

INDUSTRIAL ARBITRATION ACT, 1912-1973.

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INDUSTRIAL ARBITRATION.

No. 57 of 1912.

(Affected by Acts Nos. 12 of 1918, s. 1; 38 of 1920, s. 25;
26 of 1932, ss. 2 and 6; 38 of 1945, s. 2.)

[As amended by Acts:

No. 45 of 1920, assented to 24th December, 1920;
No. 50 of 1925, assented to 31st December, 1925;
No. 41 of 1930, assented to 24th December, 1930;
No. 6 of 1935, assented to 5th October, 1935;
No. 31 of 1935, assented to 6th January, 1936;¹
No. 26 of 1937, assented to 18th January, 1938;
No. 49 of 1941, assented to 15th January, 1942;
No. 46 of 1948, assented to 7th January, 1949;
No. 42 of 1949, assented to 26th October, 1949;
No. 20 of 1950, assented to 23rd November, 1950;
No. 56 of 1950, assented to 18th December, 1950;
No. 5 of 1952, assented to 11th September, 1952;
No. 62 of 1961, assented to 28th November, 1961;
No. 76 of 1963, assented to 19th December, 1963;²
No. 61 of 1966, assented to 12th December, 1966;³
No. 66 of 1966, assented to 12th December, 1966;⁴
No. 47 of 1968, assented to 8th November, 1968;⁵
No. 9 of 1971, assented to 13th September, 1971;⁶
No. 62 of 1971, assented to 15th December, 1971;
No. 108 of 1973, assented to 4th January, 1974;⁷

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

(In this reprint the numbering of parts, sections, etc., as adopted in the reprint published in Vol. 5 of the Reprinted Acts of the Parliament of Western Australia (1952) is retained.)

AN ACT to amend and consolidate the law relating to the Prevention and Settlement of Industrial Disputes by Arbitration, Conciliation and Mediation and for other relative purposes.

Long title amended by No. 5 of 1952, s. 2; No. 108 of 1973, s. 3.

[Assented to 21st December, 1912.]

BE it enacted—

PART I.—INTRODUCTORY.

1. This Act may be cited as the *Industrial Arbitration Act, 1912-1973*, and shall come into operation on a day to be fixed by proclamation.⁸

Heading added by No. 76 of 1963, s. 3. Short title. No. 57 of 1912, s. 1. Amended by No. 108 of 1973, s. 1.

¹ Came into operation 1st February, 1936 (see G.G. 31/1/36, p. 151).
² Came into operation 1st February, 1964 (see G.G. 24/1/64, p. 325).
³ Came into operation 9th January, 1967 (see G.G. 23/12/66, p. 3410).

⁴ Came into operation 23rd December, 1966 (see G.G. 23/12/66, p. 3410).

⁵ Came into operation 22nd November, 1968 (see G.G. 22/11/68, p. 3406).

⁶ Came into operation 6th October, 1971 (see G.G. 6/10/71, p. 3941).

⁷ Came into operation 20th February, 1974 (see G.G. 15/2/74, p. 375).

⁸ Came into operation 1st January, 1913 (see G.G. 24/12/1912, p. 5077).

⁹ Note: Where the marginal notes in the reprint make reference to section numbers of the Act, No. 57 of 1912, the section numbers are those which are contained in the reprint of the Act contained in the Appendix to the Sessional Volume of the Statutes for the year 1935.

Act divided into Parts.
 Added by No. 31 of 1935, s. 2, as s. 1A; Repealed and re-enacted by No. 76 of 1963, s. 4.
 Amended by No. 66 of 1966, s. 3; No. 47 of 1968, s. 3; No. 108 of 1973, s. 4.

2. This Act is divided into Parts, as follows:—

PART I.—INTRODUCTORY. Ss. 1 to 7.

PART II.—INDUSTRIAL UNIONS AND ASSOCIATION Ss. 8-36U.

Division I.—Industrial Unions. Ss. 8-32.

Division II.—Industrial Associations. Ss. 33-36.

Division III.—Disputed Elections. Ss. 36A-36N.

Division IV.—Jurisdiction to order submission of matters to secret Ballot. Ss. 36P-36U.

PART III.—INDUSTRIAL AGREEMENTS. Ss. 37-43.

PART IV.—THE WESTERN AUSTRALIAN INDUSTRIAL COMMISSION. Ss. 44-108.

Division I.—Constitution of Commission. Ss. 44-60.

Division II.—Jurisdiction of Commission and Court. Ss. 61-108.

PART IVA.—WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT Ss. 108A-108D.

PART IVB.—MEDIATION AND CONCILIATION. Ss. 108F-108K.

PART VII.—BASIC WAGE. Ss. 123-127F.

PART VIII.—APPRENTICES. Ss. 128-131.

PART IX.—OFFENCES. Ss. 132-142A.

PART X.—EQUAL PAY FOR MALE AND FEMALE WORKERS. Ss. 143-146.

PART XI.—MISCELLANEOUS. Ss. 166-180.

FIRST SCHEDULE—ACTS REPEALED.

SECOND SCHEDULE.—NOTICES AND MATTERS FOR PUBLICATION IN THE WESTERN AUSTRALIAN INDUSTRIAL GAZETTE.

3. [Added by No. 31 of 1935, s. 2 as s. 1B. Repealed by No. 61 of 1966, s. 3.]

[Heading deleted by No. 76 of 1963, s. 5.]

4. The Acts mentioned in the schedule hereto are hereby repealed: Provided that with reference to those Acts the following provisions shall have effect:—

No. 57 of
1912, s. 2

Repeal.
Savings.

(a) All offices, appointments, regulations, rules, registers, records, certificates, awards, industrial agreements, orders, permits, instruments, and generally all acts of authority which originated under any enactment repealed by this Act and hereby re-enacted with or without modification and which are subsisting or in force on or immediately prior to the commencement of this Act shall, subject to this Act, enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated.

(b) Every union or association registered under any such repealed Act and subsisting at or immediately prior to the commencement of this Act shall be deemed to be registered under this Act: Provided that the constitution and rules of any such union or association shall be amended so far (if at all) as may be necessary to bring them into compliance with this Act, and in case of default the registration may be cancelled by the President.

(c) All matters and proceedings commenced under any such repealed Act and pending or in progress at or immediately prior to the commencement of this Act may be continued completed and enforced under this Act.

[4A. *Added by No. 76 of 1963, s. 6. Repealed by No. 108 of 1973, s. 5.*]

Certain industrial matters and industrial disputes deemed not to have arisen in certain circumstances. Added by No. 108 of 1973, s. 6.

4B. Any industrial matter or industrial dispute referred to the Commission before the date of the coming into operation of the Industrial Arbitration Act Amendment Act, 1973, shall be deemed not to have arisen and shall not be heard and determined or otherwise dealt with by the Commission unless—

- (a) the hearing of that industrial matter or industrial dispute has been commenced by the Commission before that date; or
- (b) the parties to that industrial matter or industrial dispute, within one month after that date, advise the Registrar in writing that they agree that the industrial matter or industrial dispute be heard and determined or otherwise dealt with by the Commission.

Validation of the registration of certain bodies. No. 57 of 1912, s. 3.

5. The registration as an industrial union or an industrial association of any society or council or other body before the commencement of this Act shall be deemed to be and to have been as valid to all intents and purposes as it would have been if the definition of "Industry" and of "Worker" contained in this Act had been in the Act under which the registration was or purported to be made at the date of the registration.

Interpretation, No. 57 of 1912, s. 4. Amended by No. 50 of 1925, s. 4; No. 5 of 1952, s. 4; No. 76 of 1963, s. 7; No. 61 of 1966, s. 4; No. 108 of 1973, s. 7.

6. In this Act, if not inconsistent with the context,

- "award" means an award made under this Act;
- "calling" means any trade, craft or occupation of a worker;
- "Commission" means The Western Australian Industrial Commission established under this Act;
- "Commission in Court Session" means the Commission constituted by not less than three Commissioners sitting or acting together;

“Commissioner” means a Commissioner appointed under this Act and includes the Chief Industrial Commissioner;

“Court” means the Western Australian Industrial Appeal Court constituted under this Act;

“Employer” includes—

(a) persons, firms, companies and corporations;

(b) the Crown and any Minister of the Crown, or body corporate acting on behalf of the State; and

(c) any employer within the meaning of the Public Service Arbitration Act, 1966,

employing one or more workers;

“Group of Industries” means any number of related industries within the meaning of section sixty-two;

“industrial agreement” or “agreement” means an agreement made and filed in accordance with the provisions of Part III., and enforceable pursuant to the provisions of section ninety-nine, of this Act;

“Industrial Association” or “Association” means an industrial association registered under this Act;

“Industrial dispute” means a dispute as to industrial matters between a union or association of workers on the one hand and an employer or a union or association of employers on the other hand;

“Industrial matters” means all matters affecting or relating to the work, privileges, rights, and duties of employers or workers in any industry, not involving questions which are or may be the subject of proceedings for an indictable offence; and, without limiting the general nature of the above definition, includes all matters relating to—

Industrial Arbitration.

- (a) The wages, allowances, or remuneration of workers employed or usually employed or to be employed in any industry, or the prices paid or to be paid therein in respect of such employment;
- (b) The hours of employment, sex, age, qualification, or status of workers, and the mode, terms, and conditions of employment;
- (c) The employment of children or young persons, or of any person or class of persons, in any industry, or the dismissal of or refusal to employ any person or class of persons therein;
- (d) Any established custom or usage of any industry; either generally or in the particular locality affected;
- (e) [*Deleted by No. 76 of 1963, s. 7 (h).*]
- (f)
 - (i) The persons who may take or become apprentices;
 - (ii) The number of apprentices that may be taken by any one employer;
 - (iii) The mode of binding apprentices;
 - (iv) The terms and conditions of apprenticeship;
 - (v) The registration of apprentices;
 - (vi) The examination of apprentices and the payment of examiners;
 - (vii) The rights, duties, and liabilities of the parties to any agreement of apprenticeship;
 - (viii) The assigning or turning over of apprentices;

- (ix) The dissolution of apprenticeships; and
- (x) Any claim or dispute arising under any agreement of apprenticeship, or relating to an alleged breach of such agreement, notwithstanding that any party to any such agreement may have determined or have purported to determine the agreement;

(g) [*Deleted by No. 76 of 1963, s. 7 (h).*]

(h) What is fair and right in relation to any industrial matter, having regard to the interests of the persons immediately concerned, and of the community as a whole;

“Industrial union” or “union” means an industrial union registered under this Act;

“Industry” includes—

- (a) Any business, trade, manufacture, handicraft, undertaking, or calling of employers on land or water;
- (b) Any calling, service, employment, handicraft, or industrial occupation or vocation of workers, on land or water; and
- (c) A branch of an industry or a group of industries;

“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;

Of. C. & A.
Ch., s. 4.

“judge” includes a person appointed a Commissioner under section forty-nine of the Supreme Court Act, 1935;

“Lock-out” includes any closing of a place of employment or any suspension of work or any refusal by an employer to continue to employ any number of his workers with a view to compel his workers or to aid another employer in compelling his workers to accept any terms or conditions of employment, or with a view to enforce compliance with the demands made by any employer on any workers;

“Mediator” means a person appointed mediator under this Act;

Cf. C. & A.
Cth., s. 4.

“office” in relation to an industrial union means—

- (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 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;

“President” means the President of the Court;

“Registrar” means the Registrar of Industrial Unions under this Act;

“strike” includes—

(i) a cessation or limitation of work or a refusal to work by a worker acting in combination 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.

“Trade union” means a trade union registered under the Trade Unions Act, 1902;

“Worker” means any person of not less than fourteen years of age of either sex employed or usually employed by any employer to do any skilled or unskilled work for hire or reward, and includes an apprentice; but shall not include any person engaged in domestic service, in a private home, provided that no home in which more than six boarders and/or lodgers are received for pay or reward shall be deemed to be a private home:

The term includes canvassers for industrial insurance whose services are remunerated wholly or partly by commission or percentage reward.

For the purposes of this paragraph, the word "canvassers" means persons wholly and solely employed in the writing of industrial insurance business, and/or in the collection of premiums at not longer intervals than one month in respect to such insurance, but does not include any person who directly or indirectly carries on or is concerned in the carrying on or conduct of any other business or occupation in conjunction or in association with that of industrial insurance;

The term does not include—

- (a) [*Deleted by No. 61 of 1966, s. 4.*]
- (b) any officer within the meaning of that word in the Railways Classification Board Act, 1920-1945¹; or
- (c) any officer or person employed on the teaching staff of the Education Department under the Education Act, 1928-1943², or the regulations made under that Act.

Penalties.
No. 57 of
1912, s. 5.
Amended by
No. 76 of
1963, s. 8.

7. The mention of any penalty, pecuniary or other, at the foot of any section, subsection, or numbered paragraph of this Act, means that any contravention of the section, subsection, or paragraph, as the case may be, whether by act or omission, shall be an offence against this Act, punishable on summary conviction or on conviction before the Court, by a penalty not exceeding the penalty indicated, or that any offence defined in the section, subsection, or paragraph, as the case may be, shall be punishable as aforesaid.

¹ Now Railways Classification Board Act, 1920-1959.

² Now Education Act, 1928-1973.

PART II.—INDUSTRIAL UNIONS AND ASSOCIATIONS.

Division I.—Industrial Unions.

8. (1) Any society consisting—

- (a) In the case of employers, of two or more persons who have in the aggregate throughout the six months next preceding the date of the application for registration employed on an average, taken per month, not less than fifteen workers, or

- (b) In the case of workers, of any number of workers not less than fifteen,

What societies may be registered. No. 57 of 1912, s. 6. Amended by No. 50 of 1925, s. 3; No. 76 of 1963, s. 9.

associated for the purpose of protecting or furthering the interests of employers or workers in or in connection with any specified industry, or (in the case and subject to the conditions hereinafter set out) in or in connection with divers industries in the State, may, on passing the necessary resolution and rules, and otherwise complying with the requisitions of this Act, be registered as an industrial union under this Act.

(2) Any branch of a society or industrial union may be treated as a distinct society, and, with the approval of the Commission in Court Session, may, subject to this Act, be separately registered as an industrial union.

Branch may be treated as distinct society.

(3) If it is proved to the satisfaction of the Commission in Court Session that, under the conditions existing in any locality defined in the application for registration, it is expedient that the limitation of the purposes of the society to a specified industry should not apply, the society may be lawfully registered as an industrial union under this Act, notwithstanding that its members may be associated for the protection and furtherance of the interests of employers or workers (as the case may be) in connection with divers industries, and notwithstanding that such divers industries may not be a group of industries within the meaning of this Act.

(4) (a) A society which consists of persons who are not all employers or workers in or in connection with one specified industry may apply for registration as an industrial union, and the Commission in Court Session may allow such society to be registered as an industrial union, or validate the registration or supposed registration prior to the commencement of this Act of such society as an "industrial union" if in other respects it is entitled to be so registered; provided it is proved to the satisfaction of the Commission in Court Session that the right of membership in such society is limited to persons whose interests in regard to industrial matters are in the main identical or of a kindred nature or whose vocations (as for example the vocations of clerks or engine-drivers) have characteristics in common, or whose interests are of like composite character.

(b) After the registration of any such union the members shall as such be deemed for the purposes of this Act to be workers or employers, as the case may be, in the same industry, and the vocations of the members shall, for all the purposes of this Act, be deemed to be one industry, and the provisions of this Act shall apply accordingly.

(5) [*Repealed by No. 76 of 1963, s. 9.*]

(6) [*Repealed by No. 76 of 1963, s. 9.*]

Conditions
to be
fulfilled
before
making
application
for regis-
tration.
No. 57 of
1912, s. 7.
Substituted
by No. 76 of
1963, s. 10.
Amended by
No. 108 of
1973, s. 8.

9. A society shall not make application to be registered as a union unless and until—

(a) a resolution authorising the application has been passed by a majority of the members of the society present in person at a general meeting of the society specially called for the purpose, of which seven days' previous notice specifying the time, place and objects of the meeting has been given, by publishing a copy of a notice thereof in a newspaper circulating generally in the district in which the office of the society is situate and by posting a copy of the notice

in a conspicuous place outside that office, but the Registrar may, upon written request signed by the President and Secretary of the society, authorise the giving of notice of the meeting by a method different from that prescribed in the foregoing provisions of this paragraph, if and only if he is satisfied that all reasonable actions have been or will be taken in order to ensure that all members of the society will thereby receive due notice of the meeting; and

- (b) the society has, by a vote of the majority of the members of the society present at that general meeting or at another general meeting called in like manner for the purpose, passed and approved rules of the society for the purposes of this Act.
- (c) [*Repealed by No. 108 of 1973, s. 8.*]
- (d) [*Repealed by No. 108 of 1973, s. 8.*]

9A. [*Added by No. 76 of 1963, s. 11. Repealed by No. 108 of 1973, s. 9.*]

9B. (1) The rules of a society shall specify the purposes for which the society is formed, and shall provide for—

- (a) the appointment to and removal from and powers and duties of office;
- (b) the manner of calling general or special meetings, the powers thereof, and the quorum and manner of voting thereat;
- (c) the mode in which industrial agreements and all deeds and instruments shall be made and executed by the society and in what manner the society shall be represented in proceedings before the Commission and before the Court;

Matters to be provided for in rules.
 Added by No. 76 of 1963, s. 12.
 Amended by No. 66 of 1966, ss. 4 and 17;
 No. 108 of 1973, s. 10.

- (d) the device, custody, and use of the seal of the society;
- (e) the control of the property, and the investment of the funds of the society, and an annual or other shorter periodical audit of the accounts;
- (f) the inspection of the books of the society and the register of members by every person having an interest in the funds;
- (g) a register of members, and for the mode in which and the terms and qualification on which persons shall become or cease to be members, but so that a member shall not discontinue his membership without giving at least three months' previous written notice to the secretary, or paying a sum equal to three months' contributions instead of notice, or until that member has paid all fees, fines, levies, or other dues payable by him under the rules to the end of the period covered by the notice, or has obtained a clearance card duly issued in accordance with the rules of the society;
- (h) the purging of the register by striking off members in arrears of dues for such period as is prescribed by the rules not exceeding twelve months but without releasing those persons from arrears due;
- (i) the conduct of the business of the society at some convenient and specified address to be called the registered office of the society;
- (j) the amendment, repeal, or alteration of the rules, subject to the requirements of this Act; and
- (k) any prescribed matter.

(2) The rules of a society shall expressly provide that—

- (a) a person shall not be a member of the society who is not a worker or employer, as the case may be;

- (b) no part of the funds or property of the society shall be paid or applied for in connection with or to aid or assist any person engaged in any strike or lockout in this State;
- (c) all industrial disputes in which the society or any of its members may be concerned shall unless settled by mutual consent, be referred for settlement pursuant to this Act; and
- (d) no amendment, repeal or alteration of the rules of a society shall be made unless the amendment, repeal or alteration has been passed and approved by a vote of the majority of the members of the society present in person at a general meeting called for the purpose in a manner provided by paragraph (a) of section nine of this Act.

(2a) For the purpose of paragraph (a) of subsection (2) of this section, an honorary member of the society or a member of the society who or whose personal representative is entitled to some financial benefit or financial assistance under the rules of the society while not being a worker or employer, shall be deemed to be a worker or employer as the case may be.

(3) Rules of a society 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 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.

(4) Without prejudice to the operation of subsections (5) and (6) of this section, the rules of a society applying for registration, or registered as a union, relating to elections for office may provide for compulsory voting.

(5) The Court may, upon its own motion or upon application made under this section, disallow any rule of a union that, 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 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 is void.

