

PUBLIC SERVICE ARBITRATION.

No. 62 of 1966.

AN ACT to make provision for the appointment of a Public Service Arbitrator, and for incidental and other purposes.

[Assented to 12th December, 1966.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the *Public Service Arbitration Act, 1966.*

*Commence-
ment.*

2. This Act shall come into operation on a date to be fixed by proclamation.

3. In this Act unless the contrary intention appears— Interpre-
tation.

“employer”—

- (a) in relation to Government officers who are public service officers or temporary employees under and within the meaning of the Public Service Act, 1904,

means the Public Service Commissioner; and

- (b) in relation to any other Government officers,

means the Minister of the Crown, body corporate, or other body or person by or under whom or which any Government department, State Trading Concern, State instrumentality or State agency, in which those Government officers are employed, is administered;

“Government officer” means a person who is a Government officer under and within the meaning of section eleven A of the Industrial Arbitration Act, 1912;

“occupational group” means those Government officers who occupy positions at various levels in a specific occupation or profession within the service of an employer that require as a condition of appointment basically the same educational standard, training, experience and academic qualifications, or any of them;

“the Arbitrator” means the Public Service Arbitrator appointed under this Act;

“the Association” means the Civil Service Association of Western Australia Incorporated;

“the Public Service Commissioner” means the Public Service Commissioner appointed under the Public Service Act, 1904.

Application.

4. (1) This Act shall be read in conjunction with the Public Service Act, 1904.

(2) Subject to subsection (3) of this section, this Act applies only to Government officers within the meaning of that term in section three of this Act.

(3) This Act does not apply to any Government officer if and when he occupies—

- (a) a position included in the Special Division of the Public Service in accordance with the provisions of the Public Service Act, 1904; or
- (b) a position in any State Trading Concern, State instrumentality or State agency, that is declared by the Governor, on the recommendation of the Public Service Commissioner, to be not lower in status or salary than a position included in the Special Division of the Public Service; or
- (c) a position, the salary of which is determined by any Act to be at a fixed rate, or is determined or to be determined by the Governor pursuant to the provisions of any Act.

Public
Service
Arbitrator.

5. (1) For the purposes of this Act there shall be a Public Service Arbitrator who shall be appointed by the Governor.

(2) Subject to subsection (3) of this section, the Arbitrator shall be appointed for a term of seven years and shall be eligible for re-appointment.

(3) If the person appointed to be the Arbitrator is at the time of his appointment or re-appointment above the age of fifty-eight years, the term of his appointment, or as the case may be, re-appointment, shall be the period that will expire on his attaining the age of sixty-five years.

(4) Where the Arbitrator was, immediately before his appointment as the Arbitrator, in the employ of the Government of the State, he shall

retain his existing and accruing rights and privileges and for the purposes of determining those rights and privileges his service as the Arbitrator shall be taken into account.

(5) Where the Arbitrator was, immediately before his appointment as the Arbitrator, in the employ of the Government of the State, he shall, if he resigns his office as Arbitrator, or if the term of his appointment or re-appointment expires and is not renewed, be entitled to be employed in the Government of the State in a position of no less status than that enjoyed by him immediately prior to his appointment as the Arbitrator.

6. (1) The salary of the Arbitrator shall be at the rate fixed from time to time by the Governor and be paid out of the Consolidated Revenue Fund which to the necessary extent is hereby appropriated accordingly.

Salary of the
Arbitrator.

(2) The Arbitrator shall be paid such travelling expenses as are considered reasonable by the Minister.

(3) Subject to the provisions of the Superannuation and Family Benefits Act, 1938, the Arbitrator shall while he holds his office be deemed to be an employee within the meaning of that Act.

(4) The Arbitrator shall be entitled to such leave of absence from duty as is for the time being prescribed for an officer appointed under the provisions of the Public Service Act, 1904.

