

[CONFIDENTIAL]

(Rough Draft for Consideration Only.)

No. , 1942.

A BILL

To provide for the reconstitution of the Industrial Commission of New South Wales, and for the appointment of not more than five conciliation commissioners; for these and other purposes to amend the Industrial Arbitration Act, 1940, as amended by subsequent Acts; and for purposes connected therewith.

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. (1) This Act may be cited as the "Industrial Arbitration (Amendment) Act, 1942."

Short title,
citation
and com-
mencement:

Industrial Arbitration (Amendment).

(2) The Industrial Arbitration Act, 1940, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

(3) The Industrial Arbitration Act, 1940, as amended by subsequent Acts and by this Act, may be cited as the Industrial Arbitration Act, 1940-1942.

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

10 2. The Principal Act is amended—

Amendment of Act No. 2, 1940. Sec. 5. (Definitions.)

15 (a) (i) by omitting from the definition of "Employee" in section five the words "or any vehicle used in the delivery of goods," and by inserting in lieu thereof the words "or as an outworker, or is working as a salesman, canvasser, collector, commercial traveller, insurance agent or in any other capacity in which he is paid wholly or partly by commission";

20 (ii) by omitting from paragraph (e) of the definition of "Industrial matters" in the same section, the words "but not so as to give preference of employment to members of industrial unions, except in accordance with the provisions of paragraph (g) of subsection one of section twenty of this Act";

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

30 (c1) a claim that as between members of any industrial union or unions of employees and other persons offering or desiring service or employment at the same time preference shall be given to such members;

35 (iv) by inserting after the definition of "Minister" in the same section the following new definition:—

40 "Outworker" means a person to whom articles or materials are given out to be made

cf. Act No. 15, 1926, s. 6 (1).

Industrial Arbitration (Amendment).

5 made up, cleaned, washed, altered, ornamented, finished, or repaired or adapted for sale, in his own home or on other premises not under the control or management of the person who gave out the materials or articles.

(v) by inserting at the end of the same section the following new subsections:—

10 (2) A person who is engaged in plying for hire or in the delivery of goods with any vehicle or vessel the use of which is obtained by that person under a contract of bailment (other than a hire purchase agreement) in consideration of the payment of a fixed sum or a share in the earnings or otherwise shall, where the work in which such person is so engaged is work for which, by an award or industrial agreement, a price or rate has been fixed for persons performing such work, be deemed, for the purposes of this Act, to be an employee employed by the person from whom the use of the vehicle or vessel is so obtained, and such last mentioned person shall, for the purposes of this Act, be deemed to be the employer of such employee.

cf. Act No. 15, 1926, s. 6 (11).

30 (3) In any case where four or more persons (in this subsection referred to as the "contractors"), being or alleging themselves to be partners working in association in any industry, enter into a contract for the performance of any work for which, by an award or industrial agreement, a price or rate has been fixed for persons performing such work, and the contractors or any of them engage personally in the performance of the work (whether with or without the assistance of other persons employed by them) then for the purposes of

Industrial Arbitration (Amendment).

5 of this Act each of the contractors who so
engage in the performance of the work shall
be deemed to be an employee and the person
with whom the contract was entered into
shall, for the purposes of this Act, be
deemed to be the employer of any such
employee, unless such contractor or person
establishes to the satisfaction of the tribunal
in which proceedings for a breach of the
award or industrial agreement are instituted
10 that the contract was a bona fide
contract and was not entered into for the
purpose of avoiding the operation of the
award or industrial agreement.

15 (4) (a) Where any person (in this sub-
section referred to as "the principal")
advertises or otherwise notifies that he will
accept timber delivered or supplied to him
or his agent or other person in accordance
20 with such advertisement or notification or
advertises or otherwise notifies to the
abovementioned effect, any person (herein-
after referred to as the "contractor") who
gives notice to the principal that he will
25 deliver or supply such timber or any part
thereof, such contractor, whilst engaged in
or about the work of cutting, delivering or
supplying such timber or part thereof shall,
for the purposes of this Act, be deemed to
30 be an employee employed by the principal,
and the principal shall, for the purposes of
this Act, be deemed to be the employer of
such contractor.

35 Notice of intention to deliver or supply
timber as aforesaid shall indicate the
nature of the actual work to be undertaken.

The notice may be given personally or
by letter posted to the principal at his place
of business or usual address.

(b)

Industrial Arbitration (Amendment).

(b) For the purposes of this subsection:—

- 5 “Timber” includes sleepers, piles, poles, girders, logs or pit timber;
- 5 “Cutting” includes felling, sawing, obtaining, preparing or doing any work in connection with timber.

(b) by omitting the proviso to subsection three of section eight.

10 **3.** (1) The Principal Act is further amended—

Sec. 8.
(Registration of industrial union of employees.)
Further amendment of Act No. 2, 1940.
Sec. 14.
(Industrial commission.)

- (a) by omitting from subsection one of section fourteen the words “not more than six” and by inserting in lieu thereof the word “three”;
- 15 (b) by omitting from the same subsection the words “by his commission”;
- 20 (c) by omitting from subsection two of the same section the words “The persons who, immediately before the commencement of this Act, were President and other members of the industrial commission of New South Wales as constituted immediately before the commencement of this Act shall continue to hold office as President and member of the commission under this Act”;
- 25 (d) by omitting subsection four of the same section;
- 25 (e) by omitting from subsection six of the same section the words “of two or more of them”;
- 30 (f) (i) by omitting from subsection seven of the same section the words “the conciliation commissioner” where firstly occurring and by inserting in lieu thereof the words “a conciliation commissioner”;
- 35 (ii) by omitting from the same subsection the words “The conciliation commissioner, committee or” wherever occurring and by inserting in lieu thereof the words “A conciliation commissioner or committee or the”;

(g)

Industrial Arbitration (Amendment).

