

No. XXIX.

TRADE DISPUTES
CONCILIATION AND
ARBITRATION
(No 2).

An Act to provide for the establishment of
Councils of Conciliation and of Arbitration
for the settlement of Industrial Disputes.
[31st March, 1892.]

Preamble.

WHEREAS it is believed that the establishment of Councils of Conciliation and of Arbitration for the settlement of disputes between employers and employees would conduce to the cultivation and maintenance of better relations, and more active sympathies, between employers and their employees, and would be of great benefit, in the public interest, by providing simple methods for the prevention of strikes, and other disputes, from the effects of which industrial operations may suffer serious and lasting injury, and the welfare and peaceful government of the country be imperilled: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Establishment of Industrial Districts, &c.

Industrial Districts,
&c.

1. The Governor shall, within three months after the passing of this Act, cause New South Wales to be divided into Industrial Districts for the purposes of this Act, not exceeding five in number; or, at his discretion, instead of so dividing the Colony, he may treat it as one Industrial District for the said purposes. If the Colony shall be divided into Industrial Districts, every such District shall be notified in the *Gazette*; and in the notification shall be specified the designation and the limits of such District. By a like notification the Governor may abolish, alter, subdivide or modify the boundaries of any such District, or unite any two or more Districts, and may, from time to time and in like manner, exercise any of the said powers, as he may think fit.

Office of Clerk of
Awards

2. In and for every Industrial District, or in and for the Colony (if undivided into Districts), there shall be a Clerk of Awards who shall be appointed by the Governor, and be paid such salary or remuneration as Parliament may provide. The position of Clerk of Awards may be held separately, or in conjunction with any other position in the Public Service, as the Governor may determine. The Clerk of Awards shall, in the prescribed manner, report to the President of the Council of Arbitration all proceedings and matters commenced, taken, or done, by or before him, and shall be provided with an office.

Duties, &c., of Clerk
of Awards.

3. It shall be the duty of the Clerk of Awards to receive and register, and, subject to the provisions of this Act, to deal with all applications within his District lodged by employers or employees, or on their behalf, for reference to the Council of Conciliation for the District, or to the Council of Arbitration, of any dispute or claim within the meaning of this Act; to convene any such Council for the purpose of dealing with any such dispute or claim; to keep a Register in which shall be entered the particulars of all references and settlements of disputes and claims made to and by the Council of Conciliation, and of all references and awards made to and by the Council of Arbitration; and generally to do all such things and take all such

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such proceedings as may be required in the performance of his duties in accordance with the Regulations. The Clerk of Awards shall be the officer to issue all summonses to witnesses to attend to give evidence, with or without the production of papers and documents, before any such Council, and to issue all notices and perform all other acts in connection with the sittings of such Council in the prescribed manner.

Councils of Conciliation.

4. In and for every Industrial District there shall be a Council of Conciliation for the settlement of disputes and claims pursuant to this Act, which Council shall consist of four members, two to be appointed by the Governor on the recommendation of the organisation, or a majority of the organisations representing the interests of employees and registered according to the law regulating the registration of Trade Unions or Friendly Societies which have a registered office or offices within such district, and two to be appointed by him on the recommendation of the organisation or a majority of the organisations representing the interests of employers and registered according to the law regulating the registration of Trade Unions or Friendly Societies which have a registered office or offices within such District; and each such organisation or majority as aforesaid is hereinafter referred to as a Recommending Authority. If, and so long as, the Colony shall not be divided into Industrial Districts, there shall be a Council of Conciliation for the whole Colony, which shall consist of not fewer than twelve nor more than eighteen members; and of the entire number (which shall in every case be some number divisible by two) one half shall be appointed by the Governor on the recommendation of each of the several Recommending Authorities.

Establishment of
Councils of
Conciliation.

The procedure for the purposes of making out lists of such organisations and of ascertaining and giving effect to the recommendations of such Recommending Authorities shall be prescribed by regulations to be made pursuant to this Act: Provided that if and so long as the Colony is not divided into Industrial Districts, such regulations shall be so framed as to provide, as far as may be practicable, that the Council of Conciliation appointed for the whole Colony shall be fairly representative of all large centres of industry in the Colony.

