

INDUSTRIAL ARBITRATION.

1° Elizabeth II., No. V.

No. 5 of 1952.

AN ACT to amend the Industrial Arbitration Act, 1912-1950.

[Assented to 11th September, 1952.]

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:—

1. (1) This Act may be cited as the *Industrial Arbitration Act Amendment Act, 1952.* Short title and citation

(2) In this Act the Industrial Arbitration Act, 1912-1950,

Act No. 57 of 1912 as reprinted with amendments to and including Act No. 42 of 1949 incorporated pursuant to the provisions of the Amendments Incorporation Act, 1938, and as further amended by Act No. 20 of 1950 and by Act No. 56 of 1950, Approved for reprint, 5th October, 1950

is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Industrial Arbitration Act, 1912-1952.

2. The long title of the principal Act is amended by inserting before the word "Settlement" in line two of the long title the words "Prevention and" Long title amended.

and also by inserting after the word "Arbitration" in line two of the long title of the principal Act the words "and Conciliation".

s. 2
amended.

3. Section two of the principal Act is amended by adding after the words, "Division II., ss. 33 to 36—Industrial Associations." in lines six and seven the following—

Division III., ss. 36A to 36N—Disputed Elections.

Division IV., ss. 36P to 36U—Jurisdiction to Order Submission of Matters to Secret Ballot.

s. 6
amended.

4. Section six of the principal Act is amended by—

(a) adding before the interpretation, "Court" the following interpretation—

"award" means an award made under this Act;

(b) adding before the interpretation, "Industrial Association" the following interpretation—

"industrial agreement" means an agreement made and filed in accordance with the provisions of Part III, and enforceable pursuant to the provisions of section one hundred, of this Act;

(c) adding before the interpretation, "Lock-out" the following interpretation—

"irregularity", in relation to an election for an office, includes a breach of the rules of an industrial union, and any act, omission or other means by which the full and free recording of votes by persons entitled to record votes, and by no other persons, or a correct ascertainment or declaration of the results of the voting is, or is attempted to be, prevented or hindered;

Cl. C. & A.
Cth.* s. 4.

*The Conciliation and Arbitration Act, 1904-1952, of the Commonwealth Parliament is referred to in the marginal notes to this Act; thus—C. & A., Cth.

- (d) adding before the interpretation, "Prescribed" the following interpretations—

"office" in relation to an industrial union means—

*Of. C. & A.
Cth., s. 4.*

- (a) the office of a member of the committee of management of the industrial union;
- (b) the office of president, vice president, secretary, assistant secretary or other executive office by whatever name called of the industrial union;
- (c) the office of a person holding, whether as trustee or otherwise, property of the industrial union, or property in which the industrial union has any beneficial interest; and
- (d) every office within the industrial union for the filling of which an election is conducted within the industrial union;

and includes

- (e) offices, by whatever name called, the whole or part of the the functions of which are declared by the Court to be those of an office in the industrial union;

"officer" means a person who carries out, or whose duty is or includes the carrying out of the whole or part of the functions of an office in an industrial union;

"order" means an order made under this Act;

- (e) substituting for the interpretation, "Strike" the following interpretation—

"strike" includes—

- (i) a cessation or limitation of work or a refusal to work by a worker acting in combina-

tion or under a common understanding with another worker or person; and

- (ii) a refusal or neglect to offer for or accept employment in the industry in which he is usually employed by a person acting in combination or under a common understanding with another worker or person;

unless and until in any particular case the Court declares the particular cessation, limitation, refusal or neglect not to be a strike.

s. 9 amended.

5. Section nine of the principal Act is amended by—

- (a) substituting for paragraph (a) of subsection (3) the following paragraph—

(a) The appointment to and removal from and powers and duties of office;

- (b) adding the following subsections—

(4a) Rules relating to elections for office—

(a) shall provide that the election shall be by secret ballot; and

(b) shall make provision for—

(i) absent voting;

(ii) the manner in which persons may become candidates for election;

(iii) the appointment, conduct and duties of returning officers;

(iv) the conduct of the ballot;

(v) the appointment, conduct and duties of scrutineers to

*Of. C. & A.
Oth., s. 70A
(1).*

represent the candidates at the ballot; and

- (vi) the declaration of the result of the ballot,

and those rules shall be such as will ensure, as far as practicable, that no irregularity can occur in connection with the election.

(4b) Without prejudice to the operation of subsections (4f) and (4g) of this section, the rules of a society applying for registration, or of an industrial union, relating to elections for office may provide for compulsory voting.

Cf. C. & A. Cth., s. 70A (2).

(4c) A society which is registered as an industrial union on the coming into operation of the Industrial Arbitration Act Amendment Act, 1952, is allowed a period of three months after that date, or such longer period as the Registrar determines, within which to bring its rules into conformity with the requirements of subsection (4a) of this section.

Cf. C. & A. Cth., s. 70A (3).

(4d) If the rules of an industrial union to which subsection (4c) of this section applies do not, at the expiration of the period allowed by that subsection, in the opinion of the Registrar, conform with the requirements of subsection (4a) of this section, the Registrar may, after inviting the industrial union to consult with him on the matter, determine such alterations of the rules as will, in his opinion, bring them into conformity with those requirements.

Cf. C. & A. Cth., s. 70A (4).

Cf. C. & A.,
Cth., s. 70A
(5).

