

Western Australia

## **Coal Industry Tribunal of Western Australia Act 1992**

### **STATUS OF THIS DOCUMENT**

This document is from an electronic database of legislation maintained by the Parliamentary Counsel's Office of Western Australia.

### **DISCLAIMER**

No warranty is given as to the accuracy or completeness of this document. The State of Western Australia and its agents and employees disclaim liability, whether in negligence or otherwise, for any loss or damage resulting from reliance on the accuracy or completeness of this document.

### **REPRINT AND CONSOLIDATION NUMBERING**

The reprint number (in the footer of each page of the document) shows how many times the Act has been reprinted. For example, numbering a reprint as "Reprint 3" would mean that the reprint was the 3<sup>rd</sup> reprint since the Act was passed. A consolidation described as "Consolidation 3a" would be the result of updating Reprint 3 for the first time to reflect the amendments since the date as at which Reprint 3 was prepared.

Reprint and consolidation numbering was implemented as from 1 January 2003.

### **COPYRIGHT**

Copyright in this document is reserved to the Crown in right of the State of Western Australia. Reproduction except in accordance with copyright law is prohibited.

**THE TEXT OF THE LEGISLATION FOLLOWS**



# Coal Industry Tribunal of Western Australia Act 1992

---

## CONTENTS

---

<b>Part 1 — Preliminary</b>		
1.	Short title	2
2.	Commencement	2
3.	Interpretation	2
<b>Part 2 — Coal Industry Tribunal of Western Australia</b>		
4.	The Tribunal	4
5.	Chairperson and deputy chairperson	4
6.	Employer representatives and deputies	4
7.	Functions of deputies	5
8.	Constitution of Tribunal	5
9.	Term of office	6
10.	Jurisdiction	7
11.	Intervention of the Crown	8
12.	Conferences	8
13.	Evidence before Tribunal	9
14.	Procedure	10
15.	Powers of Tribunal	11
16.	Investigations	12
17.	Enforceability	14
18.	Review by Full Bench of Commission	14
19.	Awards, etc., not to be challenged or questioned	15

Contents

---

20.	Award of Tribunal inconsistent with award of industrial authority	15
21.	Appointment and duties of secretary	15
	<b>Part 3 — Local board of reference</b>	
22.	Local board of reference	17
23.	Functions of local board of reference	17
24.	Procedure	18
25.	Review by Tribunal	19
	<b>Part 4 — Miscellaneous</b>	
26.	Summons	21
27.	Fees and allowances	22
28.	Relationship to Public Service	22
29.	Protection of members of the Tribunal and others	22
30.	Allowances to witnesses	23
32.	Regulations	23
33.	Review of Act	23
	<b>Part 5 — Repeal, savings, transitional, validation and amendments</b>	
34.	Interpretation	24
35.	Repeal	24
36.	Operation of <i>Interpretation Act 1984</i>	24
37.	Continuation	24
38.	Validation	25
	<b>Notes</b>	
	Compilation table	26

Western Australia

## **Coal Industry Tribunal of Western Australia Act 1992**

**An Act to provide for the regulation of the coal industry, to  
constitute the Coal Industry Tribunal of Western Australia and for  
related purposes.**

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Coal Industry Tribunal of Western Australia Act 1992*<sup>1</sup>.

### **2. Commencement**

This Act shall come into operation on such day as is fixed by proclamation<sup>1</sup>.

### **3. Interpretation**

In this Act, unless the contrary intention appears —

**“board of investigation”** means a board of investigation appointed under section 16;

**“chairperson”** means chairperson of the Tribunal;

**“Commission”** means The Western Australian Industrial Relations Commission continued under the *Industrial Relations Act 1979*;

**“employee”** means —

- (a) a person employed in the coal mining industry of Western Australia by an employer to do work for hire or reward including an apprentice or industrial trainee;
- (b) any person whose usual status is that of an employee; or
- (c) any person who is the lessee of any tools or other implements of production or of any vehicle used in the delivery of goods or who is the owner, whether wholly or partly, of any vehicle used in the transport of goods or passengers if that person is in all other respects an employee;