- (g) (i) by omitting from paragraph (a) of subsection eight of the same section the words "as arranged by the President";
- (ii) by omitting paragraph (c) of the same subsection.
- 5 (h) by omitting from subsection ten of the same section the word "commissioner" and by inserting in lieu thereof the word "commissioners";
- (2) (a) The persons who, immediately before the
- 10 commencement of this Act were members of the industrial commission of New South Wales shall, as from such commencement cease to hold office as such members, but shall be eligible for appointment under the Principal Act as amended by this Act as members.
- 15 (b) Any such person who is not so appointed shall be eligible for appointment to any other office in the State having the like rank, title, status and precedence and the like salary, pension and other rights as those attaching to his office immediately before the commence-
- 20 ment of this Act.
- (c) If any such person is not appointed pursuant to paragraph (a) or paragraph (b) of this subsection he shall retain the rank, title, status and precedence and the salary, pension and other rights to which he
- 25 would have been entitled if that Act had not been enacted; and shall, at all times, hold himself available for appointment to act temporarily as a member of the commission or for appointment as an acting judge of the Supreme Court.
- 30 This paragraph shall not apply to and in respect of any such person who refuses, without just cause, to accept appointment pursuant to paragraph (a) or paragraph (b) of this subsection.

4. (1) The Principal Act is further amended—

- 35 (a) (i) by omitting subsection one of section fifteen and by inserting in lieu thereof the following subsections:—

(1) The Governor may appoint not more than five persons each of whom shall be a conciliation

Further amendment of Act No. 2, 1940.
 Sec. 15.
 (Conciliation commissioner.)

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Industrial Arbitration (Amendment).

conciliation commissioner, and may appoint one of the conciliation commissioners to be the senior conciliation commissioner.

5 (1A) (a) The conciliation commissioners, other than the senior conciliation commissioner, shall have seniority according to the dates of their appointments, or, where the appointments of two or more of them were made on the same date, according to such order of precedence as may be assigned to them by the Governor.

10 (b) In the case of the absence of the senior conciliation commissioner or of his inability to perform the duties of his office, or in the case of any vacancy in the office of senior conciliation commissioner, all the duties and powers of the senior conciliation commissioner shall devolve upon the conciliation commissioner who is next in order of seniority.

15 (1B) A conciliation commissioner shall be chairman of each committee.

The senior conciliation commissioner shall, from time to time, determine the committees of which each conciliation commissioner is to be chairman.

25 (ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection:—

30 (2) Each conciliation commissioner shall be paid such salary as the Governor may determine.

(iii) by omitting from subsection three of the same section the word "The" and by inserting in lieu thereof the word "A";

35 (iv) by omitting from subsection four of the same section the word "The" where firstly occurring and by inserting in lieu thereof the word "A";

Industrial Arbitration (Amendment).

- 5 (v) by omitting from paragraph (b) of the same subsection the words "The commissioner suspended" and by inserting in lieu thereof the words "A conciliation commissioner suspended";
- (vi) by omitting from the same paragraph the words "the commissioner" wherever occurring and by inserting in lieu thereof the words "such conciliation commissioner";
- 10 (vii) by omitting from subsection five of the same section the word "The" where firstly occurring and by inserting in lieu thereof the word "A";
- 15 (viii) by omitting subsection six of the same section;
- (b) by omitting from section sixteen the words "the conciliation commissioner" wherever occurring and by inserting in lieu thereof the words "a conciliation commissioner";
- 20 (c) by inserting after section seventeen the following new section:—
 - 17A. (1) The Minister may appoint any person to be a special conciliation commissioner.
 - (2) Where a special conciliation commissioner is of the opinion that an industrial dispute has arisen or is threatened or impending he may require the attendance of any persons to meet in conference. At such conference the special conciliation commissioner shall preside and endeavour to induce the parties to come to an agreement.
 - (3) If any person so required to attend does not attend in conference as aforesaid he shall be liable to a penalty not exceeding fifty pounds.
- 35 (d) (i) by inserting next after subsection one of section eighteen the following new subsection:—
 - 40 (1A) (a) In the establishment of a committee no exception shall be made from the industry

Sec. 16. (Additional conciliation commissioners.)

New sec. 17A.

Special conciliation commissioner.

Sec. 18. (Conciliation committees.)

Industrial Arbitration (Amendment).

5 industry or calling or combination, arrangement or grouping of industries or callings for which the committee is established, which will have the effect of excluding the employees of any one or more specified employers or any one or more specified groups of employers engaged in such industry or calling or combination, arrangement or grouping of industries or callings, unless such employees are engaged in an industry or calling or combination, arrangement or grouping of industries or callings for which some other committee is established.

15 (b) Where, in the establishment of any committee which is in existence at the commencement of the Industrial Arbitration (Amendment) Act, 1942, any exception was made which contravenes the provisions of paragraph (a) of this subsection, then, as from such commencement, the instrument establishing such committee shall be read and construed as if such exception were omitted therefrom, and the committee shall, after such commencement, be deemed to be established accordingly.

20 The Minister shall, as soon as practicable after such commencement, make such alterations and amendments of the instrument establishing such committee as may be necessary to give effect to this subsection.

30 (ii) by omitting from subsection two of the same section the words "the conciliation commissioner" and by inserting in lieu thereof the words "a chairman, who shall be one of the conciliation commissioners";

35 (iii) by inserting in the same subsection after the words "Such representatives" the words and symbols "(in this section hereinafter referred to as 'members')";

(e)

Industrial Arbitration (Amendment).

- (e) (i) by inserting at the end of subsection one of section nineteen the words "The person so appointed shall be one of the conciliation commissioners";
- 5 (ii) by omitting subsection two of the same section;
- (iii) by omitting subsections seven and eight of the same section.

Sec. 19. (Apprenticeship commissioners.)

10 (2) (a) The persons who immediately before the commencement of this Act held office as the conciliation commissioner and the apprenticeship commissioner respectively shall as from such commencement cease to hold office but each of such persons shall be eligible for appointment under the Principal Act as amended by 15 this Act, as a conciliation commissioner.

(b) If any such person is not so appointed he shall receive such compensation as he would have been entitled to had his services been dispensed with otherwise than according to law.

20 (3) The Principal Act is further amended by inserting next after section four the following new section:—

Further amendment of Act No. 2, 1940. New sec. 4A.

25 4A. (1) After the commencement of the Industrial Arbitration (Amendment) Act, 1942, a reference in any Act, award, industrial agreement, regulation or other instrument whatsoever, to the conciliation commissioner shall be construed as a reference to a conciliation commissioner appointed under section fifteen of this Act (as amended by the Industrial 30 Arbitration (Amendment) Act, 1942).