(6) A member of a union or any person who in the opinion of the Court has sufficient interest in the disallowance of the rule, may apply to the Court for the disallowance of a rule of the union on any of the grounds specified in subsection (5) of this section.

(7) The court may, instead of disallowing the rule, direct the 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 thereupon the rule is void.

(8) (a) The Court may, upon complaint by a member of a 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 a 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 against this Act.

Penalty: Fifty dollars.

(9) The rules of a society or any amendment thereof may contain such other provisions not inconsistent with this Act or otherwise contrary to law as a majority of the members of the society present in person at any general meeting thereof may approve.

10. (1) Any two or more industrial unions consisting of employers or workers engaged in the same industry or in related industries may apply to the Commission in Court Session for registration as one union.

Amalgama-
tion of
unions.
No. 57 of
1912, s. 8.
Amended by
No. 76 of
1963, s. 13;
No. 108 of
1973, s. 11.

(2) The application shall be under the respective seals of the unions concerned, and shall be signed by their respective presidents and secretaries.

(3) The application shall be accompanied by—

- (a) A list of the members and officers and the trustees (if any) of the proposed new union;
- (b) Two copies of the rules of such proposed union, such rules being in accordance with section nine B of this Act; and
- (c) A copy of a resolution authorising the application and approving of the rules on behalf of each union concerned, passed by

a vote of the majority of the members present in person at a general meeting of each of those unions.

(4) Subject to subsection (4a) of this section, every application hereunder shall be deemed to be an application by a society for registration under this Act, and the succeeding provisions of this Act shall (so far as applicable) apply thereto, and in respect thereof accordingly.

(4a) Where an application is made under this section—

- (a) no objection may be made concerning the qualifications of persons for membership of the proposed new union unless those qualifications exceed in ambit or extent the aggregate of the qualifications for membership of the unions which are parties to the application; and
- (b) no objection may be made concerning the area of operation or industry or calling in respect of which the proposed new union is sought to be registered unless that area of operation or industry or calling exceeds in ambit or extent the aggregate of the areas of operation or industries or callings in respect of which the unions which are parties to the application are registered.

(5) On the proposed new union being registered as an industrial union under this Act—

- (i) The registration of every union affected shall be deemed to have been cancelled under subsection one of section twenty-nine;
- (ii) All the property, rights, duties, and obligations whatever vested in or imposed on the unions affected shall become vested in or imposed on the new union.

Mode of application.
No. 57 of 1912, s. 9.
Amended by
No. 76 of 1963, s. 14;
No. 108 of 1973, s. 12.

11. (1) An application for registration shall be made to the Commission in Court Session by one or more of the officers of the society in the prescribed form, accompanied by—

- (a) A list of the members and officers and the trustees (if any) of the society with their addresses;
- (b) Three copies of the rules of the society referred to in paragraph (b) of section nine of this Act; and
- (c) A copy of the resolution authorising the application.
- (d) [*Deleted by No. 108 of 1973, s. 12.*]

(2) The applicant society shall, within fourteen days of filing the application for registration of the society as a union, serve a notice in the prescribed form accompanied by a copy of the rules of the society relating to the qualification of persons for membership of the society, on each union whose comparative rules include or are capable of including workers having the same calling as those to which the rules of the applicant society relate; and for this purpose the Registrar shall supply the applicant society with a list of the unions to be served with the notice.

(3) The Registrar shall, at least fourteen days before the hearing of the application, give notice of the application by publishing a notice in a newspaper circulating generally in the district or locality in respect of which the society is formed and shall include in the notice an address where a copy of the rules of the society may be inspected.

(4) Any union referred to in subsection (2) of this section or any employer who employs or usually employs or is likely to employ members of the applicant society or any union of employers of which that employer is a member or any association on which that union of employers is represented, may, upon giving the Registrar and the applicant society notice in the prescribed form, be heard in objection to the application.

(5) In dealing with an application for registration the Commission in Court Session may—

- (a) direct the Registrar to register the applicant society; or

- (b) direct the Registrar to register it when the society has duly made such amendments to such of its rules as are referred to in subsection (5) of section nine A of this Act, as the Commission in Court Session thinks fit.

Registration
of Civil
Service
Association
as an
industrial
union.
Added by
No. 61 of
1966, s. 5.

11A. (1) In this section—
“Government officer” includes—

- (a) every person employed as an officer or temporary employee under and within the meaning of the Public Service Act, 1904;
- (b) every person employed on the salaried staff of—
- (i) the Commissioner of Main Roads appointed under the Main Roads Act, 1930;
 - (ii) the Forests Department under the Forests Act, 1918;
 - (iii) the Commissioner of Transport constituted under the State Transport Co-ordination Act, 1933;¹
 - (iv) the Metropolitan Market Trust under the Metropolitan Market Act, 1926;
 - (v) any public hospital that is managed and controlled by a Minister of the Crown under and for the purposes of the Hospitals Act, 1927; or
 - (vi) any port authority, harbour trust or harbour board; and
- (c) every person who is employed in any Government department, State Trading Concern, State instrumentality or State agency named in an order

¹ Now see Transport Commission Act, 1966, s. 15.

of the Commission in Court Session made pursuant to subsection (6) of this section, and who is declared by that order to be a Government officer, and who is or is eligible to become a member of the Association;

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

(2) After the coming into operation of the Public Service Arbitration Act, 1966, the Commission in Court Session shall, subject to the provisions of this section, direct the Registrar to register the Association as an industrial union under this Act, notwithstanding that the Association has not complied with the requisitions of this Act relating to registration of a society as an industrial union under this Act.

(3) Before directing the Registrar as referred to in subsection (2) of this section, the Commission in Court Session—

- (a) shall give notice of its intention so to direct the Registrar by publishing a notice to that effect in the *Western Australian Industrial Gazette* and in a newspaper published and circulating generally within the State; and
- (b) may direct the Association to make such amendments to its rules as the Commission in Court Session thinks fit.

(4) The notice referred to in paragraph (a) of subsection (3) of this section shall state that any industrial union the rules of which, so far as they relate to qualifications of persons for membership of the union, include workers having the same calling as those to which the rules of the Association relate, and any employer who employs or usually employs or is likely to employ members of the Association, may upon giving to the Registrar and the Association notice in the prescribed form be heard in objection to or to the registration of any

rules of the Association that relate to the qualification of persons for membership of the Association, the area and the industry or calling in respect of which it is intended to register the Association as an industrial union, and shall appoint a date and place for the hearing of any such objections.

(5) The Association may appear and be heard in relation to any objections made pursuant to subsection (4) of this section.

(6) When in pursuance of the provisions of subsection (2) of this section the Commission in Court Session directs the Registrar to register the Association as an industrial union under this Act, the Commission in Court Session shall make an order declaring that such persons as are employed in any Government department, State Trading Concern, State instrumentality or State agency named in that order, and as are therein described, are Government officers within the meaning of this section.

(7) The Commission in Court Session may at any time and from time to time, on application made by the Association or by any employer or industrial union and after consulting the Public Service Arbitrator appointed under the Public Service Arbitration Act, 1966, make an order amending or varying the order made by it under subsection (6) of this section.

(8) Notwithstanding the provisions of subsection (1) of this section, the following persons are deemed not to be Government officers, namely—

- (a) any officer of either House of Parliament under the separate control of the President or Speaker or under their joint control;
- (b) any officer employed on the teaching staff of the Education Department under the Education Act, 1928, or the regulations made under that Act;

(c) any officer within the meaning of the term "officer" in the Railways Classification Board Act, 1920.

12. (1) The Registrar shall comply with a direction of the Commission in Court Session given pursuant to section eleven of this Act.

Registration of Society. No. 57 of 1912, s. 10, Substituted by No. 17 of 1963, s. 15.

(2) Where the Registrar is directed by the Commission in Court Session to register a society as a union the Registrar shall so register it, by registering its name, its rules and the address of the office of the union and that office shall be the registered office for the purposes of this Act.

(3) On the registration of a society as a union the Registrar shall give to the union a certificate of registration in the prescribed form which until cancelled is, subject to this Act, conclusive evidence of the registration under this Act of the union specified therein and of the union having complied with the prescribed conditions that entitle it to be so registered.

13. (1) Every society registered as an industrial union shall, upon and during registration, become and be, for the purposes of this Act, a body corporate by the registered name, having perpetual succession and a common seal: Provided that subject to this Act a union may at any time, with the consent of the Commission in Court Session, change its name.

Incorporation of Society. No. 57 of 1912, s. 11. Amended by No. 76 of 1963, s. 16.

(2) The registered name shall clearly indicate whether the union is a union of employers or a union of workers and shall also indicate the general locality in which the majority of its members reside or exercise their calling.

Registered name.

14. Upon and after registration the industrial union, and members thereof for the time being, shall be subject to the jurisdiction of the Court and the Commission, and to all the provisions of this Act;

Effect of registration. No. 57 of 1912, s. 12. Amended by No. 76 of 1963, s. 17.

and all such members shall be bound by the rules of the industrial union during the continuance of their membership: Provided that nothing herein contained shall render a shareholder of an incorporated company liable for any further amount hereunder than that for which he is liable as a shareholder of such company.

Powers and liabilities of industrial unions. No. 57 of 1912, s. 13. Amended by No. 108 of 1973, s. 13.

15. (1) An industrial union may sue and be sued and may purchase, take on lease, hold, sell, lease, mortgage, exchange, and otherwise own, possess, and deal with any real or personal property.

(2) Any industrial union shall subject to this Act, be liable to all the penal provisions of this Act to the same extent, so far as may be, as an individual.

(3) The service of any process, notice, or document of any kind on an industrial union may be effected by delivering the same to the president or secretary of such union, or by leaving the same at its registered office (not being a branch office) or by posting the same to such registered office in a duly registered letter addressed to the secretary of such union.

Registration under the Act of trade unions. No. 57 of 1912, s. 14. Amended by No. 76 of 1963, s. 18.

16. (1) A trade union, consisting of not less than fifteen persons, formed in connection with any specified industry or industries, may be registered under this Act as if it were a society complying with the conditions of section eight.

(2) Such union when registered shall bear the name which it bears as a trade union and shall comply with subsection (2) of section thirteen of this Act.

(3) It shall not be necessary for the union to pass and approve a complete set of rules for the purposes of this Act, but the union may in lieu thereof pass and approve such additional rules and modifications of existing rules as may be necessary to bring the

rules of the union into conformity with the requisitions of this Act, and the said rules with and subject to any such additions and modifications shall constitute the rules of the industrial union.

(4) For the purposes of this section "trade union" includes a branch of a trade union and also a branch of any society in the nature of a trade union duly registered under the law of any part of the Queen's Dominions outside the State.

17. With respect to the registration of societies of employers the following special provisions shall apply—

Special provisions as to registering societies of employers. No. 57 of 1912, s. 15. Amended by No. 76 of 1963, s. 19.

- (1) Where a co-partnership firm is a member of the society, each individual partner residing in the State shall be deemed to be a member, and the name of each such partner (as well as that of the firm) shall be set out in the list of members accordingly, as thus: "Watson, Brown, and Company, of Perth, boot manufacturers; the firm consisting of four partners, of whom the following reside in Western Australia, that is to say, John Watson, of Perth, and Charles Brown, of Fremantle";
- (2) except where its memorandum, articles or rules expressly forbid the same, any company, incorporated under any Act, or being a foreign company within the meaning of the Companies Act, 1961, may be registered as an industrial union of employers, as if it were a society complying with the conditions of section eight, and in such case the provisions of sections eight, nine, nine A, nine B and eleven hereof shall be deemed to be sufficiently complied with if the application for registration is made under the seal of the company, and pursuant to a resolution of the board of directors, and is accompanied by—

- (a) a copy of such resolution;
 - (b) satisfactory evidence of the registration or incorporation of the company;
 - (c) two copies of the memorandum and articles of association or rules of the company;
 - (d) a list containing the names of the directors, and of the manager or other principal executive officer of the company in Western Australia;
 - (e) the address of the registered office of the company in Western Australia;
- (3) in so far as the memorandum, articles, or rules of any company are repugnant to this Act, they shall, on the registration of the company as an industrial union of employers, be construed as applying exclusively to the company and not to the industrial union;
- (4) subsection (2) of section thirteen of this Act does not apply to an incorporated company that is registered as an industrial union.

Provisions relating to society to apply to trade union and company.
No. 57 of 1912, s. 16.

18. Subject to any provision to the contrary the provisions of this Act relating to the registration of a society and to the effect of such registration and of a certificate thereof apply in respect of a trade union, company, council, or other body authorised to be registered under this Act.

Company authorised to join society or industrial union, or to enter into industrial agreement.
No. 57 of 1912, s. 17.

19. Notwithstanding anything to the contrary contained in the memorandum or articles of association or rules of any company, such company may, with the consent of its manager or other principal executive officer in Western Australia, become a member of any society proposed to be

registered as an industrial union of employers or of an industrial union of employers or a party to any industrial agreement.

20. An industrial union shall not be registered under a name identical with that by which any other industrial union has been registered or so nearly resembling such name as to be likely to deceive or mislead the members or the public.

Unions not to be registered under similar names. No. 57 of 1912, s. 18.

21. The Commission in Court Session may refuse to register any society, trade union, or company as an industrial union if in the same locality there exists an industrial union to which the members or the bulk of the members of such society, trade union, or company can conveniently belong.

Power to refuse registration in certain cases. No. 57 of 1912, s. 19. Amended by No. 76 of 1963, s. 20.

22. [*Repealed by No. 76 of 1963, s. 21.*]

23. (1) The provisions of section nine, nine B, eleven and twenty-one of this Act relating to an application by a society applying for registration under this Act the rules of that society and the registration of those rules, apply, with such modifications as the circumstances require, to any amendment or rescission of the rules of any union and no amendment or rescission thereof is valid until those provisions are complied with to the extent required by this section.

Amendment of rules. No. 57 of 1912, s. 21. Amended by No. 76 of 1963, s. 22; No. 68 of 1966, ss. 5 and 17; No. 108 of 1973, s. 14.

(2) A printed copy of the rules (certified as in subsection three) for the time being of the industrial union shall be delivered by the secretary to any person applying for the same on payment of a sum not exceeding the cost of production per copy of those rules.

(3) In all proceedings affecting the industrial union, *prima facie* evidence of the rules and their validity may be given by the production of what

purports to be a copy thereof, certified as a true copy under the seal of the union and the hand of the secretary or any other prescribed officer.

(4) [*Repealed by No. 108 of 1973, s. 14.*]

(5) [*Repealed by No. 76 of 1963, s. 22.*]

(6) Where the rules of an industrial union that were registered before the commencement of this subsection, empower a body other than the majority of its members present at a duly convened general meeting of that industrial union to amend, repeal or alter those rules, the provisions of paragraphs (a) and (b) of section nine of this Act, as applied by subsection (1) of this section, do not apply in respect of an amendment, repeal or alteration of any rule of that industrial union passed and approved as prescribed by those rules at a duly convened and constituted meeting of that body.

(7) An amendment, repeal or alteration of any rule of an industrial union passed and approved as provided in subsection (6) of this section prior to the commencement of this subsection, is by force of this section as valid as if the amendment, repeal or alteration of the rule were passed and approved by the majority of the members of that industrial union present in person at a duly convened general meeting of that industrial union called for the purpose.

(8) Notwithstanding the foregoing provisions of this Act and the rules of an industrial union, the Commission in Court Session on the application of the industrial union, may direct that the procedure prescribed in those rules for amending, repealing or altering them may be varied in such manner and to such extent as the Commission in Court Session, having regard to the circumstances set out in the application, thinks fit and specifies in such direction.

(9) Any amendment, repeal or alteration of a rule of an industrial union made in accordance with a direction made pursuant to subsection (8) of this

section, is as valid as if it were passed and approved by the majority of the members of that industrial union present in person at a duly convened general meeting of the industrial union called for the purpose.

(10) (a) Notwithstanding the foregoing provisions of this Act, any part of an application to amend the rules of a union that does not relate to the qualification of persons for membership of the union, or the area or industry or calling in respect of which the union is registered, shall be referred by the Chief Industrial Commissioner to the Commission constituted by a Commissioner to be dealt with thereby; and the Commission so constituted has and may exercise in dealing with an application that is so referred to it, the powers of the Commission in Court Session.

(b) An application to which paragraph (a) of this subsection refers may be dealt with by the Commission in chambers.

23A. Where, in the course of dealing with an application by—

- (a) a society for registration as a union;
- (b) two or more unions for registration as one union; or
- (c) a union to amend its rules,

Power of governing body of society or union to make certain alterations to rules.
Added by No. 108 of 1973, s. 15.

the Commission or, as the case may be, the Commission in Court Session requires that any applicant's rules be altered in form but not in substance the rules may, notwithstanding any other provision of this Act or the provisions of those rules to the contrary, be so altered by the governing body of the society or union.

24. (1) In addition to its registered office, an industrial union may have a branch office in any locality in which any of its members reside or exercise their calling.

Registered office and branch office of industrial union.
No. 57 of 1912, s. 22.
Amended by No. 108 of 1973, s. 16.

(2) Upon application by the industrial union, under its seal and the hand of its president or secretary, specifying the address of the branch office, the Registrar shall register the same.

(3) The address of the registered office and of each registered branch office may be changed from time to time in the prescribed manner.

(4) Every such change shall be forthwith notified to the Registrar by the secretary of the union, and shall thereupon be registered.

Records to be kept and filed by industrial union.
 Cf. C. & A. Cth., s. 91 (1).
 No. 57 of 1912, s. 23. Repealed and re-enacted by No. 5 of 1952, s. 7.
 Amended by No. 66 of 1966, ss. 6 and 17; No. 108 of 1973, s. 17.

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
- (d) such other records as are prescribed.

Penalty: Ten dollars for each week of default.

(2) [*Repealed by No. 108 of 1973, s. 17.*]

(3) [*Repealed by No. 108 of 1973, s. 17.*]

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 paragraph (b) of subsection (1) of this section and a record of the number of members in the industrial union, 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: Ten dollars 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: Ten dollars for each week of default.

(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.

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

Penalty: Twenty dollars.

(7) [*Repealed by No. 108 of 1973, s. 17.*]

(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: Twenty dollars.

(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.

Power of Registrar in relation to register of members of industrial union. Repealed and re-enacted by No. 108 of 1973, s. 18.

26. (1) Where it appears to the Registrar that the register of members of an industrial union is not being maintained in such a form and manner as to provide, for the purpose of the conduct of a ballot or election in pursuance of this Act, a convenient form of the accurate particulars of the membership of the industrial union, he may direct the union to make such rectifications in the register and such changes in the form or manner in which the register is being maintained, as he considers necessary for that purpose.

(2) An industrial union to which a direction is given under subsection (1) of this section shall comply therewith.

Penalty: Twenty dollars.

(3) A certificate from the Registrar stating that a person specified in the certificate was at a time so specified a member or officer of an industrial union so specified is, in all courts and proceedings, *prima facie* evidence of the facts so stated.

Return for Parliament. No. 57 of 1912, s. 25.

27. It shall be the duty of the Registrar to supply to Parliament, within thirty days after its meeting in each year, a return showing the number of members in each industrial union registered under the Act.

Industrial unions to send yearly balance sheet to Registrar. No. 57 of 1912, s. 26. Amended by No. 49 of 1941, s. 2. No. 68 of 1966, s. 17.

28. The secretary of every industrial union shall, once in every year, cause the accounts of the union to be properly audited by a duly qualified public accountant, and shall, within one calendar month after the completion of the yearly audit of the accounts of the union, deliver to the Registrar a duly audited balance sheet of the assets and liabilities of the union, made up to the date of closing the accounts, and also a duly audited statement of the receipts and expenditure of the union during the year, the subject of such audit.