7. (1) Where the Arbitrator is unable to attend to his duties under this Act, whether on account of illness or otherwise, or where there is a vacancy in the office of Arbitrator, the Governor may appoint a person to be the acting Arbitrator during the inability of the Arbitrator or the vacancy of the office, and the person so appointed to be the acting Arbitrator, while so acting, shall have and may exercise all the powers and functions of the Arbitrator.

Acting
Arbitrator
may be
appointed.

(2) Notwithstanding the expiry of the period for which the Arbitrator or acting Arbitrator has been appointed under this Act, the Governor may continue him in office for such period as the Governor determines in order to enable him to complete all matters, proceedings or inquiries that he has entered upon and has not completed before such expiry.

(3) The Governor may from time to time extend any period determined by him under subsection (2) of this section for such period or periods as he thinks fit.

Removal or
suspension
of the
Arbitrator.

8. (1) The Governor may remove the Arbitrator from office on an address praying for his removal on the ground of proved misbehaviour or incapacity being presented to the Governor by each House of Parliament during the same session of Parliament.

(2) The Governor may suspend the Arbitrator from office on the grounds of misbehaviour or incapacity and in such case a full statement of the grounds of suspension shall be laid by the Minister before each House of Parliament within seven sitting days after the suspension if Parliament is then in session, or if not, then within seven days of the commencement of the next session.

(3) The Arbitrator shall be restored to office unless each House of Parliament, within twenty-one sitting days after the statement has been laid before it pursuant to subsection (2) of this section, presents to the Governor an address praying for the removal of the Arbitrator on the ground of proved misbehaviour or incapacity.

Vacation
of office.

9. The office of the Arbitrator shall be vacated if—

- (a) he engages in paid employment outside the duties of his office without the approval of the Governor;
- (b) he becomes bankrupt or insolvent, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors, or makes an assignment of his salary for their benefit;

- (c) he becomes permanently incapable of performing the duties of his office;
- (d) he absents himself from duty for an aggregate of more than seven days in any twelve months, except during—
 - (i) a period of leave of absence to which he is entitled under this Act; or
 - (ii) any other period of leave of absence approved by the Governor; or
- (e) he resigns his office by writing under his hand addressed to the Governor and his resignation is accepted,

and the Governor declares by notice published in the *Gazette* that the office has become vacant.

10. Before entering upon his office the Arbitrator shall make oath before a judge that he will faithfully and impartially perform the duties of his office, and that he will not, except in the discharge of his duties, disclose to any person any evidence or other matter brought before him.

Oath of office.

11. (1) Subject to this Act, the Arbitrator is empowered to determine all matters submitted to him relating to—

Matters to be determined by the Arbitrator.

- (a) a claim made by the Association on behalf of any occupational group concerning salaries, or ranges of salaries and incremental steps therein, applicable to those offices in which that occupational group of Government officers are employed;
- (b) a claim made by the Association on behalf of more than one occupational group, and affecting only Government officers included in the same Division of the Public Service, concerning the salaries or ranges of salaries and incremental steps therein applicable to those offices in which those Government officers are employed if—
 - (i) the Public Service Commissioner consents to the making of the claim on behalf of all of the occupational groups included therein; or

- (ii) the Arbitrator determines that the claim should be heard as a claim on behalf of all or any number of the occupational groups in respect of which the claim is sought to be made by the Association;
- (c) a claim not affecting the Public Service Commissioner that is made by the Association on behalf of more than one occupational group concerning salaries or ranges of salaries and incremental steps therein, applicable to those officers in which those occupational groups of Government officers are employed, if—
 - (i) the employer affected by the claim consents to the making of the claim on behalf of all of the occupational groups included therein; or
 - (ii) the Arbitrator determines that the claim should be heard as a claim on behalf of the all or any number of the occupational groups in respect of which the claim is sought to be made by the Association;
- (d) a claim made by the Association concerning allowances to be paid to Government officers in addition to salary, including those to be paid to specific occupational groups, and the circumstances in which any such allowances shall be payable;
- (e) a claim by the Association concerning rates to be paid for overtime worked by Government officers in addition to ordinary salary, including rates to be paid to specific occupational groups, and the circumstances in which payment for overtime shall be made;
- (f) an application by the Association or any employer relating to any dispute or disagreement concerning the application of any provision of an award, order or decision of the Arbitrator or of any provision of an agreement entered into by the Association and an employer in accordance with this Act;