References in Acts, etc., and matters pending. cf. Act No. 39, 1932, s. 7 (2) (3).

35 (2) Any matter pending or part heard before the conciliation commissioner or the chairman of a committee at the commencement of the Industrial Arbitration (Amendment) Act, 1942, may be heard or continued before a conciliation commissioner appointed under section fifteen of this Act (as amended by the Industrial Arbitration (Amendment) Act, 1942).

Industrial Arbitration (Amendment).

5. The Principal Act is further amended—

Further amendment of Act No. 2, 1940. Sec. 20. (Original jurisdiction.)

- 5 (a) (i) by omitting from paragraph (a) of subsection one of section twenty the words "fifteen pounds" and by inserting in lieu thereof the words "twenty pounds";
- (ii) by omitting from the same paragraph the words "seven hundred and fifty pounds" and by inserting in lieu thereof the words "one thousand pounds";
- 10 (iii) by omitting from the same paragraph the words "the Hunter District Water Supply and Sewerage Board" and by inserting in lieu thereof the words "The Hunter District Water Board";
- 15 (iv) by omitting from paragraph (g) of the same subsection the words "other things being equal";
- (v) by omitting paragraphs (a) and (b) of subsection two of the same section;
- 20 (b) by inserting after section twenty-three the following new section:—
- 25 23A. (1) In every award or industrial agreement made or entered into after the commencement of the Industrial Arbitration (Amendment) Act, 1942, provision shall be made to the effect that while the award or industrial agreement continues in force, it shall not be lawful for any adult person to offer or seek service or employment or for an adult employee to continue in employment in the industry to which the award or industrial agreement relates unless he is a member of an industrial union of employees engaged in that industry or unless he gives an undertaking that he will apply for membership of such union within a period of one month from the date of the award or industrial agreement or the date of his employment whichever is the later date; and that it shall not be lawful for any person who has given such an undertaking to continue in employment
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New sec. 23A.

Compulsory unionism. I.C. & A. Act (N.Z.), s. 18.

after

Industrial Arbitration (Amendment).

after the expiration of the period of one month unless he has made such application.

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(2) Every award or industrial agreement in force at the commencement of the Industrial Arbitration (Amendment) Act, 1942, shall, upon the expiration of one month after that date, be deemed to have incorporated therein a provision to the effect that while the award or industrial agreement continues in force, it shall not be lawful for any adult person to offer or seek service or employment or for an adult employee to continue in employment in the industry to which the award or industrial agreement relates unless he is a member of an industrial union of employees engaged in that industry or unless he gives an undertaking that he will apply for membership of such union within a period of one month from the date of such commencement or the date of his employment whichever is the later date, and that it shall not be lawful for any person who has given such an undertaking to continue in employment after the expiration of the period of one month unless he has made such application.

(3) Every person who has given an undertaking, pursuant to any award or industrial agreement, to apply for membership of an industrial union, shall be entitled to become a member of that union on application made in accordance with its rules, and insofar as the rules of any industrial union are inconsistent with the provisions of this subsection they shall be null and void.

(4) If any employee is employed or continues in employment in contravention of any such provision as is referred to in subsection one or subsection two of this section such employment or continuance in employment shall be a breach of the award or industrial agreement in which the provision is made or deemed to be made.

(5)

Industrial Arbitration (Amendment).

5 (5) For the purposes of this section a person of the age of eighteen years or upwards and every other person who for the time being is in receipt of not less than the minimum rate of wages prescribed for adult workers by any award or industrial agreement, shall be deemed to be an adult.

10 (6) (a) Nothing contained in the foregoing provisions of this section shall affect the employment or continuance in employment of any person to whom a certificate is granted under this subsection.

15 (b) Any person who claims that he holds a conscientious belief which does not allow him to be a member of an industrial union of employees engaged in any industry may apply in the manner prescribed to an industrial magistrate to be granted a certificate that he is a conscientious objector.

cf. National Security (Conscientious Objectors) Regulations No. 80 of 1942.

20 (c) An applicant for a certificate as a conscientious objector who is dissatisfied with the order of an industrial magistrate on such application may, within twenty-one days after the determination of the matter before the industrial magistrate appeal to the commission in the manner prescribed. Such appeal shall be by way of rehearing and the commission may on such appeal, make such order as it deems fit.

25 (d) For the purposes of this subsection "conscientious belief" includes any conscientious belief whether the ground thereof is or is not of a religious character and whether the belief is or is not part of the doctrines of any religion.

35 (c) (i) by omitting subsections one to six inclusive and subsection ten of section twenty-four; (ii) by omitting from subsections seven, eight and nine the words "under this section" wherever occurring;

Sec. 24. (Powers of conciliation commissioner.)

(d)

Industrial Arbitration (Amendment).

- (d) (i) by omitting from subsection one of section twenty-five the word "The" where firstly occurring and by inserting in lieu thereof the word "A";

Sec. 25.
(Compulsory conferences.)
- 5 (ii) by omitting subsection four of the same section and by inserting in lieu thereof the following subsection:—

(4) If the parties are unable to come to an agreement the following provisions shall have effect:—

10 (a) where the conciliation commissioner is sitting alone he may make an order or award in relation to the question, dispute or difficulty, or may refer the question, dispute or difficulty to the commission; and any award so made shall have the like effect as an award made by a committee;

15 (b) where the members of the conciliation committee established for the particular industry concerned are summoned to sit with the conciliation commissioner they, together with the conciliation commissioner as chairman, may sit as a committee and may make an order or award in relation to the question, dispute or difficulty or may refer the question, dispute or difficulty to the commission.

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- (e) (i) by omitting from section twenty-six the word "The" where firstly occurring and by inserting in lieu thereof the word "A";

Sec. 26.
(Powers of conciliation commissioner.)

35 (ii) by omitting from the same section the words "at the request of any party he shall, or, of his own motion";

(iii) by omitting from the same section the words "but as assessors only and without vote" and by inserting in lieu thereof the words "and

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Industrial Arbitration (Amendment).

