

**ACTS AMENDMENT AND REPEAL
(INDUSTRIAL RELATIONS)
ACT (No. 2) 1984.**

(No. 94 of 1984.)

ARRANGEMENT.

Section

PART I—PRELIMINARY.

1. Short title.
2. Commencement.

PART II—INDUSTRIAL ARBITRATION ACT 1979.

3. Principal Act.
4. Section 1 amended.
5. Section 6 substituted.
6. Section 7 substituted.
7. Heading to Part II amended.
8. Section 8 amended.
9. Sections 9 and 10 substituted.
10. Section 16 amended.
11. Section 17 amended.
12. Section 18 amended.
13. Section 22 amended.
14. Section 22A inserted.
15. Section 23 amended.
16. Section 25 substituted.
17. Section 26 amended.

Section

18. Section 27 amended.
19. Sections 29 and 30 substituted and sections 29A and 29B inserted.
20. Section 31 amended.
21. Section 32 substituted.
22. Section 33 amended.
23. Section 34 amended.
24. Section 35 amended.
25. Section 38 substituted
26. Sections 41, 42 and 43 substituted and section 41A repealed.
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28. Section 47 amended.
29. Section 48 amended.
30. Section 49 amended.
31. Section 49A repealed.
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35. Section 55 amended.
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37. Section 58 amended.
38. Section 62 amended.
39. Section 63 amended.
40. Section 66 amended.
41. Section 67 substituted.
42. Section 69 amended.
43. Section 72 substituted.
44. Section 73 amended.
45. Section 74 repealed.
46. Division 5 of Part II repealed.
47. Parts IIA, IIB and IIC inserted:

(PART IIA—CONSTITUENT AUTHORITIES.

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Division 2—Public Service Arbitrator and Appeal Boards—Sections 80C-80L.

Division 3—Railways Classification Board—Sections 80M-80W.

Division 4—Promotions Appeal Boards—Sections 80X-80ZD.

PART IIB—ENQUIRIES—Section 80ZE.

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48. Heading to Part III amended.
49. Section 81 amended.
50. Section 82 substituted and section 82A inserted.
51. Section 83 amended.
52. Section 84A inserted.
53. Section 85 amended.
54. Section 90 amended.

Section

- 55. Heading to Part V amended.
- 56. Section 93 amended.
- 57. Section 95 substituted.
- 58. Part VI and sections 97 and 97A of the principal Act are repealed.
- 59. Section 101 repealed.
- 60. Sections 102A and 103 substituted.
- 61. Section 113 amended.
- 62. Section 114 amended.
- 63. Section 115A inserted.
- 64. Schedule 2 added.
- 65. Miscellaneous amendments as to offences and penalties.
- 66. Consequential amendments.

PART III—EDUCATION ACT 1928.

- 67. Principal Act.
- 68. Section 3 amended.
- 69. Section 7 amended.
- 70. Section 7D amended.
- 71. Effect of Part VI not limited.

PART IV—PUBLIC SERVICE ACT 1978.

- 72. Principal Act.
- 73. Section 1 amended.
- 74. Section 3 amended.
- 75. Section 5 amended.
- 76. Heading to Division 1 of Part III deleted.
- 77. Section 25 amended.
- 78. Section 31 amended.
- 79. Section 32 amended.
- 80. Division 2 of Part III repealed.
- 81. Section 51 amended.
- 82. Effect of Part VI not limited.

PART V—REPEALS.

- 83. Repeal of Acts.

PART VI—SAVING AND TRANSITIONAL.

- 84. Interpretation of this Part.
- 85. Office holders; references to office holders and bodies.
- 86. Style and title of President.
- 87. Unions and organizations.
- 88. Awards, consent awards and industrial agreements.
- 89. Pending proceedings continued.
- 90. Jurisdiction in relation to existing matters.
- 91. Regulations, etc.
- 92. Interpretation Act 1984, ss. 16 and 36 to apply.

**ACTS AMENDMENT
AND REPEAL
(INDUSTRIAL RELATIONS)
(No. 2).**

No. 94 of 1984.

AN ACT to amend the Industrial Arbitration Act 1979, the Education Act 1928 and the Public Service Act 1978 and to repeal the Government Employees (Promotions Appeal Board) Act 1945, the Government School Teachers Arbitration and Appeal Act 1979, the Public Service Arbitration Act 1966 and the Railways Classification Board Act 1920, and for related purposes.

[Assented to 11 December 1984.]

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

PART I—PRELIMINARY.

1. This Act may be cited as the *Acts Amendment and Repeal (Industrial Relations) Act (No. 2) 1984.* Short title.

Commence-
ment.

2. (1) Subject to subsection (2) this Act shall come into operation on the day on which it is assented to by the Governor.

(2) The provisions of Parts II, III, IV and V shall come into operation on such day as is, or days as are respectively, fixed by proclamation.

PART II—INDUSTRIAL ARBITRATION ACT 1979.

Principal
Act.
Reprinted
as approved
21 March
1983.

3. In this Part the Industrial Arbitration Act 1979 is referred to as the principal Act.

Section 1
amended.

4. Section 1 of the principal Act is amended by deleting "*Arbitration*" and substituting the following—

" *Relations* ".

Section 6
substituted.

5. Section 6 of the principal Act is repealed and the following section is substituted—

Objects.

" 6. The principal objects of this Act are—

- (a) to promote goodwill in industry;
- (b) to encourage, and provide means for, conciliation with a view to amicable agreement, thereby preventing and settling industrial disputes;
- (c) to provide means for preventing and settling industrial disputes not resolved by amicable agreement, including threatened, impending and probable industrial disputes, with the maximum of expedition and the minimum of legal form and technicality;

- (d) to provide for the observance and enforcement of agreements and awards made for the prevention or settlement of industrial disputes;
- (e) to encourage the formation of representative organizations of employers and employees and their registration under this Act and to discourage, so far as practicable, overlapping of eligibility for membership of such organizations;
- (f) to encourage the democratic control of organizations so registered and the full participation by members of such an organization in the affairs of the organization; and
- (g) to encourage persons, organizations and authorities involved in, or performing functions with respect to, the conduct of industrial relations under the laws of the State to communicate, consult and co-operate with persons, organizations and authorities involved in, or performing functions with respect to, the conduct or regulation of industrial relations under the laws of the Commonwealth. ”.

6. Section 7 of the principal Act is repealed and the following section is substituted— Section 7 substituted.

“ 7. (1) In this Act, unless the contrary intention appears— Interpretation.

“alteration”, in relation to rules of an organization, includes amendment, addition to, variation, rescission or substitution;

“apprentice” means an apprentice under the Industrial Training Act 1975;

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“association” means an association that is registered under Division 4 of Part II;

“Australian Commission” means the Australian Conciliation and Arbitration Commission established by the Commonwealth Act;

“award” means an award made by the Commission under this Act;

“calling” means any trade, craft, occupation, or classification of an employee;

“canvasser” means any person wholly and solely employed in the writing of industrial insurance business or in the collection of premiums at not longer intervals than one month in respect of such insurance, or in both, but does not include a person who directly or indirectly carries on or is concerned in the carrying on or conduct of any other business or occupation in conjunction with that of industrial insurance;

“Chief Commissioner” includes an Acting Chief Commissioner;

“Commission” means the body continued and constituted under this Act under the name of The Western Australian Industrial Relations Commission;

“Commission in Court Session” means the Commission constituted as provided by section 15 (2);

“Commissioner” means a Commissioner appointed under this Act and includes the Chief Commissioner, the Senior Commissioner and an Acting Commissioner;

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“Commonwealth Act” means the Conciliation and Arbitration Act 1904 of the Commonwealth;

“Confederation” means the body known as The Confederation of Western Australian Industry (Incorporated);

“constituent authority” means the Government School Teachers Tribunal, the Public Service Arbitrator, a Public Service Appeal Board, the Railways Classification Board, or a Promotions Appeal Board, established or appointed under Part IIA;

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

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

“decision” includes award, order, declaration or finding;

“declaration” means a declaration made by the Commission under this Act;

“Deputy Registrar” means a Deputy Registrar appointed pursuant to this Act;

“employee” means—

- (a) any person employed by an employer to do work for hire or reward including an apprentice or industrial trainee;
- (b) any person whose usual status is that of an employee;
- (c) any person employed as a canvasser whose services are remunerated wholly or partly by commission or percentage reward; or