(4e) The Registrar shall register the alterations so determined by him, and thereupon the rules shall be deemed to be altered accordingly.

Cf. C. & A.,
Cth., s. 80 (1).

(4f) The Court may, upon its own motion or upon application made under this section, disallow any rule of an industrial union which, in the opinion of the Court—

- (a) is contrary to law, or to an award, order or industrial agreement;
- (b) is tyrannical or oppressive;
- (c) prevents or hinders members of the industrial union from observing the law or the provisions of an award, order or industrial agreement; or
- (d) imposes unreasonable conditions upon the membership of a member or upon an applicant for membership,

and a rule so disallowed shall be void.

Cf. C. & A.,
Cth., s. 80 (2).

(4g) A member of an industrial union may apply to the Court for the disallowance of a rule of the industrial union on any of the grounds specified in subsection (4f) of this section.

Cf. C. & A.,
Cth., s. 80 (3).

(4h) The Court may, in its discretion, instead of disallowing the rule, direct the industrial union concerned to alter that rule, within a specified time, so as to bring it into conformity with the requirements of this Act and, if, at the expiration of that time, the rule has not been so altered, the Court may then disallow the rule and the rule shall be void.

- (4i) (a) The Court may, upon complaint by a member of an industrial union and after giving persons against whom an order is sought an opportunity of being heard, make an order giving directions for the performance or observance of any of the rules of an industrial union by persons under obligation to perform or observe those rules.
- (b) A person who fails to comply with directions so given commits an offence.

Penalty: Twenty-five pounds.

6. Section twelve of the principal Act is amended by adding the following subsection—

s. 12 amended.

(3) Where an industrial union has been registered in connection with an industry, and that registration has been cancelled by the President, whether before or after the coming into operation of the Industrial Arbitration Act Amendment Act, 1952, an industrial union or a trade union or a society shall not be registered in connection with that industry without the Court's consent.

7. Section twenty-five of the principal Act is repealed and re-enacted as follows—

s. 25 repealed and re-enacted.

25. (1) An industrial union shall keep the following records—
- (a) a register of its members, showing the name and postal address of each member;
- (b) a list of the names, postal addresses and occupations of the persons holding offices in the industrial union;
- (c) an account, in proper form, of the receipts, payments, funds and effects of the industrial union; and

Records to be kept and filed by industrial union.
Cf. C. & A. Cth., s. 91(1)

(d) such other records as are prescribed.

Penalty: Five pounds for each week of default.

*Cf. C. & A.
Cth., s. 91(2).*

(2) An industrial union shall, within three months after the date upon which it became registered or after the coming into operation of the Industrial Arbitration Act Amendment Act, 1952, whichever is the later, or within such longer time as the Registrar allows, file with the Registrar a copy of the register of its members as at the quarter day next preceding the date on which the copy is filed.

Penalty: Five pounds for each week of default.

*Cf. C. & A.
Cth., s. 91(3).*

(3) An industrial union which has filed with the Registrar a copy of the register of its members shall, during the month next following each quarter day, commencing with the quarter day next following the date on which the copy register was filed, file with the Registrar a statement giving, in respect of the period of three months ending on that quarter day, particulars of the alterations made in the register of its members.

Penalty: Two pounds for each week of default.

*Cf. C. & A.
Cth., s. 91(4).*

(4) An industrial union shall file with the Registrar once in each year, at such time as is prescribed, a copy of the records required to be kept under paragraphs (b), (c) and (d) of subsection (1) of this section, certified by statutory declaration by the Secretary or other prescribed officer of the industrial union to be a correct statement of the information contained therein.

Penalty: Five pounds for each week of default.

(5) An industrial union shall file with the Registrar in such manner and within such time as is prescribed notification of changes in the holding of offices.

Penalty: Five pounds for each week of default.

*Cf. C. & A.
Cth., s. 91(5).*

(6) An industrial union shall, at all times during which a person is a member of the industrial union, keep a record or butt of the latest union ticket issued to him, showing his name and usual postal address.

Penalty: Ten pounds.

(7) The Court may at any time order such rectifications of the register of members of an industrial union, and of the copy of the register kept by the Registrar, as it considers necessary.

Cf. C. & A. Cth., s. 91(6)

(8) All documents filed with the Registrar under this section shall be made available for inspection at the office of the Registrar as prescribed.

Cf. C. & A. Cth., s. 91(7)

(9) The register of members of an industrial union shall be made available by the industrial union for inspection by such persons as are authorised by the Registrar at such times as are appointed by him, at the office of the industrial union.

Cf. C. & A. Cth., s. 91(8)

Penalty: Ten pounds.

(10) The regulations may make provision with respect to the manner in which records are to be kept for the purposes of this section, and the records shall be deemed not to be duly kept unless they are kept in accordance with the regulations.

Cf. C. & A. Cth., s. 91 (10).

(11) In this section—

Cf. C. & A. Cth., s. 91(11).

“quarter day” means the last day of the month of March, June, September or December;

“union ticket” includes a receipt or other document acknowledging or certifying that a person is a member or has renewed his membership of the industrial union or has paid any dues or other moneys payable in respect of his membership of the industrial union or the renewal of his membership.