“and when so sitting they, together with the conciliation commissioner as chairman, shall constitute a committee”;

5 (iv) by omitting from the same section the words “the conciliation commissioner” where lastly occurring and by inserting in lieu thereof the words “a conciliation commissioner or a committee upon any matter referred under this section”;

10 (f) (i) by omitting from section twenty-seven the words “the conciliation commissioner” wherever occurring and by inserting in lieu thereof the words “a conciliation commissioner or a committee”;

Sec. 27.
(Decision of conciliation commissioner final.)

15 (ii) by inserting in the same section after the words “upon him” the words “or it”;

(g) (i) by inserting next after subsection one of section twenty-eight the following new subsection:—

Sec. 28.
(Jurisdiction of apprenticeship councils.)

20 (1A) Without prejudice to the generality of subsection one of this section the apprenticeship council shall—

25 (a) determine what facilities are available for the training of apprentices and trainee apprentices in any industry;

30 (b) where it determines that such facilities are available in any trade, technical or other training school, require that such number of apprentices and trainee apprentices as it may determine, having regard to the facilities available, shall attend thereat for such classes or courses of instruction as may be specified;

35 (c) where it determines that no such facilities or no sufficient such facilities as are mentioned in paragraph (b) of this subsection are available, but
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Industrial Arbitration (Amendment).

- 5 but that facilities are available for providing instruction by correspondence or otherwise, require that such number of apprentices and trainee apprentices as it may determine, having regard to the facilities available, shall obtain such instruction as may be specified;
- 10 (d) determine that the employer of every apprentice or trainee apprentice required to attend any trade, technical or other training school, shall allow him reasonable time during ordinary working hours to attend such school, such time not to exceed four hours (exclusive of time spent in travelling between the place of employment and such school) in any week;
- 15 (e) determine that the employer of every apprentice or trainee apprentice who is required to obtain instruction by correspondence or otherwise shall allow him reasonable time during ordinary working hours (not exceeding four hours) in any week) for the purpose of taking full advantage of the instruction so obtained.
- 20 (ii) by inserting after subsection four of the same section the following new subsection:—
- 25 (4A) No employer shall, directly or indirectly or by any pretence or device—
- 30 (a) require or permit any person to pay or give;
- 35 (b) demand or receive from any person, any premium, fee, gift, reward, bonus or consideration for entering into any indenture or other contract of apprenticeship (whether with such person or any other
- 40 person)

Industrial Arbitration (Amendment).

person) or for training any employee or prospective employee in any industry without having first obtained the consent of the apprenticeship council for such industry.

5 Any person who contravenes any provision of this subsection shall be liable, on conviction, to a penalty not exceeding one hundred pounds.

10 Upon any such conviction the magistrate may also make an order directing the employer to refund such premium, fee, gift, reward, bonus or consideration to the person from whom it was received.

6. The Principal Act is further amended—

15 (a) by inserting next after section fifty-four the following new section:—

Further amendment of Act No. 2, 1940. New s. 54A.

54A. (1) This section shall apply to and in respect of—

Awards and agreements existing at commencement of Industrial Arbitration (Amendment) Act, 1942.

20 (a) all awards and industrial agreements made or deemed to have been made under this Act which were in force at the commencement of the Industrial Arbitration (Amendment) Act, 1942, and which—

25 (i) fix rates of wages for employees by reference to the needs basic wage assessed on the index number for Sydney contained in the Retail Price Index Numbers, but with the differentiation in the rates for different districts approved and adopted by the Commonwealth Court of Conciliation and Arbitration in the Commonwealth Judgment, and the fixed loading addition determined in the Commonwealth Judgment as being applicable to the needs basic wage so assessed; or

(ii)

Industrial Arbitration (Amendment).

5 (ii) fix rates of wages exclusively for employees of the Crown (as defined in section fifty-four of this Act) and for such employees only whether or not such rates are fixed on an annual basis; and

10 (b) any other award or industrial agreement (not being an award or industrial agreement which fixed rates of wages exclusively for employees within the county of Yancowinna and for such employees only) made or deemed to have been made under this Act, which is in force at the commencement of the Industrial Arbitration (Amendment) Act, 1942, and which the commission, upon application made as prescribed, declares to be an award or industrial agreement to which this section applies.

20 In dealing with any such application the commission shall, as far as practicable, adopt the principles which, under subsection one of section fifty-seven of this Act, are applicable to and in respect of awards made after the commencement of the Industrial Arbitration (Amendment) Act, 1942.

25 (2) Every award or industrial agreement to which this section applies shall be deemed to be varied so as to provide that the needs basic wage which shall apply to that award or industrial agreement shall be the needs basic wage assessed on the index number for Sydney contained in the Retail Price Index Numbers (but without the differentiation in the rates for different districts approved and adopted by the Commonwealth Court of Conciliation and Arbitration in the Commonwealth Judgment) and the fixed loading addition determined in the Commonwealth Judgment as being applicable to

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Such

Industrial Arbitration (Amendment).

Such variation shall—

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(a) in the case of awards and industrial agreements of the nature referred to in paragraph (a) of subsection one of this section take effect as from the commencement of the first pay period after the commencement of the Industrial Arbitration (Amendment) Act, 1942; and

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(b) in the case of any awards or industrial agreements of the nature referred to in paragraph (b) of subsection one of this section as from such date as the commission may specify in the declaration made under that paragraph in respect of the award or industrial agreement.

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(3) As soon as practicable after the commencement of the Industrial Arbitration (Amendment) Act, 1942, the registrar shall vary the terms of each award to which this section applies, affecting rates of pay, to the extent necessary to give effect to the provisions of this section and may make such alterations in the form of any such award as he may think necessary or desirable to enable full effect to be given to the provisions of this Act.

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

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

(b)

Industrial Arbitration (Amendment).

