

ACTS AMENDMENT (INDUSTRIAL MAGISTRATE'S COURTS) ACT 1991

No. 44 of 1991

AN ACT to amend—

the *Constitution Acts Amendment Act 1899*,
the *Industrial Relations Act 1979*,
the *Long Service Leave Act 1958*,
the *Stipendiary Magistrates Act 1957*,
the *Temporary Reduction of Remuneration (Senior
Public Officers) Act 1983* and
the *Timber Industry Regulation Act 1926*,
and for related purposes.

[Assented to 17 December 1991]

The Parliament of Western Australia enacts as follows:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Acts Amendment (Industrial Magistrate's Courts) Act 1991*.

Commencement

2. This Act shall come into operation on such day as is fixed by proclamation.

PART 2—CONSTITUTION ACTS AMENDMENT ACT 1899

Schedule V amended

3. Schedule V to the *Constitution Acts Amendment Act 1899** is amended in Division 1 of Part 1 by deleting "Industrial Magistrate" and substituting the following—

“ Industrial magistrate ”.

[*Reprinted as at 16 March 1989.

For subsequent amendments, see 1990 Index to Legislation of Western Australia pp. 34-5, Acts Nos. 40 and 91 of 1990.]

PART 3—INDUSTRIAL RELATIONS ACT 1979

Principal Act

4. In this Part, the *Industrial Relations Act 1979** is referred to as the principal Act.

[*Reprinted as at 12 May 1985.

For subsequent amendments, see 1990 Index to Legislation of Western Australia p. 76.]

Section 7 amended

5. Section 7 of the principal Act is amended in subsection (1) by inserting after the definition of—

(a) "industrial agreement" the following definition—

“ “industrial magistrate's court” means industrial
magistrate's court established under section 81
(1); ”;

and

(b) "Senior Commissioner" the following definition—

" "stipendiary magistrate" has the meaning given by the
Stipendiary Magistrates Act 1957; ".

**Sections 81 and 82 repealed and sections 81,
81A, 81B, 81C, 81D and 82 substituted, and transitional**

6. (1) Sections 81 and 82 of the principal Act are repealed and the following sections are substituted—

Establishment of industrial courts

" 81. (1) The Governor may by proclamation establish an industrial magistrate's court at any place within the State.

(2) An industrial magistrate's court is a court of record and shall have an official seal of which judicial notice shall be taken.

(3) The Governor may by proclamation disestablish an industrial magistrate's court.

(4) When an industrial magistrate's court is disestablished, all proceedings pending in the industrial magistrate's court and all records of the industrial magistrate's court shall be transferred to such other industrial magistrate's court as the Governor in the relevant proclamation referred to in subsection (3) directs.

Jurisdiction of industrial courts

81A. (1) An industrial magistrate's court is a court of summary jurisdiction with jurisdiction to hear and determine any application made to it under section 83 (1).

(2) An application for the enforcement of an award, industrial agreement or order (other than an order made under section 32, 44 (6) or 66) shall not be made otherwise than to an industrial magistrate's court.

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(3) Section 88 applies to and in relation to an industrial magistrate's court as if—

- (a) each reference to the Court in that section were a reference to the industrial magistrate's court; and
- (b) "or the Presiding Judge" in section 88 (4) were deleted.

(4) An industrial magistrate's court has in the exercise of its jurisdiction under this Act like powers to those of a stipendiary magistrate sitting as a court of summary jurisdiction.

(5) In the absence of evidence to the contrary, anything done by an industrial magistrate's court shall be taken to have been done within its jurisdiction.

(6) A judgment, order, direction or other decision of an industrial magistrate's court may be enforced in accordance with regulations made under section 113 (3).

Constitution of industrial courts

81B. (1) An industrial magistrate's court shall be constituted by an industrial magistrate.

(2) The Governor may, on the joint recommendation of the President and the Chief Stipendiary Magistrate, appoint a person holding office as a stipendiary magistrate to be an industrial magistrate.

(3) An industrial magistrate ceases to hold office as such when—

- (a) he ceases to be a stipendiary magistrate; or
- (b) he resigns his office as industrial magistrate by writing delivered to the Governor.

(4) When an industrial magistrate is, or is expected to be, for any reason unable to perform the functions of his office, the Governor may, on the joint recommendation of the President and the Chief Stipendiary Magistrate, appoint a person holding office as a stipendiary magistrate to act in the office of the industrial magistrate for the period, or the remainder of the period, as the case requires, during which the industrial magistrate is, or is expected to be, so unable.