8. Section twenty-six of the principal Act is repealed and re-enacted as follows:—

S. 26 repealed and re-enacted.

26. (1) Where the Registrar is satisfied—
that the register of members of an industrial union is maintained in such a form

*Exemptions from certain requirements.
Cf. C. & A. Cth., s. 91A (1).*

and manner that it would, for the purposes of the conduct of a ballot or election in pursuance of this Act, provide in a convenient form accurate particulars of the membership of the industrial union,

he may issue to the industrial union a certificate exempting the industrial union from the the application of the provisions of subsections (2), (3) and (6) of section twenty-five of this Act.

Cf. C. & A.
Oth., s.
91A(2).

(2) While a certificate under subsection (1) of this section is in force, if the certificate exempts the industrial union, the provisions of subsections (2), (3) and (6) of section twenty-five of this Act do not apply to the industrial union.

(3) Where—

- (a) it appears to the Registrar that the register of members of an industrial union to which a certificate under this section has been issued is no longer maintained in such form and manner as to justify the continuance in force of the certificate; or
- (b) the industrial union refuses or fails to give to the Registrar information or facilities required by him for the purpose of deciding whether the exemption should be continued,

he may cancel the certificate and if he does so shall give notice in writing of the cancellation to the industrial union.

Cf. C. & A.
Oth., s.
91A(4).

(4) Where a certificate is so cancelled, the industrial union shall, within one month after the first quarterday, as defined by section twenty-five of this Act, next following the cancellation of the certificate, or within such longer time as the Registrar allows, file with the Registrar a copy, as at that quarterday, of its register of members.

Penalty: Five pounds for each week of default.

(5) A certificate of the Registrar that a specified person was at a specified time a member or officer of a specified industrial union shall, in all courts and proceedings, be prima facie evidence that the facts are as stated.

Certificate as to membership of industrial union.
Cf. C. & A. Cth., s. 93.

9. Paragraph (f) of subsection (2) of section twenty-nine of the principal Act is amended by adding after the word, "Court" in line two the words, "the President, or the Conciliation Commissioner".

S. 29 amended.

10. Section thirty-one of the principal Act is repealed.

S. 31 repealed.

11. The principal Act is amended by adding after section thirty-six the following headings and sections—

Divisions III and IV added to Part II.

Division III.—Disputed Elections.

36A. (1) Where a member of an industrial union, or a person who, within the preceding period of two months, has been a member of an industrial union, claims that there has been an irregularity in or in connection with an election for an office in the industrial union, he may lodge an application for an inquiry by the Court into the matter.

Applications for inquiries respecting elections
Cf. C. & A. Cth., Part IV., Div. 3, ss. 96A-96N.

(2) An application under this section shall—

- (a) be in writing in accordance with the prescribed form;
- (b) be lodged with the Registrar before the completion of the election or within such time after the completion of the election as is fixed by or under the regulations;
- (c) specify the election in respect of which the application is made and the irregularity which is claimed to have occurred, and state the facts relied on in support of the application; and

- (d) be accompanied by a statutory declaration by the applicant declaring that the facts stated in the application are, to the best of the applicant's knowledge and belief, true.

Action by
Registrar.
Of. C. & A.
Act., s. 96B.

36B. (1) Where an application under section thirty six A of this Act is lodged with the Registrar, he shall—

- (a) if he is satisfied—

(i) that there are reasonable grounds for an inquiry into the question whether there has been an irregularity in or in connection with the election, which may have affected or may affect the result of the election; and

(ii) that the circumstances of the matter justify an inquiry by the Court under this Division,

grant the application and refer the matter to the Court; or

- (b) if he is not so satisfied, refuse the application and inform the applicant accordingly and may impose costs against the applicant if the application is considered to be frivolous or vexatious.

(2) The Registrar may exercise his powers under subsection (1) of this section upon the basis of the matters stated in the application, but he may nevertheless take into account any relevant information coming to his knowledge.

(3) At any time after the lodging with the Registrar of an application for an inquiry in connection with an election, the Court may authorise the Registrar, by himself or by a person acting on his behalf, to—

- (a) inspect ballot papers, envelopes, lists and other documents which have been used in connection with or are relevant to the election;

- (b) for the purpose of the inspection, enter, with such assistance as he considers necessary, premises which he believes were used or occupied by the industrial union, and in which he believes the ballot papers, envelopes, lists or documents to be;
- (c) require a person to deliver to him, in accordance with the requirement, the ballot papers, envelopes, lists and other documents in the possession or under the control of that person;
- (d) take possession of the ballot papers, envelopes, lists and other documents; and
- (e) retain the ballot papers, envelopes, lists or other documents delivered to him, or of which he has taken possession, until the completion of the proceedings arising out of the application or until such earlier time as the Court orders.

(4) Before authorising action under subsection (3) of this section, the Court shall, if of opinion that, having regard to all the circumstances, a person should be given an opportunity of objecting to the proposed action, give the opportunity to that person.

(5) A person who—

- (a) refuses or fails to comply with a requirement under this section; or
- (b) obstructs or hinders the Registrar or any other person in the exercise of his powers under this section,

commits an offence against this Act.

Penalty: Fifty pounds or imprisonment for six months.

(6) An act or decision of the Registrar under this section shall be subject to appeal to the Court within the time and in the manner prescribed, and the Court may hear and determine the appeal.

Jurisdiction
of Court.
Cf. C. & A.
Cth., s. 96C.