- (b) (i) by omitting paragraph (a) of subsection one of section fifty-five; Sec. 55.
(Uni-
formity.)
- 5 (ii) by omitting from paragraph (a) of subsection two of the same section the words "paragraph (a) or";
- (iii) by omitting paragraph (b) of the same subsection;
- (c) (i) by omitting section fifty-six; Sec. 56.
(Power to
alter basis of
awards.)
- 10 (ii) by omitting from subsection eight of section fifty-four the words "or section fifty-six"; Sec. 54.
(Conse-
quential.)
- (d) (i) by omitting subsection one of section fifty-seven and by inserting in lieu thereof the following subsection:— Sec. 57.
(Future
award and
industrial
agree-
ments.)
- 15 (1) (a) This subsection shall apply to and in respect of all awards and industrial agreements made after the commencement of the Industrial Arbitration (Amendment) Act, 1942.
- 20 (b) Subject to paragraph (d) of this subsection all awards and industrial agreements to which this subsection applies (other than awards or industrial agreements which fix rates of wages exclusively for employees within the county of Yancowinna and for such employees only), shall, insofar as they fix rates of wages by reference or in relation to a needs basic wage with the appropriate fixed loading, be made by reference or in relation to the needs basic wage assessed on the index number for Sydney contained in the Retail Price Index Numbers (but without the differentiation in the rates for different districts approved and adopted by the Commonwealth Court of Conciliation and Arbitration in the Commonwealth Judgment)
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- 35 and the fixed loading addition determined in the Commonwealth Judgment

Industrial Arbitration (Amendment).

as being applicable to the needs basic wage so assessed.

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(c) Subject to paragraph (d) of this subsection all awards or industrial agreements to which this subsection applies which fix rates of wages exclusively for employees within the county of Lancowinna and for such employees only shall, insofar as they fix rates of wages by reference or in relation to a needs basic wage with the appropriate fixed loading, be made by reference or in relation to the needs basic wage assessed on the index number for Broken Hill contained in the Retail Price Index Numbers and the fixed loading addition determined in the Commonwealth Judgment as being applicable to the needs basic wage so assessed.

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(d) Notwithstanding anything contained in paragraph (b) or paragraph (c) of this subsection the parties to any award or industrial agreement to which this subsection applies and which fixes rates of wages by reference or in relation to a needs basic wage with the appropriate fixed loading addition, may by consent, at the time the award or industrial agreement is made or upon any application for a variation of the award or industrial agreement, adopt the needs basic wage assessed on the index number for such place within New South Wales or such combination of places (of which Sydney or some other town in New South Wales is one) contained in the Retail Price Index Numbers as may be specified in the award or industrial agreement with the fixed loading addition determined by the Commonwealth Court of Conciliation and Arbitration as being applicable to the needs basic wage assessed on the index number for such place or combination of places.

(e)

Industrial Arbitration (Amendment).

(e) by omitting section fifty-nine.

Sec. 59.
(Provision for applying s. 54 to certain awards and agreements.)

7. The Principal Act is further amended—

Further amendment of Act No. 2, 1940.

(a) by inserting next after paragraph (e) of section sixty-three the following new paragraph:—

Sec. 63.
(Directions re hours.)

5 (e1) The commission or a committee may, in any case where the parties agree, reduce the ordinary working hours of employees below the number of hours specified in this section.

10 (b) (i) by inserting next after paragraph (c) of subsection one of section sixty-four the following new paragraph:—

Sec. 64.
(Standard hours.)

15 (c1) The Commission may, in respect of any employees or class of employees who are bound by an award made by agreement in accordance with paragraph (e1) of subsection one of section sixty-three of this Act—

20 (i) declare a lesser number of ordinary working hours than the standard hours about to be declared; or

(ii) declare a lesser number of ordinary working hours than the standard hours already declared;

25 (ii) by inserting at the end of the same section the following new subsection:—

30 (11) Notwithstanding anything contained in this section, an award or industrial agreement may be made, where the parties agree, prescribing a lesser number of ordinary working hours for employees bound by such award or industrial agreement than the standard hours determined and declared under this section and applicable with respect to such employees.

8. The Principal Act is further amended—

Further amendment of Act No. 2, 1940.

35 (a) by omitting from section seventy-five the words "conciliation commissioner" and by inserting in lieu thereof the word "chairman"; (b)

Sec. 75.
(Convening of meetings of committees.)

Industrial Arbitration (Amendment).

(b) by inserting after section seventy-seven the following new sections:—

New secs.
77A-77F.

5

77A. The chairman of a committee shall keep notes of the proceedings before such committee, which notes shall be forwarded to the registrar with the committee's award, order or determination.

Notes of proceedings.

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77B. In every case where an application or reference to a committee is made, it shall be the duty of the chairman to endeavour to bring the parties to an agreement with respect to the matters referred to in such application or reference, and to this end the committee shall, in such manner as it thinks fit, expeditiously and carefully inquire into such matters and anything affecting the merits thereof.

Inquiry by committee.
cf. Act No. 17, 1912, s. 32.

15

In the course of such inquiry, the chairman may make all such suggestions and do all such things as he deems right and proper for inducing the parties to come to a fair and amicable settlement of such matters.

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77C. A committee may confer with any persons as to anything affecting the settlement of an industrial matter and may summon any person before it for the purpose of conference or of giving evidence. Such summons shall be signed by the chairman or by the registrar.

Persons may be summoned.

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Every person so summoned shall be bound to attend upon such summons and shall for disobedience thereto be liable to a penalty not exceeding fifty pounds.

35

77D. A committee may—

- (a) conduct its proceedings in public or private as it may think fit;
- (b) adjourn the proceedings to any time or place;
- (c) exercise in respect of witnesses and documents and persons summoned or giving

Conduct of proceedings.
cf. *Ibid.*, s. 34.

Industrial Arbitration (Amendment).

5 giving evidence before it, or on affidavit, the same powers as were by section one hundred and thirty-six of the Parliamentary Electorates and Elections Act, 1902, conferred on a committee of elections and qualifications, and the provisions of the said section shall apply in respect of the proceedings of the committee:

10 Provided that unless a person raises the objection that the profits of an industry are not sufficient to enable him to pay the wages or grant the conditions claimed, no person shall be required
 15 without his consent to produce his books, or to give evidence with regard to the trade secrets, profits, losses, receipts, and outgoings of his business, or his financial position.