- (d) any person who is the lessee of any tools or other implements of production or of any vehicle used in the delivery of goods or who is the owner, whether wholly or partly, of any vehicle used in the transport of goods or passengers if he is in all other respects an employee,

but does not include—

- (e) any person engaged in domestic service in a private home unless more than 6 boarders or lodgers are therein received for pay or reward;

“employer” includes—

- (a) persons, firms, companies and corporations; and
(b) the Crown and any Minister of the Crown, or any public authority,

employing one or more employees;

“final offer arbitration” means arbitration in which an issue is decided by the Commission by awarding, without qualification or amendment, that one of the final proposals made by the parties concerned which, viewed in its entirety is, in the opinion of the Commission, the more or the most reasonable, as the case may be;

“finding” means a decision, determination or ruling made in the course of proceedings that does not finally decide, determine or dispose of the matter to which the proceedings relate;

“Full Bench” means the Commission constituted as provided by section 15 (1);

“industrial action” means any act, omission, or circumstance done, effected, or brought about by an organization or employer or employee or by any other person for the purpose, or in the opinion of the Commission for the purpose, of compelling an employer or an employee or an organization to accept any terms or conditions of employment or to enforce compliance with any demand relating to employment not including an application made under this Act;

“industrial agreement” means an agreement registered by the Commission under this Act as an industrial agreement;

“*Industrial Gazette*” means the *Western Australian Industrial Gazette* published pursuant to this Act;

“Industrial Inspector” means an Industrial Inspector appointed pursuant to this Act;

“industrial matter”, other than in relation to a person who is a teacher as defined in section 73A and is employed under the Education Act 1928, means, subject to subsection (2), any matter affecting or relating to the work, privileges, rights, or duties of employers or employees in any industry or of any employer or employee therein and, without limiting the generality of that meaning, includes any matter relating to—

- (a) the wages, salaries, allowances, or other remuneration of employees or the prices to be paid in respect of their employment;

- (b) the hours of employment, leave of absence, sex, age, qualification, or status of employees and the mode, terms, and conditions of employment including conditions which are to take effect after the termination 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) the privileges, rights, or duties of any organization or association or any officer or member thereof in or in respect of any industry;
- (f) in respect of apprentices or industrial trainees—
 - (i) their wage rates; and
 - (ii) subject to the Industrial Training Act 1975—
 - (I) their other conditions of employment; and
 - (II) the rights, duties, and liabilities of the parties to any agreement of apprenticeship or industrial training agreement;

- (g) the restoration of a practice of collecting subscriptions to an organization of employees where that practice has been ceased by an employer or the implementation of an agreement between an organization of employees and an employer under which the employer agrees to collect subscriptions to the organization;
- (h) membership or non-membership of an organization;
- (i) any matter, whether falling within the preceding part of this interpretation or not, where—
 - (i) an organization of employees and an employer agree that it is desirable for the matter to be dealt with as if it were an industrial matter; and
 - (ii) the Commission is of the opinion that the objects of this Act would be furthered if the matter were dealt with as an industrial matter;

“industrial matter”, in relation to a person who is a teacher as defined in section 73A and is employed under the Education Act 1928, means—

- (a) salaries or ranges of salaries, including the incremental steps therein;

- (b) allowances for additional responsibility or additional duty;
- (c) allowances for disabilities and reimbursement of expenses;
- (d) circumstances in which allowances are to be payable and conditions of service to apply in lieu of payment of an allowance;
- (e) any matter relating to membership or non-membership of an organization;
- (f) any matter relating to the privileges, rights, or duties of any organization or association or any officer or member thereof in or in respect of any industry;
- (g) any matter relating to the restoration of a practice of collecting subscriptions to an organization of employees where that practice has been ceased by an employer, or the implementation of an agreement between an organization of employees and an employer under which the employer agrees to collect subscriptions to the organization,

but does not include any matter regulated under conditions of employment prescribed by or under the Education Act 1928 unless an organization of employees and an employer agree that it is desirable for the matter to be dealt with as if it were an industrial matter and the

Commission constituted by the Government School Teachers Tribunal established under Division 1 of Part IIA is of the opinion that the objects of this Act would be furthered if the matter were dealt with as if it were an industrial matter;

“industrial trainee” means an industrial trainee under the Industrial Training Act 1975;

“industry” includes each of the following—

- (a) any business, trade, manufacture, undertaking, or calling of employers;
- (b) the exercise and performance of the functions, powers, and duties of the Crown and any Minister of the Crown, or any public authority;
- (c) any calling, service, employment, handicraft, or occupation or vocation of employees,

whether or not, apart from this Act, it is, or is considered to be, industry or of an industrial nature, and also includes—

- (d) 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 organization, 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;

“Judge” means a Judge of the Supreme Court;

“legal practitioner” means a person who is, or is deemed to be, a certificated practitioner under and for the purposes of the Legal Practitioners Act 1893;

“member of the Commission” means the President or a Commissioner and includes the President or a Commissioner when he is performing the functions of a constituent authority, or of a member of a constituent authority, but does not include any other member or acting member of a constituent authority;

“Mines and Metals Association” means the body known as the Australian Mines and Metals Association (Incorporated);

“office” in relation to an organization means—

- (a) the office of a member of the committee of management of the organization;
- (b) the office of president, vice president, secretary, assistant secretary, or other executive office by whatever name called of the organization;
- (c) the office of a person holding, whether as trustee or otherwise, property of the organiza-

tion, or property in which the organization has any beneficial interest;

- (d) an office within the organization for the filling of which an election is conducted within the organization; and
- (e) any other office, all or any of the functions of which are declared by the Full Bench pursuant to section 68 to be those of an office in the organization,

but does not include the office of any person who is an employee of the organization and who does not have a vote on the committee of management of the organization;

“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 organization;

“organization” means an organization that is registered under Division 4 of Part II;

“post-secondary education institution” means an institution or part of an institution established or continued by or under the University of Western Australia Act 1911, the Western Australian Institute of Technology Act 1966, the Murdoch University Act 1973, the Western Australian College of Advanced Education Act 1984 or the Colleges Act 1978;

“President” means the President of the Commission and includes an Acting President;

“Presiding Judge” means the Presiding Judge of the Court;

“principal executive officer” in relation to an organization or association means the president or chairman of that organization or association;

“public authority” means the Governor in Executive Council, any Minister of the Crown in right of the State, State Government department, State trading concern, State instrumentality, State agency, or any public statutory body, corporate or unincorporate, established under a written law but does not include The Rural and Industries Bank of Western Australia established by the Rural and Industries Bank Act 1944 or a municipality or regional council constituted under the Local Government Act 1960;

“public hospital” means a public hospital as defined in the Hospitals Act 1927;

“public servant” means a person who is an officer within the meaning of the Public Service Act 1978;

“Registrar” means the Registrar appointed pursuant to this Act;

“registration”, in relation to an organization, means registration under Division 4 of Part II by authority of the Full Bench;

“repealed Act” means the Act repealed by section 4;

“Senior Commissioner” includes an Acting Senior Commissioner;

“vary” in relation to an award or industrial agreement means to add a new provision or to add to, alter, amend or rescind an existing provision.

(2) A matter relating to the quantum of hours of employment or leave of absence of public servants is not an industrial matter for the purposes of this Act. ”.

7. Part II of the principal Act is amended in the heading by inserting after “INDUSTRIAL” the following—

Heading to Part II amended.

“ RELATIONS ”.

8. Section 8 of the principal Act is amended—

Section 8 amended.

(a) in subsection (1)—

(i) by deleting “, under that name,”;
and

(ii) by inserting after “this Act” the following—

“ under the name The Western Australian Industrial Relations Commission ”; and

(b) in subsection (2) by deleting from paragraph (b) “Industrial”.

9. Sections 9 and 10 of the principal Act are repealed and the following sections are substituted—

Sections 9 and 10 substituted.

“ 9. (1) A person shall not be appointed as the President unless he is or has been a barrister or solicitor of the High Court of Australia or of the Supreme Court of a State or Territory of the Commonwealth of not less than 5 years’ standing.

Qualifications for appointment of President and Chief Commissioner.

(2) A person shall not be appointed Chief Commissioner unless—

- (a) he has had experience at a high level in industrial relations; or
- (b) he has, not less than 5 years previously, obtained a degree of a university or an educational qualification of similar standard after studies considered by the Governor to have substantial relevance to the duties of the Chief Commissioner.

Age limit
for members
of
Commission.

10. A person who has attained the age of 65 years is ineligible for appointment as a member of the Commission and each member of the Commission shall retire from his office upon attaining the age of 65 years. ”.

Section 16
amended.