36C. (1) Upon the reference of a matter to the Court under section thirty-six B of this Act, the inquiry shall be deemed to have been instituted in the Court.

Cf. s. 64 post.

(2) An act or decision of the Court under this Division shall be final and conclusive and shall not be questioned in the Supreme Court or any other Court.

(3) The provisions of subsection (2) of this section do not derogate from those of section sixty-four of this Act.

Directions
as to hearing.
Cf. C. & A.
Cth., s. 96D.

36D. Where an inquiry has been instituted, the Court shall fix a time and place for conducting the inquiry, and may give such directions as the Court thinks necessary to ensure that persons who are or may be justly entitled to appear or be represented at the inquiry are notified of the time and place so fixed.

Interim
orders.
Cf. C. & A.
Cth., s. 96E.

36E. (1) At any time after an inquiry in connection with an election has been instituted, the Court may, if it thinks fit, make one or more of the following orders—

- (a) an order that no further steps shall be taken in the conduct of the election or in carrying into effect the result of the election;
- (b) an order that a person who has assumed an office, or has continued to act in an office, or claims to occupy an office, being an office to which the inquiry relates shall not act in that office;
- (c) an order that a person who holds, or who last held before the election, an office to which the inquiry relates may act or continue to act in that office;
- (d) where it considers that an order under paragraph (c) of this subsection would not be practicable or would be prejudicial to the efficient conduct of the affairs of the indus-

trial union or would be inappropriate having regard to the nature of the inquiry,

an order

that a member of the industrial union or another person specified in the order may act in an office to which the inquiry relates; provided that in the event of a suitable member being available the Court shall give preference to such member;

- (e) an order incidental or supplementary to an order under this subsection; and
- (f) an order varying or discharging an order under this subsection.

(2) Where the Court orders that a person may act, or continue to act, in an office, that person shall, while the order remains in force, be deemed, for all purposes, to hold the office.

(3) An order under this section shall continue in force, unless expressed to operate for a shorter period or unless sooner discharged, until the completion of proceedings in the Court in connection with the election and of all matters ordered, otherwise than under this section, by the Court in those proceedings.

36F. (1) The Court shall allow to appear or be represented at an inquiry, persons who apply to the Court for leave to appear or be represented, being persons who appear to the Court to be justly entitled to be heard, and the Court may order any other person so to appear or be represented.

Procedure
at hearing.
Cf C. & A.
Cth., s. 96F.

(2) The persons appearing or represented, or ordered to appear or be represented, at an inquiry shall be deemed to be parties to the proceedings.

(3) The Attorney General may, at any stage of an inquiry intervene by counsel, solicitor or agent on behalf of the State.

(4) Notwithstanding the provisions of subsection (4) of section sixty-seven of this Act, legal practitioners may be allowed by the Court to represent parties to and be heard at proceedings under this Division.

(5) The provisions of section sixty-nine of this Act apply in relation to proceedings under this Division.

Functions
and powers
of Court.
Cf. G. & A.
Oth., s 96G

36G. (1) At an inquiry the Court shall inquire into and determine the question whether irregularity has occurred in, or in connection with, the election, and such further questions concerning the conduct and results of the election as the Court thinks necessary.

(2) In the course of conducting an inquiry the Court may make such orders, including an order for the recounting of votes, as the Court thinks necessary for the purposes of the inquiry.

(3) If the Court finds that an irregularity has occurred, the Court may, in its discretion, but subject to subsection (4) of this section make one or more of the following orders—

- (a) an order declaring the election, or any steps taken in or in connection with the election, to be void;
- (b) an order declaring a person purporting to have been elected not to have been elected, and declaring another person to have been elected;
- (c) an order directing a new election to be held, or any step in or in connection with the election, including the submission of nominations, to be taken again, in accordance, subject to an order, if any, under paragraph (d) of this subsection, with the rules of the industrial union or with those rules as varied or added to in such manner as the Court thinks necessary to rectify procedural defects in those rules which appear to the Court to exist;

(d) an order directing the taking of such safeguards as the Court thinks necessary against irregularities in, or in connection with,

- (i) a new election if so ordered;
- (ii) a step if so ordered to be taken again; or
- (iii) uncompleted steps in the election,

and, for the purposes of the order, an order appointing and authorising a person to act as a returning officer in conjunction with the returning officer, if any, acting under the rules of the industrial union in connection with the election, and to exercise such powers as the Court directs; and

(e) an order incidental or supplementary to an order under this section.

(4) The Court shall not

declare an election, or a step taken in or in connection with an election, to be void, or declare that a person was not elected,

unless the Court is of opinion that,

having regard to the irregularity found, and any circumstances giving rise to a likelihood that similar irregularities may have occurred or may occur,

the result of the election may have been affected, or may be affected by irregularities.

36H. (1) The Court may make such orders as it thinks necessary for the effectual exercise of its powers and functions and the enforcement of its orders under this Division.

Enforcement
of orders
Cf. C. & A.
Cth., s. 96H.

(2) A person who refuses or fails to comply with an order of the Court under this Division or hinders or obstructs the carrying out of any such order commits an offence against this Act.

Penalty: Fifty pounds or imprisonment for six months.

(3) The provisions of this section do not derogate from the other provisions of this Act relating to contempt.

Validation
of certain
acts etc.
Of C. & A.
Cth., s. 96J.