(I) As soon as practicable after a full Council shall have been appointed for any District, or for the entire Colony (as the case may be), the names of the members of such Council shall be notified in the *Gazette* by the Minister.

(II) The names and addresses of every member of a Council of Conciliation shall be registered in the prescribed manner, and the register of such names and addresses shall be open to the inspection of any person during office hours, without payment of any fee.

5. (I) The appointment for any District, or for the entire Colony, of a Council of Conciliation under the provisions hereinbefore contained, shall not prevent the appointment, from time to time, as occasion may require, of a Council of four Conciliators, two by each party to any dispute or claim, by or on behalf of any employer or the employees of any employer, for the purpose of dealing specially with any reference of such dispute or claim. And the members of any such Council shall, for all purposes of this Act, except in respect of the duration of their office, be deemed to be and to possess all the powers and to be entitled to the remuneration of members of a Council of Conciliation appointed as hereinbefore provided.

Special Councils of
Conciliation.

(II) If in any case there be no Council of Conciliation appointed by the Governor, pursuant to recommendation under this

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Act, or none available for the purpose of dealing with any dispute or claim within the meaning of this Act, and if either party to such dispute or claim so desires the dispute or claim shall be referred to Conciliators for settlement, and a Council of four Conciliators appointed by both parties, two members of such Council being selected by each party, shall be a Council of Conciliation for all purposes of this Act as aforesaid: Provided that any appointments under this section shall not take effect until after the approval thereof by the Governor.

Remuneration of members of Council of Conciliation.

6. Every member of any such Council of Conciliation whilst engaged in the adjustment of any dispute shall be remunerated for his services in a manner and according to a scale of payment to be fixed and provided for by Parliament.

Duration of office of Member of Council of Conciliation.

7. The duration of the office of a member of a Council of Conciliation shall, except in the case of members appointed under section five of this Act, be two years, at the end of which term and of every successive term of two years, a fresh appointment of members shall be made by the Governor upon recommendation pursuant to section four of this Act. Any person who has held office as a member of such Council shall, if duly recommended, be eligible for reappointment.

Extraordinary vacancies.

8. Any vacancy in such Council arising through the death or resignation of any member thereof, shall be filled by the Governor, upon recommendation made pursuant to the provisions of section four of this Act.

Certain disabilities.

9. If any member of such Council shall be disabled from illness or other cause from attending to his duties as such member, the Governor, on the recommendation of the proper Recommending Authorities, may appoint a person to act in his place for the period of such disability. And such person shall, upon such appointment, be deemed for all purposes of this Act to be a member of such Council during such period.

Council in certain cases.

10. If a Council of Conciliation shall be appointed for the entire Colony, the parties to any reference to a Council of Conciliation may each select two members of such Council, so that the Council to deal with such reference shall consist of four persons, or, at their discretion, may each appoint two persons, not being members of such first-mentioned Council appointed pursuant to section four of this Act; and every such Council so appointed shall have the powers and be entitled to the remuneration hereinafore mentioned.

Procedure for Conciliation.

How disputes, &c., referred to Council of Conciliation.

11. Any dispute or claim within the meaning of this Act may be referred for settlement to a Council of Conciliation in manner following:—

- (I) The parties to such dispute or claim may jointly agree, in the prescribed manner, to refer such dispute or claim for settlement to a Council of Conciliation.
- (II) Either party to such dispute or claim may, in the prescribed manner, lodge an application with the Clerk of Awards requesting that such dispute or claim be referred for settlement to a Council of Conciliation.
- (III) Either party to a dispute or claim may, for the purposes of this Act, be represented by one or more persons (not exceeding three) authorized in writing by such party to represent him or them, and shall be bound by the acts of every such representative or representatives. And where the persons interested in any such dispute or claim, as a party, number more than twenty, they may appoint or elect, in such manner as they may think proper, any one or more persons

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persons (not exceeding three) to represent them as aforesaid. And such person or persons may be designated the Manager, or Managers, of the case.