Penalty: Twenty dollars.

29. (1) An industrial union may apply to the Registrar in the prescribed manner for a cancellation of the registration thereof, and thereupon the Registrar, if satisfied that the cancellation is desired by a majority of the members of such union, and after giving six weeks' notice of his intention so to do, may by notice in the *Gazette* cancel such registration.

Procedure for cancellation of registration. No. 57 of 1912, s. 27. Amended by No. 5 of 1952, s. 9; No. 76 of 1963, s. 23.

(2) If it appears to the Commission in Court Session on the application in the prescribed manner of any industrial union or person interested, or of the Registrar—

- (a) that an industrial union has been registered erroneously or by mistake; or
- (b) that the rules of an industrial union are not in conformity with the requisitions of this Act or have not bona fide been observed; or
- (c) that the rules of an industrial union or their administration do not or does not provide reasonable facilities for the admission of new members or impose or imposes unreasonable conditions upon the continuance of their membership or are or is in any way oppressive; or
- (d) that the proper authority of an industrial union wilfully neglects to provide for the levying and collection of subscriptions, fees, or penalties from members of the union; or
- (e) that the accounts of an industrial union have not been duly audited or that the accounts of the union or of the auditor do not disclose the true financial position of the union; or
- (f) that an industrial union has wilfully neglected to obey an order of the Court or the Commission; or

(g) that the number of members in the union is below the number which a society would be required to have before it could be registered as such a union under this Act; or

(h) that for any other reason the registration of an industrial union ought to be cancelled, the Commission in Court Session may order the registration of the union to be cancelled, and thereupon it shall be cancelled accordingly.

Effect of
cancellation.
No. 57 of
1912, s. 28.
Amended by
No. 76 of
1963, s. 24.

30. A cancellation shall, as from the making thereof, dissolve the incorporation of the industrial union in so far as this Act is concerned, and any representatives of the union in any industrial association shall cease to be members of such association, but the cancellation shall not affect the prior status of the union or the status of any such association or relieve the union, or any member thereof, from the obligation of any industrial agreement, or any award or order, nor from any penalty or liability incurred prior to such cancellation.

31. [*Repealed by Act No. 5 of 1952, s. 10.*]

Conditional
order for
cancellation.
No. 57 of
1912, s. 30.
Amended by
No. 76 of
1963, s. 25.

32. On making any order for cancellation the Commission in Court Session may direct that the order shall be suspended for a period fixed by it and that if a requisition specified in the direction be complied with by the union to the satisfaction of the Commission in Court Session within that period, then the order shall be annulled, but that if the requisition be not so complied with then the order shall have effect as from the making thereof; and every such direction of the Commission in Court Session shall have effect according to its tenor.

Division II.—Industrial Associations.

Industrial
associations
may be
registered.
No. 57 of
1912, s. 31.

33. Any council or other body, however designated, representing not less than two industrial unions of either employers or workers in any speci-

fied industry, may be registered under this Act as if such council or body were a society complying with the conditions of section eight.

Provided that every such council or other body shall in lieu of being registered as an industrial union be registered as and designated an industrial association, and the word "association" shall be substituted for the word "union" wherever necessary accordingly.

34. All the provisions of this Act relating to industrial unions, their officers, trustees, and members, shall *mutatis mutandis*, extend and apply to a registered industrial association, its officers, trustees, and members respectively, and such provisions shall be read and construed accordingly in so far as the same are applicable, and the special reference to industrial associations in any section shall not render other sections inapplicable.

Provisions affecting unions applicable. No. 57 of 1912, s. 32. Amended by No. 76 of 1963, s. 26.

35. (1) In lieu of making provision with respect to the matters mentioned in paragraphs (f), (g) and (h) of subsection (1) of section nine B of this Act, provisions shall be made in the rules of any council or other body applying for registration as an industrial association with respect to—

Matters to be dealt with in rules of associations. No. 57 of 1912, s. 33. Amended by No. 76 of 1963, s. 27.

- (i) a register of industrial unions represented on the association and of the members of the association respectively representing such unions, and the mode in which and the terms and qualifications on which such unions shall be entitled to be or shall cease to be so represented, but so that no union shall discontinue its representation unless and until it has given at least three months' previous written notice to the association of its intention so to do;
- (ii) the expulsion from representation on the council or body of unions in arrears of dues for any specified period not longer than

twelve months, but without freeing such union or its representatives from arrears due;

- (iii) the purging of the register;
- (iv) the inspection of the books and the register of members by any person authorised in that behalf by an industrial union represented on the council or body.

(2) Regulations may be made prescribing other matters in respect of which industrial associations shall have rules and providing that industrial associations need not have rules regarding any specified matter which has been prescribed in the case of industrial unions.

Ground for
cancellation
of registra-
tion.
No. 57 of
1912, s. 34.

36. It shall be an additional ground for the cancellation of the registration of an industrial association that the rules thereof or their administration do not provide reasonable facilities for the admission to representation on the association of new unions or impose or imposes unreasonable conditions upon the continuance of their membership or are or is in any way oppressive.

[Div. III.
added by
No. 5 of
1952, s. 11.]
Ct. C. & A.
Cth., Part
IV., Div. 3,
ss. 96A-96N.

Division III.—Disputed Elections.

Applications
for inquiries
respecting
elections.
Added by
No. 5 of
1952, s. 11.

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.

- (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.

36B. (1) Where an application made in accordance with section 36A of this Act is lodged with the Registrar, the Registrar shall grant the application and refer the matter to the Court.

(2) [*Repealed by No. 108 of 1973, s. 19.*]

(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;

Action by Registrar.
Of. C. & A. Oth., s. 96B.
Added by No. 5 of 1952, s. 11.
Amended by No. 66 of 1966, s. 17; No. 108 of 1973, s. 19.

- (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: one hundred dollars.

(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.
Added by
No. 5 of
1952, s. 11.
Amended by
No. 76 of
1963, s. 28.
Cf. C. & A.
Oth., 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.

(2) [*Repealed by No. 76 of 1963, s. 28.*]

(3) [*Repealed by No. 76 of 1963, s. 28.*]

Directions
as to
hearing.
Added by
No. 5 of
1952, s. 11.
Cf. C. & A.
Oth., 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.

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—

Interim orders.
Added by No. 5 of 1952, s. 11.
Cf. C. & A. Oth., s. 96E.

- (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 industrial 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.

Procedure
at hearing.
Added by
No. 5 of
1952, s. 11.
Amended by
No. 76 of
1963, s. 29.
Cf. C. & A.
Cth., s. 96F.

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.

(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) [*Repealed by No. 76 of 1963, s. 29.*]

(5) The provisions of subsection (1) of section sixty-nine of this Act apply in relation to proceedings under this Division and in applying those provisions to the proceedings the reference to the Commission in those subsections shall be read as though it was a reference to the Court.

Functions
and powers
of Court.
Added by
No. 5 of
1952, s. 11.
Cf. C. & A.
Cth., 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.

Enforce-
ment of
orders.
Cf. C & A.
Oth., s. 96H.
Added by
No. 5 of
1952, s. 11.
Amended by
No. 66 of
1966, s. 17.
No. 108 of
1973, s. 20.

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.

(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: One hundred dollars.

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

Validation
of certain
acts, etc.
Added by
No. 5 of
1952, s. 11.
Cf. C. & A.
Oth., 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.

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.

Costs.
Added by
No. 5 of
1952, s. 11.
Cr. C. & A.
Oth., s. 96K.

(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.

Ballot papers, etc., to be preserved.
Cf. C. & A. Cth., s. 96L.
Added by No. 5 of 1952, s. 11.
Amended by No. 66 of 1966, s. 17.
No. 108 of 1973, s. 21.

36L. Notwithstanding anything contained in the rules of an industrial union, an industrial union and its officers able to do so, shall take such steps as are necessary to ensure that ballot papers, envelopes, lists and other documents used in connection with, or relevant to, an election for an office are preserved and kept at the registered office of the industrial union for a period of one year after the completion of the election.

Penalty: One hundred dollars.

Registrar to conduct elections upon request.
Cf. C. & A. Cth. s. 96M.
Added by No. 5 of 1952, s. 11.
Amended by No. 66 of 1966, ss. 7 and 17.
No. 108 of 1973, s. 22.

36M. (1) An industrial union may, in writing, request the Registrar that an election for an office in the industrial union be conducted under this section with a view to ensuring that no irregularity occurs in or in connection with the election.

(2) For the purposes of subsection (1) of this section, a request by an industrial union may be made—

- (a) by or on behalf of the committee of management of the industrial union; or
- (b) by a number, ascertained as prescribed, of the members of the industrial union.

(3) The regulations may make provision with respect to the times at which requests may be made under this section.

(4) Where a request is made or purports to be made under this section, the Registrar shall, after making such inquiries, if any, as he considers necessary, decide whether or not the request has been duly made.

(5) Where the Registrar decides that a request has been duly made under this section, he shall inform the industrial union accordingly and make arrangements with the Chief Electoral Officer appointed under the Electoral Act, 1907, for the conduct of the election by an officer holding office under that Act or by some other person authorised in writing by the Chief Electoral Officer.

(5a) Where the Registrar decides that a request has not been duly made under this section he shall inform the industrial union accordingly.

(5b) The party that purported to make the request under subsection (2) of this section on behalf of the industrial union may appeal to the Commission in Court Session in the manner prescribed against the decision of the Registrar.

(5c) An appeal under subsection (5b) of this section shall be made within seven days of the industrial union being informed by the Registrar that the request has not been duly made.

(6) Notwithstanding anything contained in the rules of the industrial union, the person conducting the election 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 election or to remedy procedural defects which appear to him to exist in those rules.

(7) A person who—

(a) refuses or fails to comply with a direction given under subsection (6) of this section; or

(b) obstructs or hinders—

(i) the person conducting an election under this section in the conduct of the election or the taking of any action under subsection (6) of this section; or

(ii) any other person in the carrying out of a direction under subsection (6) of this section;

commits an offence against this Act.

Penalty: One hundred dollars.

(8) The provisions of this Division relating to inquiries do not apply in relation to an election conducted under this section.

(9) An election conducted under this section is not invalid by reason only of an irregularity in the request in pursuance of which the election was conducted or by reason 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 section.

(10) The expense of an election conducted under this section, but not including the salary of an officer of the State performing a duty in relation to the election, shall be borne by the industrial union concerned.

(11) In proceedings

in connection with anything done or proposed to be done by reason of a request made 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.

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;

Offences in connection with elections.
Cf. C. & A. Cth. s. 96N.
Added by No. 5 of 1952, s. 11.
Amended by No. 66 of 1966, s. 17.
No. 108 of 1973, s. 23.

- (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: One hundred dollars.

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

[Div. IV. Added by No. 5 of 1952, s. 11.]

36P. Where the Commission 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 Commission may order that the 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 Commission.

Commission may order secret ballot.
Cf. C. & A. Cth., s. 72 (b).
Added by No. 5 of 1952, s. 11.
Amended by No. 108 of 1973, s. 24.

36Q. (1) The Commission 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.
Added by No. 5 of 1952, s. 11.
Amended by No. 66 of 1966, s. 17; No. 108 of 1973, s. 25.

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

Penalty: One hundred dollars.

36R. The Commission 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 Commission thinks fit.

Ballot papers, etc., to be preserved.
Added by No. 5 of 1952, s. 11.
Amended by No. 108 of 1973, s. 26.

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

Persons having the conduct of ballots.
Added by No. 5 of 1952, s. 11.
Amended by No. 66 of 1966, s. 17; No. 108 of 1973, s. 27.

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.

Disobedi-
ence 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: One hundred dollars.

Validity of
ballots.

(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.

Expenses
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.

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

(6) [*Repealed by No. 27 of 1973, s. 27.*]

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

Offences in connection with ballots.
Added by No. 5 of 1952, s. 11.
Amended by No. 66 of 1966, s. 17; No. 108 of 1973, s. 28.

- (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 or opposition,

commits an offence against this Act.

(3) Penalty for an offence mentioned in this section: One hundred dollars.

Saving of the powers conferred by s. 36F.
Added by No. 5 of 1952, s. 11.
Amended by No. 108 of 1973, s. 29.

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 Commission by section thirty-six P of this Act to direct how the secret ballot is to be taken.

PART III.—INDUSTRIAL AGREEMENTS.

Industrial agreements may be made.
No. 57 of 1912, s. 35.
Amended by No. 76 of 1963, s. 30;
No. 108 of 1973, s. 30.

37. (1) Any industrial union or association of workers or employers may make an agreement in writing for the prevention or settlement of an industrial dispute or relating to any industrial matter. Every such agreement shall be made between an industrial union or association of workers, of the one part, and an industrial union or association of employers or some specified employer or employers, of the other part.

(2) Every industrial agreement shall be for a term to be specified therein, not exceeding three years from the date of the making thereof and shall commence as follows: "This agreement, made in pursuance of the 'Industrial Arbitration Act, 1912,' this day of Between ,"

and then the matters agreed upon shall be set out.

Term and form of agreement.

[See No. 76 of 1963, s. 1 (3).]

(3) An agreement shall be limited in its effect to the particular locality therein specified.

(4) The date of the making of the agreement shall be the date on which it is first executed by any party thereto; and such date, and the names of all the original parties thereto, shall be truly stated therein.

Date of agreement.

(5) Notwithstanding the expiry of the term of an industrial agreement, it shall, subject to this Act, continue in force in respect of all parties thereto, except those who retire therefrom, until a new agreement or an award in substitution for the first mentioned agreement has been made.

Agreement to continue in force for parties not retired.

(6) At any time after, or not more than thirty days before, the expiry of an industrial agreement any party thereto may file in the office of the Registrar a notice in the prescribed form signifying his intention to retire therefrom at the expiration of thirty days from the date of such filing, and such party shall on the expiration of that period cease to be a party to the agreement.

Mode of retirement.

38. (1) A duplicate original of every industrial agreement shall, within sixty days after the making thereof, be filed in the office of the Registrar.

Duplicate to be filed. No. 57 of 1912, s. 36. Amended by No. 5 of 1952, s. 12; No. 76 of 1963, s. 31.

(2) Every document purporting to be a copy of an industrial agreement shall (notwithstanding that no notice to produce the original has been given) be admissible in evidence in proof of the contents of the original, provided such copy be certified as a correct copy under the seal of the

Commission and the hand of the Registrar, and the production of such copy shall be *prima facie* evidence that the original agreement was duly executed in accordance with this Act in manner indicated in the copy, and that a duplicate has been duly filed as provided in this section.

Parties to agreement may be added.
No. 57 of 1912, s. 37.
Amended by No. 108 of 1973, s. 31.

39. (1) Whilst the industrial agreement is in force any industrial union or industrial association or employer may (with the consent of the original parties to the agreement or their respective representatives) become party thereto by filing in the office wherein such agreement is filed a notice in the prescribed form, signifying concurrence with such agreement.

(2) Where a union satisfies the Commission—

(a) that there is in force an industrial agreement—

(i) to which the union is not a party; and

(ii) which governs any terms and conditions of employment of workers employed in the same or any part of the same area of operation or industry or calling as that in respect of which that union is registered; and

(b) that among the workers whose terms and conditions of employment are governed by that industrial agreement are some of its members,

the Commission may, on application being made by that union, order that that union become a party to that industrial agreement and thereupon for the purposes of this Act that union shall be a party to that industrial agreement and shall be deemed to have concurred therein.

40. (1) Every industrial agreement duly filed shall except to the extent mentioned in section ninety-eight A of this Act be binding on the parties who execute the same or concur therein, and also on every member for the time being of any industrial union or industrial association which is party thereto, and also on every industrial union and every member for the time being of any industrial union which is for the time being represented on any such association.

On whom agreement binding.
No. 57 of 1912, s. 38.
Amended by No. 5 of 1952, s. 13 (a);
No. 76 of 1963, s. 32.

(2) Except to the extent mentioned in section ninety-eight A of this Act, the agreement also extends to and binds every worker who, at any time while the agreement is in force, is employed on any work to which the agreement relates by any employer on whom the agreement is binding.

(3) [*Repealed by No. 76 of 1963, s. 32.*]

41. Every industrial agreement may be varied, renewed, or cancelled by a subsequent agreement made by and between all the parties thereto and in so far as the agreement relates to an employer, union or association of employers, on the one hand, and to a union or association of workers, on the other hand, it may be varied, renewed or cancelled by a subsequent agreement between that employer, union or association of employers and that union or association of workers.

Power to vary, renew or cancel industrial agreements.
No. 57 of 1912, s. 39.
Repealed and re-enacted by No. 76 of 1963, s. 33.

42. On the application of any party to an industrial agreement, the Commission may cancel, amend or vary any provision of the industrial agreement at any time, while the agreement is in force, if in the opinion of the Commission—

Power of Commission to vary industrial agreement in certain instances.
No. 57 of 1912, s. 40.
Substituted by No. 76 of 1963, s. 34.

(a) circumstances have arisen since the making of the agreement that at the time the agreement was made could not reasonably have been foreseen by the parties to the agreement; and

- (b) those circumstances render that provision of the agreement no longer just,

and the provision shall be cancelled, amended or varied accordingly.

Variation of Industrial Agreement inconsistent with an award.
No. 57 of 1912, s. 41.
Substituted by No. 76 of 1963, s. 35.
Amended by No. 108 of 1973, s. 32.

43. Where at the date of the making of an industrial agreement, an award is in force by virtue of its term in relation to any employer or worker on whom the agreement is binding, if any provision of the agreement is inconsistent with the award, the provision is, to the extent of the inconsistency, void and the Commission may by order vary the agreement so as to remove the inconsistency.

Heading substituted by No. 76 of 1963, s. 36.

PART IV.—THE WESTERN AUSTRALIAN INDUSTRIAL COMMISSION.

Division I.—Constitution of Commission.

Constitution of Commission.
No. 57 of 1912, s. 42.
Substituted by No. 76 of 1963, s. 37.
Amended by No. 9 of 1971, s. 3;
No. 108 of 1973, s. 33.

44. (1) There is hereby established a Commission by the name of "The Western Australian Industrial Commission" which shall consist of the following members—

- (a) a Chief Industrial Commissioner; and
(b) such number of other Commissioners as may, from time to time, be necessary for the purposes of this Act.

(2) [*Repealed by No. 108 of 1973, s. 33.*]

Tenure of Commissioners.

(3) Each member of the Commission shall be appointed by the Governor by Commission in Her Majesty's name, and subject to this Act, shall hold office until he attains the age of sixty-five years.

Commission a Court of Record.

(4) The Commission is a Court of Record and shall have an official seal.

Judicial Notice.

(5) All Courts, judges and persons acting judicially shall take judicial notice of the seal of the Commission affixed to a document and shall presume that it has been duly so affixed.

45. [Repealed by No. 76 of 1963, s. 38.]

46. (1) Where a Commissioner is unable to attend to his duties under this Act, whether on account of illness or otherwise, the Governor may in accordance with this Act appoint a person eligible to be appointed a Commissioner, to be an acting Commissioner during the inability of the firstmentioned Commissioner and that person, while so acting has and may exercise all the powers and functions of the Commissioner in whose place he is so acting.

Provision
in case of
illness or
absence of
member.
No. 57 of
1912, s. 44.
Substituted
by No. 76 of
1963, s. 39

(2) Notwithstanding the expiry of the period for which a Commissioner or acting Commissioner 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 the 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.

47. [Repealed by No. 76 of 1963, s. 40.]

48. [Repealed by No. 76 of 1963, s. 41.]

49. Forthwith after the Commission has been established, the names of the members shall be notified in the *Gazette*, and such notification shall be final and conclusive for all purposes.

Notification
of appoint-
ments.
No. 57 of
1912, s. 47.
Amended by
No. 76 of
1963, s. 42.