**“employer”** includes persons, firms, companies and corporations employing one or more employees in the coal mining industry of Western Australia;

**“industrial dispute”** means —

- (a) any dispute as to an industrial matter;
- (b) any threatened or impending or probable dispute as to any industrial matter; or
- (c) any dispute relating to the demarcation of functions of employees or classes of employees whether as between employers and employees or as between members of different organizations in the coal mining industry of Western Australia;

**“industrial matter”** means any industrial matter likely to affect the amicable relations of employers and employees in the coal mining industry of Western Australia;

**“local board of reference”** means the local board of reference appointed under section 22;

**“member”** means a member of the Tribunal and includes the chairperson;

**“organization”** means an organization of employees registered under Division 4 of Part II of the *Industrial Relations Act 1979* or a Trade Union within the meaning of the *Trade Unions Act 1902*<sup>2</sup>;

**“relevant organization”**, in relation to any industrial dispute, industrial matter or other matter in respect of which the Tribunal has jurisdiction, means the organization to which the majority of the employees concerned in the industrial dispute, industrial matter or other matter owe membership;

**“Tribunal”** means the Coal Industry Tribunal of Western Australia constituted under section 4.

[3A-3C.      *Repealed by No. 20 of 2002 s. 108.*]

## **Part 2 — Coal Industry Tribunal of Western Australia**

### **4. The Tribunal**

- (1) There shall be a tribunal to be known as the Coal Industry Tribunal of Western Australia.
- (2) The Tribunal shall have a seal of which all courts and persons acting judicially shall take notice.

### **5. Chairperson and deputy chairperson**

- (1) The chairperson of the Tribunal shall be appointed by the Governor on the recommendation of the Minister.
- (2) The Minister shall, in writing, appoint a person as deputy chairperson to act in the place of the chairperson and may revoke such an appointment at any time.
- (3) The Minister shall endeavour to ensure that the person recommended for appointment as chairperson and the person appointed to be deputy chairperson have expertise in, or qualifications relevant to, the coal mining industry.

### **6. Employer representatives and deputies**

- (1) The Minister shall, by appointments in writing, establish a panel of members nominated by the employers.
- (2) Each employer shall have one nominee appointed to the panel.
- (3) Where a nomination for appointment under subsection (1) is required to be made, the nomination shall be made to the Minister within such time after receiving notice from the Minister that the nomination is required as is specified in the notice.
- (4) If a nomination is not made in accordance with subsection (3) within the time specified under that subsection the Minister may appoint such person as the Minister thinks fit and a person appointed in accordance with this subsection shall hold office as



if that person had been nominated by the employer as required by this section.

- (5) Each employer represented by a member appointed under subsection (1) may appoint a person as deputy to act in place of that member and may revoke such an appointment at any time.

**7. Functions of deputies**

- (1) A person appointed under section 5(2) or 6(5) has, and may perform, during any period when —
- (a) the member for whom that person is the deputy is absent or otherwise unable to perform his or her functions; or
  - (b) the office of the member for whom that person was appointed as deputy is vacant,

all of the functions and entitlements of that member.

- (2) No act or omission of a person acting in place of another under this section shall be questioned on the ground that the occasion for acting had not arisen or had ceased.

**8. Constitution of Tribunal**

- (1) Subject to section 14(3), the Tribunal shall, when exercising the jurisdiction conferred upon it by this Act, be constituted by —
- (a) the chairperson;
  - (b) 2 employer representatives, being members selected by the chairperson from the panel established under section 6(1), at least one of whom shall be the representative of the employer principally concerned in the industrial dispute, industrial matter or other matter before the Tribunal; and
  - (c) 2 persons appointed by the relevant organization as an industrial dispute, industrial matter or other matter arises to be considered and determined by the Tribunal.

**s. 9**

---

- (2) Where, in the case of a member to be appointed under subsection (1)(c), the relevant organization fails to appoint a member to attend the hearing of the industrial dispute, industrial matter or other matter, the Tribunal shall be constituted by the members referred to in subsection (1)(a) and (b).
- (3) Where a person is appointed under subsection (1)(c) in relation to a hearing, the person presiding at that hearing shall cause the appointment to be recorded in writing by the secretary of the Tribunal.