- (iv) The Clerk of Awards, on receipt of any such agreement or application for a reference to a Council of Conciliation, shall forthwith lay the same before the Council mentioned in such agreement or application at a meeting of such Council to be convened by him in the prescribed manner, and, subject to the provisions of this Act and the regulations, shall carry out all directions of the said Council in order to effect a settlement of the dispute or claim referred to it.
- (v) The Clerk of Awards shall transmit a report of the result of every such reference, certified under the hands of the members of the Council of Conciliation, together with all papers relating to the reference, to the President of the Council of Arbitration, which report and papers shall be filed of record by such President.

12. If the Council of Conciliation shall, by writing signed by the members thereof, report to the Clerk of Awards that they have been unable to bring about any settlement or adjustment of any dispute or claim referred to them satisfactory to the parties thereto [and it shall be the duty of such Council in every such case to make such report], the Clerk of Awards on the receipt of such report shall transmit a copy (certified by him) of such report to each party to the dispute or claim, whereupon either party may, in the prescribed manner, require the Clerk of Awards to refer the said dispute or claim to the Council of Arbitration for settlement by award. The Clerk of Awards shall thereupon transmit all the papers in the reference to the President of the Council of Arbitration in the prescribed manner.

The Council of Arbitration.

13. There shall be one Council of Arbitration for the settlement by award of disputes and claims pursuant to this Act. Such Council shall consist of three members, one to be appointed by the Governor on the recommendation of the Recommending Authority in the fourth section of this Act described representing the employees, and one to be appointed by him on the recommendation of the Recommending Authority in the said fourth section described representing the employers, and, in each case, in accordance with the regulations to be made in pursuance of this Act. The third member, who shall be the President of the Council, shall be appointed in manner following, namely:—The two members so appointed may, within twenty-one days after their appointment, submit to the Minister the name of some impartial person for the position of President. And in case of failure so to do on the part of the said two members, then the Governor shall appoint as President an impartial person not personally connected with or interested in any trade or industry, or likely by reason of his former occupation, business, vocation, or other influence, to be biased in favour of, or against, employers or employees. As soon as practicable after a full Council shall have been appointed by the Governor, the names of the members of the Council of Arbitration so appointed shall be notified in the *Gazette* by the Minister.

14. Every member of the Council of Arbitration, shall be remunerated for his services in such manner and according to such rate of payment as the Governor shall appoint, but subject to Parliamentary provision being made therefor.

15. (1) The term of office of a member of such Council shall be two years; at the end of which term, and of every successive term of two years a fresh appointment of members shall be made pursuant to this Act.

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(II) Every member of such Council shall be eligible after the expiry or other termination of his term of office for re-appointment for a like term.

(III) If the President of such Council shall be declared a bankrupt, or shall make a composition with his creditors, or make an assignment of his property or salary for the benefit of his creditors, he shall be deemed thereby to have vacated his office of President.

(IV) The President shall hold office during ability and good behaviour subject to the limitation of the term of office herein declared.

(V) The President shall not engage during his term of office in any employment outside the duties of such office.

Vacancies,
disabilities, &c.

16. (1) Any vacancy in such Council arising through the death, resignation, or disqualification of any member thereof, shall be filled by the Governor for the term of office, or the residue of such term (as the case may be), in accordance with the respective methods prescribed by this Act.

(II) The Governor may appoint a person to be Acting President of the Council of Arbitration in case the President of such Council shall be unable to act as such from illness or other temporary disability: And such Acting President shall upon such appointment have all the powers and perform all the duties conferred and imposed by this Act upon the President.

(III) If any member of such Council other than the President shall, from illness or from any other disability howsoever arising, be unable to perform the duties of his office in respect to any dispute or claim hereunder, the parties thereto may consent, in writing under their respective hands, to the appointment, by the Governor, of a member to act for and in the place of the member during such disability; and the Governor may appoint the person so nominated, who shall thereupon be deemed a member of such Council for all purposes relating to such dispute or claim, and to the hearing and determination thereof.

Members of Council
of Conciliation may
sit as assessors to
Council of Arbitra-
tion.