- (g) an appeal by any Government officer in respect of the salary, range of salary or title allocated to the office occupied by that Government officer by an employer in accordance with section twelve of this Act;
- (h) an appeal by the Association in respect of the salary or range of salary allocated to a vacant office by an employer in accordance with section twelve of this Act;
- (i) an appeal by the Association against a decision of an employer to downgrade any office that is vacant.

(2) Nothing in subsection (1) of this section shall affect or interfere with the exercise by an employer in relation to any Government officer, office or occupational group under his administration of any power in relation to any of the matters referred to in that subsection within the jurisdiction of the Arbitrator, but any act, matter or thing done by an employer in relation to any matter in respect whereof the Arbitrator has such jurisdiction is liable to be reviewed, nullified, modified or varied by the Arbitrator in the course of the exercise by him of his jurisdiction in respect of that matter under this Act.

12. (1) Whenever a new award is made by the Arbitrator or a new agreement is entered into between an employer and the Association, concerning salaries or salary ranges and the incremental steps therein applicable to offices in which Government officers are employed, the employer affected by that award or agreement shall, within two months after the operative date thereof, or such further time as the Arbitrator on the application of the employer may approve—

Determina-
tion to be
made by
employer on
new award or
agreement.

- (a) review the offices to which that award or agreement applies; and
- (b) make a determination, by notice published in the Gazette, allocating to those offices such of the salaries or salary ranges contained in that award or agreement as he considers appropriate to those offices.

(2) The determination of an employer referred to in paragraph (b) of subsection (1) of this section shall have and take effect from and including the operative date of the new award or agreement, as the case may be.

Application
by employer
of provisions
of amend-
ments to
awards or
agreements.

13. (1) Whenever an amendment to an award is made by the Arbitrator or an amendment to an agreement is entered into between an employer and the Association, in accordance with this Act, the employer affected by that amendment shall apply the provisions of that amendment to the offices to which it applies.

(2) The application by an employer of the provisions of any amendment referred to in subsection (1) of this section shall have and take effect from and including the operative date of that amendment.

Association
to submit
claim to
employer.

14. (1) Before the Association may make a claim to the Arbitrator relating to any of the matters referred to in paragraphs (a), (b), (c) (d) or (e) of subsection (1) of section eleven of this Act, it shall first submit the claim to the employer affected by the claim.

(2) Upon his receiving a claim pursuant to subsection (1) of this section, the employer shall consider the claim and within two months after the date of its receipt confer with the Association concerning the matters the subject of the claim.

(3) After considering the claim and conferring with the Association as required by this section, the employer may—

- (a) enter into an agreement in writing with the Association concerning all or any of the matters the subject of the claim;
- (b) make any determination he is empowered to make concerning all or any of those matters; or
- (c) decline to enter into an agreement with the Association, or to make any determination, concerning any of those matters.

15. (1) Where pursuant to section fourteen of this Act the Association submits a claim to an employer affected by that claim and—

Association may submit claim to Arbitrator if agreement not reached with employer.

- (a) the employer fails to confer with the Association within the time specified in subsection (2) of that section; or
- (b) the employer and the Association are unable to reach agreement on the matters the subject of the claim within three months after the date of receipt by the employer of the claim, or such further time as may be agreed upon between the Association and the employer,

the Association may submit the claim to the Arbitrator for determination in accordance with this Act.