10. Section 16 of the principal Act is amended—

- (a) by repealing subsection (1) and substituting the following subsections—

“ (1) Subject to this Act, the Chief Commissioner may allocate and reallocate the work of the Commission, including the work of constituent authorities, and may assign or appoint Commissioners for the purposes of constituting the Full Bench, the Commission in Court Session, or a constituent authority.

(1a) The Chief Commissioner may assign a Commissioner to sit or act alone as the Commission or to sit or act as a member of the Full Bench or the Commission in Court Session notwithstanding that that Commissioner is for the time being appointed as or to a constituent authority. ”; and

- (b) in subsection (2) by deleting paragraph (a)

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11. Section 17 of the principal Act is amended by repealing subsections (1), (2) and (3) and substituting the following subsections— Section 17 amended.

“ (1) Where a member of the Commission is, or is expected to be, unable to attend to his duties under this Act, whether on account of illness or otherwise, the Governor may appoint a person to be Acting President, Acting Chief Commissioner, Acting Senior Commissioner or an Acting Commissioner, as the case may require, for such period as the Governor determines.

(2) A person shall not be appointed Acting President or Acting Chief Commissioner unless he holds the relevant qualifications prescribed in section 9. ”.

12. Section 18 of the principal Act is amended in subsection (1)— Section 18 amended.

(a) by inserting after “Notwithstanding” the following—

“ the retirement of a member of the Commission or ”;

(b) by deleting “a member or” and substituting the following—

“ an ”; and

(c) by inserting after “before” the following—

“ the retirement or ”.

13. Section 22 of the principal Act is amended— Section 22 amended.

(a) by inserting after the section designation “22.” the subsection designation “(1)”;

(b) by deleting “, and subject to sections 10 and 21”; and

(c) by inserting the following subsection—

“ (2) The office of a member of the Commission shall become vacant if—

- (a) he is removed from the office pursuant to subsection (1); or
- (b) he retires pursuant to section 10 or resigns pursuant to section 21. ”.

14. Before section 23 of the principal Act the following section is inserted—

Section 22A
inserted.
Interpreta-
tion.

“ 22A. In this Division—

“Commission” means the Commission constituted otherwise than as a constituent authority;

“industrial matter” does not include a matter in respect of which, subject to Division 3 of this Part, a constituent authority has exclusive jurisdiction under this Act. ”.

Section 23
amended.

15. Section 23 of the principal Act is amended—

(a) by repealing subsection (1) and substituting the following subsection—

“ (1) Subject to this Act, the Commission has cognizance of and authority to enquire into and deal with any industrial matter except any matter provided for in paragraph (a):

“ (a) the suspension from duty in, discipline in, dismissal from, termination of, or reinstatement in, employment of any person as—

- (i) an officer or employee in either House of Parliament

(I) under the separate control of the President or Speaker or under their joint control;

(II) employed by a Committee appointed pursuant to the Joint Standing Rules and Orders of the Legislative Council and the Legislative Assembly; or

(III) employed by the Crown; or

(ii) an officer or employee on the Governor's Establishment; "

and

(b) by repealing subsection (3) and substituting the following subsection—

" (3) The Commission in the exercise of the jurisdiction conferred on it by this Part shall not—

(a) prohibit the employment of employees 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—

(i) prevents the registration with the Commission of any industrial

agreement that contains or provides for any such prohibition or restriction; or

- (ii) prevents the Commission from 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 such work;
- (b) regulate the rates of salary or wages, or the conditions of employment of any person who holds an office for which the remuneration payable is determined or recommended pursuant to the Salaries and Allowances Act 1975;
- (c) make an award or order empowering a representative of an organization to enter any part of an employer's premises the principal use of which is for habitation by the employer and his household;
- (d) regulate the suspension from duty in, discipline in, dismissal from, termination of, or reinstatement in, employment of any employee or any one of a class of employees if there is provision, however expressed, by or under any other Act for or in relation to a matter of that kind and there is provision, however expressed, by or under that other Act for an appeal in a matter of that kind;

(e) provide for—

(i) compulsion to join an organization to obtain or hold employment; or

(ii) non-employment by reason of being or not being a member of an organization;

(f) provide for preference of employment at the time of, or during, employment by reason of being or not being a member of an organization;

or

(g) limit the working hours of employees engaged in the agricultural and pastoral industry but nothing in this paragraph prevents the registration with the Commission of any industrial agreement that contains or provides for any such limitation. ”.

16. Section 25 of the principal Act is repealed and the following section is substituted—

Section 25 substituted.

“ 25. (1) In allocating the work of the Commission under this Division the Chief Commissioner may—

Allocation of industrial matters.

(a) allocate matters to a Commissioner;

(b) allocate matters directly to the Commission in Court Session; and

(c) notwithstanding that he has allocated a matter to a Commissioner, revoke that allocation and allocate the matter to another Commissioner or directly to the Commission in Court Session.

(2) Nothing in subsection (1) affects the operation of Part IIC. ”.

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Section 26
amended.

17. Section 26 of the principal Act is amended in subsection (1) by inserting in paragraph (d) after “consideration” the following—

“ to the extent that it is relevant ”.

Section 27
amended.

18. Section 27 of the principal Act is amended in subsection (1)—

(a) in paragraph (e) by inserting after “any” the following—

“ time and ”; and

(b) in paragraph (q) by inserting before “document” the following—

“ record, ”.

Sections 29
and 30
substituted
and sections
29A and
29B inserted.

19. Sections 29 and 30 of the principal Act are repealed and the following sections are substituted—

By whom
matters may
be referred.

“ 29. An industrial matter may be referred to the Commission—

(a) in any case, by—

(i) an employer with a sufficient interest in the industrial matter;

(ii) an organization in which persons to whom the industrial matter relates are eligible to be enrolled as members or an association that represents such an organization; or

(iii) the Minister;

and

(b) in the case of a claim by an employee—

(i) that he has been unfairly dismissed from his employment; or

- (ii) that he has not been allowed by his employer a benefit, not being a benefit under an award or order, to which he is entitled under his contract of service,

by the employee.

29A. (1) Where an industrial matter has been referred to the Commission pursuant to section 29, the claimant or applicant shall specify the nature of the relief sought.

Service of
claims and
applications.

(2) Where the reference of an industrial matter to the Commission seeks the issuance of an award, or the variation of the area of operation or the scope of an award, or the registration of an industrial agreement, the Commission shall not hear the claim or application until those parts of the proposed award, variation or industrial agreement that relate to area of operation or scope have been published in the *Industrial Gazette* and a copy of the claim or application has been served—

- (a) in the case of a proposed award or variation of an award, on—

- (i) the Council, the Confederation, the Mines and Metals Association and the Minister;

and

- (ii) such organizations, associations and employers as the Commission may direct being, in the case of employers, such employers as constitute, in the opinion of the Commission, a sufficient number of employers who are reasonably representative of the employers who would be bound by the proposed award or the award as proposed to be varied, as the case may be;

(b) in the case of the proposed registration of an industrial agreement, on the Council, the Confederation, the Mines and Metals Association and the Minister.

(3) Unless otherwise directed by the Commission, where the reference of an industrial matter to the Commission seeks the variation of an award, other than a variation of the kind mentioned in subsection (1), the Commission shall not hear the claim or application until the named parties to the award have been served with a copy of the claim.

(4) Where the reference of an industrial matter to the Commission seeks the issuance or variation of an order or declaration, other than of a kind referred to in subsection (2) or (3) the Commission shall not hear the claim or application until the persons sought to be bound by the decision in the proceedings have been served with a copy of the claim or application.

Parties to proceedings.

29B. Subject to section 27 (1) (j) the parties to proceedings before the Commission shall be—

- (a) the claimant or applicant by whom or which the proceedings were initiated; and
- (b) the other persons, bodies, organizations or associations upon whom or which a copy of the claim or application is served.

Intervention of Crown.

30. (1) The Minister may, by giving the Registrar notice in writing of his intention to do so, and by leave of the Commission, intervene on behalf of the State in any proceedings before the Commission in which the State has an interest.

(2) The Minister of the Commonwealth administering the Department of the Commonwealth that has the administration

of the Commonwealth Act may by giving the Registrar notice in writing of his intention to do so, and by leave of the Commission, intervene on behalf of the Commonwealth in any proceedings before the Commission in which the Commonwealth has an interest. ”.