17. In any case where the Council of Conciliation has, upon a reference to it of any dispute or claim under this Act, been unable to bring about a settlement or adjustment of the same; and thereupon, such dispute or claim has, pursuant to the provisions hereinbefore contained, been referred to the Council of Arbitration for its award, it shall be lawful for the members of such Council of Conciliation, subject to the consent in writing of both parties to the said dispute or claim having been first obtained, to sit as assessors upon such reference to the Council of Arbitration, two members of the Council of Conciliation on behalf of each such party: Provided always that no such assessor shall take any part in the hearing or determination of the reference, other than as an assessor sitting to inform the Council of Arbitration when called upon to do so, and that no such member sitting as an assessor shall be entitled to more than half fees for so sitting.

References to Arbi-
tration, how made,
&c.

18. Any dispute or claim within the meaning of this Act may be referred to the Council of Arbitration for its hearing and determination in any of the following ways:—

(I) On application in the prescribed manner to the Clerk of Awards by either party to a dispute or claim which, having been referred to a Council of Conciliation, has not been settled or adjusted by such Council.

(II) On application in like manner to the Clerk of Awards by both parties to a dispute or claim within the meaning of this Act, which has not been so referred as aforesaid.

Provided that if the award of the Council of Arbitration shall not be complied with or carried out by the parties to any dispute or claim as aforesaid, or for any reason shall have proved abortive, the parties to the reference or either of them shall not thereby be precluded from referring

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referring the same to the Council of Conciliation, or from making a second reference to such Council where a former reference has already been made to it.

19. The Council of Arbitration shall sit and conduct its proceedings as in open Court, and in making its decisions shall be governed as far as practicable by the principles of equity and good conscience. The President shall, for the purpose of preserving order during any sitting of the Council, have all the powers of a Judge of a Superior Court of Record: Provided that no party to any proceedings either before the Council of Conciliation or the Council of Arbitration shall be represented by Counsel or Attorney or by any paid agent other than one or more of the persons between whom the dispute or claim has arisen.

Council of Arbitration to sit in open Court, &c.

20. The award of the Council of Arbitration shall be made by the President within one month after such Council shall have completed its sittings for the hearing of any reference, and shall be by and under the hands of a majority of the members of the Council, and the official seal of the Council shall be attached thereto. Every such award shall be published in the *Gazette*, and in one or more newspapers circulating in the Industrial District within which the claim or dispute, the subject of such award, arose. A copy of the award, certified under the hand of the President of the said Council, shall be deposited in the office of the said Council and also of the Registrar of Trade Unions, and shall be open to inspection without charge during office hours.

Award, how to be made.

21. Either party to a reference to the Council of Arbitration may, at any time before award made, by writing under the hands of such party in the prescribed manner, agree to be bound by the award of the Council upon such reference in the same manner as parties are bound upon an award made pursuant to a reference to Arbitration or the order of the Supreme Court or of any Judge thereof. Every agreement so to be bound shall be laid before the other party to the reference by the Clerk of Awards, and if such other party also agree in like manner to be bound by the said award, then the said award may be made a Rule of the Supreme Court on the application of either party.

When award may be enforced by legal process.

General and Miscellaneous Provisions.

22. (1) It shall be lawful for a Council of Conciliation, and such Council is hereby authorized and required by its Clerk of Awards, or any member of such Council, at the request in writing of any of the parties, and for the President of the Council of Arbitration, to summon any witness or witnesses to appear and give evidence on oath or affirmation as may be necessary before such Council, respectively, at the time and place appointed for hearing and determining any dispute or claim under this Act (which time and place shall be specified in the summons); and if any person so summoned shall not appear before such Council at the time and place specified in such summons, or give some reasonable excuse for the default, or, appearing according to such summons, shall not submit to be examined as a witness, and give evidence before such Council touching the matter of such dispute or claim, provided reasonable travelling expenses have been tendered to such witness by the party at whose instance the summons is issued, then it shall be lawful for any Justice of the Peace, and he is hereby authorized (proof on oath, in the case of any person not appearing according to such summons, having been first made before such Justice of the due service of such summons on every such person by delivering the same to him, or by leaving the same at the usual place of abode of such person), by warrant under the hands of any such Justice, to commit any such person

Enforcing attendance of witnesses.