**9. Term of office**

- (1) Subject to this section, a member appointed under section 5(1) or 6(1) shall hold office for such term not exceeding 2 years as is specified in the instrument of appointment and is eligible for reappointment.
- (2) The office of a member appointed under section 5(1) or 6(1) becomes vacant if —
  - (a) in the case of a member appointed under section 5(1) the member is removed from office by the Governor, or in the case of a member appointed under section 6(1) the member is removed from office by the Minister, on the grounds of misbehaviour, incompetence, or mental or physical incapacity impairing the performance of the member's duties and proved to the satisfaction of the Governor or the Minister as the case requires;
  - (b) the member resigns office by notice in writing delivered to the Tribunal;
  - (c) the member is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy; or
  - (d) the member is absent without leave of the Tribunal from 3 consecutive meetings of the Tribunal that the member is entitled to attend.

- (3) The office of a member appointed under section 6(1) becomes vacant if the employer who nominated that member advises the Minister in writing that the nomination is withdrawn.
- (4) A member appointed under section 5(1) or 6(1), unless the member sooner resigns, is removed from office or his or her office otherwise becomes vacant under subsection (2) or (3), shall continue in office until his or her successor comes into office, notwithstanding that the term for which the member was appointed may have expired.

**10. Jurisdiction**

- (1) Notwithstanding any of the provisions of the *Industrial Relations Act 1979*, or of any award or industrial agreement made or registered under that Act, the Tribunal has cognizance of and authority to inquire into and deal with —
  - (a) any industrial dispute relating to the coal mining industry in the State not extending beyond the limits of the State referred to the Tribunal;
  - (b) any industrial matter arising under any order, decision or award of the Tribunal, relating to the coal mining industry in the State referred to the Tribunal; and
  - (c) any other matter affecting industrial relations in the coal mining industry in the State referred to the Tribunal.
- (2) An industrial dispute may be referred to the Tribunal under subsection (1)(a) by the relevant organization, the employers or association of employers involved in the industrial dispute, the parties to the dispute or the Minister.
- (3) An industrial matter may be referred to the Tribunal under subsection (1)(b) by the relevant organization, the employers or association of employers affected by the matter or by the Minister.
- (4) A matter may be referred to the Tribunal under subsection (1)(c) by the Minister.

**s. 11**

---

- (5) Where an industrial dispute relating to the demarcation of functions of employees or classes of employees whether as between employers and employees or as between members of different organizations in the coal mining industry of Western Australia is referred to the Tribunal, the chairperson sitting and acting alone shall constitute the Tribunal for the purpose of enquiring into and dealing with that industrial dispute.
- (6) The chairperson sitting and acting alone under subsection (5) has and may exercise while so sitting and acting all the functions of the Tribunal.

**11. Intervention of the Crown**

The Minister may, by giving the Tribunal notice in writing of his or her intention to do so, intervene on behalf of the State in any proceedings before the Tribunal in which the State has an interest.

**12. Conferences**

- (1) The chairperson may, whenever in the opinion of the chairperson it is desirable for the purpose of preventing or settling an industrial dispute referred to the Tribunal, summon any person to attend, at a time and place specified in the summons, at a conference presided over by the chairperson.
- (2) A conference convened under this section may be held partly or wholly in public or in private, at the discretion of the chairperson.
- (3) Whenever a conference has been held under this section, and an agreement has been reached as to the whole or some of the matters in dispute, the chairperson shall —
  - (a) notify all organizations and employers that, in the opinion of the chairperson, may be affected by the agreement of the matters upon which agreement has been reached, and the terms and conditions agreed upon;