20. Section 31 of the principal Act is amended— Section 31
amended.

(a) by repealing subsection (1) and substituting the following subsection—

“ (1) Any party to proceedings before the Commission, and any other person or body permitted by or under this Act to intervene or be heard in proceedings before the Commission, may appear—

(a) in person;

(b) by an agent; or

(c) where—

(i) that party, person or body, or any of the other parties, persons or bodies permitted to intervene or be heard, is the Council, the Confederation, the Mines and Metals Association, the Minister or the Minister of the Commonwealth administering the Department of the Commonwealth that has the administration of the Commonwealth Act; or

(ii) the proceedings are in respect of a claim referred to the Commission under section 29 (b) or involve the hearing and determination of an application under section 44 (7) (a) (iii); or

(iii) all parties to the proceedings expressly consent to legal practitioners appearing and being heard in the proceedings; or

(iv) the Commission, under subsection (4), allows legal practitioners to appear and be heard in the proceedings,

by a legal practitioner. ”;

and

(b) by repealing subsection (4) and substituting the following subsection—

“ (4) 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 the Commission, the Commission may allow legal practitioners to appear and be heard. ”.

Section 32
substituted.

21. Section 32 of the principal Act is repealed and the following section is substituted—

Reference of
industrial
matters for
conciliation.

“ 32. (1) Where an industrial matter has been referred to the Commission the Commission shall, unless it is satisfied that the resolution of the matter would not be assisted by so doing, endeavour to resolve the matter by conciliation.

(2) In endeavouring to resolve an industrial matter by conciliation the Commission shall do all such things as appear to it to be right and proper to assist the parties to reach an agreement on terms for the resolution of the matter.

(3) Without limiting the generality of subsection (2) the Commission may, for the purposes of that subsection—

- (a) arrange conferences of the parties or their representatives presided over by the Commission;
- (b) arrange for the parties or their representatives to confer among themselves at a conference at which the Commission is not present;
- (c) give such directions and make such orders as will in the opinion of the Commission—
 - (i) prevent the deterioration of industrial relations in respect of the matter until conciliation or arbitration has resolved the matter;
 - (ii) enable conciliation or arbitration to resolve the matter; or
 - (iii) encourage the parties to exchange or divulge attitudes or information which in the opinion of the Commission would assist in the resolution of the matter;
- (d) give any direction or make any order or declaration which the Commission is otherwise authorized to give or make under this Act.

(4) The Commission shall—

- (a) if it gives or makes a direction, order or declaration orally under subsection (3), reduce the direction, order or declaration to writing as soon as is practicable thereafter;

(b) preface each direction, order or declaration given or made by it under subsection (3)—

(i) if so given or made in writing, at the time of that giving or making; or

(ii) if so given or made orally, at the time of the reduction of that direction, order or declaration to writing,

with a preamble in writing setting out the circumstances which led to the giving or making of that direction, order or declaration; and

(c) make the text of each direction, order or declaration given or made by it under subsection (3) and of the preamble thereto available to the parties as soon as is practicable after that giving or making.

(5) Only the Registrar or a Deputy Registrar at the direction of the Commission may make an application under section 84A for the enforcement of a direction, order or declaration given or made under this section.

(6) Where the Commission does not endeavour to resolve a matter by conciliation or, having endeavoured to do so—

(a) is satisfied that further resort to conciliation would be unavailing; or

(b) is requested by all the parties to the proceedings to decide the matter by arbitration,

the Commission may decide the matter by arbitration.

(7) Where a matter is decided by arbitration the Commission shall endeavour to ensure that the matter is resolved on terms that could reasonably have been agreed between the parties in the first instance or by conciliation. ”.

22. Section 33 of the principal Act is amended in subsection (1) by deleting from paragraph (b) "according to the prescribed scale" and substituting the following—

Section 33
amended.

" as determined by the Commission ”.

23. Section 34 of the principal Act is amended in subsection (4) by inserting after "declaration," the following—

Section 34
amended.

" finding, ”.

24. Section 35 of the principal Act is amended in subsection (1) by inserting after "except" the following—

Section 35
amended.

" a direction, order or declaration under section 32 or ”.

25. Section 38 of the principal Act is repealed and the following section is substituted—

Section 38
substituted.

" 38. (1) The parties to proceedings before the Commission in which an award is made, other than the Council, the Confederation, the Mines and Metals Association and the Minister, shall be listed in the award as the named parties to the award.

Named
parties to
awards.

(2) At any time after an award has been made the Commission may, by order made on the application of—

(a) any employer who, in the opinion of the Commission, has a sufficient interest in the matter;

(b) any organization which is registered in respect of any calling mentioned in the award or in respect of any industry to which the award applies;
or

(c) any association on which any such organization is represented,

add as a named party to the award any employer, organization or association.

(3) Where an employer who is added as a named party to an award under subsection (2) is engaged in an industry to which the award did not previously apply, the variation to the scope of that award by virtue of that addition shall for the purposes of section 37(1) be expressly limited to that employer. ”.

Sections 41,
42 and 43
substituted
and section
41A repealed.

26. Sections 41, 41A, 42 and 43 of the principal Act are repealed and the following sections are substituted—

Industrial
agreements.

“ 41. (1) An agreement with respect to any industrial matter or for the prevention or resolution under this Act of disputes, disagreements, or questions relating thereto may be made between an organization or association of employees and any employer or organization or association of employers.

(2) Subject to subsection (3), where the parties to an agreement referred to in subsection (1) apply to the Commission for registration of the agreement as an industrial agreement the Commission shall, if and to the extent that the terms of the agreement are not contrary to this Act or any General Order made under section 51, or any principles formulated in the course of proceedings in which a General Order is made under section 51, register the agreement as an industrial agreement.

(3) Before registering an industrial agreement the Commission may require the parties thereto to effect such variation as the Commission considers necessary or desirable—

- (a) for the purpose of giving clear expression to the true intention of the parties; or
- (b) to remove any inconsistency with an award that is in force in relation to any employer or employee bound by the industrial agreement.

(4) An industrial agreement extends to and binds—

(a) all employees who are employed—

(i) in any calling mentioned in the industrial agreement in the industry or industries to which the industrial agreement applies; and

(ii) by an employer who is—

(I) a party to the industrial agreement; or

(II) a member of an organization of employers that is a party to the industrial agreement or that is a member of an association of employers that is a party to the industrial agreement;

and

(b) all employers referred to in subparagraph (ii) of paragraph (a),

and no other employee or employer, and its scope shall be expressly so limited in the industrial agreement.

(5) An industrial agreement shall operate—

(a) in the area specified therein; and

(b) for the term specified therein.

(6) 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.

(7) At any time after, or not more than 30 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 30 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.

Parties
may be
added to
agreement.

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

(2) Where an organization satisfies the Commission—

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

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

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

and

(b) that among the employees 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 organization, order that that organization become a party to that industrial agreement and thereupon for the purposes of this Act that organization shall be a party to that industrial agreement and shall be deemed to have concurred therein.

(3) Where an employer satisfies the Commission that there is in force an industrial agreement—

(a) to which the employer is not a party;
and

(b) which governs any terms and conditions of employees employed in the same, or any part of the same, area of operation or industry as that in which the employer is engaged,

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

43. (1) An 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, organization or association of employers, on the one hand, and to an organization or association of employees, on the other hand, it may be varied, renewed or cancelled by a subsequent agreement between that employer, organization or association of employers and that organization or association of employees.

Power to vary, renew or cancel industrial agreements.

(2) On the application of any party to an industrial agreement the Commission may, by order, vary the industrial agreement at any time while the agreement is in force if and to the extent that the terms of the variation are not contrary to this Act, or any General Order made under section 51 or any principles

formulated in the course of proceedings in which a General Order is made under section 51, and if—

- (a) in the opinion of the Commission—
 - (i) 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
 - (ii) those circumstances render the provisions of the agreement, or any of them, no longer just; or
- (b) all the parties to the agreement agree that the agreement be so varied by the Commission,

and the agreement shall be varied accordingly. ”.

**Section 44
amended.**

27. Section 44 of the principal Act is amended—

- (a) in subsection (7) by deleting from subparagraph (ii) of paragraph (a) “Attorney General” and substituting the following—

“ Minister ”;
- (b) in subsection (8)—
 - (i) by deleting paragraphs (b) and (c); and
 - (ii) in paragraph (d) by deleting “any of the foregoing courses of action be followed” and substituting the following—

“ an order in terms of the agreement be made ”;
- (c) by repealing subsection (9) and substituting the following subsection—

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“ (9) Where at the conclusion of a conference held in accordance with this section any question, dispute, or disagreement in relation to an industrial matter has not been settled by agreement between all of the parties, the Commission may hear and determine that question, dispute, or disagreement and may make an order binding only the parties in relation to whom the matter has not been so settled. ”; and

(d) by inserting after subsection (12) the following subsections—

“ (12a) Where, at the conclusion of a conference held in accordance with this section, any question, dispute, or disagreement in relation to an industrial matter has not been settled by agreement between all of the parties, and the parties in relation to whom the matter has not been so settled all consent in writing to the Commissioner who presided over the conference conclusively determining that question, dispute or disagreement, that Commissioner may hear and determine that question, dispute, or disagreement and make an order binding on the parties who so consented.