50. (1) A Commissioner sitting or acting alone constitutes the Commission and, except as otherwise provided in this Act, he has and may exercise while so sitting or acting, all the powers and jurisdiction of the Commission.

Commis-
sioner
constituting
Commission.
No. 57 of
1912, s. 48.
Substituted
by No. 76 of
1963, s. 43.

(2) Where more than one Commissioner is sitting or acting at the same time in the exercise of the jurisdiction of the Commission under this Act, each such Commissioner constitutes the Commission.

Salaries of Commissioners.
No. 57 of 1912, s. 49.
Substituted by No. 76 of 1963, s. 44.

51. (1) The salary of the Chief Industrial Commissioner and the salary of each other Commissioner shall be at the rate fixed from time to time by the Governor, and the Consolidated Revenue is appropriated accordingly.

(2) The Chief Industrial Commissioner and each other Commissioner shall be paid such travelling expenses as are considered reasonable by the Minister.

Commissioner deemed to be employee for purposes Act No. 34 of 1938.

(3) A Commissioner shall, while he holds his office, be deemed to be an employee within the meaning of and for the purposes of the Superannuation and Family Benefits Act, 1938.

Rights of Commissioners presumed.
No. 57 of 1912, s. 50.
Substituted by No. 76 of 1963, s. 45.
Amended by No. 108 of 1973, s. 34.

52. (1) [*Repealed by No. 108 of 1973, s. 34.*]

(2) Where a Commissioner was immediately before his appointment as a Commissioner, an officer of the Public Service of the State, he retains his existing and accruing rights and for the purpose of determining those rights, his service as a Commissioner, shall be taken into account as if it were service within the Public Service of the State.

Protection of Commissioners.
No. 57 of 1912, s. 51.
Substituted by No. 76 of 1963, s. 46.

53. A Commissioner has, in the performance of his functions and duties as a Commissioner, the same protection and immunity as a judge.

Seniority of Commissioners.
No. 57 of 1912, s. 52.
Substituted by No. 76 of 1963, s. 47.

54. (1) The Commissioners, other than the Chief Industrial Commissioner, have seniority according to the dates of their appointments or, where the appointments of two or more of them were made on the same day, according to such order of seniority as may be assigned to them by the Governor when appointing them.

(2) Where the Chief Industrial Commissioner is absent or unable to perform the duties of his office, or where there is a vacancy in the office of Chief Industrial Commissioner, the duties and powers of the Chief Industrial Commissioner devolve on the Commissioner who is next in order of seniority.

(3) The Chief Industrial Commissioner—

- (a) shall allocate the work of the Commissioners; and
- (b) shall, before the first day of October in each year, make a written report to the Minister as to the operations of the Commission under this Act up to the last preceding thirtieth day of June.

55. Any person who—

- (a) is an alien; or
- (b) is an undischarged bankrupt; or
- (c) is of unsound mind,

Disqualifications for membership. No. 57 of 1912, s. 53. Amended by No. 76 of 1963, s. 48.

shall be incapable of being appointed a member of the Commission.

56. The office of a Commissioner shall be vacated if—

- (a) he engages in paid employment outside the duties of his office;
- (b) 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 his duties as Commissioner;
- (d) except on leave granted by the Minister, he absents himself from duty for fourteen consecutive days or for twenty-eight days in the aggregate in any twelve months; or

Vacation of office of Commissioners. No. 57 of 1912, s. 54. Substituted by No. 76 of 1963, s. 49.

- (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.

Removal on suspension from office of Commissioner.
No. 57 of 1912, s. 55. Substituted by No. 76 of 1963, s. 50.

57. (1) The Governor may remove a Commissioner 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 in the same session of Parliament.

(2) The Governor may suspend a Commissioner from office on the ground of misbehaviour or incapacity.

(3) A full statement of the ground of the suspension shall be laid by the Minister before each House of Parliament within seven sitting days of that House after the suspension.

(4) The Commissioner shall be restored to office unless each House of Parliament within twenty-one sitting days after the statement has been so laid before it, presents to the Governor an address praying for the removal of the Commissioner on the grounds of proved misbehaviour or incapacity.

58. [*Repealed by No. 76 of 1963, s. 51.*]

Oath of office and secrecy.
No. 57 of 1912, s. 57. Amended by No. 50 of 1925, s. 11; No. 76 of 1963, s. 52.

59. Before entering upon their offices the members of the Commission shall make oath before a Judge of the Supreme Court that they will faithfully and impartially perform the duties of their respective offices, and that they will not, except in the discharge of their duties, disclose to any person any evidence or other matter brought before the Commission.

60. (1) The Governor may, on the recommendation of the Public Service Commissioner, appoint under and subject to the Public Service Act, 1904, such officers to the Commission as may be necessary for the purposes of this Act.

Officers of the Commission. No. 57 of 1912, s. 58. Repealed and re-enacted by No. 76 of 1963, s. 53. Amended by No. 108 of 1973, s. 35.

(2) The duties of the officers of the Commission shall be as prescribed and as directed by the Commission or the Chief Industrial Commissioner.

[Subsections (3), (4) and (5)—Repealed by No. 108 of 1973, s. 35.]

Division II.—Jurisdiction of Commission and Court.

Heading substituted, by No. 76 of 1963, s. 54.

61. (1) Subject to this Act, the Commission has cognisance of and power to enquire into any industrial matter or industrial dispute in any industry, including any industrial matter or industrial dispute referred to it under Part IVB of this Act, and in respect of that industry may, on any reference or application to it, make an order or award—

Jurisdiction of Commission. No. 57 of 1912, s. 59. Substituted by No. 76 of 1963, s. 55. Amended by No. 61 of 1966, s. 6; No. 108 of 1973, s. 36.

- (a) fixing the prices for work done by, and the rates of wages payable to workers in the calling or callings to which the industrial matter or industrial dispute relates;
- (b) fixing the number of hours and the times to be worked in order to entitle those workers to the wages so fixed;
- (c) limiting the hours of piece workers;
- (d) fixing the rates for overtime, work on holidays, shift work, week-end work and other special work, including allowances as compensation for overtime or any of such work referred to in this paragraph;
- (e) determining any industrial matter;
- (f) declaring what deduction may be made from the prices or wages of workers for board or residence or board and residence provided for workers and for any customary provisions or payments in kind conceded to such workers; and

"This Act"
includes
regulations.
S. 4.
Act No. 30 of
1918.

- (g) determining, declaring or fixing any matter or thing that by this Act, is required or permitted to be determined, declared or fixed by an order or award of the Commission.

(2) The Commission in the exercise of the jurisdiction conferred on it by this Act shall not by any order or award—

- (a) except as provided by section sixty-one C of this Act prohibit the employment of workers on any day of the week or restrict in any other way the number of days or hours in the week during which any operation may be carried on in any industry or by any employer but nothing in this paragraph prevents the exercise by the Commission of its powers under paragraph (d) of subsection (1) of this section;
- (b) prohibit shift work in any industry, except as provided by section sixty-one C of this Act;
- (c) require any worker to enter into, remain in, or resume employment with an employer unless in the opinion of the Commission—
 - (i) the worker is taking part in a strike; or
 - (ii) the worker has failed or refused to enter into, remain in, or resume employment with an employer solely because that employer is an officer or member of a union or association or of a society that has applied to be registered as a union or association or solely because the employer has claimed any benefit to which he is entitled under an award or agreement;
- (d) [*Repealed by No. 108 of 1973, s. 36.*]
- (e) limit the working hours of workers engaged in the agricultural and pastoral industries; or

- (f) regulate the rates of salary or wages, or the conditions of employment, of any worker who is a Government officer within the meaning of section eleven A of this Act.

61B. (1) For the purposes of this section "conscientious belief" includes a conscientious belief whether the grounds for the belief are or are not of a religious character and whether the belief is or is not part of the doctrine of any religion.

Exemption from union membership.

Added by No. 76 of 1963, s. 56.

- (2) A person who—
 - (a) objects on the grounds of conscientious belief to being a member of a union;
 - (b) applies in the manner prescribed to the Registrar for a certificate of exemption from membership of any such union; and
 - (c) pays to the Registrar an amount equivalent to the subscription prescribed by the rules of the union for membership thereof,

shall be issued by the Registrar with a certificate of exemption from membership of the union, unless the Registrar is satisfied that the objections of the person on the grounds of conscientious belief are not genuine.

(3) A certificate issued under this section shall remain in force for the period specified therein and may be renewed from time to time by the Registrar upon payment of such amount, not exceeding the amount referred to in paragraph (c) of subsection (2) of this section, as the Registrar may require.

(4) The Registrar shall pay to the credit of the Consolidated Revenue Fund any amount received by him pursuant to subsections (2) and (3) of this section.

(5) (a) A person whose application for a certificate of exemption from membership of a union or for any renewal thereof under this section is

refused may, within twenty days of the decision of the Registrar refusing the application, appeal in the manner prescribed to the Court from that decision.

(b) The Court may on the hearing of the appeal make such order as it thinks fit.

Power of
Commission
relating to
shift work.
Added by
No. 76 of
1963, s. 57.

61C. (1) The Commission shall, upon application made to it by any party to an award or industrial dispute, fix rates of wages and conditions of employment or service to apply to shift work in the industry to which the award or industrial dispute relates and may fix different rates and conditions for different work.

(2) An inspector appointed under the—

- (a) Factories and Shops Act, 1904¹;
- (b) Inspection of Scaffolding Act, 1924²;
- (c) Health Act, 1911; or
- (d) Electricity Act, 1945,

may exercise all the powers of entry and examination conferred on him by the Act under which he was appointed in relation to any place where shift work is being worked, for the purpose of ascertaining whether that shift work or the manner, conditions or circumstances in or under which it is being performed, is likely to result in injury to or endanger the health of workers engaged therein.

(3) Any inspector referred to in subsection (2) of this section shall enter any place where shift work is being worked, upon any reasonable request being made by any union of workers whose members are engaged therein.

(4) Where an inspector who has entered a place pursuant to subsection (3) of this section is of opinion that any shift work being carried on therein or thereon, or the manner, conditions or circumstances in or under which it is being performed,

¹ Now Factories and Shops Act, 1963.

² Now Construction Safety Act, 1972.

is likely to result in injury to or endanger the health of workers engaged on the work, he shall notify the Commission as soon as practicable and the Commission may make such order as it deems necessary to avoid that result.

(5) (a) An order made by the Commission under subsection (4) of this section may be made—

(i) unconditionally or subject to such conditions or exceptions or both as the Commission thinks fit;

(ii) without limitation of time or for a specified time or until subsequent order of the Commission,

and the Commission shall specify in the order the person or class of person to whom the order applies.

(b) By subsequent order the Commission may from time to time as it thinks fit, vary or suspend or cancel the order wholly or in part.

(6) The provisions of this section do not derogate from any other powers or authority of an inspector under any of the Acts mentioned in subsection (2) of this section.

62. (1) An industrial dispute may relate either to any industry in which the party by whom the dispute is referred for settlement to the Commission as hereinafter provided is engaged, concerned, or interested, or to any industry or industries related thereto.

Industrial
disputes
in related
industries.
No. 57 of
1912, s. 60
Amended by
No. 76 of
1963, s. 58.

(2) An industry or industries shall be deemed to be related to another where both or all are branches of the same trade (as, for example, bricklaying, masonry, carpentering and painting are branches of the building trade), or are so connected that industrial matters relating to the one may affect the other.

Jurisdiction not affected by fact that no member of union is concerned in dispute.
No. 57 of 1912, s. 61.
Amended by No. 76 of 1963, s. 59.

63. When an industrial union of workers is party to an industrial dispute, the jurisdiction of the Commission to deal with the dispute shall not be affected by reason merely that no member of the union is employed by any party to the dispute or is personally concerned in the dispute.

Power of Commission to decide whether matter is industrial matter.
No. 57 of 1912, s. 60.
Repealed and re-enacted by No. 76 of 1963, s. 60.

64. The Commission has jurisdiction to determine in any proceedings before it whether any matter referred to it is an industrial matter and any finding by the Commission that a matter referred to it is or is not an industrial matter is, subject to sections one hundred and eight C and one hundred and eight D of this Act, final and conclusive with respect to those proceedings.

Conciliation
No. 57 of 1912, s. 63;
Amended by No. 50 of 1925, s. 13;
No. 51 of 1941, s. 3;
No. 76 of 1963, s. 61;
No. 108 of 1973, s. 37.

65. (1) At any time after an industrial dispute has been referred into the Commission pursuant to this Act, or when in the course of a hearing, investigation, or inquiry into any industrial dispute (including any compulsory conference), the Commission shall make all such suggestions and do all such things as appear to be right and proper for dealing with the cause or bringing about the settlement of the dispute by amicable agreement.

(2) Where the parties to an industrial dispute relating to any calling or callings in any industry have reached agreement on the matter in dispute, whether before or after the dispute has been referred to the Commission, a memorandum of the terms of the agreement—

- (a) may be made in writing;
- (b) may, if so made, be filed at the office of the Registrar; and
- (c) shall, if so filed, be certified subject to this Act, by the Commission in proceedings which shall be held in public,

and when so certified has, subject to this Act, the same effect as and be deemed to be an award of the Commission.

(3) Before the memorandum of the terms of the agreement is certified by the Commission all unions and associations that in the opinion of the Commission, may be affected thereby, shall be notified by the Registrar and shall be afforded the opportunity of being heard in relation thereto.

(4) In proceedings for certification of a memorandum of agreement under this section the Commission may add to or otherwise vary the memorandum—

- (a) if any provision in the memorandum is inconsistent with or contrary to any provision of this Act; or
- (b) if it appears to the Commission to be equitable so to do in the interests of any person who is not a party to the memorandum, but an alteration shall not be made pursuant to paragraph (b) of this subsection so as to affect the rights or obligations of the parties to the memorandum with respect to one another unless those parties consent thereto.

66. (1) Any industrial matter or dispute relating to any specified calling or callings in any specified industry may be referred to the Commission—

- (a) by any employer or employers employing workers in that or those callings in that industry;
- (b) by any union of employers any of whose members employ such workers;
- (c) by any association of employers on which any such union is represented;
- (d) by any union of workers having, or entitled to have, members in that or those callings in that industry;
- (e) by any association of workers if any union represented on that association has or is entitled to have members in that or those callings in that industry; and

By whom an industrial matter or dispute may be referred to Commission.

No. 57 of 1912, s. 64.
Substituted by No. 76 of 1963, s. 62.

Amended by No. 108 of 1973, s. 38.

- (f) subject to subsection (2) of this section by any person acting on behalf of less than fifteen workers in that or those callings in that industry.

(2) An industrial matter may not be referred to the Commission pursuant to paragraph (f) of subsection (1) of this section if, in the opinion of the Commission—

- (a) there is a union to which the workers concerned can conveniently belong; or
 (b) the workers concerned could join with other workers to form a society that would be eligible to become registered as a union.

(3) Notwithstanding the foregoing provisions of this section or any other provision of this Act, an industrial matter or dispute may be referred to the Commission—

- (a) under Part IVB of this Act; or
 (b) when all parties to the industrial matter or dispute agree that the matter or dispute be determined by the Commission,

and not otherwise.

Representa-
 tion of
 parties
 before Com-
 mission.
 No. 57 of
 1912, s. 65.
 Amended by
 No. 50 of
 1925, s. 15;
 No. 5 of
 1952, s. 16;
 No. 76 of
 1963, s. 63.

67. (1) Any employer, being a party to a reference or any other matter, may appear in person, or by his agent duly appointed in writing for that purpose.

(2) An industrial union or industrial association being a party to a reference or any other matter, may appear by its chairman or secretary, or by any person appointed in writing by the chairman, or in such other manner as the rules prescribe.

(3) Except as hereinafter provided, every party appearing by a representative shall be bound by the acts of such representative.

(4) (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 Commission in any capacity whatsoever, or to attend the Commission to advise the representative of any party before the Commission, unless all the parties to the reference or other matter expressly consent thereto.

(b) [*Repealed by No. 76 of 1963, s. 63.*]

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

68. Where in the opinion of the Minister, the public interest is or is likely to be adversely affected by any industrial dispute or by any award, order, decision or determination of the Court or the Commission, the Crown may intervene in any proceedings before the Court or the Commission as the case may be, and may make such representations as may be thought necessary to safeguard the public interest.

Intervention
of Crown.
No. 57 of
1912, s. 66.
Repealed
and
re-enacted
by No. 76 of
1963, s. 64.

69. (1) In the exercise of its jurisdiction under this Act the Commission 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 a way as it thinks just.

Commis-
sion to
decide
according to
equity and
good
conscience.
No. 57 of
1912, s. 67.
Amended by
No. 76 of
1963, s. 65;
No. 108 of
1973, s. 39.

(2) In granting relief or redress under this Act the Commission shall not be restricted to the specific claims made or to the subject matter of the claim.

(3) (a) Where the Commission, in deciding any industrial matter or dispute, proposes or intends to take into account any matter or information that was not raised before it on the hearing of the industrial matter or dispute, the Commission shall notify the parties to the hearing and afford them the opportunity of being heard in relation to that matter or information.

(b) A notification by the Commission under paragraph (a) of this subsection shall be given to the parties to the hearing before any reasons for decision or minutes in which any matter or information referred to in that paragraph has been taken into account, are issued to those parties.

(4) If the Commission proposes to grant relief or redress not sought in the specific claims then before the Commission on the hearing of the industrial matter or dispute the Commission shall, before doing so, notify the parties to the hearing and afford them the opportunity of being heard in relation to the relief or redress proposed to be granted.

Sittings of
Commis-
sion.
No. 57 of
1912, s. 68.
Substituted
by No. 76 of
1963, s. 66.
Amended by
No. 68 of
1966, s. 8;
No. 108 of
1973, s. 40.

70. (1) The sittings of the Commission shall be held at such time and place as may from time to time be fixed by the Commission, and the parties concerned shall be given at least seven days' notice of the time and place of each sitting other than an adjourned sitting, except where the Commission is of the opinion that urgency requires shorter notice in which case the notice to be given shall be that fixed by the Commission.

(2) (a) Subject to sections one hundred and eight H and one hundred and eight I of this Act and to paragraph (c) of this subsection, an industrial matter or dispute referred to the Commission shall not be listed for hearing before the Commission unless and until—

- (i) issues have been settled; and
- (ii) the party or parties or a majority of the parties which made the reference has or have applied in writing to the Commission for the matter or dispute to be heard,

but subparagraph (i) of this paragraph does not apply in any case in which the Commission, as it is hereby empowered to do, decides that a settlement of issues is unnecessary.

(b) All industrial matters and disputes referred to the Commission shall be listed and heard by the Commission in the order in which applications for

hearing have been made pursuant to paragraph (a) of this subsection unless for a sufficient reason the Commission otherwise directs.

(c) Notwithstanding paragraphs (a) and (b) of this subsection, an industrial matter or dispute referred to the Commission may be listed by the Commission on its own motion for hearing before it at any time after the expiration of a period of twelve months from the day on which the industrial matter or dispute was so referred.

71. Except as otherwise provided in this Act, the Commission may, in relation to any dispute or other matter before it—

Powers of
Commission.
No. 57 of
1912, s. 69;
Substituted
by No 78 of
1963, s. 87.
Amended by
No. 66 of
1966, s. 9;
No. 108 of
1973, s. 41.