36J. (1) Where the Court declares void the election of a person who has, since the election, purported to act in the office to which he purported to have been elected, acts done by him while so purporting to act and which could validly have been done by him if he had been duly elected are, subject to this section, valid and effectual for all purposes.

(2) The Court may, if it considers it desirable so to do, declare an act so done to have been void, and thereupon that act is, for all purposes to be deemed not to have been validly done.

(3) Where an election is held, or a step in or in connection with an election is taken, in pursuance of an order of the Court, that election or step shall not be invalidated by reason only of a departure from the rules of the industrial union involved in compliance with the order of the Court.

Costs
Of C. & A.
Cth., s. 96K.

36K. (1) Where upon an inquiry the Court finds that an irregularity has occurred, the Attorney General may, if he considers the circumstances to justify him in so doing, authorise payment by the State to the person who applied for the inquiry of the whole or a part of his costs and expenses, including expenses of witnesses and fees of legal practitioners who are allowed to appear.

(2) Where, upon an inquiry, the Court does not find that an irregularity has occurred, but certifies that the person who applied for the inquiry acted reasonably in so applying, the Attorney General may authorise payment by the State to that person of the whole or a part of his costs and expenses, including expenses of witnesses and fees of legal practitioners who are allowed to appear.

(3) Where the Attorney General is satisfied that, having regard to the findings of the Court upon an inquiry, it is not just that a person, not being the person who applied for the inquiry, should be required to bear, or to bear in full, any expenses, including expenses of witnesses and fees of legal practitioners who are allowed to appear, incurred by him in connection with the inquiry, the Attorney General may authorise payment by the State of the whole or a part of those expenses.

(4) Where the Court orders—

- (a) a new election to be held;
- (b) a step in or in connection with an election to be taken again; or
- (c) safeguards, not provided for in the rules of the industrial union to be taken in or in connection with an uncompleted step in an election,

the Attorney General may,

if he is satisfied that the nature of the irregularity found by the Court to have occurred is such that it would be unreasonable for the industrial union to be required to bear, or to bear in full, the expenses involved in compliance with the order of the Court,

authorise payment by the State

of the whole or part of those expenses.

(5) (a) The Court may make an order as to the costs and expenses, including expenses of witnesses and fees of legal practitioners who are allowed to appear, of proceedings before the Court in or in connection with an inquiry.

(b) The provisions of the preceding subsections of this section do not affect those of this subsection.

(6) Authorisation by the Attorney General under this section of payment, is sufficient for appropriation of the payment from the Public Account.

or purporting to be made under this section in relation to an industrial union, the copy of the register of members of that industrial union filed with the Registrar,

as varied

in accordance with statements, if any, filed under section twenty-five of this Act before the date upon which the request was made, is prima facie evidence that the persons shown in that copy register, as so varied, as the members of the industrial union, were, at the date on which the request was made, the members of the industrial union.

Offences in connection with elections. Cf. C. & A. Cth., s. 96N.

36N. (1) A person who, without lawful authority or excuse, in or in connection with an election for an office

- (a) personates another person to secure a ballot paper to which the personator is not entitled, or personates another person for the purpose of voting;
 - (b) destroys, defaces, alters, takes or otherwise interferes with a nomination paper, ballot paper or envelope;
 - (c) puts or delivers a ballot paper or other paper—
 - (i) into a ballot box or other ballot receptacle;
 - (ii) into the post; or
 - (iii) to a person receiving ballot papers for the purposes of the election;
 - (d) records a vote which he is not entitled to record;
 - (e) records more than one vote;
 - (f) forges or alters, knowing it to be forged, a nomination paper, ballot paper or envelope;
 - (g) supplies a ballot paper;
 - (h) obtains, or has in his possession, a ballot paper; or
 - (i) destroys, takes, opens or otherwise interferes with a ballot box,
- commits an offence against this Act.

(2) A person who, in or in connection with an election for an office,

(a) threatens, offers or suggests violence, injury, punishment, damage, loss, disadvantage, or any form of intimidation for or on account of, or to induce—

(i) candidature or withdrawal of candidature;

(ii) a vote or an omission to vote;

(iii) support or opposition to a candidate; or

(iv) a promise of a vote, or an omission to vote, or of support for, or of opposition to a candidate; or

(b) uses, causes, inflicts or procures violence, punishment, damage, loss, disadvantage, or any form of intimidation for or on account of any such candidature, withdrawal, vote, omission, support or opposition,

commits an offence against this Act.

(3) Penalty for an offence mentioned in this section: Fifty pounds or imprisonment for six months.

Division IV.—Jurisdiction to Order Submission of Matters to Secret Ballot.

36P. Where the Court thinks that the views of the members, or of a section or class of the members, of an industrial union or where registration of an industrial union has been cancelled, that the views of the persons or a section or class of the persons who were at the time of the cancellation members of the union upon a matter ought to be ascertained, the Court may order that that matter be submitted to a vote of those members, or of the members of that section or class, taken by secret ballot, with or without provision for absent voting, in accordance with directions given by the Court.

Court may order secret ballot.
Cf. C. & A. Cth., s. 72(b).

Enforcement
of orders.

36Q. (1) The Court may make such orders as it thinks necessary for the effectual exercise of its powers and functions and the enforcement of its orders under this Division.

(2) A person who refuses or fails to comply with an order of the Court under this Division or hinders or obstructs the carrying out of any such order commits an offence against this Act.