20 Where a person raises such objection he may be required, on the order of the chairman, to produce the books used in connection with the carrying on of the industry in respect of which the claim
 25 is made, and to give evidence with regard to the profits, losses, receipts, and outgoings in connection with such industry, but he shall not be required to give evidence regarding any trade
 30 secret, or, saving as hereinbefore provided, his financial position. No such evidence shall be given without his consent except in the presence of the committee alone, and no person shall
 35 inspect such books except the chairman or an accountant appointed by the committee, who may report to the committee whether or not his examination of such books supports the evidence so given, but shall not otherwise disclose the contents of such books. Such accountant
 40 shall,

Industrial Arbitration (Amendment).

shall, before acting under this paragraph, take an oath not to disclose any matter or evidence before the committee relating to—

- 5 trade secrets;
- the profits or losses or the receipts and outgoings of any employer;
- 10 the books of any employer or witness produced before the committee; or
- the financial position of any employer or of any witness,
- 15 and if he violates his oath he shall be liable to a penalty not exceeding five hundred pounds.

77E. At any meeting of a committee—

- 20 (a) the chairman shall preside;
- (b) each member, except the chairman, shall have one vote; and where the votes for and against any matter are equal, the chairman shall decide the question;
- 25 (c) if any of the members, other than the chairman, are absent from a duly convened meeting of a committee, the chairman may, together with such members as may be present, proceed to hear and determine any matter before the committee. Such determination shall be deemed to be a decision of the committee.
- 30

Proceedings at meetings. cf. Act No. 17, 1912, s. 36.

35 77F. Any award or order of a committee shall, after settlement by the registrar in the manner prescribed, be signed by the chairman:

Awards and orders.

Provided that upon any settlement the registrar may submit any question of law to the commission for its determination.

Subject

Industrial Arbitration (Amendment).

Subject to this subsection the registrar shall publish the award or order, when signed, in the Gazette, and shall notify the parties in the prescribed manner.

- 5 (c) by omitting from section seventy-eight the words "the conciliation commissioner" and by inserting in lieu thereof the words "a conciliation commissioner"; Sec. 78. (Intervention by Crown.)
- 10 (d) by omitting section eighty and by inserting in lieu thereof the following section— Subst. sec. 80.
 - 15 80. (1) In proceedings before the commission, if the matter is an industrial matter no party shall be represented by counsel or a solicitor except by the consent of the commission; but such consent shall not be given in any case where, in the opinion of the commission, the questions to be determined in such proceedings are exclusively questions of fact. Appearance by counsel.
 - 20 (2) In proceedings before a conciliation commission or a committee no party shall, except by consent of the conciliation commissioner or the committee, as the case may be, and all the parties, be represented by counsel or a solicitor.
 - 25 (3) Nothing in this section shall preclude any permanent employee of the Crown from appearing on behalf of the Crown in any proceedings before the commission, a conciliation commissioner or a committee.
 - 30 (e) by omitting from section eighty-one the words "the conciliation commissioner" where firstly occurring and by inserting in lieu thereof the words "a conciliation commissioner."

9. The Principal Act is further amended—

Further amendment of Act No. 2, 1940.

- 35 (a) by inserting next after section eighty-eight the following new section:—

88A. (1) The commission or a committee shall upon any application for a new award or for the renewal Employment of juniors.

Industrial Arbitration (Amendment).

5 renewal or variation of an award give consideration to the desirability of fixing the number or proportionate number of juniors in the industry to which the award relates, with the object of securing employment for the maximum number of adult males.

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

10 88B. The Commission or a committee shall not award any conditions nor fix rates of wages or other payments for employees of the Crown less favourable than the conditions granted or the wages paid or other payments made to 15 employees (other than employees of the Crown) who are doing substantially the same class of work, but the fact that employment is permanent or that additional privileges are allowed to employees of the Crown shall not of itself 20 be regarded as a substantial difference in the nature of the work.

In this section the expression "employees of the Crown" includes employees of the Government or of any department of the Government or of any of the following corporations, that is to say—

- 25 The Commissioner for Railways,
- The Commissioner for Road Transport and Tramways,
- 30 The Commissioner for Main Roads,
- The Metropolitan Meat Industry Commissioner,
- The Maritime Services Board of New South Wales,
- 35 The Metropolitan Water, Sewerage and Drainage Board,
- The Water Conservation and Irrigation Commission,
- 40 Board of Fire Commissioners of New South Wales,

The

Industrial Arbitration (Amendment).

The Hunter District Water Board, and
The Hospitals Commission of New South
Wales.

- 5 (b) by inserting next after section ninety the follow- New sec.
ing new section:— 90A.
- 10 90A. Where an award made or deemed to have Incorporation
been made under this Act has been varied of
(whether such variation was made before or variation in
after the commencement of the Industrial reprint of
Arbitration (Amendment) Act, 1942) the Gov- awards.
ernment Printer shall, if and when directed so to
do by the registrar, reprint the award in a form
certified as correct by the registrar.
- 10. The Principal Act is further amended— Further
amendment
of Act No. 2;
1940.
- 15 (a) (i) by inserting in subsection one of section Sec. 92.
ninety-two after the word "Act" the words (Recovery
"or by the conditions of a permit issued of wages.)
under section eighty-nine of this Act";
- 20 (ii) by inserting at the end of the same subsec-
tion the words "or permit as the case may
be";
- (iii) by omitting from subsection two of the same
section the words "within six months after
such money has become due";
- 25 (iv) by omitting from the same subsection the
words "to the registrar or";
- (v) by omitting from the same subsection the
words "The registrar or magistrate" and
by inserting in lieu thereof the words "The
30 industrial magistrate";
- (vi) by inserting in the same subsection after
the words "price or rate" the words "which
became due during the period twelve months
35 immediately preceding the date of the appli-
cation (where such person is still in the
employment of such employer at that date)
or within the last twelve months of the
employment with such employer (where the
employment

67

Industrial Arbitration (Amendment).

employment was terminated before the date of the application).

Any such application shall be made not later than six months after the date of termination of the employment”;

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(vii) by inserting at the end of the same subsection the following words: “Where, in any proceedings under this section it is made to appear that the employer has committed a breach of section ninety-three or section section ninety-six of this Act, the registrar or magistrate may, in addition to any order made under this section, order such employer to pay the penalty prescribed in section ninety-three or section ninety-six as the case may be”;

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(viii) by omitting from subsection three of the same section the words “within the said period of six months”;

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

(4A) In any case where the person authorised to take proceedings under subsection two or subsection three of this section is a person employed to do any work for which the price or rate has been fixed by an award or by an industrial agreement made under this Act, the proceedings may be taken by the secretary or other officer of an industrial union concerned in the industry to which such award or industrial agreement relates, in the name and on behalf of such person.