(12b) Nothing in subsection (12a) authorizes the Commissioner to use final offer arbitration without the express consent, in writing, of all of the parties concerned.

(12c) Notwithstanding section 49 no appeal shall lie from an order made under subsection (12a). ”.

28. Section 47 of the principal Act is amended— Section 47 amended.

(a) in subsection (1) by inserting after “award”, in both places where it occurs, the following—

“ or industrial agreement ”;

(b) in subsection (2) by inserting after “party”, where it last occurs, the following—

“ as a named party ”;

(c) by inserting after subsection (2) the following subsection—

“ (2a) Subject to subsections (3), (4) and (5), where the Commission is of the opinion that a party to an industrial agreement is no longer carrying on business as an employer referred to in section 41(4)(a)(ii) in relation to the agreement or is, for any other reason, not bound by the agreement, the Commission may on its own motion, by order, strike out that party to the agreement. ”;

(d) in subsection (3) by deleting “or (2)” and substituting the following—

“ , (2) or (2a) ”; and

(e) by repealing subsection (5) and substituting the following subsection—

“ (5) If the Commission does not uphold an objection to the making of the order referred to in the notice the Commission may make the order and shall, as soon as practicable thereafter, direct the Registrar to serve a copy of the order—

(a) where the order relates to an award, on each organization of employees that is a named party to the award, on such other persons as are bound by the award as the Commission thinks fit, and on the Council, the Confederation and the Association;

(b) where the order relates to an industrial agreement, on each party to the agreement. ”.

29. Section 48 of the principal Act is amended— Section 48 amended.

- (a) by repealing subsections (3), (4), (13) and (14); and
- (b) in subsection (11) by deleting “subsections (12), (13) and (14)” and substituting the following—
“ subsection (12) ”.

30. Section 49 of the principal Act is amended— Section 49 amended.

- (a) in subsection (1) by deleting “subsection (13) of section 48” and substituting the following—
“ section 80ZE ”;
- (b) by inserting after subsection (2) the following subsection—

“ (2a) An appeal does not lie under this section from a finding unless, in the opinion of the Full Bench, the matter is of such importance that, in the public interest, an appeal should lie. ”;

(c) in subsection (3)—

- (i) by inserting after paragraph (a) the following—

“ or ”;

- (ii) by deleting “; or” at the end of paragraph (b) and substituting a full stop; and

(iii) by deleting paragraph (c);

and

(d) by inserting after subsection (10) the following subsections—

“ (11) At any time after an appeal to the Full Bench has been instituted under this section a person who has a sufficient interest may apply to the

Commission for an order that the operation of the decision appealed against be stayed, wholly or in part, pending the hearing and determination of the appeal.

(12) An application under subsection (11) shall be heard and determined by the President. ”.

Section 49A
repealed.

31. Section 49A of the principal Act is repealed.

Section 50
amended.

32. Section 50 of the principal Act is amended—

(a) in subsection (2) by deleting “Attorney General, or the Public Service Board” and substituting the following—

“ Mines and Metals Association or the Minister ”;

(b) in subsection (5) by deleting from paragraph (e) “and the Attorney General” and substituting the following—

“ the Mines and Metals Association and the Minister ”;

(c) by repealing subsections (7) and (8) and substituting the following subsection—

“ (7) A General Order shall not be made in respect of preference of employment at the time of, or during, employment by reason of being or not being a member of an organization. ”;

and

(d) in subsection (10) by deleting “Public Service Board, the Attorney General” and substituting the following—

“ Mines and Metals Association, the Minister ”.

33. After section 51 of the principal Act the following section is inserted—

Section 51A
inserted.

“ 51A. (1) Subject to this Act, the Commission may in respect of a public authority and its employees, on application by the Minister, the Council or an organization with sufficient interest in the matter—

General
Orders as to
public sector
discipline.

(a) make a General Order or General Orders with respect to one or more of the following—

- (i) suspension from duty in employment;
 - (ii) discipline in employment;
 - (iii) dismissal from employment; and
 - (iv) termination of employment, and with respect to any matter related thereto;
- and

(b) add to, vary or rescind any General Order so made.

(2) A General Order referred to in subsection (1) may be made so as to apply to—

- (a) public authorities and their employees generally;
- (b) a specified public authority or specified public authorities and its or their employees;
- (c) public authorities and their employees bound by a specified award or specified awards;
- (d) a specified class of employees employed in a public authority or public authorities.

(3) In subsection (2) “specified” means specified in the General Order.

(4) A General Order in relation to a matter referred to in subsection (1) (a) shall not be made so as to apply to—

(a) any employee whose conditions of employment may not be determined by the Commission;

(b) any employee in relation to whom—

(i) there is provision, however expressed, by or under any other Act for or in relation to that matter; and

(ii) there is provision by or under that other Act for an appeal in that matter; or

(c) any member of the academic staff of a post-secondary education institution.

(5) A General Order referred to in subsection (1) shall not be made under subsection (2) (c) so as to apply to any employee covered by an award where an organization that is a party to that award does not consent to the General Order being so made. ”.

Sections 53
and 54
substituted.

34. Sections 53 and 54 of the principal Act are repealed and the following sections are substituted—

Qualifica-
tions for
and basis of
registration
of organiza-
tions of
employees.

“ 53. (1) Subject to this Act, any unregistered organization consisting of not less than 200 employees associated for the purpose of

protecting or furthering the interests of employees may be registered by authority of the Full Bench.

(2) Subject to this Act, an unregistered organization consisting of less than 200 employees may be registered by authority of the Full Bench if the Full Bench is satisfied that there is good reason, consistent with the objects prescribed in section 6, to permit registration.

54. (1) Subject to this Act, an unregistered organization consisting of 2 or more employers who—

Qualifications and basis for registration of organizations of employers.

(a) have, in the aggregate throughout the 6 months immediately preceding the date of application for registration employed on an average, taken per month, not less than 200 employees; and

(b) are associated for the purpose of protecting or furthering the interests of those employers,

may be registered by authority of the Full Bench.

(2) Subject to this Act an unregistered organization that does not comply with subsection (1) (a) may be registered by authority of the Full Bench if the Full Bench is satisfied that there is good reason, consistent with the objects prescribed in section 6, to permit registration. ”.

35. Section 55 of the principal Act is amended— Section 55 amended.

(a) by repealing subsection (1) and substituting the following subsection—

“ (1) An organization seeking registration under section 53 or 54 shall lodge in the office of the Registrar—

(a) a list of the officers of the organization with their addresses;

- (b) 3 copies of the rules of the organization; and
 - (c) the prescribed form of application. ”; and
- (b) by repealing subsection (4) and substituting the following subsections—

“ (4) Notwithstanding that an organization complies with section 53 (1) or 54 (1) or that the Full Bench is satisfied for the purposes of section 53 (2) or 54 (2), the Full Bench shall refuse an application by the organization under this section unless it is satisfied that—

(a) the application has been authorized in accordance with the rules of the organization;

(b) reasonable steps have been taken to adequately inform the members—

(i) of the intention of the organization to apply for registration;

(ii) of the proposed rules of the organization; and

(iii) that the members or any of them may object to the making of the application or to those rules or any of them by forwarding a written objection to the Registrar,

and having regard to the structure of the organization and any other relevant circumstance, the members have

been afforded a reasonable opportunity to make such an objection;

(c) in relation to the members of the organization—

(i) less than 5 per centum have objected to the making of the application or to those rules or any of them, as the case may be; or

(ii) a majority of the members who voted in a ballot conducted in a manner approved by the Registrar has authorized or approved the making of the application and the proposed rules;

(d) in relation to the alteration of the rules of the organization, those rules provide for reasonable notice of any proposed alteration and reasons therefor to be given to the members of the organization and for reasonable opportunity for the members to object to any such proposal;

(e) rules of the organization relating to elections for office—

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

(ii) conform with the requirements of section 56 (1),

and are such as will ensure, as far as practicable, that no irregularity can occur in connection with the election; and

(f) the rules of the organization provide for the purging of the register referred to in section 63 by striking off members in arrears of dues for such period as is prescribed by the rules not exceeding 12 months.