(2) The Arbitrator shall forthwith forward a copy of the claim to the employer affected by the claim and such employer shall, within one month after the receipt thereof, lodge with the Arbitrator an answer to the claim.

(3) If no answer to the claim is lodged with the Arbitrator pursuant to subsection (2) of this section, the Arbitrator may determine the claim.

(4) If the employer lodges an answer to the claim the Arbitrator shall call a conference, to be presided over by himself, of the employer affected by the claim and of representatives of the Association, and following the conference the Arbitrator shall, after hearing such evidence, if any, as he thinks necessary, in respect of such matters as have not been agreed on at the conference, determine the claim.

(5) Where more than one claim is submitted to the Arbitrator concerning an employer or several employers and the Association, the claims shall be heard by the Arbitrator in such order as may be agreed upon between the employers and the Association and in default of such agreement in such order as the Arbitrator decides.

Appeals to
Arbitrator.

16. (1) A Government officer or the Association, as the case may be, may submit to the Arbitrator any appeal relating to the matters mentioned in paragraphs (g), (h) and (i) of subsection (1) of section eleven of this Act.

(2) An appeal pursuant to subsection (1) of this section shall be commenced by notice in writing lodged with the Arbitrator within one month after the date of the determination or decision in respect of which the appeal is brought, or where that determination or decision is published in the *Gazette*, within one month from the date of the publication.

(3) The Arbitrator shall forthwith forward a copy of the notice of appeal to the employer affected by the appeal, and as soon as reasonably practicable shall determine the appeal.

Application
for variation
of award.

17. (1) Subject to the provisions of section twenty-seven of this Act, and subject also to compliance with the provisions of subsections (2) and (3) of this section, an employer affected by any award of the Arbitrator relating to any of the matters referred to in paragraphs (a), (b), (c), (d) or (e) of subsection (1) of section eleven of this Act, or the Association, may submit to the Arbitrator an application to vary that award either wholly or in part.

(2) Before the applicant, whether an employer or the Association, may submit the application to the Arbitrator pursuant to subsection (1) of this section, such applicant shall first submit the application to the party affected thereby, and upon receiving the application the party so affected shall consider the matters the subject thereof and within two months after the date of such receipt confer with the applicant concerning those matters.

(3) Where pursuant to subsection (2) of this section an application is submitted to the party affected thereby and—

(a) that party fails to confer with the applicant within the time specified in that subsection; or

- (b) that party and the applicant are unable to reach agreement on the matters the subject of the application within three months after the date of receipt by that party of the application, or such further time as may be agreed upon between the applicant and that party,

the applicant may submit the application to the Arbitrator for determination in accordance with this Act.

18. (1) Where an application is submitted to the Arbitrator for his determination pursuant to the provisions of section seventeen of this Act, the Arbitrator shall forthwith forward a copy of the application to the Association, or as the case may be, the employer, affected by the application.

Procedure on
submission of
application
to the
Arbitrator.

(2) The Association or, as the case may be, the employer affected by the application, shall, within one month after the receipt of the application, lodge with the Arbitrator an answer to the application.

(3) If no answer to the application is lodged with the Arbitrator pursuant to subsection (2) of this section, the Arbitrator may determine the application.

(4) If an answer to the application is lodged, the Arbitrator shall call a conference, to be presided over by himself, of the employer affected by the application and of representatives of the Association, and following the conference the Arbitrator shall, after hearing such evidence, if any, as he thinks necessary, determine the application.

19. In relation to every claim, appeal or application made to him pursuant to the provisions of this Act, the Arbitrator 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 his mind on any matter in such manner as he thinks fit.

Arbitrator
to act
according to
equity.

Powers of
Arbitrator.