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Any amount ordered to be paid in proceedings under this section may be paid to such secretary or other officer and the receipt of such secretary or other officer shall be a sufficient discharge to the employer for the amount mentioned in the receipt.

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Any

Industrial Arbitration (Amendment).

Any amount so paid to such secretary or other officer shall be held by him on trust for the person on whose behalf the proceedings were taken.

5 (x) by omitting from subsection five of the same section the words "final payment" and by inserting in lieu thereof the words "any payment";

10 (xi) by inserting at the end of the same section the following new subsections:—

(6) In every case where an employee has left the employment of an employer without being paid the full amount due to him in respect of such employment, and the employer has been unable, during a period of thirty days after the termination of employment, to make such payment because the whereabouts of such employee are unknown to him, and cannot with reasonable diligence be found, such employer shall forthwith after the expiration of such period, pay the full amount aforesaid to the Under Secretary of the Department of Labour and Industry and Social Services. A receipt issued on behalf of the said Under Secretary for money so paid to him shall be a sufficient discharge to the employer for the amount mentioned in the receipt.

cf. 23 Geo.
V, No. 36
(Qld.), s. 50.
(3).

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30 Any amount so paid to the Under Secretary shall be held by him in trust for the employee.

Any employer who fails to comply with this subsection shall be liable to a penalty not exceeding fifty pounds.

35 (7) Whosoever inserts or causes to be inserted in a newspaper any advertisement in which he offers or seeks employment at a wage lower than the price or rate fixed by any award or industrial agreement applicable to such employment shall be liable to a
40 penalty not exceeding ten pounds.

The

Industrial Arbitration (Amendment).

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The printer or publisher of any newspaper in which any such advertisement is published shall, upon demand, furnish an inspector, appointed under this Act, or the secretary of the industrial union for the industry to which the award or industrial agreement relates, with the name and address of the person who inserted, or caused to be inserted, such advertisement.

10

(8) (a) In any contract for the performance of any work involving the payment of wages or the supply of musical entertainment, the consideration for such contract shall not be less than a sum sufficient to pay to each person engaged in the performance of such work, or the supply of the musical entertainment, the price or rate fixed by any award or industrial agreement for a person performing such work or so engaged.

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(b) Any person who offers, enters into, or is in any way concerned with a contract which does not comply with paragraph (a) of this subsection or who knowingly performs work or engages or takes part in a musical performance in pursuance of a contract which does not comply with that paragraph shall be guilty of an offence against this Act, and shall be liable to a penalty not exceeding twenty pounds.

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(9) Where any female performs work under any award or industrial agreement, whether made before or after the commencement of the Industrial Arbitration (Amendment) Act, 1942, which does not prescribe rates of pay for female employees, such female shall be paid the price or rate prescribed by that award or agreement for employees engaged on the class of work performed by her.

Industrial Arbitration (Amendment).

11. The Principal Act is further amended—

Further amendment of Act No. 2, 1940.

Sec. 93.

(Penalty for breach of award.)

- 5 (a) (i) by omitting from subsection one of section ninety-three the words "the registrar or an industrial magistrate may order him to pay a penalty not exceeding fifty pounds" and by inserting in lieu thereof the words "he shall be liable to a penalty of not less than two pounds and not exceeding one hundred pounds";
- 10 (ii) by omitting from subsection two of the same section the words "Where on making such order" and by inserting in lieu thereof the words "Where, in proceedings for the recovery of any such penalty";
- 15 (iii) by omitting from the same subsection the words "the registrar or magistrate" and by inserting in lieu thereof the words "the industrial magistrate";
- 20 (iv) by omitting from subsection three of the same section the words "Where an order is made under subsection one of this section against any person and the registrar or magistrate" and by inserting in lieu thereof the words "Where a penalty is imposed upon any person under subsection one of this section and the industrial magistrate";
- 25 (v) by omitting from the same subsection the words "any order made" and by inserting in lieu thereof the words "any penalty imposed";
- 30 (vi) by omitting from subsection four of the same section the words "The costs of any such proceedings shall be paid by the complainant if the order is not made, and by the defendant if the order is made" and by inserting in lieu thereof the words "The industrial magistrate may award costs to either party and assess the amount of such costs";
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(b)

Industrial Arbitration (Amendment).

(b) (i) by inserting after paragraph (b) of section ninety-five the following new paragraph:—

Sec. 95.
(Penalty
for unlawful
dismissal.)

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(b1) has informed any person that a breach or a suspected breach of an award or industrial agreement has been committed by such employer; or

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(ii) by omitting from the same section the words "or a similar position" and by inserting in lieu thereof the words "position or a position not less advantageous to the employee than that held by him prior to such dismissal, injury or prejudice";

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(iii) by omitting from the same section the words "No prosecution for an offence under this section shall be commenced except by leave of the commission";

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(c) (i) by inserting in subsection one of section ninety-six after the word "factory" the words "or place";

Sec. 96.
(Time
sheets and
pay sheets.)

25

(ii) by inserting in the same subsection after the words "written up in ink" the words "Such daily records shall be preserved in good order and condition and kept available for inspection for a period of eighteen months";

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(iii) by omitting from the same subsection the words "to a penalty not exceeding ten pounds" and by inserting in lieu thereof the words "for the first offence to a penalty of not less than two pounds and not exceeding twenty pounds, and for a second or subsequent offence to a penalty of not less than five pounds and not exceeding fifty pounds";

35

(iv) by inserting at the end of subsection two of the same section the words—

It shall be a sufficient compliance with the provisions of this subsection if the employer exhibits

Industrial Arbitration (Amendment).

exhibits and keeps exhibited the copy of the award as last reprinted under section 90A of this Act.

5 (d) by inserting after section ninety-six the following new section:—

New sec. 96A.

10 96A. (1) Where in any proceedings under section ninety-two, section ninety-three or section ninety-six of this Act it appears that the award or industrial agreement referred to in the application or information, as the case may be, is not the award or industrial agreement appropriate to the proceedings and that some other award or agreement by which the employer is bound is appropriate to such proceedings, the industrial or other magistrate or justices may amend the application or information and proceed to deal with the matter as though proceedings had been instituted under the application or information as so amended:

Power to amend. cf. Act No. 27, 1902, s. 65 (3).