(5) Notwithstanding that an organization complies with section 53 (1) or 54 (1), the Full Bench shall refuse an application by the organization under this section if a registered organization whose rules relating to membership enable it to enrol as a member some or all of the persons eligible, pursuant to the rules of the first-mentioned organization, to be members of the first-mentioned organization unless the Full Bench is satisfied that there is good reason, consistent with the objects prescribed in section 6, to permit registration. ”.

Section 56 substituted and section 56A inserted.

36. Section 56 of the principal Act is repealed and the following sections are substituted—

Rules to provide for secret ballots etc.

“ 56. (1) The rules of an organization—

(a) shall provide for the conduct of every election to an office within the organization (including the acceptance or the rejection of nominations) by a returning officer, not being the holder of any other office in, and not being an employee of, the organization;

(b) shall provide that, if the returning officer conducting such election finds a nomination to be defective, he shall before rejecting the nomination, notify the person concerned of the defect, and where it is practicable to do so, give him the opportunity of remedying the defect within such period as is applicable under the rules, which shall, where practicable, be not less than 7 days after his being so notified;

(c) shall provide for the election of the holder of each office within the organization, such election to be either by—

(i) a direct voting system; or

(ii) a collegiate electoral system being, in the case of an office the duties of which are of a full-time nature, a one-tier collegiate electoral system;

(d) shall, in relation to any election for office—

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

(ii) 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

(iii) ensure, as far as practicable, that no irregularity can occur in connection with the election;

(e) shall not permit a person to be elected to hold an office within the organization for a period exceeding 4 years without being re-elected; and

(f) shall not permit a person to be elected to fill a casual vacancy in an office for a period exceeding the unexpired portion of the term of the person who has vacated the office.

(2) Where the rules of an organization which was registered immediately prior to the coming into operation of this section do not, in the opinion of the Registrar, conform with the requirements of subsection (1), the Registrar may, after inviting the organization to consult with him on the matter, allow the organization such time as he determines within which to bring them into conformity with those requirements or determine such alterations of the rules as will in his opinion bring them into conformity with those requirements.

(3) The Registrar shall register the alterations determined by him, or made by the organization to his satisfaction, pursuant to subsection (2) and thereupon the rules shall be deemed to be altered accordingly.

56A. (1) This section has effect notwithstanding any other provision of this Act.

Rules may provide for casual vacancies to be filled in alternative manner.

(2) Subject to subsection (3), rules made by an organization under this subsection may provide for the filling of a casual vacancy in such manner as is provided in those rules.

(3) Rules made under subsection (2) shall include provision to the effect that a casual vacancy may be filled in a manner provided in those rules—

(a) where the original term did not exceed 12 months—for the unexpired portion of the original term; or

(b) where the original term exceeded 12 months—for so much of the unexpired portion of the original term as does not exceed three-quarters of the original term.

(4) In subsection (3) “original term”, in relation to a casual vacancy in an office, means the period in respect of which the last person to have been elected to that office to fill a vacancy other than a casual vacancy was elected.

(5) Where a vacancy in an office is filled in a manner provided in rules made under subsection (2), the person so filling the vacancy shall be taken for the purposes of this Act (other than this section) and the provisions of the rules of the organization (other than the first-mentioned rules), to have been elected to that office in accordance with those provisions. ”.

Section 58
amended.

37. Section 58 of the principal Act is amended by inserting after subsection (2) the following subsection—

“ (3) On an application for the registration of an organization the agent or representative of the applicant may request the Full Bench to authorize the rules of the organization to be registered in terms that exclude certain persons or classes of persons from the description of persons who would have been eligible for enrolment as members of the organization under the rules as lodged under section 55 (1) (b) and, if so requested, the Full Bench may authorize the Registrar to register the rules in those terms. ”.

Section 62
amended.

38. Section 62 of the principal Act is amended—

(a) by repealing subsection (2) and substituting the following subsection—

“ (2) The Registrar shall not register any alteration to the rules of an organization that relates to its name, qualifications of persons for membership, or a matter referred to in section 71 (2) or (5) unless so authorized by the Full Bench. ”; and

(b) in subsection (3)—

(i) by deleting “subsection (2) and to”;

(ii) by deleting paragraph (a) and substituting the following paragraph—

“ (a) the application has been authorized in accordance with the rules of the organization; ”; and

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(iii) in paragraph (c) by deleting “of the society, in a ballot conducted in a manner approved by the Registrar,” and substituting the following—

“ who voted in a ballot conducted in a manner approved by the Registrar ”.

39. Section 63 of the principal Act is amended— Section 63
amended.

(a) in subsection (1)—

(i) by deleting paragraph (a) and substituting the following paragraph—

“ (a) a register of its members showing the name and residential address of each member and details of the financial status of each member in respect of his membership; ”; and

(ii) in paragraph (b) by deleting “postal” and substituting the following—

“ residential ”;

and

(b) by repealing subsections (4), (5) and (8).

40. Section 66 is amended—

Section 66
amended.

(a) in subsection (2)—

(i) by inserting after paragraph (c) the following paragraph—

“ (ca) where the President disallows any rule under paragraph (a) or (c), give

such directions as the President considers necessary to remedy, rectify, reverse or alter or to validate or give effect to, any act, matter or thing that has been done in pursuance of the disallowed rule; ”; and

(ii) in paragraph (f) by deleting subparagraph (iv);

(b) by repealing subsection (5);

(c) in subsection (7) by deleting “, subject to subsection (8),”;

and

(d) by repealing subsection (8).

Section 67
substituted.

41. Section 67 of the principal Act is repealed and the following section is substituted—

Registration
of industrial
associations.

“ 67. (1) A council or other body, however designated, formed by and for the purpose of representing 2 or more organizations to the extent that they have industrial interests in common may, subject to this Act, be registered as an association under this Act.

(2) An association registered pursuant to subsection (1) may act on behalf of all employees eligible for membership of any of the organizations represented by the association in respect of a calling or industry in respect of which the association was formed.

(3) Subject to this section, the provisions of this Act relating to organizations, their rules, records, officers and members shall extend and apply, with such modifications as are necessary, to an association, its rules, records, officers and members respectively. ”.

42. Section 69 of the principal Act is amended— Section 69 amended.

(a) in subsection (4) by inserting before “accordingly” the following—

“ , and, where the request was made by a person referred to in subsection (2) (b), that person, ”; and

(b) by repealing subsection (9) and substituting the following subsection—

“ (9) The Secretary of the organization shall, within such time as the Registrar may require, lodge with the Registrar a copy of the register of members referred to in section 63 and that register shall be open for inspection and extracts may be taken therefrom, at the office of the person conducting the election, by any member of the organization or candidate at the election. ”.

43. Section 72 of the principal Act is repealed and the following section is substituted— Section 72 substituted.

“ 72. (1) Where 2 or more organizations (in this section referred to as the amalgamating organizations) apply for the registration of a new organization and the rules of the proposed new organization are such that the only persons eligible for membership of the new organization will be persons who, if the amalgamating organizations had remained in being, would have been eligible for membership of at least one of the amalgamating unions, the new organization may be registered by authority of the Full Bench. Amalgamation of organizations.

(2) An application under this section shall be made under the respective seals of the

amalgamating organizations and shall be signed by the secretary and principal executive officer of each of those organizations.

(3) The provisions of this Division applying to and in relation to the registration of organizations under section 53 (1) or 54 (1), other than section 55 (5), shall apply with such modifications as are necessary, to and in relation to the registration of an organization under this section.

(4) Subsection (1) does not prevent the alteration, pursuant to this Act, at any time after an organization has been registered under this section, of the rules referred to in that subsection.

(5) On and from the date on which an organization is registered under this section—

(a) the registration of each of the amalgamating organizations is cancelled; and

(b) all the property, rights, duties, and obligations whatever held by, vested in, or imposed on each of those organizations shall be held by, vested in, or imposed on, as the case may be, the new organization. ”.

Section 73
amended.

44. Section 73 of the principal Act is amended—

(a) in subsections (1) and (3) by deleting “Attorney General” and substituting, in each case, the following—

“ Minister ”; and

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(b) by repealing subsections (13), (14) and (15) and substituting the following subsection—

“ (13) Proceedings for the cancellation or suspension of the registration of an organization, or any of its rights under this Act, shall not be instituted otherwise than under this section. ”.