- (b) afford those organizations and employers referred to in paragraph (a) an opportunity of being heard; and
  - (c) having complied with paragraphs (a) and (b), sign and cause to be filed in the office of the Registrar appointed under the *Industrial Relations Act 1979*, a memorandum of the matters upon which an agreement has been reached, and the terms and conditions agreed upon.
- (4) Unless otherwise ordered, and subject to any direction by the chairperson, a memorandum filed in accordance with subsection (3)(c), shall thereupon have the force and effect of an industrial agreement registered under the *Industrial Relations Act 1979* and shall be enforceable accordingly.
- (5) The chairperson shall cause accurate minutes to be kept of proceedings at a conference and shall forward those minutes to the Tribunal if a hearing is convened under subsection (6) or (7).
- (6) Whenever a conference has been held under this section, and an agreement has been reached as to some of the matters in dispute, but not as to the whole of the matters in dispute, the chairperson shall refer to the Tribunal the matters in dispute as to which no agreement has been reached, and the Tribunal shall have jurisdiction to hear and determine such matters so referred to it.
- (7) Whenever a conference has been held under this section and no agreement has been reached, the chairperson shall refer to the Tribunal all or any of the matters in dispute and the Tribunal shall have jurisdiction to hear and determine the same.
- (8) The chairperson sitting and acting under this section has and may exercise while so sitting and acting all the functions of the Tribunal.

**13. Evidence before Tribunal**

- (1) Evidence before the Tribunal —
  - (a) may be given orally or in writing; and

**s. 14**

---

- (b) shall, if the Tribunal so requires, be given on oath or affirmation or by affidavit.
- (2) The chairperson of the Tribunal may administer an oath or affirmation or take an affidavit for the purposes of proceedings under this Act.

**14. Procedure**

- (1) In the exercise of its jurisdiction under this Act the Tribunal shall act according to equity, good conscience and the substantial merits of the case, without regard to technicalities or legal forms, and shall not be bound by any rules of evidence, but may inform itself on any matter in such manner as it thinks fit.
- (2) The Tribunal shall hold its hearings at such place, on such day and at such intervals as the chairperson shall from time to time determine.
- (3) The chairperson and half of the other members of the Tribunal shall constitute a quorum, and when a quorum is constituted the Tribunal may validly function notwithstanding that both of the members referred to in section 8(1)(b) or both of the members referred to in section 8(1)(c), or their deputies, shall fail to attend.
- (4) If on any question before the Tribunal at any meeting, the other members are evenly divided, the opinion of the chairperson shall prevail.
- (5) The Tribunal shall cause accurate minutes to be kept of its proceedings.
- (6) On the hearing, determination or decision of any industrial dispute, industrial matter, or other matter by the Tribunal under this Act, an organization may be represented by a member or officer of the organization, and any party not being an organization may be represented by an employee of that party, but no party shall (except by leave of the Tribunal) be

represented by a legal practitioner (as defined in the *Legal Practice Act 2003*) or paid agent.

- (7) Pending a determination or decision of any industrial dispute or industrial matter by the Tribunal, the chairperson on the application of any party interested in such dispute or matter may by order direct that the conditions or situations out of which such industrial dispute or industrial matter arose shall not be altered pending such determination or decision.
- (8) Subject to this Act the Tribunal may make rules for or with respect to the regulation of its own procedure or providing for any other administrative matters where there is no provision, or no sufficient provision in this Act, in relation to such matters.

*[Section 14 amended by No. 65 of 2003 s. 20.]*

## **15. Powers of Tribunal**

- (1) The Tribunal may, in relation to any matter before it —
  - (a) at any stage of the proceedings dismiss the matter or any part of the matter or refrain from further hearing or determining the matter if it is satisfied —
    - (i) that the matter or part of the matter is trivial;
    - (ii) that further proceedings are not necessary or desirable in the public interest;
    - (iii) that the person who referred the matter to the Tribunal does not have a sufficient interest in the matter; or
    - (iv) that for any other reason the matter or part should be dismissed or the hearing of the matter or part discontinued, as the case may be;
  - (b) proceed to hear and determine the matter or any part thereof in the absence of any party to the proceedings who has been duly summoned to appear or who has notice of the proceedings;
  - (c) sit at any time and place;

