

APPRENTICES (WAR SERVICE) ACT.

Act No. 35, 1939.

An Act to make certain provisions in relation to apprentices and trainee apprentices who are absent from their usual employment owing to war service; to amend the Apprentices Act, 1901, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 13th November, 1939.]

George VI.
No. 35, 1939.

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. (1) This Act may be cited as the "Apprentices (War Service) Act, 1939."

Short title
and com-
mencement.

(2) This Act shall be read and construed with the Industrial Arbitration Act, 1912, as amended by subsequent Acts.

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

2. This Act shall extend to and be binding upon the Crown.

Crown
bound.

3. (1) A reference in any provision of this Act to the apprenticeship council shall, in the application of that provision to and in respect of a particular apprentice or trainee apprentice, be construed as a reference to the apprenticeship council constituted for the industry in which the apprentice or trainee apprentice is engaged, or if no apprenticeship council is constituted for that industry such apprenticeship council as the Industrial Registrar may nominate for the purpose.

Inter-
pretation.

(2)

No. 35, 1939.

(2) In this Act the expression "war service" shall have the meaning ascribed to that expression in the Defence Act, 1903-1939, of the Commonwealth of Australia.

Suspension of contract during war service.

4. Where an apprentice or trainee apprentice, whether before or after the commencement of this Act, is or has been absent from his usual employment owing to war service for a period of more than one week, his contract of apprenticeship or contract of employment as the case may be, shall be deemed to have been and to be suspended during the period of such absence and shall remain suspended until it is revived or cancelled in accordance with the provisions of this Act.

Revival of contract of apprenticeship.

5. (1) Where an apprentice has been absent from his usual employment owing to war service for a period which does not exceed four months at any one time, the contract of apprenticeship shall be revived immediately after the expiry of such period and in such case the period during which the apprentice was so absent shall not be taken into account as portion of the term of his apprenticeship.

(2) (a) An apprentice, who has been absent from his usual employment owing to war service for any period which exceeds four months at any one time, may within two months after the expiry of that period make application for the revival of his contract of apprenticeship.

(b) Such application shall be in writing and shall be sent to or lodged with the Industrial Registrar, who shall refer the application to the apprenticeship council for hearing and determination and shall notify the master of the receipt of the application and the reference.

(c) The Industrial Registrar shall notify the apprentice and the master of the date fixed for the hearing of such application.

(d) Upon the hearing of the application the apprenticeship council shall, subject to paragraph (f) of this subsection, order that the contract of apprenticeship shall as from a date to be specified in the order be revived. The apprenticeship council may by such order

vary

vary the provisions of the contract of apprenticeship in such manner and to such extent as it may deem just and equitable.

(e) As from the date specified in such order, the contract of apprenticeship shall be revived and shall have effect subject to the variations, if any, made by the order.

(f) No such order for the revival of a contract of apprenticeship shall be made by the apprenticeship council if the master proves to the satisfaction of the apprenticeship council that he no longer possesses the facilities for the proper training of the apprentice or that he no longer employs the requisite number of journeymen to warrant the re-employment of the apprentice.

(g) Where, pursuant to paragraph (f) of this subsection the contract of apprenticeship is not revived the apprenticeship council shall, at the request of the master, make an order cancelling the contract and such order shall have effect accordingly.

6. (1) A trainee apprentice who has been absent from his usual employment owing to war service for a period of more than one week may make application for the revival of his contract of employment.

Revival of
contract—
trainee
apprentice.

(2) Such application shall be in writing and shall be sent to or lodged with the Industrial Registrar—

- (a) where the period of such absence does not exceed four months at any one time—within two weeks after the expiration of that period;
- (b) where the period of such absence exceeds four months at any one time—within two months after the expiration of that period.

(3) The Industrial Registrar shall refer the application to the apprenticeship council for hearing and determination, and shall notify the trainee employer of the receipt of the application and the reference.

(4) The Industrial Registrar shall notify the trainee apprentice and the trainee employer of the date fixed for the hearing of such application.

(5)

Apprentices (War Service) Act.

No. 35, 1939.

(5) Upon the hearing of the application the apprenticeship council shall, subject to subsection seven of this section, order that the contract of employment shall, as from a date to be specified in the order, be revived. The apprenticeship council may, by such order, vary the provisions of the contract of employment in such manner and to such extent as it may deem just and equitable.

(6) As from the date specified in such order, the contract of employment shall be revived and shall have effect subject to the variations, if any, made by the order.

(7) No such order for the revival of a contract of employment shall be made by the apprenticeship council if the trainee employer proves to the satisfaction of the apprenticeship council that he no longer possesses the facilities for the proper training of the trainee apprentice or that he no longer employs the requisite number of journeymen to warrant the re-employment of the trainee apprentice.

(8) Where, pursuant to subsection seven of this section, the contract of employment is not revived, the apprenticeship council shall, at the request of the trainee employer, make an order cancelling the contract, and such order shall have effect accordingly.

Failure to
make
application.