45. Section 74 of the principal Act is repealed. Section 74 repealed.

46. Division 5 of Part II of the principal Act is repealed. Division 5 of Part II repealed.

47. Before Part III of the principal Act the following Parts are inserted— Parts IIA, IIB and IIC inserted.

“ PART IIA—CONSTITUENT AUTHORITIES.

Division 1—Government School Teachers Tribunal.

73A. (1) In this Division unless the contrary intention appears— Interpretation of this Division.

“Chairman” means the Chairman of the Tribunal;

“Department” means the Education Department of the State;

“Director-General” means the person holding or acting in the office of Director-General of Education under the Education Act 1928;

“government school” has the same meaning as it has in the Education Act 1928;

“member” means any member of the Tribunal and includes the Chairman;

“Minister for Education” means the Minister to whom the administration of the Education Act 1928 is for the time being committed;

“pre-school centre” has the same meaning as it has in the Education Act 1928;

“teacher” includes—

- (a) any person engaged in teaching in a government school;
- (b) any person employed by the Minister for Education and engaged in teaching in a pre-school centre; and
- (c) any person holding or acting in a position in the Department in respect of which a teaching academic qualification is required,

but does not include any public servant, whether or not he holds or acts in a position in respect of which a teaching academic qualification is required;

“teaching staff of the Department” includes persons who are employed under the Education Act 1928 and engaged in teaching and persons who hold or act in positions in the Department in respect of which a teaching academic qualification is required and includes any position in respect of which such a qualification is required but does not include public servants;

“Tribunal” means the Commission constituted by the Government School Teachers Tribunal established under this Division;

“Union” means the body known as The State School Teachers’ Union of Western Australia (Incorporated).

(2) Subject to this Division, the Union shall be deemed to be, and shall have and enjoy all of the rights, privileges and duties of, an organization registered under this Act.

(3) Forthwith after the coming into operation of section 47 of the Acts Amendment and Repeal (Industrial Relations) Act (No. 2) 1984 the Union shall lodge with the Registrar a true copy of its constitution and rules as then in force, certified in writing under the hands of its President and Secretary, and thereafter those rules shall be deemed to be the registered rules of the Union and shall not be altered other than in accordance with this Act.

74. (1) There shall be established, within and as part of the Commission, a tribunal to be known as the Government School Teachers Tribunal.

Government
School
Teachers
Tribunal
established.

(2) Subject to this Act, the Tribunal shall consist of 3 members, of whom—

- (a) one shall be appointed by the Chief Commissioner from amongst the other Commissioners and shall be Chairman of the Tribunal;
- (b) one shall be a person nominated for appointment by the Minister for Education and appointed by the Governor; and
- (c) one shall be a person nominated for appointment by the Union and appointed by the Governor.

(3) Wherever the Chairman is of the opinion that an organization other than the Union has a sufficient interest in a matter to be heard and dealt with by the Tribunal, the Tribunal shall be constituted by the Chairman sitting alone.

(4) Whenever it is necessary for a person to be nominated for appointment to an office referred to in subsection (2) (b) or (c) the Minister shall, in writing, request the Minister for Education, or the Union, as the case requires, to submit to him, in writing, the name of a person willing to act as a member of the Tribunal.

(5) Where a request under subsection (4) is made to the Union the Chief Electoral Officer appointed under the Electoral Act 1907, or some other officer appointed by him in writing, shall conduct an election in the prescribed manner amongst the members of the Union for the purposes of determining the name of the person to be nominated by that body for appointment to the office of member.

(6) Where the Minister for Education or the Union has been requested under subsection (4) to submit the name of a person to the Minister—

- (a) if such a name is submitted to the Minister within the prescribed period of the Minister for Education, or the Union, as the case requires, receiving the request, the person whose name appears on the submission shall be appointed to the office of member; and
- (b) if default is made within that time in submitting a name to the Minister, the Minister may nominate for appointment to the office of member such person as he thinks fit.

75. (1) Subject to this Act—

- (a) a person appointed as Chairman or as a member pursuant to section 74 (2) (b) shall hold office for such period, not exceeding 2 years as is specified in the instrument of his appointment and is eligible for reappointment;

- (b) a person appointed as a member pursuant to section 74 (2) (c) shall hold office for a period of 2 years and is eligible for reappointment.

(2) The office of the Chairman becomes vacant if—

- (a) he ceases to be a Commissioner; or
- (b) his appointment as a member of the Tribunal is terminated pursuant to subsection (3).

(3) The Chief Commissioner may at any time terminate the appointment of the Chairman as a member of the Tribunal.

(4) The Governor may terminate the appointment of a member referred to in section 74 (2) (b) or (c)—

- (a) if, in the case of a member referred to in section 74 (2) (c), the member attains the age of 65 years or resigns from the Department; or
- (b) for inability, inefficiency or misbehaviour.

(5) The office of a member referred to in section 74 (2) (b) or (c) shall become vacant if—

- (a) in the case of a member referred to in section 74 (2) (b), the nomination of the Minister for Education of the member is withdrawn;
- (b) he resigns pursuant to subsection (6);
- (c) he is an undischarged bankrupt or has his affairs under liquidation by arrangement with his creditors; or
- (d) his appointment is terminated pursuant to subsection (4).

(6) A member referred to in section 74 (2) (b) or (c) may resign his office by written notice signed by him and addressed to the Minister and the resignation takes effect on the day on which it is received by the Minister or on such later day as is specified in the notice.

(7) The Chief Commissioner may appoint a Commissioner to be the deputy of the Chairman and may at any time terminate that appointment.

(8) The Governor may—

- (a) appoint as deputy of a member, other than the Chairman, a person who has been nominated in the manner in which the member was nominated; and
- (b) terminate any appointment under paragraph (a) at any time.

(9) A person appointed pursuant to subsection (7) or (8) has all the functions, powers and duties of the member for whom he is the deputy, in his capacity as a member, in the event of—

- (a) that member being unable to attend to his duties under this Division, whether on account of illness or otherwise; or
- (b) the office of that member being vacant.

Continuation in office.

76. (1) Notwithstanding the expiry of the period of appointment of a member or deputy of a member, the Chief Commissioner or the Governor, as the case may be, may continue him in office for such period as the Chief Commissioner or the Governor determines in order to enable the Tribunal to complete all matters, proceedings or inquiries that it has entered upon while he was a member or deputy.

(2) The Chief Commissioner or the Governor, as the case may be, may from time to time extend a period determined by him under subsection (1), notwithstanding the expiry of that period, for such further period or periods as he thinks fit.

77. An act, proceeding, decision or determination of the Tribunal is not invalid by reason of any defect or irregularity in the election, nomination or appointment of any member or deputy of a member.

Validity of
acts of
Tribunal.

78. (1) Subject to Division 3 of Part II, the Tribunal has exclusive jurisdiction—

Jurisdiction
of Tribunal.

(a) to enquire into and deal with—

- (i) any industrial matter relating to a teacher, a group of teachers or teachers generally; and
- (ii) any matter concerning the interpretation or application of any Act or regulation governing the service of a teacher, a group of teachers or teachers generally or concerning any inequity arising out of the application of any such Act or regulation;

and

(b) to hear and determine—

- (i) an appeal by a teacher against a recommendation of the Director-General recommending the promotion of a teacher to a new office or vacancy in the teaching staff of the Department;
- (ii) an appeal by a teacher against a decision of the Director-General in relation to the salary fixed with respect to the teacher at the time of his appointment to the Department;
- (iii) an appeal by a teacher against any punishment for alleged misconduct imposed on him under the Education Act 1928 other than a punishment that is a reprimand or a fine that does not exceed \$50;

(iv) an appeal by a teacher against the amount of the rent of a house, being a house that was completed and ready for occupation prior to 1 January 1946, that is provided for his use by the Department and that is valued or revalued pursuant to the regulations made under the Education Act 1928.

(2) In relation to the jurisdiction conferred on the Tribunal by subsection (1) (b) (i)—

(a) an appeal lies by a teacher who is employed in the Department in other than a permanent capacity if and only if—

(i) the person recommended by the Director-General to the new office or vacancy in office is not employed in the Department in a permanent capacity; and

(ii) the appellant is in continuous employment in the Department in a full-time capacity;

(b) an appeal does not lie by a teacher who was not an applicant for the recommendation of the Director-General to a new office or vacancy in the teaching staff of the Department;

(c) an appeal does not lie in respect of a recommendation of the Director-General recommending the promotion of a teacher to a new office, or vacancy in an office, in the teaching staff of the Department that is an office within the class of office prescribed for the purposes of this paragraph;

(d) the Tribunal shall, in hearing and determining any appeal, have regard to the order of preference for employment submitted by

an appellant in his application for promotion to a new office or vacancy but where the appellant satisfies the Tribunal that circumstances have changed since the date of his application and that those changed circumstances justify a change in the order of preference so submitted the Tribunal shall permit the appellant to alter the order of preference submitted by the teacher and shall have regard to the order of preference as so altered.