**s. 16**

---

- (d) adjourn to any time and place;
  - (e) direct any person, whether a witness or intending witness or not, to leave the place where the proceedings are being conducted;
  - (f) refer any matter to an expert and accept the report of that expert as evidence;
  - (g) allow the amendment of any proceedings on such terms as it thinks fit;
  - (h) correct, amend, or waive any error, defect or irregularity whether in substance or in form;
  - (i) permit the intervention, on such terms as it thinks fit, of any person who, in the opinion of the Tribunal, has a sufficient interest in the matter;
  - (j) inspect any document, exhibit or other thing produced before the Tribunal, and retain it for such reasonable period as the Tribunal thinks fit, and make copies of any document or any of its contents;
  - (k) enter and inspect any mine or other place or facilities relevant to the proceedings;
  - (l) question any person who may be in a place of a kind referred to in paragraph (k) in relation to any matter or thing which is the subject of a matter before the Tribunal or is related to that matter; and
  - (m) generally give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of the matter.
- (2) The Tribunal may make such order for costs as it thinks fit.

**16. Investigations**

- (1) For the purposes of this Act the Tribunal may from time to time establish boards of investigation.



- (2) Each board of investigation shall consist of a chairperson appointed by the Tribunal and such members possessing relevant expertise or qualifications in the coal mining industry as the Tribunal thinks appropriate to appoint.
- (3) The Tribunal may at any time remit to a board of investigation for inquiry and report, with or without directions, any industrial dispute, industrial matter or other matter within its jurisdiction which the Tribunal considers is desirable to have included in any reference for investigation and upon which the Tribunal desires information for the purpose of making a determination or decision.
- (4) The Tribunal may, but shall not be obliged to, accept any conclusion arrived at or any recommendation made by the board of investigation, and all persons concerned in those conclusions and recommendations shall be entitled to be heard before the Tribunal.
- (5) The Tribunal may at any time itself conduct any inquiry which has been remitted to a board of investigation under subsection (3) and upon so informing the board of investigation —
  - (a) the members of the board of investigation shall forward to the chairperson a copy of the evidence taken before the board of investigation and the exhibits therein referred to; and
  - (b) the jurisdiction of the board of investigation to continue the inquiry shall cease.
- (6) Notwithstanding subsection (5)(b), the Tribunal may at any time again remit to the board of investigation any matter arising in the inquiry for report and upon that remission the jurisdiction of that board of investigation to inquire into and report upon the matter shall revive.
- (7) A board of investigation shall comply with any direction of the Tribunal.

**s. 17**

---

- (8) Subject to this Act, a board of investigation shall determine its own procedure.

**17. Enforceability**

- (1) When in regard to any industrial dispute, industrial matter or other matter of which the Tribunal has cognizance —
- (a) an award or order is made by the Tribunal; or
  - (b) an agreement as to the whole or part thereof is entered into by the parties concerned,

that award, order or agreement shall be binding on the parties concerned, shall be filed in the office of the Registrar appointed under the *Industrial Relations Act 1979* and shall thereupon in the case of an award or order shall have the force and effect of an award made under the *Industrial Relations Act 1979* and in case of an agreement shall have the force and effect of an industrial agreement registered under the *Industrial Relations Act 1979* and in each case be enforceable accordingly.

- (2) Where an order of the Tribunal requires the payment of a pecuniary sum, the secretary of the Tribunal shall, upon application by a party to the proceedings in which the order was made or a person claiming through or under such a party, issue a certified copy of the order.
- (3) A person to whom a sum is to be paid under such an order may enforce it by lodging a certified copy of it, and an affidavit stating to what extent it has not been complied with, with a court of competent jurisdiction.
- (4) When lodged, the order is to be taken to be a judgment of the court and may be enforced accordingly.

*[Section 17 amended by No. 59 of 2004 s. 141.]*

**18. Review by Full Bench of Commission**

- (1) On the application of any party to an industrial dispute, industrial matter or other matter that has been dealt with by the

Tribunal, the Full Bench of the Commission may permit any decision or settlement given or effected by the Tribunal to be reviewed by the Full Bench of the Commission and pending such review the President of the Commission may by order stay the operation of the decision or settlement.

- (2) An application under subsection (1) shall be made within 21 days of the date of the decision or settlement given or effected by the Tribunal.
- (3) A review under this section shall be made and determined on the evidence and matters raised in the proceedings before the Tribunal.