Penalty: Fifty pounds or imprisonment for six months.

Ballot papers
etc. to be
preserved.

36R. The Court may order that such steps shall be taken as are necessary to ensure that ballot papers, envelopes, lists and other documents used in connection with, or relevant to, a ballot ordered under section thirty-six P of this Act are preserved and kept at such place and for such period after the completion of the ballot, as the Court thinks fit.

Persons
having the
conduct of
ballots.

36S. (1) The Court may direct the Registrar to conduct the ballot or may direct other officers of the Court to do so, or direct the Registrar to make arrangements with the Chief Electoral Officer holding that office under the Electoral Act, 1907-1951, for the conduct of the ballot by an officer holding office under that Act.

Powers of
persons
having the
conduct of
ballots.

(2) Notwithstanding anything contained in the rules of the industrial union, the person conducting the ballot may take such action and give such directions as he considers necessary in order to ensure that no irregularities occur in or in connection with the ballot or to remedy procedural defects in those rules which appear to him to exist.

Disobedience
and
obstruction.

(3) A person who—

(a) refuses or fails to comply with a direction given under subsection (2) of this section; or

(b) obstructs or hinders—

(i) the person conducting the ballot or the taking of any action under subsection (2) of this section; or

- (ii) any other person in the carrying out of a direction under subsection (2) of this section;

commits an offence against this Act.

Penalty: Fifty pounds or imprisonment for six months.

(4) A ballot conducted under this Division is not invalid by reason only of a breach of the rules of the industrial union, involved in anything done or omitted, or in compliance with a direction given, under this Division. Validity of ballots.

(5) (a) The expenses of a ballot conducted under this Division, but not including the salary of an officer of the State performing a duty in relation to the ballot, shall be borne by the industrial union concerned, unless in exercise of the authority conferred upon him by paragraph (b) of this subsection the Attorney General authorises payment of the expenses by the State. Expenses of ballots.

(b) Where the Attorney General considers the circumstances justify him in doing so, he may authorise payment of all or part of those expenses by the State.

(c) A u t h o r i s a t i o n by the Attorney General under this section of payment, is sufficient for appropriation of the payment from the Public Account.

(6) Where an order is made for taking a ballot under section thirty-six P of this section, the copy of the register of members of the industrial union concerned, filed with the Registrar, as varied in accordance with statements, if any, filed under section twenty-five of this Act before the date appointed by the order for taking the ballot, is prima facie evidence that the persons shown in that copy register, as so varied, as the members of the industrial union, were, at the date so appointed, members of the industrial union.

Offences in
connection
with ballots.

36T. (1) A person who, without lawful authority or excuse, in or in connection with a ballot under this Division

- (a) personates another person to secure a ballot paper to which the personator is not entitled, or personates another person for the purpose of voting;
- (b) destroys, defaces, alters, takes or otherwise interferes with a ballot paper or envelope;
- (c) puts or delivers a ballot paper or other paper—
 - (i) into a ballot box or other ballot receptacle;
 - (ii) into the post; or
 - (iii) to a person receiving ballot papers for the purposes of the ballot;
- (d) records a vote which he is not entitled to record;
- (e) records more than one vote;
- (f) forges or alters, knowing it to be forged, a ballot paper or envelope;
- (g) supplies a ballot paper;
- (h) obtains or has in his possession, a ballot paper; or
- (i) destroys, takes, opens or otherwise interferes with a ballot box,

commits an offence against this Act.

(2) A person who in or in connection with a ballot under this Division

- (a) threatens, offers, or suggests violence, injury, punishment, damage, loss, disadvantage, or any form of intimidation for or on account of, or to induce—
 - (i) a vote or omission to vote;
 - (ii) support or opposition to a view on the matter, the views of the members on which are to be ascertained by the ballot;
 - (iii) promise of a vote, or an omission to vote, or of support for, or of opposition to such a view; or

(b) uses, causes, inflicts or procures violence, punishment, damage, loss, disadvantage, or any form of intimidation, for or on account of any such vote, omission, support of opposition, commits an offence against this Act.

(3) Penalty for an offence mentioned in this section: Fifty pounds or imprisonment for six months.

36U. The provisions of sections thirty-six Q to thirty-six T both inclusive of this Act do not derogate from the generality of the power conferred upon the Court by section thirty-six P of this Act to direct how the secret ballot is to be taken.

Saving of the powers conferred by s. 36P.

12. Subsection (1) of section thirty-eight of the principal Act is amended by deleting all words after the word, "Court" in line three to the end of the subsection.

S. 38 amended.

13. (a) Section forty of the principal Act is amended by adding the words, "except to the extent mentioned in subsection (2) of section thirty or in section ninety-eight A of this Act" after the word, "shall" where it appears in line one of subsection (1) and in line one of subsection (2).

Ss. 40 and 42 amended.

(b) Section forty-two of the principal Act is amended by adding before the word, "subject" in line four the words, "except to the extent mentioned in subsection (2) of section thirty or in section ninety-eight A of this Act; and".

14. Section forty-six of the principal Act is amended by deleting all words in the last line and insert in lieu thereof the following words:—"Provided that a person so appointed may continue to fill that place until he has completed all inquiries commenced before him".