- (a) dismiss the dispute or other matter or any part thereof at any stage of the proceedings if it is satisfied—
- (i) that the matter or dispute or part thereof is trivial;
 - (ii) that further proceedings are not necessary or desirable in the public interest;
 - (iii) that the party or parties which referred the matter or dispute to the Commission do not, where there is more than one party on that side, represent the view of the majority of those parties; or
 - (iv) that for any other reason the dispute or other matter or any part thereof should be dismissed;
- (b) take evidence on oath or affirmation;
- (c) order any party to the dispute or other matter to pay to any other party such costs and expenses including expenses of witnesses as are specified in the order, but so that no costs shall be allowed for the services of any counsel, solicitor, or agent;

- (d) proceed to hear and determine any dispute or other matter in the absence of any party thereto who has been duly summoned or duly served with notice to appear therein;
- (e) sit at any place;
- (f) adjourn to any time and place;
- (g) conduct its proceedings or any part thereof in private;
- (h) refer any matter to an expert and accept his report as evidence;
- (i) direct parties to be struck out or persons to be joined;
- (j) allow the amendment of any proceedings on such terms as it thinks fit;
- (k) correct, amend, or waive any error, defect, or irregularity whether in substance or in form;
- (l) extend any prescribed time or any time fixed by any order of the Commission;
- (m) make such orders as may be just with respect to any interlocutory proceedings to be taken before the hearing of any dispute or matter, the costs of those proceedings, the issues to be submitted to the Commission, the persons to be served with notice of proceedings, delivery of particulars of the claims of all parties, admissions, discovery, inspection, or production of documents, inspection or production of property, examination of witnesses, and the place and mode of hearing;
- (n) enter upon any manufactory, building, workshop, factory, mine, mine-working, ship or vessel, shed, place, or premises of any kind whatsoever, wherein or in respect of which any industry is or is reputed to be carried on, or any work is being or has been done or commenced, or any matter or

thing is taking or has taken place, which is made the subject of a reference to the Commission;

- (o) inspect and view any work, material, machinery, appliance, article, matter, or thing whatsoever being in such manufactory, building, workshop, factory, mine, mine-working, ship or vessel, shed, place or premises referred to in paragraph (n) of this section;
- (p) interrogate any person who may be in or upon any such manufactory, building, workshop, factory, mine, mine-working, ship or vessel, shed, place or premises referred to in paragraph (n) of this section in respect of or in relation to any matter or thing hereinbefore mentioned in this section;
- (q) consolidate or divide references relating to the same industry and all or any matters before the Commission; and
- (r) refer the dispute or other matter or any part thereof to the Commission in Court Session for hearing and determination by the Commission in Court Session;
- (s) 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 or dispute.

72. The power mentioned in paragraph (h) of section seventy-one of this Act shall be exercised by the Commission if so required by any party to the dispute or other matter before it and any power mentioned under paragraph (n), (o) or (p) of that section, may, if the Commission so directs in any case, be exercised by any officer of the Commission or by any expert to whom any matter has been referred by the Commission.

Exercise by Commission of certain powers.
No. 57 of 1912, s. 70.
Repealed and re-enacted by No. 76 of 1963, s. 68.

73. [*Repealed by No. 76 of 1963, s. 69.*]

Demarcation of callings. No. 57 of 1912, s. 72; Amended by No. 50 of 1925, s. 19; No. 76 of 1963, s. 70.

74. (1) Where it appears to the Commission that a question has arisen as to the right of workers in specified callings to do certain work in an industry to the exclusion of the workers in other callings, the Commission may, on application made by any industrial union of workers or industrial union of employers, constitute a Special Board to determine such question. Such board shall consist of a chairman and such number of other members as the Commission may fix, and—

- (a) if in the opinion of the Commission employers are interested in the question, one half of such other members shall be representatives of employers, and the other half shall be representatives of the industrial unions of workers engaged in the said callings;
- (b) such of the callings as the Commission considers to be directly interested in the question shall be represented on the board by an equal number of representatives of employers (if in the opinion of the Commission employers are interested in the question) and representatives of the industrial unions of workers concerned.

(2) The chairman and other members of any such board shall be appointed by the Commission, but the Commission in making such appointments shall give effect to nominations made in the prescribed manner by the parties concerned.

(3) The determination shall be adopted by the Commission for the purposes of any award or order made by the Commission.

75. [*Repealed by No. 76 of 1963, s. 71.*]

76. [*Repealed by No. 76 of 1963, s. 72.*]

77. With respect to evidence in proceedings before the Court the following provisions shall apply—

- (1) On the application of any party, the Clerk of the Court shall issue a summons in the prescribed form to any person to appear and give evidence before the Court; such summons may require such person to produce before the Court any books, papers, or other documents in his possession, or under his control, in any way relating to the proceedings.
- (2) Every person who is summoned and duly attends as a witness shall be entitled to receive from the party at whose instance he was summoned an allowance for expenses according to the prescribed scale.
- (3) Any person duly served with such summons, and to whom at the same time payment or tender has been made of his reasonable expenses according to the aforesaid scale, who fails to attend or to duly produce any book, paper, or document as required shall be guilty of an offence and be liable to a penalty not exceeding forty dollars, or to imprisonment for any term not exceeding one month.
- (4) The Court may, whenever it shall appear just or convenient so to do, make any order for the examination upon oath or otherwise before the Court or any officer of the Court, or any other person, and at any place of any witness or person, and may empower any party to give the deposition of such witness or person in evidence on such terms, if any, as the Court may direct.
- (5) The Court may take evidence on oath or affirmation.
- (6) No evidence relating to any trade secret, or to the profits or financial position of any witness or party, shall be disclosed except

Evidence.
No. 57 of
1912, s. 75.
Amended by
No. 50 of
1925, s. 20;
No. 5 of
1952, s. 19;
No. 76 of
1963, s. 73;
No. 69 of
1966, s. 17;
No. 108 of
1973, s. 42.

Provision
for obtain-
ing evidence
at a distance.

Disclosure
of trade
secrets.

Industrial Arbitration.

to the Court, or published without the consent of the person entitled to the trade secret or non-disclosure.

Penalty: Two hundred dollars or three months' imprisonment with or without hard labour.

- (7) All such evidence as is mentioned in the last preceding paragraph shall, if the witness or party so requests, be taken in private.

Contents of
books not
to be
disclosed.

- (8) All books, papers, and other documents produced in evidence before the Court may be inspected by the Court and also by such of the parties as the Court allows, but the information obtained therefrom shall not be made public without the permission of the Court, and such parts of the documents as in the opinion of the Court do not relate to the matter at issue may be sealed up. Provided that such books, papers, and documents relating to any trade secret or to the profits or financial position of any witness or party shall not, without his consent, be inspected by any party.

Penalty: Two hundred dollars or three months' imprisonment with or without hard labour.

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

78. [*Repealed by No. 76 of 1963, s. 74.*]

79. (1) Before an award or an amendment to an award or an order under Part IVB of this Act is issued by the Commission, it shall be drawn up in the form of minutes which shall be handed down to the parties concerned.

Minutes of award or amendment of award or order.
No. 57 of 1912, s. 77.
Substituted by No. 76 of 1963, s. 75.
Amended by No. 66 of 1966, s. 10; No. 108 of 1973, s. 43.

(2) The representatives of the parties concerned shall, at a time fixed by the Commission, be entitled to speak to matters contained in those minutes and the Commission may, after hearing those representatives, amend or vary the terms of those minutes before they are issued as an award or amendment of an award or an order as the case may be.

80. (1) The decision of the Commission shall in every case be signed and delivered by the Commissioner constituting the Commission that heard the matter to which the decision relates or, in the case of a decision of the Commission in Court Session shall be signed and delivered by the senior Commissioner among the Commissioners constituting the Commission in Court Session.

Decision of Commission method of delivery.
No. 57 of 1912, s. 78.
Substituted by No. 76 of 1963, s. 76.

(2) The decision of the Commission including the Commission in Court Session may at the discretion of the Commissioner giving the decision, be delivered by the Registrar.

(3) When the members of the Commission in Court Session are divided in opinion on a question, the question shall be decided according to the decision of the majority of the members.

Decision of majority decision of Commission.

81. [*Repealed by No. 76 of 1963, s. 77.*]

82. The award shall have the seal of the Commission attached thereto, and shall be deposited in the office of the Registrar, and be open to inspection without charge during office hours by all persons interested therein.

Award to be signed, sealed and deposited in office.
No. 57 of 1912, s. 80.
Amended by No. 76 of 1963, s. 78.

Terms of
award.
No. 57 of
1912, s. 81.
Substituted
by No. 76 of
1963, s. 79.

83. (1) Each award shall be framed in such manner as shall best express the decision of the Commission, avoiding all technicality where possible, and shall specify—

- (a) each union or association, and employer who is a party to the award;
- (b) the locality (if any) to which the award or any part thereof is limited; and
- (c) the term of the award.

(2) The award shall also state in clear terms what is or is not to be done by any union or association, employer or worker, bound by the award and may provide for an alternative course to be taken by any party.

Commission
may limit
operation
of award to
particular
area.
No. 57 of
1912, s. 82.
Amended by
No. 76 of
1963, s. 80.

84. (1) The Commission may, in any award made by it, limit the operation of such award or any portion thereof to any particular locality, but except in so far as the award or any part thereof is so limited it shall be deemed to extend to the whole State.

(2) The Commission shall, if the operation of the award has been limited as aforesaid, have power, on the application of any employer, industrial union, or industrial association, to extend the operation of such award or any portion thereof:

Provided that before acting under this subsection the Commission shall give all parties, likely in its opinion to be affected, notice, whether by advertisement or otherwise, of its intention to extend the operation of such award, and shall hear any parties desiring to be heard in opposition thereto.

Award.
No. 57 of
1912, s. 83.
Substituted
by No. 76 of
1963, s. 81.

85. (1) Except to the extent mentioned in section ninety-eight A of this Act and subject to this Act, an award while it is in force is binding—

- (a) on all workers employed in the calling or callings mentioned therein in the industry to which the award relates; and

(b) on all employers employing those workers.

(2) Where the operation of an award or any part thereof is limited to any particular locality it is not, as regards matters to which the limitation applies, binding beyond that locality.

86. (1) Where an award has been made on the application of any of the parties referred to in paragraph (d), (e) or (f) of subsection (1) of section sixty-six of this Act, any employer on whom the award is binding, and who, prior to the hearing of the application, was not served with a copy thereof and with proper notice of the hearing may, by leave of the Commission, apply to the Commission for variation of, or addition to, any of the provisions of the award and on any such application the Commission may—

Power of parties not served to apply to be heard. Powers of Commission on the application. No. 57 of 1912, s. 84. Substituted by No. 76 of 1963, s. 82.

- (a) in respect of that employer, order that the award or any provisions thereof be varied or added to; or
- (b) make the order unconditionally or subject to such conditions or exceptions or both as the Commission thinks fit and without limitation of time or for a specified time.

(2) Any employer who makes an application under this section shall serve within the time and in the manner prescribed, a copy of the application on each party to the award and any such party is entitled to appear and be heard on the hearing of the application but no such application may be made after a period of twelve months has elapsed—

- (a) since that award was made; or
- (b) since that employer became bound by that award.

87. [*Repealed by No. 76 of 1963, s. 83.*]

88. [*Repealed by No. 76 of 1963, s. 84.*]

Board of
Reference.
No. 57 of
1912, s. 87.
Substituted
by No. 76 of
1963, s. 85.

89. (1) The Commission may, by an award or by order made by it, on the application of a union, association or employer bound by an award or agreement—

- (a) appoint or give power to appoint for the purposes of the award or agreement, as the case may be, a Board of Reference consisting of an equal number of employers' and workers' representatives and a Chairman of the Board who shall be a Commissioner unless the parties to the application agree that a person other than a Commissioner shall be the Chairman of the Board; and
- (b) assign to the Board of Reference the function of allowing, approving, fixing, determining or dealing with in the manner and subject to the conditions specified in the award or order a matter or thing that, under the award or agreement, as the case may be, may from time to time require to be allowed, approved, fixed, determined or dealt with by a Board of Reference.

(2) An appeal lies to the Commission in Court Session against any determination, decision or finding of any Board appointed under this section, upon such conditions as may be prescribed.

Special
powers to
interpret or
amend
award.
No. 57 of
1912, s. 88.
Amended by
No. 49 of
1941, s. 6;
No. 76 of
1963, s. 86.

90. (1) (a) With respect to every award, whether made before or after the commencement of this Act, the Commission by order at any time, while the award is in force, may declare the true interpretation of the award, and shall have power to amend the provisions of the award for the purpose of remedying any defect therein or of giving fuller effect thereto.

(b) The Commission may, for the purposes of this section, exercise the powers conferred by paragraph (h) of section seventy-one.

(2) The provisions of subsection (1) of this section apply to an industrial agreement with such modifications as circumstances require.

91. The powers by the last preceding section conferred upon the Commission may be exercised on the application of any employer or industrial union or association bound by the award or as the case may be the industrial agreement.

Application may be made to Commission by any party.
No. 57 of 1912, s. 89.
Amended by No. 76 of 1963, s. 87.

92. (1) The term of an award may be any specified period not exceeding three years from the date of the award.

Currency and review of award.
No. 57 of 1912, s. 90.
Substituted by No. 76 of 1963, s. 88.
Amended by No. 108 of 1973, s. 44.

(2) The Commission may, by its award—

(a) prescribe that any specified provision of the award shall operate for a period shorter than the term of the award;

(aa) give such retrospective effect to the whole or any part of the award as the Commission may consider equitable but not beyond the date upon which the Commission first took cognizance of the matter in respect of which the award or part of the award was made; and

(b) reserve to any party to the award liberty to apply to the Commission to amend the award in respect to any specified provision.

(3) (a) The Commission may at any time review any provision of the award and may by order, subject to subsection (5) of this section, add to, vary or rescind that provision.

(b) The power conferred on the Commission under paragraph (a) of this subsection, may be exercised on the application of any union, association or employer who is bound by the award.

(c) Subject to paragraph (d) of this subsection, an order made pursuant to paragraph (a) of this subsection has effect from the date specified in the order.

(d) The provisions of paragraph (aa) of subsection (2) of this section apply, with such modifications as circumstances require, to an order made pursuant to paragraph (a) of this subsection.

(e) An order made pursuant to paragraph (a) of this subsection may be limited in its effect to a particular employer or to particular employers.

(4) Where the Commission reserves to any party liberty to apply in accordance with paragraph (b) of subsection (2) of this section, it shall clearly indicate either in the award or in the judgment accompanying the award, in what circumstances and under what conditions the liberty may be exercised.

(5) Subject to this Act the Commission shall not add to, vary or rescind any provision of an award unless—

(a) liberty to apply has been reserved in accordance with the preceding provisions of this section and the events have occurred or the circumstances have arisen which were in contemplation by the Commission when it reserved liberty; or

(b) in the opinion of the Commission—

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

(ii) those circumstances render that provision of the award no longer just.

(6) The provisions of subsection (5) of this section do not apply to—

(a) an award whose term has expired; or

(b) an application by a person who is not a party to that award,

but this subsection does not limit the powers conferred on the Commission by section seventy-one of this Act.

(7) Notwithstanding the foregoing provisions of this section but subject to the provisions of section one hundred and eight C of this Act, the Commission may, at any time, add to, vary, or rescind any

provision of an award but only in a manner and to an extent agreed to by all of the parties to the award.

92A. (1) An employer, union or association bound by an award may, while the term of the award is still current, refer any industrial matter or dispute to the Commission pursuant to this Act, but only if the matter or dispute is not governed by the provisions of the award and did not form part of the claims filed with the Registrar by the parties to the award prior to the making of the award.

Supple-
mentary
award.
Added by
No. 76 of
1963, s. 89.

(2) An award made by the Commission on a reference made under this section shall be known as a supplementary award and shall be—

- (a) made for a term expiring not later than the term of the award which it supplements; and
- (b) in all other respects subject to the provisions of section ninety-two of this Act.

92B. (1) Where a union satisfies the Commission—

- (a) that there is in force an award—
 - (i) to which the union is not a party; and
 - (ii) which governs any terms and conditions of employment of workers employed in the same or any part of the same area of operation or industry or calling as that in respect of which that union is registered; and
- (b) that among the workers whose terms and conditions of employment are governed by that award are some of its members,

the Commission may, on application being made by that union, order that that union be made a party to the award and shall thereupon amend the award accordingly.

Union
having
industrial
coverage
may be
joined as
party to
certain
awards.
Added by
No. 108 of
1973, s. 45.

(2) Where a union has, pursuant to subsection (1) of this section, been made a party to an award, the union may at any time make application for a new award governing the terms and conditions of employment of such of its members as would otherwise be workers to whom that firstmentioned award applied and the Commission is hereby empowered to make such new award notwithstanding that the firstmentioned award is still in force by virtue of its term.

Continu-
ance of
award.
No. 57 of
1912, s. 91.
Substituted
by No. 76 of
1963, s. 90.

93. Notwithstanding the expiry of the term of an award, the award shall, subject to any variation made under this Act, continue in force until a new award in substitution for that award has been made.

Minimum
wage.
No. 57 of
1912, s. 92.
Repealed
and
re-enacted
by No. 76 of
1963, s. 91.

94. The Commission may by an award—

- (a) prescribe a minimum rate of wage or other remuneration, with special provision for a lower rate being fixed, by such tribunal or person, in such manner and subject to such provisions as the Commission may think fit to prescribe in the award, in the case of any worker who is unable to earn the prescribed minimum by reason of old age or infirmity and with special provision, when deemed necessary, for a lower rate to be fixed by the Commission in the case of junior workers and apprentices; and
- (b) prescribe such rules for the regulation of any industry to which the award applies as may appear to the Commission to be necessary to secure the peaceful carrying on of such industry.

Amount of
costs or
expenses to
be fixed.
No. 57 of
1912, s. 93.
Amended by
No. 76 of
1963, s. 92.

95. In every case where the Court or Commission, in its award or order, directs the payment of costs or expenses it shall fix the amount thereof, and specify the parties or persons by and to whom the same shall be paid.

96. In all legal and other proceedings, it shall be sufficient to produce the award with the seal of the Court of Arbitration or the Commission thereto, or a copy thereof certified as true by the Registrar, and it shall not be necessary to prove any conditions precedent entitling the Court or the Commission as the case requires to make the award.

Award under seal to be evidence.
No. 57 of 1912, s. 94.
Amended by No. 49 of 1941, s. 8; No. 76 of 1963, s. 93.

97. No proceedings in the Commission shall abate by reason of the death of any party, but such proceedings may by order of the Commission be continued on such terms as the Commission thinks fit by or against the legal representative of such party or by or against any person appointed by the Commission to be the representative of such party.

No abatement on death of party.
No. 57 of 1912, s. 95.
Amended by No. 76 of 1963, s. 94.

98. [Repealed by No. 76 of 1963, s. 95.]

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

Power of Commission to cancel or suspend terms of awards.
Added by No. 5 of 1952, s. 22.
Amended by No. 76 of 1963, s. 96.

- (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 Commission 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.

Enforcement
of awards
and
industrial
agreements.
No. 57 of
1912, s. 97.
Substituted
by No. 76 of
1963, s. 97.
Amended by
No. 66 of
1966, s. 17;
No. 108 of
1973, s. 46.

99. (1) Where a person contravenes or fails to comply with any provision of an award or agreement, the Registrar, an Industrial Inspector or any employer, union or association bound by the award or agreement, may apply in the prescribed manner to an Industrial Magistrate for the enforcement of the award or agreement.

(2) On the hearing of an application under subsection (1) of this section the Industrial Magistrate may, by order—

- (a) impose for the contravention or failure to comply with the provisions of the award or agreement, such penalty as he deems just but not exceeding one thousand dollars in the case of an employer, union or association and one hundred dollars in any other case; or
- (b) dismiss the application,

in any case with or without costs, but in no case shall any costs be given against the Registrar, or to any party to the application for the services of any counsel, solicitor or agent of that party.