(5) An industrial magistrate or acting industrial magistrate shall, if the industrial magistrate's court constituted by him has not completed the hearing and determination of any application when he ceases to be an industrial magistrate or acting industrial magistrate, as the case requires, be deemed notwithstanding that cessation to continue to hold office as an industrial magistrate or acting industrial magistrate until that hearing and determination are completed.

(6) In this section—

“Chief Stipendiary Magistrate” has the meaning given by the *Stipendiary Magistrates Act 1957*.

Sittings

81C. (1) Notwithstanding anything in section 81 (1), an industrial magistrate's court may sit and act at any time and place.

(2) Notice of the time when an industrial magistrate's court will sit shall be posted in a public place at—

(a) the place referred to in section 81 (1); and

(b) if the place referred to in section 81 (1) is not the place where the industrial magistrate's court will be sitting at the time, the place where the industrial magistrate's court will be sitting at that time.

Clerks of industrial courts

81D. (1) Each industrial magistrate's court shall have a clerk, who shall be an officer of the Public Service.

(2) An industrial magistrate may perform any function of a clerk of the industrial magistrate's court constituted by the industrial magistrate.

(3) The clerk of an industrial magistrate's court has in relation to the industrial magistrate's court like powers to those of a clerk of petty sessions acting under the *Justices Act 1902* in relation to the court of petty sessions to which he is attached.

Jurisdiction of Full Bench

82. (1) The Full Bench has jurisdiction to hear and determine any application made to it under section 84A.

(2) An application for the enforcement of a provision of this Act or of a direction, order or declaration made or given under section 32, 44 (6) or 66 shall not be made otherwise than to the Full Bench.

(3) Subsection (2) does not apply to the enforcement of a provision of this Act if contravention of or failure to comply with that provision constitutes an offence against this Act. ”.

(2) A person who, immediately before the commencement of this section, held office as an Industrial Magistrate under the principal Act as read with the *Stipendiary Magistrates Act 1957* shall be deemed on that commencement to have been appointed to be an industrial magistrate under section 81B of the principal Act as amended by this Act.

(3) Any proceedings begun before an Industrial Magistrate and not abandoned or finally determined before the commencement of this section may be dealt with after that commencement as if the principal Act had not been amended by this Act.

(4) An appeal in respect of the decision of an Industrial Magistrate made before the commencement of this section may be—

- (a) determined;
- (b) heard and determined; or
- (c) instituted, heard and determined,

as the case requires, under section 84 of the principal Act after that commencement as if the principal Act had not been amended by this Act.

Section 83 amended

7. Section 83 of the principal Act is amended in subsection (1) by deleting “section 32 or 66” and substituting the following—

“ section 32, 44 (6) or 66 ”.

Minor amendments

8. Each provision of the principal Act referred to in the second column of the Schedule is amended to the extent indicated opposite thereto in the third column of the Schedule.

PART 4—LONG SERVICE LEAVE ACT 1958

Principal Act

9. In this Part, the *Long Service Leave Act 1958** is referred to as the principal Act.

[**Reprinted as approved 11 July 1974.*]

Section 3 repealed

10. Section 3 of the principal Act is repealed.

Section 4 amended

11. Section 4 of the principal Act is amended in subsection (1) by deleting the definition of "Industrial Magistrate" and substituting the following definition—

“ “industrial magistrate's court” has the meaning given by the *Industrial Relations Act 1979*; ”.

Section 20 amended

12. Section 20 of the principal Act is amended—

(a) by deleting "Industrial Magistrate" in subsections (2) and (3) and substituting in each case the following—

“ industrial magistrate's court ”; and

(b) in subsection (3) by deleting "his discretion suspend such order for such time as he" and substituting the following—

“ its discretion suspend that order for such time as the industrial magistrate's court ”.

Section 21 repealed and section 21 substituted

13. Section 21 of the principal Act is repealed and the following section is substituted—

Hearing and determination of offences

“ 21. The Full Bench of the Commission shall hear and determine all proceedings in respect of offences against this Act ”.