20. (1) For the purposes of this Act, the Arbitrator shall as regards any claim, appeal or application submitted to him under this Act have power—

- (a) to summon any witness before him, and to compel the production before him of books, documents and things for the purpose of reference to such matters as relate to the matter of the claim, appeal or application;
- (b) to take evidence on oath or affirmation, and either in public or in camera at his discretion;
- (c) to direct the payment of witness fees to witnesses, other than witnesses employed by the Government, such witness fees to be payable by the party calling the witness;
- (d) to allow the amendment or withdrawal of any claim, appeal or application;
- (e) to direct the parties to confer;
- (f) to adjourn proceedings from time to time;
- (g) to dismiss any claim, appeal or application;
- (h) to determine any dispute between any employer and the Association as to whether Government officers, or offices, included in any claim or application constitute an occupational group within the meaning of this Act;
- (i) subject to subsection (2) of this section, to declare by any order that any provision of an award shall, subject to such conditions, exceptions and limitations as are specified in the order, be a common rule relating to such Government officers as the Arbitrator may determine;
- (j) generally to give all such directions and do all such things as the Arbitrator deems necessary or expedient to give effect to the intention of this Act.

(2) Before any common rule is declared pursuant to the power conferred by paragraph (i) of subsection (1) of this section, the Arbitrator shall, by

notification in the Gazette and in such manner, if any, as he directs, specifying the matter in relation to which it is proposed to declare a common rule, make known that all persons interested and desirous of being heard may, on or before a day specified in the notification, appear or be represented before the Arbitrator, and the Arbitrator shall hear such persons so appearing or represented.

(3) Any person who on being summoned as a witness refuses or fails, without lawful excuse and after tender of reasonable expenses, to appear in obedience to the summons, or refuses or fails without lawful excuse to be sworn or make an affirmation or to produce books, documents and things which he is lawfully required to produce, or to answer questions which he is lawfully required to answer, commits an offence.

Penalty: One hundred dollars.

(4) Any proceeding for an offence against subsection (3) of this section may be prosecuted and dealt with summarily under and in accordance with the provisions of the Justices Act, 1902.

21. The Arbitrator may refrain from hearing, or from further hearing, or from determining a claim, appeal or application submitted to him under this Act, or a matter forming part of or arising out of such a claim, appeal or application, if the subject matter of the claim, appeal, application or matter is trivial, or that on any other ground it is unnecessary or undesirable in the public interest to deal with that claim, appeal, application or matter.

Arbitrator
may decline
to hear
certain
claims.

22. No costs shall be allowed in respect of any proceedings under this Act.

Costs not
allowable.

Appearance
before
Arbitrator.

23. (1) Any employer, being a party to any claim, appeal or application, may appear before the Arbitrator in person, or by his agent duly appointed in writing for that purpose.

(2) The Association, being a party to any claim, appeal or application, may appear before the Arbitrator by its President or General Secretary, or by any person appointed in writing by the President for that purpose.

(3) Any Government officer, being a party to an appeal under paragraph (g) of subsection (1) of section eleven of this Act, may appear in person or by an officer of the Association appointed in writing by that Government officer for that purpose, or, subject to subsection (5) of this section, by a legal practitioner.

(4) Every party appearing by a representative shall be bound by the acts of such representative.

(5) (a) Except where this Act provides otherwise, no legal practitioner, whether of this State or any other State, whether on the Rolls or not, or solicitor's clerk, shall be allowed to appear or be heard before the Arbitrator if he is not a party to or a witness before the proceedings, or to attend the Arbitrator to advise the representative of any party before the Arbitrator, unless all parties to the claim, appeal or application or other matter expressly consent thereto.

(b) Where a question of law is raised or argued or is likely, in the opinion of the Arbitrator, to be raised or argued in proceedings before him, the Arbitrator may allow legal practitioners to appear and be heard.

Arbitrator
may make
awards, etc.

24. (1) The Arbitrator may make such awards, orders or decisions as in his opinion are necessary for the proper exercise by him of his jurisdiction under this Act and effect shall be given to those awards, orders or decisions according to their tenor.

(2) The Arbitrator may give an interpretation of an award, order or decision made under this Act.