S. 46 amended.

15. Section sixty-one of the principal Act is amended by adding the following paragraphs—

S. 61 amended.

(c) to determine and declare in a particular case that a cessation or limitation of work,

or refusal to work, or a refusal or neglect to offer for or accept employment, does not constitute a strike;

- (d) from time to time to make declarations for the purposes of paragraph (e) of the definition of "office".
- (e) to exercise powers conferred by any other section of this Act but not expressly mentioned in this section.

S. 67
amended.

16. Subsection (4) of section sixty-seven of the principal Act is amended by—

- (a) adding after the subsection designation, "(4)" the letter "a" in brackets thus—(a), and the words, "Except where this Act provides otherwise";
- (b) substituting for the words, "Provided that" in the first line of the proviso the letter "b" in brackets thus—(b);
- (c) adding the following paragraph—
 - (c) Where a question of law is raised or argued or is likely, in the opinion of the Court to be raised or argued, in proceedings before it, the Court may allow legal practitioners to appear and be heard.

S. 70
amended.

17. Subsection (1) of section seventy of the principal Act is amended by adding at the end of the subsection "except where the Court is of opinion that urgency requires shorter notice, in which case the notice to be given shall be that fixed by the Court."

S. 71
amended.

18. Paragraph (ii) of section seventy-one of the principal Act is amended by adding after the words, "so that" in line four the words, "except as provided in section thirty-six K of this Act".

S. 77
amended.

19. Section seventy-seven of the principal Act is amended by—

- (a) deleting the words, "or President" where they appear in lines one, four and nine of subsection (4);

(b) adding the following subsection—

(9) The provisions of the preceding subsections of this section apply *mutatis mutandis* in respect of proceedings before the President.

20. Section eighty-five of the principal Act is amended by adding before the word, "subject" in line two the words, "except to the extent mentioned in subsection (2) of section thirty or in section ninety-eight A of this Act, and".

S. 85
amended.

21. The second proviso to section ninety-two of the principal Act is amended by adding before the word, "vary" in the second last line the words, "add to,".

S. 92
amended.

22. The principal Act is amended by adding after section ninety-eight the following section—

S. 98A added.
Cf. C. & A.
Cth., s. 33.

98A. (1) Where on the application of an industrial union or person who in the opinion of the Court has a sufficient interest or of the Registrar, it appears to the Court

- (a) that an industrial union which is a party to an order or award or industrial agreement has by act or omission contravened this Act, or an order, or award, or industrial agreement;
- (b) that a number of members of an industrial union, sufficiently large to form a substantial part of the industrial union refuses to accept employment either at all or in accordance with existing orders, awards or industrial agreements; or
- (c) that for any other reason an order or award or industrial agreement ought to be suspended or cancelled in whole or in part;

the Court may, by order, subject to such conditions or exceptions, or both, as it thinks fit, suspend or cancel for such period as it thinks fit, all or any of the terms or any order or award or industrial agreement in force so far as the

order or award or industrial agreement applies to, or is in favour of, the industrial union or its members.

(2) The order for suspension or cancellation may be limited to persons named therein, to classes of persons, or to particular localities.

S. 108
amended.

23. Section one hundred and eight of the principal Act is amended by adding the words, "or before the President" after the word, "Court" appearing—

- (a) in line one; and
- (b) in line four.

S. 132
amended.

24. Section one hundred and thirty-two of the principal Act is amended by—

- (a) repealing and re-enacting subsection (1) as follows—

(1) A person who takes part in a lock-out or strike commits an offence against this Act.

Penalty: In the case of an employer or industrial union, five hundred pounds; and in other cases, fifty pounds. ;

- (b) adding after the word, "section" being the last word in subsection (3) the words, "but the provisions of this section do not derogate from any other provision of this Act relating to aiding in an offence against this Act";
- (c) repealing subsection (4).

S. 137
repealed and
re-enacted.

25. Section one hundred and thirty-seven of the principal Act is repealed and re-enacted as follows:—

137. (1) Where it appears reasonably likely to the Court that an act, omission or circumstance will occur, or has occurred, or having occurred, will be repeated or continued; and that

the result

of the act, omission, circumstance, repetition, or continuance,

is or will be

- (a) to cause, contribute to, or hasten the occurrence of a lock-out or strike;
- (b) to jeopardize or delay settlement of, or to continue, an existing lock-out or strike;
- (c) to cause, or contribute to, cancellation of registration under this Act of an industrial union, except under subsection (1) of section twenty-nine of this Act;
- (d) to cause, contribute to, constitute or continue a contravention of this Act, or of an award, order, or industrial agreement or law; or
- (e) to jeopardize the security and proper use of the funds and other property of an industrial union or needlessly dissipate or improperly conceal those funds or that property;

Cf. C. & A.
Oth s. 29 (1),
(b) and (c).

the Court may make such order as it considers necessary to terminate or avoid that result.