**19. Awards, etc., not to be challenged or questioned**

Except as provided by section 18, an award, order or determination of the Tribunal under this Act shall not be challenged, appealed against, quashed, or called into question, or be subject to prohibition, *mandamus* or injunction in any court on any account whatever.

**20. Award of Tribunal inconsistent with award of industrial authority**

During the currency of any award or order made by the Tribunal under this Act, no award or order made by the Commission or by any tribunal having jurisdiction in industrial matters in the coal mining industry dealing with the same subject matter and inconsistent with the award or order made by the Tribunal (except an award or order made under this Act) shall be effective.

**21. Appointment and duties of secretary**

- (1) A secretary of the Tribunal shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994*.
- (2) The secretary referred to in subsection (1) may hold office in conjunction with any other office in the Public Service.

**s. 21**

---

- (3) The duties of the secretary of the Tribunal shall be as directed by the Tribunal and the chief executive officer of any department in which the secretary is also employed.

*[Section 21 amended by No. 32 of 1994 s. 19.]*

### **Part 3 — Local board of reference**

#### **22. Local board of reference**

- (1) For the purposes of this Act there shall be a local board of reference.
- (2) The members of the local board of reference shall be —
  - (a) a chairperson appointed by the Minister who shall be a person the Minister considers has expertise in, or qualifications relevant to, the coal mining industry;
  - (b) a person nominated by the relevant organization; and
  - (c) a person nominated by the employer concerned in the industrial dispute or industrial matter that is to be considered and determined.
- (3) The Minister may appoint a person as chairperson of the local board of reference for a specified period of time and may terminate such an appointment and make another appointment within that specified period, or may extend that specified period.
- (4) The Minister may appoint a person as a deputy to act in the place of the chairperson of the local board of reference and may terminate such an appointment at any time.

#### **23. Functions of local board of reference**

- (1) Subject to subsection (2), the function of the local board of reference shall be to consider and determine any industrial dispute or industrial matter referred to the chairperson of the local board of reference by the secretary of the relevant organization or by an employer concerned in that industrial dispute or industrial matter.
- (2) The local board of reference shall not consider any industrial dispute or industrial matter referred to the chairperson of the local board of reference that —
  - (a) affects or relates to the basic rate of pay, or allowances determined under an award, of an employee;

**s. 24**

---

- (b) is otherwise covered by an award made under this Act;  
or
  - (c) is pending before the Tribunal.
- (3) Where an industrial dispute or industrial matter is referred to the chairperson of the local board of reference, that chairperson —
- (a) shall, in the case of an industrial dispute or industrial matter referred to in subsection (2), refer that industrial dispute or industrial matter to the Tribunal;
  - (b) may, in the case of an industrial dispute or industrial matter not referred to in subsection (2), at any time before a determination in respect of that industrial dispute or industrial matter has been made, refer that industrial dispute or industrial matter to the Tribunal;  
and
  - (c) shall, in any other case, convene a meeting of the local board of reference to consider and determine that industrial dispute or industrial matter.

**24. Procedure**

- (1) The local board of reference shall hold its meetings in private unless the chairperson of the local board of reference decides otherwise.
- (2) The chairperson and one other member of the local board of reference shall constitute a quorum.
- (3) The local board of reference shall meet at such times and places as the chairperson of the local board of reference may determine.
- (4) Where the members appointed under section 22(2)(b) and (c) are divided in opinion on any matter before the local board of reference the decision of the local board of reference shall be in accordance with the opinion of the chairperson of the local board of reference.

- (5) The chairperson of the local board of reference shall record each decision of the local board of reference in a memorandum signed and dated by the chairperson and shall forward a copy of that memorandum to all parties concerned and to the secretary of the Tribunal.
- (6) If an organization or employer concerned in a matter before the local board of reference so requests, or if the chairperson of the local board of reference thinks it is appropriate to do so, the chairperson of the local board of reference shall forward the memorandum referred to in subsection (5) to the Registrar appointed under the *Industrial Relations Act 1979* for filing in the office of the Registrar.
- (7) Subject to sections 18 and 25, the decision referred to in subsection (5) shall, upon being filed under subsection (6), have the force and effect of an award under the *Industrial Relations Act 1979* and be enforceable accordingly.