25. Subject to the provisions of sections twenty-one and twenty-six of this Act, no award, order or decision of the Arbitrator made under this Act shall be challenged, appealed against, reviewed, quashed or called in question, or be subject to any prohibition or mandamus, in any Court on any account whatever.

Determinations of Arbitrator to be final.

26. (1) An appeal shall lie to the Western Australian Industrial Appeal Court, established under Part IVA of the Industrial Arbitration Act, 1912, against an award, order or decision of the Arbitrator relating to any of the matters referred to in paragraphs (a), (b), (c), (d) or (e) of subsection (1) of section eleven of this Act, on the ground that the award, order or decision is erroneous in law or is in excess of jurisdiction, but upon no other ground.

Appeals to Western Australian Industrial Appeal Court.

(2) Jurisdiction is conferred on the Court referred to in subsection (1) of this section to hear and determine an appeal made under this section.

(3) On the hearing of an appeal made under this section the Court may confirm, reverse, vary, amend, rescind, set aside or quash the award, order or decision the subject of appeal and may remit the matter to the Arbitrator for further hearing and determination according to law.

(4) An appeal under this section shall be made within one month after the date of the award, order or decision appealed against, and may be made by—

- (a) any party to the award, order or decision against which the appeal is brought; or
- (b) the Minister on behalf of the Crown where in his opinion the public interest is, or is likely to be, adversely affected by that award, order or decision.

Duration of
award.

27. (1) The term of any award made by the Arbitrator relating to any of the matters referred to in paragraphs (a), (b), (c), (d) or (e) of subsection (1) of section eleven of this Act, shall be three years from the date of the award.

(2) Notwithstanding the provisions of subsection (1) of this section—

- (a) the Arbitrator may, with the consent of the Association and the employer concerned in an award, fix the term of the award for a period less than three years;
- (b) the Arbitrator may direct in an award that all or any of the provisions thereof be referred to him for review, at such intervals of time as he may think fit, and the Arbitrator shall have power to vary or rescind all or any of those provisions;
- (c) at any time after the expiration of the first twelve months from the date of an award or after the expiration of any period of twelve months from the date of any variation thereof, application may in manner prescribed by section seventeen of this Act be made to the Arbitrator for a review of all or any of the provisions of the award, and the Arbitrator shall have power to vary or rescind all or any of those provisions;
- (d) notwithstanding the expiry of the term of an award, that award, subject to any variation ordered by the Arbitrator, shall continue in force until a new award is made.

(3) Notwithstanding the provisions of subsection (1), and paragraph (c) of subsection (2), of this section, the Arbitrator may, on application made in the manner prescribed in section seventeen of this Act, vary or rescind all or any of the provisions of an award if in his opinion—

- (a) circumstances have arisen which, at the time the award was made, or when the provisions were, or the provision was, last reviewed under this Act, could not reasonably have been foreseen by the parties; and

- (b) those circumstances render those provisions or that provision of the award no longer just.

28. The provisions of this Act, insofar as they relate to the Association, shall not operate or have effect unless and until the Association is registered as an industrial union pursuant to the provisions of section eleven A of the Industrial Arbitration Act, 1912.

Application
of this Act to
Association.

29. Without prejudice to the hearing and determination of any appeals lodged under the Public Service Appeal Board Act, 1920, and not determined at the commencement of this Act, but subject otherwise to this Act, any salaries, salary ranges or allowances of any Government officers in force or operation at the commencement of this Act, shall continue in force and operation unless and until the same are revised, altered or amended in accordance with the provisions of this or any other Act.

Existing
salaries, etc.,
to continue
until altered
under this
Act.

30. The Governor may make regulations for any purpose for which regulations are contemplated, or required or permitted by this Act, and may make all such other regulations as may, in his opinion, be necessary or expedient for giving full effect to the provisions of, and for the due administration of, this Act.

Regulations.