7. (1) If any apprentice fails to make the application referred to in section five of this Act within the time prescribed in that section the apprenticeship council shall, on application by the master, cancel the contract of apprenticeship unless the apprenticeship council is satisfied that the failure to give such notice was occasioned by mistake, absence from the State or other reasonable cause.

(2) If any trainee apprentice fails to make the application referred to in section six of this Act within the time prescribed in that section the apprenticeship council shall, on application by the trainee employer, cancel the contract of employment unless the apprenticeship council is satisfied that the failure to give such notice was occasioned by mistake, absence from the State or other reasonable cause.

8.

8. The apprenticeship council shall, in the consideration of any application made under this Act, have due regard to the interests both of the apprentice or trainee apprentice, and of the master or trainee employer, as the case may be, and, in deciding whether or not the period during which the apprentice or trainee apprentice was absent from his usual employment owing to war service or any part of such period shall be taken into account as portion of his term of apprenticeship or his term as a trainee apprentice, the apprenticeship council may take into consideration the nature of the war service and the extent to which it might be of value in relation to the training in the particular industry in which the apprentice or trainee apprentice is engaged.

No. 35, 1939.

Interests of employer and employee to be considered.

9. (1) Subject to the provisions of any award made after the commencement of this Act—

Number or proportion of apprentices and trainee apprentices.

(a) a master may, during the suspension of a contract of apprenticeship under this Act, make application to the apprenticeship council for permission to take and employ another apprentice in the place of the one whose contract of apprenticeship has been suspended;

(b) in determining the number of apprentices, or proportion of apprentices to journeymen under any award or industrial agreement made prior to the commencement of this Act, any apprentice whose contract of apprenticeship has been suspended under this Act shall, during the period of such suspension, be excluded; and any journeyman absent from his employment on war service, but entitled to return thereto on the termination of such war service, and not temporarily replaced, shall be regarded as a journeyman in the employment of the master.

(2) The provisions of subsection one of this section shall apply, mutatis mutandis, to and in respect of a trainee apprentice and his employer, in the same manner and to the same extent as those provisions apply to and in respect of an apprentice and his master; and for the purposes of such application a reference to a contract of apprenticeship shall be construed as a reference to a contract of employment.

Apprentices (War Service) Act.

No. 35, 1939.

Right to
employment.

10. (1) (a) Where a contract of apprenticeship or a contract of employment is revived by or under this Act the apprentice or trainee apprentice shall be entitled to resume his employment under the contract and shall have absolute preference in such employment over any apprentice or trainee apprentice who may have been engaged during his absence owing to war service.

(b) Any master or trainee employer who refuses to permit such apprentice or trainee apprentice to resume his employment shall be liable to a penalty not exceeding fifty pounds.

(2) Where a contract of apprenticeship or a contract of employment is revived by or under this Act the apprenticeship council may, if it considers it necessary so to do in order to protect the interests of any apprentice or trainee apprentice engaged during the period in which such contract was suspended, exempt the master or trainee employer, as the case may be, from any provision of any award or industrial agreement which limits the number of apprentices or trainee apprentices who may be employed by such master or trainee employer.

Jurisdic
tion of
apprentice-
ship
council.

11. From and after the commencement of this Act—

- (a) the jurisdiction and powers of justices under the provisions of the Apprentices Act, 1901, relating to the assignment of indentures of apprenticeship, the discharge of apprentices from the service of their masters, the cancellation of indentures of apprenticeship or assignments thereof and the settlement of differences or disputes between master and apprentice arising under any indenture or assignment, other than the imposition of fines, shall be vested in and exercised exclusively by the appropriate apprenticeship council constituted under the Industrial Arbitration (Amendment) Act, 1932;
- (b) the jurisdiction and powers of justices under the provisions of the Apprentices Act, 1901, relating to the imposition of fines for any proved misconduct or breach of contract shall be vested in and exercised exclusively by industrial magistrates.

12.

12. (1) Any penalty imposed by this Act may be recovered summarily before an industrial magistrate appointed under the Industrial Arbitration Act, 1912, as amended by subsequent Acts. No. 35, 1939.
Penalties.

(2) The provisions of the Industrial Arbitration Act, 1912, and of any Act amending that Act, and the regulations made thereunder relating to proceedings for the recovery of a penalty before an industrial magistrate and to appeals from any decision in any such proceedings to the Industrial Commission of New South Wales shall apply, mutatis mutandis, to proceedings for the recovery of any penalty under this section.

13. (1) An appeal shall lie to the Industrial Commission of New South Wales from any order made by the apprenticeship council under this Act. Appeal.

(2) An apprenticeship council or the Apprenticeship Commissioner may submit any question arising on any application made under this Act to the Industrial Commission of New South Wales for its opinion and direction.

(3) The provisions of the Industrial Arbitration Act, 1912, and of any Act amending that Act and the regulations made thereunder, relating to appeals from apprenticeship councils to the Industrial Commission of New South Wales, shall apply, mutatis mutandis, to appeals under this section.