## **25. Review by Tribunal**

- (1) A decision of the local board of reference may be reviewed and varied or cancelled by the Tribunal on the application of the relevant organization or employer concerned if —
  - (a) notice of the application for review is given by the relevant organization or employer concerned to the chairperson of the local board of reference and to the other parties concerned within 7 days of the date of the decision, or such further period of time as the Tribunal may allow; and
  - (b) the application for review is lodged with the Tribunal within 14 days of the date of the decision or such further period as the Tribunal may allow,

and pending such review the Tribunal may by order stay the operation of the decision.

**s. 25**

---

- (2) Subject to subsection (1) and section 18, all parties and persons shall abide by a decision of the local board of reference filed under section 24(6), unless and until it is varied or cancelled by the Tribunal, and if it is varied shall then abide by it as so varied.



---

## Part 4 — Miscellaneous

### 26. Summons

- (1) The Tribunal, a board of investigation, or the local board of reference, may summon any person to attend, at a time and place specified in the summons, at a hearing before the Tribunal, that board of investigation or the local board of reference.
- (2) A summons given under section 12(1) or subsection (1) of this section —
  - (a) may be given in the prescribed manner; and
  - (b) when so given shall, in any proceedings under this Act relating thereto, be deemed to have been served on the person to whom it is directed unless that person satisfies the chairperson, the Tribunal, the board of investigation, or the local board of reference as the case requires, that that person did not receive the summons.
- (3) Any person summoned under this Act shall, except with reasonable excuse, proof of which is on that person, attend the conference or hearing at the time and place specified in the summons and continue attendance at the conference or hearing as directed by the chairperson, Tribunal, board of investigation or local board of reference.
- (4) Any person who fails to comply with subsection (3) commits an offence.

Penalty:

  - (a) in the case of a natural person — \$1 000; or
  - (b) in the case of a body corporate — \$5 000.
- (5) Prosecutions against persons for offences under this section may be made or sworn by any person duly authorised by the chairperson of the Tribunal.

*[Section 26 amended by No. 84 of 2004 s. 80.]*

**s. 27**

---

**27. Fees and allowances**

The members of the Tribunal, the members of a board of investigation and the members of the local board of reference shall be paid such fees and allowances as are determined by the Minister on the recommendation of the Minister for Public Sector Management<sup>4</sup>.

**28. Relationship to Public Service**

The fact that a person is a member of the Tribunal, a member of a board of investigation or a member of a local board of reference does not —

- (a) render Part 3 of the *Public Sector Management Act 1994*, or any Act applying to persons as officers of the Public Service of the State, applicable to that person; or
- (b) affect or prejudice the application to that person of those provisions if they applied to that person at the time that person became a member.

*[Section 28 amended by No. 32 of 1994 s. 19.]*

**29. Protection of members of the Tribunal and others**

- (1) A person who is —
  - (a) a member of the Tribunal;
  - (b) a member of a board of investigation; or
  - (c) a member of the local board of reference,

is not personally liable for an act done by the body of which that person is a member in good faith in the exercise or purported exercise of the functions of that body.

- (2) In subsection (1) “**act**” includes an omission to act.

**30. Allowances to witnesses**

- (1) Allowances payable to persons attending under this Act as witnesses before the Tribunal, a board of investigation or the local board of reference shall be as prescribed by regulations.
- (2) In the making of regulations for the purposes of this section, provision shall be made for compensation for loss of wages incurred by witnesses by reason of their attendance as such and for travelling expenses incurred by witnesses.

[31. *Repealed by No. 79 of 1995 s. 66(4).*]

**32. Regulations**

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act.

**33. Review of Act**

- (1) The Minister shall carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 5 years from its commencement and in the course of that review the Minister shall consider and have regard to —
  - (a) the effectiveness of the operations of the Tribunal, the boards of investigation and the local board of reference;
  - (b) the need for the continuation of the functions of the Tribunal, the boards of investigation and the local board of reference; and
  - (c) such matters, other than those referred to in paragraphs (a) and (b), as appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (2) The Minister shall prepare a report based on the review made under subsection (1) and shall, within a period of 12 months, cause that report to be laid before each House of Parliament.