(3) (a) Where in any proceedings brought under subsection (1) of this section against an employer it appears to the Industrial Magistrate before whom the proceedings are brought, that a worker employed by that employer has not been paid the amount to which he is entitled under an award or agreement, the Industrial Magistrate may order that the employer shall pay to that worker the amount by which the worker has been underpaid by the

employer, but no order shall be made in respect of so much of that amount as relates to any period more than twelve months prior to the commencement of those proceedings.

(b) An amount ordered to be paid pursuant to paragraph (a) of this subsection shall be deemed to be a penalty imposed under this Act and may be recovered accordingly.

(4) Where the Industrial Magistrate, by an order made pursuant to subsection (2) or (3) of this section, imposes a penalty or costs, he shall state in the order the name of the person liable to pay the penalty or costs and the name of the person to whom the penalty or costs are payable.

(5) (a) Where in any proceedings brought pursuant to subsection (2) of this section, it appears to the Industrial Magistrate before whom the proceedings are brought, that a question of interpretation of an award or agreement has arisen he may, and shall, if so requested by the defendant in the proceedings, state a case in writing for the opinion of the Commission in Court Session on that question.

(b) The Commission in Court Session shall hear and determine a question referred to it pursuant to paragraph (a) of this subsection and shall remit the case with its opinion thereon to the Industrial Magistrate who shall give effect to that opinion unless an appeal against that opinion is made pursuant to section one hundred and eight D of this Act.

(6) In this section "award" includes an order made by the Commission under this Act not being an order in respect of which a penalty is prescribed by any other provision of this Act, except this section, for a contravention or failure to comply with the order.

Jurisdiction
of Industrial
Magistrate.
No. 57 of
1912, s. 98.
Substituted
by No. 76 of
1963, s. 98.
Amended by
No. 66 of
1966, s. 17.

100. (1) Proceedings under this Act in respect of the following matters shall be commenced before an Industrial Magistrate and not otherwise, that is to say—

- (a) offences against this Act or the regulations for which a maximum penalty of not more than two hundred dollars is provided; and
- (b) applications made pursuant to section ninety-nine of this Act.

(2) An Industrial Magistrate has jurisdiction to hear and determine the matters referred to in subsection (1) of this section in the exercise of his summary jurisdiction.

Jurisdiction
of Court to
deal with
offences.
No. 57 of
1912, s. 99.
Amended by
No. 76 of
1963, s. 99.

101. (1) Subject to the provisions of section one hundred of this Act the Court shall have jurisdiction to try and determine all charges of offences against this Act or the regulations, and to inflict punishment on any person convicted before it of any offence.

(2) Such jurisdiction shall be concurrent with that of Courts of summary jurisdiction.

Property
liable to
execution.
No. 57 of
1912, s. 100.
Amended by
No. 66 of
1966, s. 17;
No. 108 of
1973, s. 47.

102. (1) All property belonging to any person or body bound by any judgment, order, conviction, or direction of the Court (including therein, in the case of an industrial union or industrial association, all property held by trustees for such union or association) shall be available in or towards satisfaction of the judgment, order, conviction, or direction, and if any such body is an industrial union or an industrial association, and its property is insufficient to fully satisfy the amount due under the judgment, order, conviction, or direction, its members and the members of any union represented on any such association shall be jointly and severally liable for the deficiency:

Provided that no member shall be liable for more than twenty dollars under this subsection:

Provided also that all goods protected from seizure on an execution under a judgment of a Local Court are protected against seizure under this Act and the regulations to the extent to which such goods are from time to time protected from such seizure under the Local Courts Act, 1904.

(2) For the purpose of giving full effect to the last preceding subsection hereof, the Court or the President thereof may, on the application of the person or body entitled to claim the enforcement of such judgment, order, conviction, or direction, make such order or give such directions as are deemed necessary, and the trustees aforesaid and all other persons concerned shall obey the same.

(3) The property of any industrial union or association shall be deemed to include the property of any company, trades or industrial union, society, or other body forming part of or constituting the industrial union or association.

103. (1) The Governor may appoint any stipendiary magistrate appointed, or deemed to be appointed, under the Stipendiary Magistrates Act, 1957, to be an Industrial Magistrate for the purposes of this Act.

Appointment of Industrial Magistrates. No. 57 of 1912, s. 101. Substituted by No. 76 of 1963, s. 100. Amended by No. 66 of 1966, s. 11.

(2) An Industrial Magistrate may, in addition to the powers and jurisdiction otherwise conferred on him by this Act, exercise the powers and jurisdiction of the Court under sections one hundred and two and one hundred and thirty-two of this Act.

(3) A judgment, order, conviction, direction or other decision of an Industrial Magistrate—

- (a) is enforceable in all respects as if it were made by the Court; and
- (b) may be enforced by the Court in accordance with the regulations made by the Governor under section one hundred and seventy-nine of this Act.

Appeal from
decision of
Industrial
Magistrate.
Added by
No. 56 of
1950, s. 4.
Amended by
No. 76 of
1963, s. 101.

103A (1) In this section—

“appeal” means an appeal brought pursuant to the provisions of this section;

“decision” includes a conviction, penalty, order, order of dismissal and any other determination of an Industrial Magistrate;

“process” means a complaint, conviction, order, warrant, or other procedural document, record or proceeding before the Industrial Magistrate relating to the subject matter of an appeal.

(2) A party to proceedings before an Industrial Magistrate may appeal to the Court in manner prescribed in respect of the whole or part of the Industrial Magistrate’s decision.

(3) Jurisdiction is conferred upon the Court to hear and determine appeals.

(4) In exercising the jurisdiction conferred by the last preceding subsection, the Court may—

- (a) hear and determine the appeal upon the evidence and proceedings before the Industrial Magistrate solely or upon that evidence and those proceedings and in addition upon such evidence, either oral or by affidavit, as the Court thinks fit to call or admit;
- (b) make findings of fact and draw inferences from fact;
- (c) adjourn the hearing and determination of the appeal from time to time;
- (d) rectify or cause to be rectified any defects in substance or in form, variance, deficiency, excess or other defect or error in the processes and proceedings before, and the exercise or purported exercise of any power by, the Industrial Magistrate;
- (e) confirm, reverse, vary, amend, rescind, set aside, or quash the decision the subject of the appeal;

- (f) remit the whole or part of the case to the Industrial Magistrate or another Industrial Magistrate for hearing or rehearing with or without the observations or opinion of the Court or such directions in law as the Court thinks fit;
- (g) exercise any power, which the Industrial Magistrate might have exercised, and any order of the Court made for the purpose shall be enforceable as if made by him;
- (h) make such orders as to terms, costs and all other matters as the Court thinks desirable and just.

104. (1) When any charge of an offence against this Act is pending in a court of summary jurisdiction then, before the decision, the Court may, on the application of any party to the proceedings, issue a writ of *certiorari* commanding the removal of the proceedings into the Court, and the proceedings shall be removed accordingly, and the Court shall then have exclusive jurisdiction to try and determine the charge and to inflict punishment therefor.

Removal of prosecution for offence from Court of summary jurisdiction to Court.
No. 57 of 1912, s. 102.
Amended by No. 76 of 1963, s. 102.

(2) Subsection (1) of this section does not apply to a charge of any offence referred to in section one hundred of this Act.

105. (1) The Sheriff of Western Australia, the Bailiffs of Local Courts, and all officers of police shall be deemed to be officers of the Court, and shall exercise the powers and perform the duties prescribed by any rules of Court made under this Act; and for the purpose of carrying out the provisions of this Act and in relation to any proceedings before the Court or the Commission and in relation to the making, carrying out and enforcing of any award, order, conviction, or direction of the Court or the Commission shall, except where otherwise provided in any rules made as aforesaid, exercise the same powers and perform the same duties as they may

Sheriff and other officers to be Officers of Court.
No. 57 of 1912, s. 103.
Amended by No. 50 of 1925, s. 33; No. 76 of 1963, s. 103.

exercise and perform in relation to any judgment, order, conviction, or direction of the Supreme Court or any Local Court or Court of summary jurisdiction.

(2) All prison officials shall obey and carry out the writs, warrants, and orders of the Court so far as the same are addressed to them.

(3) Any writ or warrant of execution may, subject to this Act, be declared, by rules of Court, to have effect against any property (including land under the Transfer of Land Act, 1893-1946¹) as a writ of *feri facias*, and it shall have such effect in respect of such property accordingly.

Appoint-
ment, duties
and powers
of Industrial
Inspectors.
No. 57 of
1912, s. 104.
Substituted
by No. 76 of
1963, s. 104.

106. (1) The Governor may, on the recommendation of the Minister, appoint industrial inspectors for the purpose of securing the observance of the provisions of this Act and of awards and agreements.

(2) An industrial inspector shall perform such duties and shall make such investigations and reports in relation to the observance of the provisions of this Act, the regulations and of any award or agreement, as the Minister directs.

(3) For the purpose of carrying out his duty under this section, an industrial inspector may,—

- (a) at any time during working hours, enter any building, mine, mine-working, ship, vessel, place or premises of any kind whatsoever wherein or in respect of which any industry is carried on or any work is being or has been done or commenced or any matter or thing is taken or has taken place, in relation to which any industrial dispute is pending, or any award or agreement has been made or any offence against this Act is suspected; and
- (b) inspect any work, material, machinery, appliances, articles, book, or document therein and may interview any employee engaged therein.

¹ Now Transfer of Land Act, 1893-1972.

107. (1) No industrial matter (including any application for the enforcement of any industrial agreement or award) or dispute shall be referred to the Commission or to an Industrial Magistrate by an industrial union or association otherwise than pursuant to a resolution of the governing body of such industrial union or association.

References to Commission or Industrial Magistrate to be approved by resolution of union. No. 57 of 1912, s. 105. Amended by No. 50 of 1925, s. 50; No. 49 of 1941, s. 9; No. 76 of 1963, s. 105; No. 108 of 1973, s. 48.

(2) In the case of an industrial dispute, such resolution shall be published in a newspaper circulating in the district in which the registered office of the union or association is situated.

(3) If, in the case of an intended reference by an industrial union, a request in writing signed by not less than ten per centum of the union is made to the governing body within fourteen days after such publication to submit the matter of the intended reference to a ballot of the members, such ballot shall be taken in the prescribed manner, and the dispute shall not be referred to the Commission unless a majority of the members who record their votes vote in the affirmative.

(4) In the case of an association, if within fourteen days after the publication of such resolution a majority of the industrial unions represented on the association, at special meetings to be called for the purpose of taking such resolution into consideration, pass resolutions forbidding the reference, the dispute shall not be referred to the Commission.

(5) The provisions of this section shall not apply to any counter proposals or counter claims made by the party or parties respondent to the dispute.

108. (1) Proceedings before the Commission shall not be impeached or held bad for want of form nor shall they be removable to any Court by *certiorari* or otherwise.

Proceedings of Commission not to be impeached for want of form. No. 57 of 1912, s. 106. Substituted by No. 76 of 1963, s. 106.

(2) Except as provided by this Act, no award, order or proceeding of the Commission shall be liable to be challenged, appealed against, reviewed, quashed, or called in question by any court on any account whatsoever.

Heading substituted by No. 76 of 1963, s. 107.

PART IVA.—WESTERN AUSTRALIAN INDUSTRIAL
APPEAL COURT.

Constitution of Western Australian Industrial Appeal Court.
Added by No. 46 of 1948, s. 4.
Substituted by No. 76 of 1963, s. 108.

108A. (1) There is hereby established a Court by the name of the "Western Australian Industrial Appeal Court", which shall consist of three members namely—

- (a) a judge who shall be the President; and
- (b) two judges.

President and members of Court.

(2) The members of the Court shall be such judges as the Chief Justice of Western Australia shall, from time to time nominate, either generally or for a specified time, to be members of the Court and the President shall be such one of those members as the Chief Justice of Western Australia shall nominate to be the President.

Court of Record.

(3) The Court is a Court of Record and shall have an official seal.

Judicial notice.

(4) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Court affixed to a document and shall presume that it has been duly so affixed.

(5) The provisions of section forty-six of this Act apply to a member and acting member of the Court and in so applying those provisions any reference therein to a Commissioner or acting Commissioner shall be read as a reference to a member of the Court or an acting member of the Court respectively, and any reference to the Governor shall be read as a reference to the Chief Justice of Western Australia.

Jurisdiction of Court
Added by No. 46 of 1948, s. 4.
Substituted by No. 76 of 1963, s. 109.
Amended by No. 66 of 1966, s. 12; No. 108 of 1973, s. 49.

108B. (1) The Court has jurisdiction—

- (a) to determine and declare in any 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;

- (b) from time to time to make declarations for the purposes of paragraph (e) of the interpretation, "office";
 - (c) to make any order that it deems necessary for the purpose of preventing the improper use or the needless dissipation or the improper concealment of the funds or property of a union;
 - (d) to make such orders as it thinks just as to the costs and expenses (including the expenses of witnesses) of proceedings before the Court, including dismissal for want of jurisdiction but shall not make any such order in the case of an appeal pursuant to subsection (5) of section sixty-one B of this Act; and
 - (e) generally to determine any application that may, under this Act, be made to the Court and to exercise all the powers otherwise conferred on it by this Act.
- (2) When the members of the Court are divided in opinion on a question, the question shall be decided according to the decision of the majority of the members. Majority decision.
- (3) The Court may exercise the jurisdiction conferred on it by this Act on the application of a person who, in the opinion of the Court has a sufficient interest.
- (4) No decision, order, declaration, judgment, conviction, penalty or proceeding, given, made or imposed by the Court in the exercise of its jurisdiction under this Act, shall be liable to be challenged, appealed against, reviewed, quashed or called in question by or in the Supreme Court or any other Court.
- (5) The functions, powers and jurisdiction conferred on the Court by the provisions of section nine B, of Division III of Part II and of subsection

(5) of section sixty-one B of this Act may be exercised by any member of the Court nominated from time to time by the President, sitting or acting alone and while so sitting or acting that member of the Court shall, for the purposes of those provisions, be deemed to be the Court.

(6) A member of the Court on the application of any party to any proceedings or matter before the Court may on summons returnable before that member sitting in chambers, make in relation to that proceeding or matter any order that he thinks just as to any interlocutory proceeding to be taken before the hearing including without affecting the generality of the foregoing, the costs of the interlocutory proceeding, the issues to be submitted to the Court and the persons, if any, to be served with notice of those proceedings.

(7) An order made by a member of the Court pursuant to subsection (6) of this section, does not prejudice the exercise by the Court of any power conferred on the Court by this Act.

Appeals to
Commission
in Court
Session.

Added by
No. 46 of
1948, s. 4.

Substituted
by No. 76 of
1963, s. 110.

Amended by
No. 108 of
1973, s. 50.

108C. (1) In this section "the Commission" means the Commission constituted by a Commissioner.

(2) An appeal lies, within the time and in the manner prescribed from any decision, order or award of the Commission to the Commission in Court Session.

(3) An appeal under this section may be instituted by—

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

(4) Jurisdiction is conferred on the Commission in Court Session to hear and determine an appeal brought pursuant to this section.

(5) In the exercise of its jurisdiction under this section, the Commission in Court Session—

(a) shall hear and determine the appeal upon the evidence and matters raised in the proceedings before the Commission; and

(b) may confirm, reverse, vary, amend, rescind, set aside or quash the decision, order or award the subject of appeal and may remit the case to the Commission for further hearing and determination.

(6) Any decision of the Commission in Court Session determining an appeal under this section has effect on and from the date of the decision, order or award, the subject of the appeal, or such later date as the Commission in Court Session orders.

108D. (1) An appeal lies, within the time and in the manner prescribed to the Court from any decision, order, award or proceeding of the Commission or the Commission in Court Session, on the ground that the decision, order, award or proceeding is erroneous in law or is in excess of jurisdiction but upon no other ground.

Appeal to
the Court.
Added by
No. 76 of
1963, s. 111.

(2) For the purpose of this section the interpretation of an award or agreement made by the Commission or the Commission in Court Session shall not in itself be deemed to be a question of law.

(3) Jurisdiction is conferred on the Court to hear and determine an appeal made under this section.

(4) On the hearing of the appeal the Court may confirm, reverse, vary, amend, rescind, set aside or quash the decision, order, award or proceeding the subject of appeal and may remit the matter to the Commission, or as the case requires the Commission in Court Session, for further hearing and determination according to law.

(5) An appeal under this section may be instituted by—

- (a) any party to the proceeding, order, award 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 proceeding, order, award or decision.

Representa-
tion of
parties
before the
Court.
Added by
No. 76 of
1963, s. 112.

108E. (1) In proceedings before the Court under this Act, a party—

- (a) may appear personally or by his agent; or
- (b) may be represented by Counsel or Solicitor.

(2) In this section, “party” includes an inter-
vener.

Heading
added by
No. 108 of
1973, s. 51.

PART IVB.—MEDIATION AND CONCILIATION.

Request for,
and ap-
pointment
of, mediator
in an
industrial
dispute.
Added by
No. 108 of
1973, s. 51.

108F. (1) Where the parties to an industrial dispute request a Commissioner in writing to appoint as mediator in the dispute, a person named in the request, the Commissioner shall, if that person is willing to act, appoint him as mediator for the purpose of that dispute.

(2) The appointment of a mediator in an industrial dispute shall end when—

- (a) he has completed the functions prescribed by this Act in relation to the industrial dispute;
- (b) any party to the industrial dispute advises the Commissioner by whom he was appointed, in writing that he no longer desires the services of the mediator with respect to the industrial dispute; or

- (c) the mediator advises the Commissioner by whom he was appointed in writing that he resigns his appointment as mediator,

whichever event first occurs.

(3) The Minister shall pay a mediator such fees and expenses as the Commissioner by whom the mediator was appointed, having regard to the circumstances of the case, recommends, and for that purpose the mediator shall, in the prescribed manner, notify that Commissioner of the time spent and of any expenses incurred by him in connection with the settlement of the dispute.

(4) (a) For the purpose of this section the Registrar shall maintain a register of persons who have been nominated in writing by the Trades and Labor Council of Western Australia, The Western Australian Employers' Federation (Incorporated) or the Minister as persons who are proper persons to be, and who are willing to act as, mediators under this Part of this Act.

(b) The register shall be open to inspection by any union, association or employer.

(c) The fact that a person's name does not appear on the register does not prevent that person from being appointed a mediator under subsection (1) of this section.

108G. (1) Where, as a result of negotiations relating to an industrial dispute at which a mediator has presided, an agreement is reached as to the whole of the matters in dispute between the parties thereto, a memorandum of the terms of agreement—

- (a) shall be drawn up by, or at the direction of the mediator and signed by him; and
- (b) shall, if all of the parties to the dispute so request in writing, be referred by him to the Commission for issuance as an award or an order amending an award.

Memorandum of agreement as to whole of matters in dispute to be drawn up and referred to Commission. Added by No. 108 of 1973, s. 52.

(2) A reference made pursuant to subsection (1) of this section shall, for all purposes of this Act, be deemed to be—

- (a) the filing of a memorandum of agreement under and for the purposes of section sixty-five of this Act; or
- (b) an application under section ninety-two of this Act,

as the case may be.

(3) Where the request referred to in paragraph (b) of subsection (1) of this section is not made or a reference made pursuant to that paragraph is dismissed by the Commission the parties to the dispute shall, subject to the provisions of this section and to those of Part III of this Act, execute and register an industrial agreement in the terms of the memorandum.

(4) The parties to the dispute may exclude from an industrial agreement made pursuant to this section, and the Commission shall exclude from any award or order made pursuant to this section, any matter contained in the memorandum which, prior to the making of the industrial agreement or award or order, as the case may be, is made the subject of an unregistered agreement between the parties to the dispute.