Section 22 amended

14. Section 22 of the principal Act is amended by deleting—

- (a) “or an Industrial Magistrate” in both places where it occurs and substituting in each case the following—

“ , the Full Bench of the Commission or an industrial magistrate’s court ”; and

- (b) “or the Industrial Magistrate” in subsection (2) and substituting the following—

“ , the Full Bench of the Commission or an industrial magistrate’s court, ”.

Section 25 amended

15. Section 25 of the principal Act is amended in subsection (2) by deleting “an Industrial Magistrate” and substituting the following—

“ the Full Bench of the Commission or an industrial magistrate’s court ”.

Section 33 amended

16. Section 33 of the principal Act is amended in subsection (2) by deleting “Industrial Magistrate” and substituting the following—

“ Full Bench of the Commission ”.

Section 36 amended

17. Section 36 of the principal Act is amended by deleting “an Industrial Magistrate” and substituting the following—

“ the Full Bench of the Commission ”.

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PART 5—*STIPENDIARY MAGISTRATES ACT 1957*

Section 9 amended

18. Section 9 of the *Stipendiary Magistrates Act 1957** is amended in paragraph (b) by deleting “resident, or industrial” and substituting the following—

“ or resident ”.

[*Reprinted as approved 21 January 1981.

For subsequent amendments, see 1990 Index to Legislation of Western Australia p. 151.]

PART 6—*TEMPORARY REDUCTION OF REMUNERATION (SENIOR PUBLIC OFFICERS) ACT 1983*

Section 4 amended

19. Section 4 of the *Temporary Reduction of Remuneration (Senior Public Officers) Act 1983** is amended in paragraph (b) of the definition of “court” in subsection (1) by inserting after “that Court,” the following—

“ any industrial magistrate's court ”.

[*Act No. 7 of 1983.]

PART 7—*TIMBER INDUSTRY REGULATION ACT 1926*

Principal Act

20. In this Part, the *Timber Industry Regulation Act 1926** is referred to as the principal Act.

[*Reprinted as approved 17 July 1970.]

Section 1A repealed

21. Section 1A of the principal Act is repealed.

Section 2 amended

22. Section 2 of the principal Act is amended in subsection (1) by deleting the definition of "Industrial magistrate" and substituting the following definition—

“ “industrial magistrate’s court” has the meaning given by the
Industrial Relations Act 1979; ”.

Section 15 amended

23. Section 15 of the principal Act is amended—

(a) by deleting "industrial magistrate" wherever it occurs and substituting in each case the following—

“ industrial magistrate’s court ”; and

(b) in subsection (3) by inserting after—

(i) “if he” the following—

“ or it ”; and

(ii) “with his” the following—

“ or its ”.

Section 16 amended

24. Section 16 of the principal Act is amended in the proviso by deleting "industrial magistrate" and substituting the following—

“ an industrial magistrate’s court ”.

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Section 21 amended

25. Section 21 of the principal Act is amended in paragraphs (2), (3) and (4) by deleting "industrial magistrate" and substituting in each case the following—

" an industrial magistrate's court ".

Section 28 amended

26. Section 28 of the principal Act is amended by deleting "industrial magistrate appointed for the purposes of the Industrial Arbitration Act, 1925" and substituting the following—

" industrial magistrate's court ".

SCHEDULE

(Section 7)

MINOR AMENDMENTS TO *INDUSTRIAL RELATIONS ACT 1979*

<u>Item</u>	<u>Provision amended</u>	<u>Extent of amendment</u>
1.	Section 83	Delete "Industrial Magistrate" wherever it occurs and substitute in each case the following— " industrial magistrate's court ".
2.	Section 83 (2) (a) and (6)	Delete "he" and substitute in each case the following— " the industrial magistrate's court ".
3.	Section 84	Delete "Industrial Magistrate" wherever it occurs and substitute in each case the following— " industrial magistrate's court ".
4.	Section 103 (2)	Delete "Industrial Magistrate" and substitute the following— " industrial magistrate's court ".

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5. Section 106 (a) (ii) Delete "Industrial Magistrate" and substitute the following—

" industrial magistrate ".
 6. Section 110 (2) Delete "the Industrial Magistrate" and substitute the following—

" an industrial magistrate's court ".
 7. Section 113 (3) Delete "his powers" and substitute the following—

" its powers ".
 8. Section 113 (3) and (4) (ii) Delete "Industrial Magistrate" wherever it occurs and substitute in each case the following—

" industrial magistrate's court ".
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