(2) The Court may

- (a) make the order on the application of a person, who, in the opinion of the Court has a sufficient interest, or of its own motion;
- (b) specify in the order, the person or class of person, to whom, or the body or class of body, to which the order

applies, or that the order applies generally to all persons and all bodies;

- (c) if the order is to commence to operate upon service or notification of the order or of the happening of any other event, specify in the order how the service or notification may be effected or the happening ascertained; and
 - (d) make the order, unconditionally, or subject to such conditions or exceptions or both, as the Court thinks fit, without limitation of time or for a specified time or until subsequent order of the Court.
- (3) If the order provides that it is to commence to operate upon service or notification of the order or on the happening of any other event, the order commences to operate on service or notification of the order or ascertainment of the happening as specified.
- (4) If the order is subject to conditions or exemptions or both, a contravention of the conditions or exemptions constitutes a contravention of the order.
- (5) (a) By subsequent orders the Court may from time to time as it thinks fit, vary, or suspend or cancel the order, wholly or in part.
- (b) The provisions of subsections (2), (3) and (4) of this section apply in respect of subsequent orders.

26. Section one hundred and thirty-eight of the principal Act is repealed and re-enacted as follows—

S. 138
repealed and
re-enacted.
Cf. C. & A.
Oth., s. 29A.

138. (1) The Court has the same power to punish contempts of its power and authority, whether in relation to its judicial powers and functions or otherwise, as has the Supreme Court in respect of contempts of Court, and this power extends to an act or omission constituting a contempt, notwithstanding that the act or omission is prescribed by this or any other Act as an offence, or that a penalty is prescribed or provided by this or any other Act for the offence, or that the offender has been punished for the offence if, after having been so punished, he repeats or continues the offence; and without prejudicing the generality of the power, where the Court considers that a contempt may be appropriately punished by a fine, it may inflict a fine.

(2) A person who counsels, procures, aids, abets, instigates to or incites to a contempt of the Court is deemed to have committed a contempt and shall be punishable accordingly.

(3) A person who by act or omission contravenes an order made in exercise of authority conferred by this Act commits a contempt of the Court.

(4) The provisions of subsection (3) of this section do not derogate from any other provision of this Act relating to contempt.

(5) The President when acting alone in exercise of a power or authority conferred by this Act, has the same power to punish contempts of his power and authority whether in relation to his judicial powers and functions or otherwise as has the Court in respect of contempts of Court and the provisions of the preceding subsections of this section apply *mutatis mutandis* in respect of those contempts of the President's power and authority.

27. Section one hundred and thirty-nine of the principal Act is repealed.

S. 139
repealed.

S. 140
repealed and
re-enacted.

28. Section one hundred and forty of the principal Act is repealed and re-enacted as follows—

140. A person who—

- (a) resists or obstructs a person in the performance of a duty imposed or the exercise of a power conferred by or pursuant to this Act;
- (b) being lawfully required to do so fails to produce or exhibit a document or allow a document to be examined;
- (c) wilfully misleads a person in any particular likely to affect the exercise of a power so conferred or the discharge of a duty so imposed;
- (d) being lawfully asked a question by a person pursuant to this Act fails to answer truthfully to the best of his knowledge, information and belief;
- (e) being an officer of an industrial union, refuses to assist in the taking of any ballot by providing for the use of the Returning Officer or his assistants such register and lists of the members of the industrial union as the Returning Officer requires; or
- (f) falsely represents in an application made under this Act that he is a member of an industrial union,

commits an offence against this Act.

Penalty: Twenty-five pounds or imprisonment for three months.

S. 141
amended.

29. Section one hundred and forty-one of the principal Act is amended by—

- (a) adding after the section designation, “141” the following subsection—
 - (1) In this section—

“encourage” includes counsel, procure, aid, abet, instigate to, and incite to. ;
- (b) adding before the word, “Every” in line one the figure “2” in brackets thus—(2);
- (c) deleting the word, “counsels,” in line three;

(d) adding the following subsections—

(3) An attempt to commit an offence against this Act is an offence against this Act and is punishable as if the offence had been committed.

(4) A person charged with committing an offence may be convicted of an attempt to commit an offence.

(5) (a) In the event of a lock-out or strike occurring in an industry, the Court may order an industrial union whose executive or members take part in or encourage the lock-out or strike to pay a penalty not exceeding five hundred pounds.

(b) It shall be a defence in any proceedings for an order under paragraph (a) of this subsection that the industrial union by the enforcement of its rules and by other means reasonable under the circumstances endeavoured to prevent its members from taking part in or encouraging and continuing to take part in or encourage the lock-out or strike.

30. Section one hundred and forty-two of the principal Act is repealed and re-enacted as follows—

S. 142
repealed and
re-enacted.

142. (1) Where it is alleged

that one and the same offence has been committed by two or more persons, or

that related offences have been committed respectively by two or more persons,

charges of the offence or the offences, as the case may be, may be joined in the one complaint,

notwithstanding that the offence or offences are alleged to have been committed otherwise than at the same time, and notwithstanding that in cases where there is a

principal offender a complaint is not made against the principal offender or that the principal offender is not amenable to justice.

(2) The Court of Arbitration, Court of Petty Sessions, or the Industrial Magistrate, as the case may be, before whom the complaint is brought, may proceed with the trial of the matters of complaint together, but if of opinion that a defendant is likely to be prejudiced by the joinder, may require the complainant to elect upon which matter of complaint he will proceed, and may direct that the matter of complaint so elected shall be tried separately.

S. 142A
added.

31. The principal Act is amended by adding after section one hundred and forty-two, the following section—

Continuing
offences

142A. Where this Act prescribes an act or omission as an offence and prescribes a penalty for the offence, and the offence is a continuing offence but is not punishable as such, the maximum penalty for each day the offence is continued is one-twentieth of the penalty so prescribed.
