents of premises which are leased or let, either wholly or partially, as dwelling-houses, or as shops, or partly as a dwelling-house and partly as a shop, or of any class of such premises defined by the Minister in the reference; and for the purposes of such reference a class may be defined in relation to the rental of the premises, the value of the premises, the purpose or mode of user of the premises, the locality in which the premises are situate, or any other circumstance whatsoever;

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

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

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

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

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

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

(Regulations
—valida-
tion.)

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

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

PART III.

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

Commence-
ment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 32.
(Body
corporate.)

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

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

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

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

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

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

Retiring
members.

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

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

Proceedings
pending.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Notice of
election.

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

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

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

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

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

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

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

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

.....
do hereby state as follows:—

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

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

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

Dated this day of 19

.....
(Signature)

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

.....
(Signature of witness.)

.....

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

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

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



MEDICAL