Memorandum of agreement as to some of the matters in dispute, to be drawn up and referred to Commission.
Added by No. 108 of 1973, s. 53.

108H. (1) Where, as a result of negotiations relating to an industrial dispute at which a mediator has presided, an agreement has been reached as to some of the matters in dispute but not as to all of them, or if no agreement has been reached, if the parties to the dispute so request in writing, the mediator—

- (a) shall draw up or cause to be drawn up and sign a memorandum of the matters agreed upon, and the matters then in dispute; and
- (b) shall refer the memorandum to the Commission for hearing and determination of those matters in dispute.

(2) In determining a reference made under subsection (1) of this section the Commission shall make an order which shall bind only the parties to the dispute and shall exclude from the order any matters, which prior to the making of the order, the parties make the subject of an unregistered agreement.

(3) Upon, or at any time after the making of an order under this section, the parties may, in the prescribed manner, request the Commission to—

- (a) issue an award in the terms of the order; or
- (b) amend the award by which the parties are bound so as to give effect to the terms of the order.

(4) A request made pursuant to subsection (3) of this section shall, for all purposes of this Act, be deemed to be—

- (a) the filing of a memorandum of agreement under and for the purposes of section sixty-five of this Act; or
- (b) an application under section ninety-two of this Act,

as the case may be.

(5) An order made under subsection (2) of this section shall cease to operate upon the making of an award or order on a request made under subsection (3) of this section.

108I. (1) Subject to this section, a Commissioner may summon any person to attend, at a time and place specified in the summons, at a conference presided over by the Commissioner.

Power of Commissioner to summon persons to conference. Added by No. 108 of 1973, s. 54.

(2) Any person so summoned shall attend the conference at the time and place specified in the summons and continue his attendance thereat as directed by the Commissioner.

Penalty: Two hundred dollars.

(3) The conference shall be held in private and any notes or transcript taken during the conference shall be used for the purpose of the conference and for no other purpose, unless all parties to the conference otherwise agree.

(4) (a) The power conferred on a Commissioner by subsection (1) of this section may be exercised for the purpose of preventing or settling an industrial dispute, strike or lockout and shall be exercised upon an application made for that purpose by—

- (i) any union, association or employer; or
- (ii) the Attorney General,

and not otherwise.

(b) An application by the Attorney General under this subsection shall be accompanied by a statement that, in the opinion of the Attorney General, the public interest is or is likely to be seriously and detrimentally affected by the industrial dispute in relation to which the conference is sought.

(5) Where a conference has been held under this section and an agreement has been reached as to the whole of the matters in dispute between the parties thereto a memorandum of the terms of agreement shall be drawn up by, or at the direction of, the Commissioner, and signed by him and the provisions of section one hundred and eight G of this Act, with such adaptations as the circumstances require, apply in relation to that memorandum.

(6) (a) Where a conference has been held under this section and an agreement has been reached as to some of the matters in dispute between the parties thereto but not as to all of them, or if no agreement has been reached, a memorandum of the matters agreed upon and the matters then in dispute may be drawn up by, or at the direction of, the Commissioner and signed by him and the Commissioner may refer the memorandum to the Commission for hearing and determination of the matters in dispute.

(b) The provisions of subsections (2), (3), (4) and (5) of section one hundred and eight H of this Act apply, with such adaptations as the circumstances require, to a reference made under this subsection.

(7) Subject to subsection (8) of this section the Commission is constituted by a Commissioner sitting or acting under this section.

(8) For the hearing and determination of a reference made under paragraph (a) of subsection (6) of this section the Commission shall not be constituted by the Commissioner who made the reference unless—

- (a) all parties to the dispute so agree in writing; or
- (b) the only matter in dispute is the date on and from which the whole or any part of the matters contained in the memorandum commenced or shall commence to operate.

108J. In proceedings before the Commission under this Part of this Act the Commission may, subject to subsection (8) of section one hundred and eight I of this Act, fix the date on and from which the whole or any part of any order or award made under this Part of this Act commenced or shall commence to operate, but any such date shall not be earlier than—

Date on which order or award commences to operate.
Added by No. 108 of 1973, s. 55.

- (a) the date on which the Commission first took cognizance of the matter in respect of which the order or the award or the part of the order or the part of the award was made; or
- (b) in a case to which section one hundred and eight G or one hundred and eight H of this Act applies, the date on which the request referred to in subsection (1) of section one hundred and eight F of this Act was made.

Additional jurisdiction in relation to certain industrial disputes. Added by No. 108 of 1973, s. 56.

108K. Notwithstanding any other provision of this Act, it is hereby declared—

- (a) that any difference or dispute may be an industrial dispute for the purposes of this Part notwithstanding that the subject matter of the difference or dispute is governed by an industrial agreement or award still in force by virtue of its term;
- (b) that a mediator may be appointed under this Part in respect of, and has, when appointed, all the powers conferred by this Part, in respect of such an industrial dispute as is referred to in paragraph (a) of this section; and
- (c) that the Commission has, on the reference to it by a mediator of such an industrial dispute as is referred to in paragraph (a) of this section, all the powers and functions that it has in relation to an industrial dispute which arises in respect of a difference or dispute which is not governed by an industrial agreement or award still in force by virtue of its term.

PART V. (Ss. 109-119.)

[Repealed by No. 76 of 1963, s. 113.]

PART VI. (Ss. 120-122.)

[Repealed by No. 76 of 1963, s. 114.]

PART VII.—BASIC WAGE.

Part VII repealed and Part substituted by No. 47 of 1968, s. 4. Interpretation. Substituted by No. 47 of 1968, s. 4.

123. In this Part, unless the contrary intention appears—

“Attorney General” includes the Minister for Justice;

“basic wage” means that wage or that part of a wage which in the opinion of the Commission, is just and reasonable for a

worker to whom it applies, without regard to the circumstances pertaining to the work upon which, or the industry in which, such worker is employed;

“commencing day” means the date on which the Industrial Arbitration Act Amendment Act, 1968, comes into operation;

“the Commission” means the Commission in Court Session;

“the Council” means the body known as the Trades and Labor Council of Western Australia;

“the Federation” means the body known as the Western Australian Employers’ Federation (Incorporated).

124. Notwithstanding the provisions of any Act other than this Act or any law but subject to this Part, it is hereby declared that on and from the commencing day—

Basic wage on and from commencing day.
Substituted by No. 47 of 1968, s. 4.

- (a) the basic wage to be paid to male workers and the basic wage to be paid to female workers under any award or industrial agreement that is for the time being in force shall be deemed to be an amount of thirty-five dollars forty-five cents in the case of male workers and twenty-seven dollars eight cents, in the case of female workers; and
- (b) any provision of an award or industrial agreement under which the basic wage is deemed to have been increased by a special loading shall be of no effect.

125. Subject to this Part and for the purposes of this or any other Act, the Commission may at any time and from time to time, by order—

Determination and declaration of basic wage.
Substituted by No. 47 of 1968, s. 4.

- (a) determine and declare a basic wage for male workers;

- (b) determine and declare a basic wage for female workers; and
- (c) vary any basic wage for the time being in force,

and any such basic wage so determined and declared or so varied shall be for all purposes, the basic wage for male workers or female workers throughout the State.

Commission to consider certain matters in determining basic wage. Substituted by No. 47 of 1968, s. 4.

126. In determining a basic wage the Commission shall take into consideration—

- (a) the amount that the Commission considers sufficient to enable the average worker to whom that basic wage shall apply, to live in reasonable comfort; and
- (b) the economic capacity of industry and any other matters (including rates of wages determined on economic grounds by any other person or body of persons authorised or required by a law of the Commonwealth or of another State of the Commonwealth to fix or determine the wages to be paid to workers) that, and to the extent that the Commission considers it relevant and advisable so to do, but not so as to reduce that basic wage below an amount considered necessary by the Commission to meet the requirements of paragraph (a) of this section and determined by the Commission without regard for the matters mentioned in this paragraph,

and in determining a basic wage the Commission is not bound by any previous decision that determines a minimum or basic wage, whether the decision is made under this Act or otherwise.

Power of Commission to act on own motion or that of specified persons. Substituted by No. 47 of 1968, s. 4.

127. (1) The Commission may exercise its jurisdiction under paragraphs (a) and (b) of section one hundred and twenty-five of this Act, either on its own motion or on the motion of the Council, the Federation or the Attorney General.

(2) Where the jurisdiction referred to in subsection (1) of this section is exercised by the Commission otherwise than on its own motion, a declaration of a basic wage for male workers, or, as the case may be, for female workers, resulting from the exercise of that jurisdiction shall be made so as to take effect only after the expiration of a period of twelve months after the last preceding declaration of a corresponding wage.

(3) When and as often as the Commission exercises the jurisdiction referred to in subsection (1) of this section—

- (a) the Council, the Federation and the Attorney General; and
- (b) any other person who, in the opinion of the Commission, has a sufficient interest in the proceedings before the Commission in the exercise of that jurisdiction and who obtains leave of the Commission,

may appear and be heard in those proceedings.

127A. (1) The jurisdiction conferred on the Commission under paragraph (c) of section one hundred and twenty-five shall be exercised only by the Commission on its own motion.

Power of Commission only to vary basic wage. Substituted by No. 47 of 1968, s. 4.

(2) The Commission shall review each basic wage declared pursuant to section one hundred and twenty-four or section one hundred and twenty-five of this Act that is for the time being in force not later than twelve months from—

- (a) the commencing day;
- (b) the day on which that basic wage was declared; or
- (c) the day on which that basic wage was last varied,

whichever is the latest, but any variation of that basic wage shall be made to take effect only after the expiration of such twelve months unless in the

opinion of the Commission there are special reasons existing in the circumstances of any particular case and it is just and equitable to otherwise determine.

(3) In exercising the jurisdiction referred to in this section, the Commission may inform itself in any way that appears to it to be just, but before determining the manner in which it will proceed to exercise that jurisdiction the Commission shall consult with the Council, the Federation and the Attorney General.

Power of
Commission
to allow
costs.
Added by
No. 47 of
1968, s. 4.

127B. The Commission may, in respect of proceedings under this Part, allow to any person such reasonable costs as it thinks sufficient, and any costs so allowed are payable from moneys appropriated by Parliament for the purposes of this Act.

Operation
and effect of
declaration
and varia-
tion of basic
wage.
Added by
No. 47 of
1968, s. 4.

127C. When and as often as a basic wage for male workers or a basic wage for female workers is declared or varied by or under this Part, the order of the Commission declaring or varying the basic wage—

- (a) shall operate and have effect, subject to this Part, from such date as the Commission determines and specifies in the order and shall remain in force until but not including the date on which the next such order of the Commission with respect to that basic wage operates and has effect;
- (b) shall, in accordance with its terms, be deemed to vary the basic wage for male workers or, as the case requires, the basic wage for female workers that is prescribed in any award or industrial agreement;
- (c) shall provide, where that basic wage has been increased, that payment of the amount by which the basic wage is increased may be delayed by any employer

at his option until the end of the first pay period that commences after the publication of the order in the *Gazette*; and

- (d) shall be sent by the Commission to the Minister, who shall cause it to be published forthwith in the *Gazette*.

127D. On and from the commencing day an award or industrial agreement shall not be made if it prescribes for male workers or female workers a lesser wage than the basic wage for male workers or, as the case may be, for female workers that is in force by virtue of this Part, except in the case of junior, infirm or aged workers or apprentices.

Basic wage to be written into award or industrial agreement. Added by No. 47 of 1968, s. 4.

127E. Nothing in this Part prevents the Commission, however constituted, from prescribing a minimum rate of wage for male workers or a minimum rate of wage for female workers under section ninety-four of this Act and, in the course of any proceedings under this Part, the Commission may, on its own motion, prescribe in any award or industrial agreement a minimum rate of wage for male workers or a minimum rate of wage for female workers or vary any minimum rate of wage relating to any such workers that is prescribed in any award or industrial agreement.

Saving of power of Commission to prescribe minimum wage. Added by No. 47 of 1968, s. 4.

127F. Nothing in this Part prevents the Commission, however constituted, from prescribing, which it is hereby authorised to do, a rate of wage, including a wage for female workers, junior workers or apprentices, by reference to a wage other than a basic wage.

Power of Commission to prescribe rate of wage for female workers, etc. Added by No. 47 of 1968, s. 4.

PART VIII.—APPRENTICES.

128. (1) The Governor may appoint a board of three members, to be called "the Apprenticeship Board," which shall be constituted as follows:—

Apprenticeship Board. No. 57 of 1912, s. 125; Amended by No. 50 of 1925, s. 54; No. 76 of 1963, s. 118; No. 66 of 1966, s. 17; No. 108 of 1973, s. 57.

- (a) One member shall be nominated by the industrial unions of employers in the building trade;

- (b) one member shall be nominated by the industrial unions of workers in the building trade;
- (c) the third member shall be appointed by the Minister, and shall be the Chairman of the Board.

(2) No person shall be employed or become an apprentice in the building trade otherwise than as prescribed by this section and the regulations.

Penalty: Two hundred dollars.

(3) Whenever any person who is indentured as an apprentice to the Board shall have already served for some period as an apprentice to the building trade (including service with the parent of the apprentice), such service shall be taken into consideration in fixing the period of apprenticeship to the Board.

(4) Every such apprentice shall be indentured to the Apprenticeship Board in the prescribed form, and shall be placed from time to time with an employer under an agreement of apprenticeship between the Apprenticeship Board, the apprentice, and the employer, with power reserved to the Board to abrogate any agreement, and to transfer the apprenticeship from one employer to another:

Provided that the members of the said Board shall not be personally liable under this Act or under any agreement or indenture of apprenticeship entered into with the said Board, nor shall such members be liable to any action or proceeding at the instance of any apprentice or employer or other person joined in such agreement or indenture.

(5) The Governor may, on the recommendation of the Commission in Court Session, by regulation define the term "building trade" for the purposes of this section.

129. (1) Every person desirous of becoming an apprentice shall be employed on probation for a period of three months to determine his fitness or otherwise for apprenticeship. In the event of his becoming an apprentice, such probationary period shall be counted as part of the term of apprenticeship.

Apprenticeship generally. No. 57 of 1912, s. 126. Amended by No. 50 of 1925, s. 55; No. 76 of 1963, s. 119; No. 66 of 1966, s. 17.

(2) No premium shall be paid to or accepted by an employer for taking an apprentice.

(3) It shall be provided in every agreement of apprenticeship—

- (a) that technical instruction of the apprentice prescribed by any award or agreement binding on the apprentice and his employer or by the regulations relating to the apprenticeship, when available, shall be at the employer's expense, and shall be in the employer's time, except in places when such instruction is given after the ordinary working hours;
- (b) that in the event of any apprentice, in the opinion of the examiners, not progressing satisfactorily, increased time for technical instruction shall be allowed at the employer's expense to enable such apprentice to reach the necessary standard but if and only if, the failure of the apprentice to make satisfactory progress is due to the fault of the employer or is due to the inability of the apprentice to attend to his duties at any time during the term of his apprenticeship, whether on account of illness or other lawful reason.

(4) Any employer who, when required by the Commission in Court Session, or by the Apprenticeship Board in the case of apprenticeships in the building trade, to enter into an agreement of apprenticeship, neglects or refuses to do so without reasonable cause shall be guilty of an offence.

Penalty: One hundred dollars.

(5) This section applies to apprenticeship generally to any industry to which this Act relates.

(6) So far as the Act to declare the law relating to masters and apprentices (37 Victoria, No. 12) is inconsistent with the provisions of this Act, or of any industrial agreement or award, it shall be of no effect.

Registration of agreements of apprenticeship.
No. 57 of 1912, s. 127.
Amended by No. 50 of 1925, s. 56; No. 49 of 1941, s. 10; No. 76 of 1963, s. 120; No. 66 of 1966, s. 17; No. 108 of 1973, s. 58.

130. (1) No apprentice shall be employed by an employer in an industry which is subject to an industrial agreement or award, otherwise than by an agreement in writing registered with the Registrar.

(2) Application for the registration of an agreement for apprenticeship shall be made by the employer to the Registrar within fourteen days from the date of the agreement.

(3) Subject to section one hundred and twenty-eight, subsection (3), service under an agreement of apprenticeship shall not commence until registration, unless an application for registration has been duly made within the prescribed time, in which case, on registration of the agreement, service thereunder shall be deemed to have commenced from the date of the agreement, or such other date (not being earlier than the date of the agreement, or such other time as may be mutually agreed between the industrial union of workers and the employers) as may be thereby fixed:

Provided that if it is proved to the satisfaction of the Commission that by inadvertence, or from some cause for which there is sufficient excuse, an application for registration was not made within the prescribed time, the Commission may permit the registration after the expiration of such time, but in such case the service shall date from the registration, unless the Commission otherwise directs.

(4) Except as provided by this section, every agreement of apprenticeship shall be subject to the provisions of any industrial agreement or award in force for the time being applicable to apprenticeship in the industry to which the agreement relates.

(5) Notice of application for the registration of an agreement for apprenticeship shall be given by the Registrar to the industrial unions or associations of workers or employers in the industry, and any such union or association may, within a time to be fixed by a notice (not being less than fourteen days from the date thereof), give notice to the Registrar of its objection to the registration of the agreement, and the grounds thereof.

On receipt of such notice of objection the Registrar shall refer the matter to the Commission, and shall notify all parties concerned of the time and place appointed for the hearing, and the Commission may make such order for registration of the agreement or otherwise as it thinks fit.

(6) Except as provided in subsection (4) of section one hundred and twenty-eight an apprentice shall not be transferred from one employer to another otherwise than by order of the Commission, but such order shall not be made without the concurrence of the employer to whom an apprentice is to be transferred or by an agreement in writing registered by the Registrar. The provisions of subsection (5) of this section shall *mutatis mutandis* apply to the registration of any such transfer.

(7) No apprentice employed under a registered agreement shall be discharged by the employer for alleged misconduct until the registration of the agreement of apprenticeship has been cancelled by order of the Commission on the application of the employer.

(8) If at the commencement of this section any employer in an industry to which this section applies is employing any person as an apprentice under an agreement that has not been registered with the Registrar, such employer shall forthwith apply for the registration of such agreement under this section, and service under such agreement shall be deemed not to have commenced until registration, unless on an application by the employer, or by or on behalf of the apprentice, the Commission shall otherwise direct.

(9) The breach or non-observance by an employer of any of the provisions of this section shall be an offence against this Act.

Penalty: One hundred dollars.

Regulations
as to ap-
prenticeship.
No. 57 of
1912, s. 128.
Amended by
No. 50 of
1925, s. 57;
No. 76 of
1963, s. 121.

131. The Commission in Court Session, with the approval of the Governor, may make regulations—

- (a) prescribing the method in which apprentices shall be indentured and placed with employers, and the terms and conditions of apprenticeship;
- (b) prescribing the matters to be taught to apprentices, the methods, times, and conditions of instructing apprentices, and the examinations (if any) which shall be passed by them;
- (c) for the training of apprentices in technical schools or otherwise;
- (d) for the examination of apprentices, and the appointment and payment of examiners; and
- (e) prescribing all such other matters relating to apprentices as may be deemed necessary or desirable.

PART IX.—OFFENCES.

Prohibition
of strikes or
lock-outs.
No. 57 of
1912, s. 129.
Amended by
No. 5 of
1952, s. 24;
No. 66 of
1966, s. 17.

132. (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, one thousand dollars; and in other cases, one hundred dollars.

(2) Nothing in this section shall prohibit the suspension or discontinuance (not being in the nature of a strike or lock-out) of any industry or of the working of any persons therein for good cause independent of an industrial dispute; but on a prosecution for any contravention of this section

the onus of proof that any such suspension or discontinuance is not in the nature of a strike or lock-out, and that such independent good cause exists, shall lie on the defendant.