## **Part 5 — Repeal, savings, transitional, validation and amendments**

### **34. Interpretation**

In this Part —

**“former Tribunal”** means the Western Australian Coal Industry Tribunal constituted under the repealed Act;

**“new Tribunal”** means the Coal Industry Tribunal of Western Australia constituted under this Act;

**“proclaimed date”** means the date on which this Act comes into operation<sup>1</sup>;

**“repealed Act”** means the *Western Australian Coal Industry Tribunal Act 1978*.

### **35. Repeal**

The *Western Australian Coal Industry Tribunal Act 1978* is repealed.

### **36. Operation of *Interpretation Act 1984***

The *Interpretation Act 1984* applies to and in respect of the repealed Act except to the extent that this Act provides otherwise.

### **37. Continuation**

On and after the proclaimed date —

- (a) the persons who, immediately before the proclaimed date, held office on the former Tribunal as chairman and deputy chairman shall be deemed to have been appointed under and subject to this Act to the office of chairperson and deputy chairperson respectively on the new Tribunal and shall be deemed to have been so appointed on the day on which that person was appointed to that office under the repealed Act;

- (b) all applications, matters, and proceedings commenced under the repealed Act pending or in progress immediately before the proclaimed date may be continued, completed and enforced under this Act;
- (c) any award, order or decision in force immediately before the proclaimed date under the repealed Act shall be deemed to have been made under the authority of this Act and to continue in force and take effect according to its tenor as if expressly authorised by this Act;
- (d) subject to paragraph (f), all parties and persons shall abide by any award, order or decision referred to in paragraph (c) unless and until it is altered under this Act, and, if it be so altered, shall then abide by it as so altered;
- (e) when an award, order or decision referred to in paragraph (c) is inconsistent with an award, order, or decision made under this Act, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid; and
- (f) any award, order or decision referred to in this section shall be subject to review and determination under this Act.

**38. Validation**

All awards, orders or decisions of the Tribunal shall, notwithstanding that a person has acted or voted as a member while not being appointed properly or at all, be and be deemed always to have been as valid as if that person had been so appointed.

[39. *Omitted under the Reprints Act 1984 s. 7(4)(e).*]

## Notes

- <sup>1</sup> This is a compilation of the *Coal Industry Tribunal of Western Australia Act 1992* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Coal Industry Tribunal of Western Australia Act 1992</i>	37 of 1992	2 Oct 1992	31 Dec 1992 (see s. 2 and <i>Gazette</i> 31 Dec 1992 p. 6311)
<i>Workplace Agreements Act 1993</i> s. 103	13 of 1993	23 Nov 1993	1 Dec 1993 (see s. 2 and <i>Gazette</i> 30 Nov 1993 p. 6439)
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 19	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Industrial Relations Legislation Amendment and Repeal Act 1995</i> s. 66(4)	79 of 1995	16 Jan 1996	18 May 1996 (see s. 3(2) and <i>Gazette</i> 14 May 1996 p. 2019)
<i>Labour Relations Reform Act 2002</i> s. 16, 107 and 108	20 of 2002	8 Jul 2002	s. 16 and 107: 15 Sep 2002 (see s. 2(1) and <i>Gazette</i> 6 Sep 2002 p. 4487); s. 108: 15 Sep 2003 (see s. 2(4))
<b>Reprint of the <i>Coal Industry Tribunal of Western Australia Act 1992</i> as at 15 Nov 2002</b> (includes amendments listed above except the <i>Labour Relations Reform Act 2002</i> s. 108)			
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003</i> s. 20	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))

- <sup>2</sup> Repealed by the *Industrial Relations Legislation Amendment and Repeal Act 1995*.

<sup>3</sup> Footnote no longer applicable.

<sup>4</sup> Under the *Public Sector Management Act 1994* s. 112(2), a reference in a written law to the Public Service Commissioner is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the Minister for Public Sector Management (as defined in the *Interpretation Act 1984*). This reference was amended under the *Reprints Act 1984* s. 7(5)(a).