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person so making default in appearing, or appearing and refusing to give evidence, to some prison or place of detention for any time not exceeding two calendar months, or until such person shall submit himself to be examined and give his evidence before such Council as aforesaid; provided, always, that in case such dispute or claim shall be heard and determined before such offender shall submit to be examined and give evidence as aforesaid, then such offender may be imprisoned for the full term of such commitment.

Powers of entry for purpose of viewing.

(II) It shall be lawful for a Council of Conciliation, and for the Council of Arbitration, and for any member of any such Council without any other warrant than this Act, at any time to enter upon any manufactory, building, workshop, factory, mine, mine workings, shed or premises of any kind whatsoever, wherein or in respect of which any work is being, or has been done, or commenced, or any matter or thing is taking or has taken place, which has been made the subject of a reference to such Council; and to inspect and view any work, material, machinery, appliances, matter or thing whatsoever being in such manufactory, building, workshop, factory, mine, mine workings, shed, or premises. And any person who shall hinder or obstruct any other person in the exercise of any power conferred on such last-mentioned person by this section, or who shall refuse to such person entrance during any such time as aforesaid to any such manufactory, building, workshop, factory, mine, mine workings, shed, or premises, shall for every such offence incur a penalty not exceeding five hundred pounds, to be recovered in a summary way before any Stipendiary or Police Magistrate.

Claims and disputes explained.

23. A claim or dispute under this Act shall include any matter as to which there is a disagreement between any employer and his employees respecting,—

- (i) The price to be paid for work done, or in course of being done, whether such disagreement shall have arisen with respect to wages as agreed upon, or the hours or times of working as agreed upon.
- (II) Damage alleged to have been done to the work, delay in finishing the same, not finishing the same in a good and workmanlike manner, or according to agreement, or with respect to materials supplied to employees and alleged to be bad, or unfit, or unsuitable.
- (III) The price to be paid for winning any mineral or substance mined, or obtained by mining, hewing, quarrying, or other process; the allowances, if any, to be made for bands, refuse, faults, or other causes whereby the mining of the mineral or substance is impeded.
- (IV) The performance or non-performance of any stipulation or matter alleged to have been embodied in any agreement whether in writing or not.
- (V) Insufficient or unwholesome food supplied to employees where there is an agreement to victual them, or to supply them with provisions or stores of any kind.
- (VI) Ill-ventilated, or dangerous workings, or places in mines, or unwholesome or insanitary rooms, or other places of accommodation, in which work is being performed, or want of necessary conveniences in connection with such rooms or places.
- (VII) Any established custom, or usage of any industry, employment, or District.
- (VIII) The dismissal or employment under agreement of any employees or number of employees.

Provisions as to parties and representatives.

24. No claim or dispute shall be the subject of conciliation or arbitration under this Act, in any case in which the employees affected

Children's Protection.

affected by such claim or dispute shall be fewer in number than ten. And in every case referred to a Council of Arbitration, such Council shall have power to require any party to the claim or dispute so referred to name not more than three persons, who upon their consent in writing, shall for all purposes of the reference be taken to represent such party.

25. The Governor may make regulations for the purpose of Regulations. giving effect to any of the provisions or requirements of this Act. And all such regulations not being inconsistent with this Act shall have the full effect of law on publication in the *Gazette*. Every such regulation shall be laid before Parliament within fourteen days after it has been published in the *Gazette*, if Parliament be then in Session; but if not, or if Parliament be in recess, then such regulation shall be laid before it, within fourteen days from the date of the first day of the ensuing Session or reassembling of Parliament.

26. All expenses connected with the administration of this Act Expenses of Act, how defrayed. not hereinbefore provided for, exclusive of the expenses of the parties and witnesses concerned in any dispute or matter referred either to a Council of Conciliation or the Council of Arbitration, shall be defrayed from such annual appropriations as Parliament shall make in that behalf.

27. In the construction and for the purposes of this Act, the Interpretation of terms. expression "Governor" means Governor with the advice of the Executive Council; "Minister" means the responsible Minister charged with the administration of this Act; "prescribed" means prescribed by any Regulation made under this Act.

28. This Act may be cited for all purposes as the "Short title. Trade Disputes Conciliation and Arbitration Act, 1892," and shall continue in force for four years from the commencement thereof and no longer.