(3) Every person who makes any gift of money or other valuable thing to or for the benefit of any person who is a party to any strike or lock-out, or to or for the benefit of any industrial union, industrial association, trade union, or other society or association of which any such person is a member, shall be deemed to have aided in the strike or lock-out within the meaning of this section 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.

(4) [*Repealed by No. 5 of 1952, s. 24 (c).*]

133. [*Repealed by No. 108 of 1973, s. 59.*]

134. Any industrial union or association of employers or workers which, for the purpose of enforcing compliance with the demands of any employers or workers, orders its members to refuse to offer or accept employment, shall be deemed to have taken part in or done something in the nature of a lock-out or strike, as the case may be.

Union ordering its members to refuse to offer or accept employment. No. 57 of 1912, s. 131.

135. (1) No employer shall dismiss any worker from his employment or injure him in his employment or alter his position to his prejudice by reason merely of the fact that the worker is an officer or member of an industrial union or association or of a society or other body that has applied to be registered as a union or association or is entitled to the benefit of an industrial agreement or award.

Employer not to dismiss worker on account of application. No. 57 of 1912, s. 132. Amended by No. 66 of 1966, s. 17.

Penalty: One hundred dollars.

(2) In any proceeding for any contravention of this section it shall lie upon the employer to show that any worker proved to have been dismissed or

injured in his employment or prejudiced whilst an officer of an industrial union or association or such a society or body, or whilst entitled as aforesaid, was dismissed or injured in his employment or prejudiced for some reason other than that mentioned in this section.

Worker not to cease work on account of application of employer.
No. 57 of 1912, s. 133.
Amended by No. 66 of 1966, s. 17.

136. (1) No worker shall cease work in the service of an employer by reason merely of the fact that the employer is an officer or member of an industrial union or association or of any society or other body that has applied for registration as an industrial union or association or is entitled to the benefit of an industrial agreement or award.

Penalty: Fifty dollars.

(2) In any proceedings for any contravention of this section it shall lie upon the worker proved to have ceased work in the service of an employer whilst the employer was an officer or member of an industrial union or association or of such a society or body, or was entitled as aforesaid, to show that he ceased so to work for some reason other than that mentioned in this section.

137. [*Repealed by No. 108 of 1973, s. 60.*]

Power of Court to punish contempts.
No. 57 of 1912, s. 135.
Repealed and re-enacted by No. 5 of 1952, s. 26.
Amended by No. 76 of 1963, s. 123.
Cf. O. & A. Cth., 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) [*Repealed by No. 76 of 1963, s. 123.*]

139. [*Repealed by No. 5 of 1952, s. 27.*]

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

Penalty for obstructing performance of duty imposed by this Act, etc.
No. 57 of 1912, s. 137.
Repealed and re-enacted by No. 5 of 1952, s. 28.
Amended by No. 66 of 1966, s. 17.

- (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: Fifty dollars or imprisonment for three months.

Counselling
or procuring
offences.
No. 57 of
1912, s. 138.
Amended by
No. 5 of
1952, s. 29;
No. 66 of
1966, s. 17.

141. (1) In this section—

“encourage” includes counsel, procure, aid, abet, instigate to, and incite to.

(2) Every person who, or union, association, or other body which, is directly or indirectly concerned in the commission of any offence against this Act, or takes part in, or encourages the commission of any such offence shall be deemed to have committed that offence, and shall be punishable accordingly.

(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 one thousand dollars.

(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.

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.

Joinder of charges.
S. 142 repealed and re-enacted by No. 5 of 1952, s. 30.
Amended by No. 76 of 1963, s. 124.

(2) The Court, 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.

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.

Continuing offences.
Added by No. 5 of 1952, s. 31.

[Former Part X, sections 143 to 165 inclusive repealed by No. 61 of 1966, s. 7.]

PART X.—EQUAL PAY FOR MALE AND FEMALE WORKERS.

Part X added by No. 47 of 1968, s. 5.

143. Subject to this Part, the Commission shall, upon application made therefor, insert by way of variation or otherwise, in any award or industrial

Equal pay for male and female workers in certain circumstances.
Added by No. 47 of 1968, s. 5.

agreement that fixes rates of wages for male and female workers performing work of the same or a like nature and of equal value, provisions for equal pay as between the sexes based upon the principles set out in this Part.

Determina-
tion of
equal pay
for male and
female
workers.
Added by
No. 47 of
1968, s. 5.
Amended by
No. 108 of
1973, s. 61.

144. (1) Where the Commission is satisfied that male and female workers are performing work of the same or a like nature and of equal value, the same rates of wages shall, in the manner and within the time provided by subsection (3) of this section, be fixed irrespective of the sex of the workers.

(2) [*Repealed by No. 108 of 1973, s. 61.*]

(3) The rates of wages of such female workers as are referred to in subsection (1) of this section shall be fixed by the Commission by removing the difference between the basic wage for male workers and the basic wage for female workers in such manner and at such times as the Commission thinks fit.

Saving.
Added by
No. 47 of
1968, s. 5.

145. Except as provided in this Part, the provisions thereof do not limit or affect the powers, authorities, duties and functions conferred or imposed on the Commission by or under this Act in respect of rates of wages for female workers.

Application
of this Part
of this Act.
Added by
No. 47 of
1968, s. 5.
Amended by
No. 62 of
1971, s. 2.

146. (1) This Part applies to and in respect of awards and industrial agreements that are in force and whether made before or after the coming into operation of the Industrial Arbitration Act Amendment Act, 1968.

(2) [*Repealed by No. 62 of 1971, s. 2.*]

[*Sections 147 to 165 repealed by No. 61 of 1966, s. 7.*]

PART XI.—MISCELLANEOUS.

166. (1) The Governor shall from time to time appoint some person to be Registrar of Industrial Unions, and may also appoint some person to be Assistant Registrar of Industrial Unions, who—

Formerly
Part. X.
Registrar.
No. 57 of
1912, s. 163.
Amended by
No. 50 of
1925, s. 53;
No. 46 of
1948, s. 5;
No. 76 of
1963, s. 147;
No. 66 of
1966, s. 14.
No. 108 of
1973, s. 62.

(a) shall have and may exercise all or any of the powers and authorities, and shall discharge the duties under this Act of the Registrar during the illness, temporary incapacity, or temporary absence from office of the Registrar;

(b) shall have and may exercise such powers and authorities of the Registrar as the Commission or the Registrar may from time to time assign to him in writing, either generally or in any particular case.

(1A) In the absence of proof to the contrary, it shall be presumed that anything done by the Assistant Registrar in purported exercise of any power conferred by this Act on the Registrar is lawfully authorised under this section.

(2) It shall be the duty of the Registrar whenever a total or partial cessation of work occurs in or in connection with any industry to make immediate inquiry into the cause thereof, and if on such inquiry he shall be of the opinion that any person has committed or is committing any breach of this Act, or of any industrial agreement or award, he shall forthwith acquaint the Commission accordingly.

(3) In the carrying out and discharge of his duties under this section, the Registrar shall be entitled to the assistance of all officers of the Court and of the Commission.

167. (1) Subject to the provisions of subsection (4) of this section it shall be the duty of the Registrar to publish in the *Gazette* all industrial agreements and awards filed in his office, and all

Publication
in *Gazette*
of awards,
etc.
No. 57 of
1912, s. 164.
Amended by
No. 49 of
1941, s. 11;
No. 76 of
1963, s. 148;
No. 108 of
1973, s. 63.

orders whereby industrial agreements and awards are amended, interpreted, or affected. All such industrial agreements, awards, and orders, and, in addition, all the various notices and matters set out in the Second Schedule to the Act shall be published in the *Western Australian Industrial Gazette*.

(2) The production of the *Gazette* or the *Western Australian Industrial Gazette* in which is published any industrial agreement, award, or any order as aforesaid, or any notification made under the authority of this Act, or any of the notices or matters set out in the Second Schedule to the Act shall, before all Courts and persons acting judicially, be *prima facie* evidence of such agreement, award, order, notification, notice or matter and of any of the matters stated therein.

(3) The production of the *Statistical Register* compiled by the Government Statistician or by the Government Statistician's Office, containing any statistical information relevant to the consideration of any matter before the Court or the Commission, or a copy of the same purporting to have been printed by the Government Printer, shall be *prima facie* evidence of the correctness of the matters therein stated.

(4) Where the *Western Australian Industrial Gazette* is regularly published at intervals of less than one month the Registrar may, if the Chief Industrial Commissioner so directs, discontinue publishing in the *Gazette* the matters required by subsection (1) of this section to be published therein.

(5) The Registrar shall, as soon as practicable after any award or order amending an award is made under this Act, publish in the *Gazette*—

- (a) in the case of an award, the number and title of the award, the area of its operation and the date on and from which it operates; and
- (b) in the case of an amendment, the number and title of the award being amended, the number of the amending order, the title of

each clause amended or added by the order and the date on and from which the order operates.

168. All Courts and all persons acting judicially shall take judicial notice of—

- (a) the official signature of any person who holds or has held the office of President of the Court of Arbitration, President of the Western Australian Industrial Appeal Court, Chief Industrial Commissioner, Commissioner, Conciliation Commissioner, Clerk of the Court, Registrar, Assistant Registrar or Industrial Inspector; and
- (b) the appointment and official character of any such person.

Judicial notice to be taken of certain matters.

No. 57 of 1912, s. 165. Amended by No. 46 of 1948, s. 6; No. 76 of 1963, s. 149.

169. No stamp duty shall be payable upon or in respect of any registration, certificate, agreement, award, or instrument effected, issued, or made under this Act.

Stamp duty not payable in certain cases.

No. 57 of 1912, s. 166.

170. (1) The Commission may, of its own motion, for the purpose of effectively exercising all or any of the powers and functions respectively conferred on it by this Act—

- (a) direct any record to be kept by any person for the purpose of affording evidence of the compliance or non-compliance with any provision of an award, order, agreement or of this Act;
- (b) direct the Registrar or the Assistant Registrar to make such investigations and reports in relation to the observance of this Act and the regulations and of any award as it deems necessary;
- (c) direct the Registrar, Assistant Registrar or an industrial inspector to institute proceedings for an offence against this Act or for the recovery of a penalty under section ninety-nine of this Act.

Powers of Court and Commission to direct investigation and institution of proceedings.

No. 57 of 1912, s. 167. Repealed and re-enacted by No. 76 of 1963, s. 150. Amended by No. 68 of 1966, s. 15.

(2) The Registrar, Assistant Registrar or an industrial inspector shall carry out a direction given to him under subsection (1) of this section.

(3) No order for costs shall be made against the Registrar, Assistant Registrar or an industrial inspector in proceedings instituted by him pursuant to a direction given under subsection (1) of this section.

171. [Repealed by No. 108 of 1973, s. 64.]

172. [Repealed by No. 76 of 1963, s. 152.]

After
conference
Commiss-
sioners may,
by consent,
hear and
determine
dispute.
No. 57 of
1912, s. 170.
Amended by
No. 76 of
1963, s. 153;
No. 108 of
1973, s. 65.

173. Where a conference has been held under section one hundred and eight I of this Act, and an agreement as to the whole or part of the matters in dispute is not reached, but all parties to the dispute consent in writing to the dispute or the matters in difference being heard and determined by the Commissioner who presided over the conference, that Commissioner has jurisdiction to hear and determine the dispute or the matters in difference.

Registered
unions and
associations
not affected
r./ Acts
against
illegal
societies.
No. 57 of
1912, s. 171.

174. No industrial union or association duly registered under this Act shall, from the date of such registration, and while so registered, be affected by the provisions of any Act of the Imperial Parliament against corresponding societies or unlawful combinations in respect of any matters done in compliance with the registered rules of such union or association.

Powers of
unions to
recover
fines, etc.
No. 57 of
1912, s. 172.

175. All fines, fees, levies, and dues payable under its rules to an industrial union or association by any member thereof or to any industrial association by any union represented thereon may, in so far as they are owing to the union or association for any period subsequent to the registration thereof, be sued for and recovered in a Court of summary jurisdiction.

Disputes
between
unions and
members.
No. 57 of
1912, s. 173
Amended by
No. 76 of
1963, s. 154;
No. 88 of
1968, s. 17.

176. (1) Every dispute between an industrial union or association and any of its members, or between an industrial association and any union represented thereon, shall be decided in the manner directed by the rules of the union, or, where the dispute is with an association, by the rules of the association.

(2) On the application of a union or association, the Court may order the payment by any member or (in the case of an association) by any union represented thereon of any fine, penalty, or subscription payable in pursuance of the rules aforesaid, or any contribution to a penalty incurred or money payable under an award or order; but no such contribution on the part of a member shall exceed twenty dollars.

177. The Court may, on the application of any industrial union or association, order that any member thereof shall cease to be a member as from a date and for a period to be named in the order, or that any union represented on an association shall cease to be so represented from such a date for such a period.

Court may order that persons cease to be members of unions, etc. No. 57 of 1912, s. 174.

178. (1) No employer or worker or person acting on behalf of an employer or worker shall ask, demand or receive or pay or provide or offer to pay or provide any premium, payment or reward for or in respect of the employment or engagement of any worker in any industry which is the subject of an award or industrial agreement: Provided that nothing in this subsection contained shall apply to an employment or engagement through the agency of an employment broker acting in the ordinary course of his business under the Employment Brokers Act, 1909-1918.

Prohibition on obtaining premiums in respect to employment. Added by No. 49 of 1941, s. 12. ss. s. 174A. Amended by No. 66 of 1966, s. 17.

(2) No person shall accept for publication or publish in a newspaper, periodical or otherwise any advertisement of an offer to accept or receive any premium, payment or reward of the kind referred to in the preceding subsection.

Penalty for breach of either of the above subsections shall not exceed one hundred dollars.

(3) Notwithstanding the penalty provided by this section, any sum or payment made in contravention of this section by or on behalf of any person in respect of the employment or engagement of any worker may be recovered back by action at suit of any industrial inspector or at suit of the person by whom or on whose behalf such payment was made in any Court of competent jurisdiction.

Regulations.
No. 57 of
1912, s. 175.
Amended by
No. 56 of
1950, s. 9;
No. 76 of
1963, s. 155;
No. 66 of
1966, ss. 16
and 17.

179. (1) The Court with respect to any of the following purposes that relate to the Court, and the Commission with respect to any of the purposes that relate to the Commission may, with the approval of the Governor, make regulations for any of the following purposes:—

- (i) Prescribing the forms of certificates, notices, returns, or other instruments or documents to be used for the purposes of this Act;
- (ii) prescribing the duties of the Registrar and of all other officers and persons acting in the execution of this Act;
- (iii) [*Deleted by No. 76 of 1963, s. 155 (c).*]
- (iv) regulating the practice and procedure of the Court and the Commission and providing for the effective exercise of its original and appellate jurisdiction more especially but not so as to limit the generality of its powers in the premises with reference to—
 - (a) the times and places for the sitting of the Court and the Commission;
 - (b) the summoning of parties and of witnesses;
 - (c) the allowances to witnesses;
 - (d) the enforcement of the awards, orders, judgments, convictions, and sentences of the Court and the Commission;

- (v) prescribing what fees shall be paid in respect of any proceeding before the Court and the Commission, and the party by whom such fees shall be paid;
- (vi) regulating the practice and procedure before and industrial magistrate for and incidental to the enforcement of industrial agreements and awards, and prescribing the costs to be allowed in such proceedings, and the fees to be paid, and the allowances to witnesses;
- (vii) providing for the registration of junior workers under a prescribed age employed in any industry;
- (viii) prescribing any act or thing necessary to supplement or render more effectual the provisions of this Act as to the conduct or proceedings before the Court and the Commission; and
- (ix) providing for any matters which by this Act are required or permitted to be prescribed or which it may be necessary or convenient to regulate (either generally or in any particular case) for giving effect to this Act.

(1a) The Governor may make regulations for the purpose of regulating the practice and procedure before an Industrial Magistrate for and incidental to the enforcement of industrial agreements and awards, and prescribing the costs to be allowed in proceedings before an Industrial Magistrate, and the fees to be paid, and the allowance to witnesses in respect thereof and the enforcement of a judgment, order, conviction, direction or other decision of an Industrial Magistrate.

(2) Any regulations made or purporting to be made under this Act—

- (i) [*Deleted by No. 56 of 1950, s. 9 (b).*]
- (ii) [*Deleted by No. 56 of 1950, s. 9 (b).*]
- (iii) may impose a penalty not exceeding forty dollars for any breach thereof;

- (iv) may provide for the imprisonment of any person in default of payment of any fine or penalty payable under any award, order, judgment, conviction, or sentence of the Court or the Commission or an Industrial Magistrate, but so that the term of imprisonment shall not exceed the term that a person might be required to serve under the Justices Act, 1902, or any amendment thereof, in respect of the nonpayment of a fine of similar amount;
- (v) shall, subject as hereinafter provided, and except in so far as they may be in conflict with the express provisions of this or any other Act, be conclusively deemed to be valid.

(3) [*Deleted by No. 56 of 1950, s. 9 (c).*]

(4) [*Deleted by No. 56 of 1950, s. 9 (c).*]

(5) [*Deleted by No. 56 of 1950, s. 9 (c).*]

**Prohibition
of contract-
ing out.
No. 57 of
1912, s. 176.**

180. (1) Subject to section forty-one no person shall be freed or discharged from any liability or penalty or from the obligation of any industrial award or agreement by reason of any contract made or entered into by him or on his behalf, and every contract, in so far as it purports to annul or vary such award or agreement, shall, to that extent, be null and void without prejudice to the other provisions of the contract which shall be deemed to be severable from any provisions hereby annulled.

(2) Every worker shall be entitled to be paid by his employer in accordance with any industrial agreement or award binding on his employer and applicable to him and to the work performed, notwithstanding any contract or pretended contract to the contrary, and such worker may recover as wages the amount to which he is hereby declared entitled in any court of competent jurisdiction, but every action for the recovery of any such amount must be commenced within twelve months from the time when the cause of action arose.

FIRST SCHEDULE.

No. 57 of
1912; The
Schedule.
Sec. 4.

The Industrial Conciliation and Arbitration Act, 1902,
1° and 2° Edward VII., No. 21.

The Industrial Conciliation and Arbitration Act
Amendment Act, 1909, No. 47 of 1909.

SECOND SCHEDULE.

Sec. 167.
Added by
No. 49 of
1941, s. 13.
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*Notices and Matters for Publication in the "Western
Australian Industrial Gazette."*

1. Retirements from industrial agreements.
2. Notices of concurrence in industrial agreements.
3. Any determination of the basic wage under Part VII. of this Act.
4. Any order in the nature of a mandamus or injunction to compel compliance with an award or industrial agreement.
5. Decisions made pursuant to this Act relating to the enforcement of awards and industrial agreements or to breaches of the Act or regulations or to the interpretation of awards or industrial agreements.
6. Decisions of industrial magistrates.
7. Any order validating the registration of any rules or amendments of rules of a society or industrial union.
8. Any order adding to, amending, or rescinding any rule of a union which has or may have the effect of altering the qualifications for membership of the union or the area in respect of which the union is registered.
9. Any order consenting to the change of name of a union.
10. A list of industrial unions registered in pursuance of the provisions of the Act, together with the registered offices of such unions.
11. Any order appointing a special board and any member or chairman thereof, and all decisions of any such board.

12. Any order appointing a board of reference, and/or assigning any matter thereto, and any decision of such a board.

13. All decisions of the Court and the Commission.

14. Any matter which is prescribed or which is directed by the Court or the Chief Industrial Commissioner to be published or which the Registrar may deem expedient to publish.