20 Provided that where the defect or variance appears to the industrial or other magistrate or justices before whom such proceedings are taken to be such that the employer has been thereby deceived or misled such industrial or other magistrate or justices may, upon such terms as he or they think fit, adjourn the hearing of the case to some future day.

25 (2) Nothing in this section shall be construed as limiting the operation of section thirty or section sixty-five of the Justices Act, 1902-1940.

30 (e) (i) by omitting from section one hundred and nineteen the word "ninety-three";

Sec. 119. (Enforcement of certain orders.)

35 (ii) by inserting in the same subsection after the word "penalty" where firstly occurring the words "or where an order is made under subsection (4A) of section twenty-eight of this Act for the refund of any premium, fee, gift, reward, bonus or consideration";

(iii)

Industrial Arbitration (Amendment).

- 5 (iii) by inserting in the same subsection after the word "penalty" where secondly occurring the words "or for the amount of value of such premium, fee, gift, reward, bonus or consideration";
- 10 (f) by inserting next after section one hundred and twenty-one the following new section:—

121A. If any person shall, during any proceeding before an industrial magistrate, be guilty of contempt, such person may be punished in a summary way by such industrial magistrate by fine not exceeding forty shillings or by imprisonment for a period not exceeding fourteen days.

New sec. 121A.
Contempt. cf. Act No. 27, 1902, s. 152.
- 15 (g) by inserting at the end of section one hundred and twenty-two the following words:—

Provided that where such penalty has been recovered upon complaint or information of the secretary or other officer of an industrial union, the commission or the registrar or an industrial or other magistrate or justices may order that the penalty or any part thereof be paid to such union;

Sec. 122. (Penalties to be paid to Consolidated Revenue.)
- 20 (h) (i) by omitting from subsection one of section one hundred and twenty-seven all words after the words "powers and duties prescribed" down to and including the words "section ninety-three of this Act" and by inserting in lieu thereof the following words:—"An inspector may—

25 (a) at any reasonable time enter, inspect and examine any premises where he has reasonable cause to believe that any person is employed therein and any work is being done therein;

30 (b) examine either alone or in the presence of any other person as he thinks fit, with respect to matters arising under this Act or any award

Sec. 127. (Appointment and powers of inspectors.)
cf. Factories & Shops Act, s. 123.

Industrial Arbitration (Amendment).

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award or industrial agreement, any person whom he finds in such premises and require any person so examined to sign a statement of the truth of his answers to any question asked of him on such examination;

(c) make such examination and inquiries as he thinks necessary to ascertain whether the requirements of this Act or any award or industrial agreement are being or have been complied with;

(d) require the production of any time sheets or pay sheets or award required to be kept or exhibited under this Act, or any indenture of apprenticeship and may inspect, examine and take copies of the same;

(e) when authorised in that behalf by the Minister institute proceedings in the name and on behalf of the Minister for a penalty under section ninety-three of this Act."

(ii) by omitting subsection three of the same section and by inserting in lieu thereof the following new subsection:—

(3) Any person who—

(a) refuses or wilfully delays the admission to any premises of an inspector; or

(b) obstructs any inspector in the exercise of the powers conferred upon him by or under this Act; or

(c) fails to truly answer or reply to any question which the inspector is authorised to ask under this section, or omits to comply with any direction

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Industrial Arbitration (Amendment).

direction of an inspector to supply a statement of the truth of his answers; or

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(d) fails to produce time and pay sheets or awards or other documents when duly required by an inspector or;

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(e) conceals any person from an inspector or prevents any person from appearing before or being examined by an inspector, or attempts to conceal or prevent any person,

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shall be liable to a penalty not exceeding twenty pounds.

(i) by omitting from section one hundred and twenty-eight the words "conciliation commissioner" and by inserting in lieu thereof the word "chairman"; Sec. 128. (Power of entry and inspection.)

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(j) by omitting section one hundred and twenty-nine and by inserting in lieu thereof the following new section:— Subst. sec. 129.

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129. (1) The commission or a member thereof and every person authorised in writing by the commission or the registrar or a committee may at any time during working hours enter any building, mine, mine working, ship, vessel, place or premises of any kind wherein or in respect of which any industry is carried on or any work is being or has been done or commenced or any matter or thing is taking or has taken place in relation to which any industrial dispute is pending, or any award has been made, or any offence against this Act is suspected, and may, to the extent and for the purposes named in the authority, inspect and view any work, material, machinery, appliance, articles, book or document therein. Power of entry. cf. Act No. 13 of 1904 (C'wth), s. 41.

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(2) Every person who hinders or obstructs the commission or a member thereof or any

Industrial Arbitration (Amendment).

any person authorised as aforesaid in the exercise of any power conferred by this section shall be liable to a penalty not exceeding fifty pounds.

12. The Principal Act is further amended by omitting 5 from subsection one of section one hundred and thirty-one the words "shall not be subject to the provisions of this Act other than Parts XIV and XV" and by inserting in lieu thereof the words "shall be subject to the provisions of this Act other than Part VI."

Further amendment of Act No. 2, 1940. Sec. 131. (Rural workers.)

13. The Principal Act is further amended in the manner and to the extent set forth in the Schedule to this Act.

Further amendment of Act No. 2, 1940.

SCHEDULE.

Sections, headings, etc.	Amendment.
15 Sec. 2	(a) Omit the figures 17, 23 and 77, and insert the figures and letters 17A, 23A and 77F respectively.
20 Part II, Heading	(b) Omit the words "Conciliation Commissioner" wherever appearing and insert the words "Conciliation Commissioners." Omit the words "Conciliation Commissioner" and insert the words "Conciliation Commissioners."
25 Part II, Division 2, Heading	Omit the words "Conciliation Commissioner" and insert the words "Conciliation Commissioners."
Sec. 16	Omit the words "subsections six and" and insert the word "subsection."
30 Part III, Heading	Omit the words "Conciliation Commissioner" and insert the words "Conciliation Commissioners."
Part III, Division 2, Heading	Omit the words "Conciliation Commissioner" and insert the words "Conciliation Commissioners."
35	