(3) Without limiting the generality of subsection (1) (b) the Tribunal may confirm, modify or reverse any decision, determination or finding appealed against.

79. (1) An industrial matter may be referred to the Tribunal under section 78 (1) (a) (i) by an organization or association or by the Minister for Education.

By whom matters may be referred to the Tribunal.

(2) A matter may be referred to the Tribunal under section 78 (1) (a) (ii) by the Minister for Education or an organization, or jointly by the Minister for Education and an organization.

(3) An appeal to the Tribunal may be instituted by the teacher concerned or by an organization on his behalf.

80. (1) In this section—

“efficiency” means efficiency as defined in the regulations in force under this Act;

“seniority” means, as between teachers, seniority by longer period of continuous full-time service as a teacher in the Department calculated from the date of the appointment of the teacher to the Department and excluding any previous service as a teacher with the Department prior to that date;

Grounds of appeal in respect of appointments and promotions.

“service” includes service as—

- (a) a monitor;
- (b) a student pursuing a teacher education course that was commenced by the teacher before 1 January 1977 and undertaken with financial assistance provided by the Minister for Education under the Education Act 1928;
- (c) a science teacher exhibitor at The University of Western Australia with the financial assistance provided by the Minister for Education under the Education Act 1928;
- (d) a teacher in the Department in a temporary capacity if that service immediately precedes and is continuous with service as a teacher in the Department in a permanent capacity;
- (e) a teacher under the Director of Technical Education in his capacity as Regional Director of Industrial Training for Commonwealth Training Schemes, if that service immediately precedes and is continuous with service as a teacher in the Department in a permanent capacity.

(2) An appeal under section 78 (1) (b) (i) may be on the ground of—

- (a) superior efficiency; or
- (b) equal efficiency and seniority to the teacher recommended for promotion by the Director-General.

80A. (1) For the purposes of exercising its jurisdiction the Tribunal may sit at any time and place appointed by the Chairman and may adjourn to any time and place appointed by him.

Proceedings
of Tribunal.

(2) The decision of the Tribunal shall be in the form of an award, order, determination or declaration and shall be signed and delivered by the Chairman.

(3) Subject to section 74 (3) the jurisdiction of the Tribunal shall be exercised by all the members sitting together and when the members are divided in opinion on a question, the question shall be decided according to the decision of the majority of the members.

(4) To the extent to which it is not prescribed the Tribunal may regulate its own procedure.

(5) No record relating to an appeal against a punishment imposed on a teacher shall be open to public inspection.

80B. (1) Subject to this Division, the provisions of Division 2 of Part II that apply to and in relation to the exercise of the jurisdiction under this Act of the Commission constituted by a Commissioner shall apply, with such modifications as are prescribed and such other modifications as may be necessary or appropriate, to the exercise by the Tribunal of its jurisdiction under this Act.

Provisions
of Part II,
Division 2
to apply.

(2) For the purposes of subsection (1)—

(a) section 31 (1) (c) shall apply as if subparagraphs (i) and (ii) were deleted and the following subparagraph was substituted—

“ (i) the proceedings are in respect of an appeal under section 78 (1) (b) (iii); ”; and

(b) section 49 shall not apply to a decision of the Tribunal on an appeal under section 78 (1) (b).

No. 94.] *Acts Amendment and Repeal* [1984.
(*Industrial Relations*) (No. 2).

Division 2—Public Service Arbitrator and Appeal Boards.

Interpreta-
tion,
construction
and
application
of this
Division.

80C. (1) For the purposes of this Division, unless the contrary intention appears—

“Arbitrator” means the Commission constituted by a Public Service Arbitrator appointed under this Division;

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

“Board” means the Commission constituted as a Public Service Appeal Board established under this Division;

“employer”—

(a) in relation to a Government officer who is a public servant, means the Public Service Board; and

(b) in relation to any other Government officer, means the public authority by whom or by which that Government officer is employed;

“Government officer” means—

(a) every public servant;

(b) every other person employed on the salaried staff of a public authority;

and

(c) any person not referred to in paragraph (a) or (b) who would have been a Government officer within the meaning of section 96 of this Act as enacted before the coming into operation of section 58 of the Acts Amendment and Repeal (*Industrial Relations*) Act (No. 2) 1984,

but does not include—

- (d) any teacher as defined in section 73A;
- (e) any railway officer as defined in section 80M;
- (f) any member of the academic staff of a post-secondary education institution;
- (g) any person who is an officer or employee in either House of Parliament—
 - (i) under the separate control of the President or Speaker or under their joint control;
 - (ii) employed by a Committee appointed pursuant to the Joint Standing Rules and Orders of the Legislative Council and the Legislative Assembly; or
 - (iii) employed by the Crown; or
- (h) any person who is an officer or employee on the Governor's Establishment.

(2) This Division shall be read in conjunction with the Public Service Act 1978.

(3) Sections 80E and 80F do not apply to a Government officer if and when he occupies—

- (a) an office for which the remuneration payable is determined or recommended pursuant to the Salaries and Allowances Act 1975; or
- (b) an office for which the remuneration is determined by an Act to be at a fixed rate, or is determined or to be determined by the Governor pursuant to the provisions of any Act.

(4) Where any industrial matter in relation to a Government officer or group of Government officers is being dealt with under this Act and a question arises between 2 or more organizations as to which of them or whether or not one of them, should be named as a party to an award or order or should become a party to an industrial agreement, regard shall be had, when that question is being determined, to the past coverage of such Government officers by organizations under awards, orders and industrial agreements and under unregistered industrial agreements that the Commission considers to be relevant.

(5) In relation to—

(a) an application or claim made to an Arbitrator in respect of a medical practitioner employed in a public hospital, or a group of medical practitioners so employed, or medical practitioners so employed generally, and any proceedings in relation to such an application or claim; and

(b) any award, order or industrial agreement made or registered under this Division that is applicable to a medical practitioner employed in a public hospital, or a group of medical practitioners so employed, or medical practitioners so employed generally,

the Western Australian Branch of the Australian Medical Association Incorporated shall be deemed to be an organization for the purposes of subsection (4), section 80F, and the provisions applied by section 80G.

(6) In subsection (5) “medical practitioner” means a medical practitioner as defined in the Medical Act 1894.

(2) An additional Public Service Arbitrator or additional Public Service Arbitrators may be appointed within the Commission.

(3) An Arbitrator shall be appointed by the Chief Commissioner from amongst the other Commissioners.

(4) An Arbitrator shall hold office for such period not exceeding 2 years as is specified in the instrument of his appointment and is eligible for reappointment.

(5) The office of an Arbitrator becomes vacant if—

- (a) he ceases to be a Commissioner; or
- (b) his appointment as an Arbitrator is terminated pursuant to subsection (6).

(6) The Chief Commissioner may at any time terminate the appointment of an Arbitrator.

80E. (1) Subject to Division 3 of Part II, an Arbitrator has exclusive jurisdiction to enquire into and deal with any industrial matter relating to a Government officer, a group of Government officers or Government officers generally.

**Jurisdiction
of an
Arbitrator.**

(2) Without limiting the generality of subsection (1) the jurisdiction conferred by that subsection includes jurisdiction to deal with—

- (a) a claim in respect of the salary, range of salary or title allocated to the office occupied by a Government officer and, where a range of salary was allocated to the office occupied by him, in respect of the particular salary within that range of salary allocated to him; and
- (b) a claim in respect of a decision of an employer to downgrade any office that is vacant.

(3) In determining a claim relating to hours of duty or leave of absence of any kind for Government officers who are not officers within the meaning of the Public Service Act 1978, an Arbitrator shall not make an award which is, in any respect concerning hours of duty or leave of absence of any kind, more favourable than the hours of duty or leave of absence applicable to Government officers who are permanent officers or temporary officers, as is appropriate to the particular case, within the meaning of that Act.

(4) Nothing in subsection (3) shall prevent an Arbitrator from making an award prescribing, in respect of a group of officers, conditions to which officers of that group were entitled immediately before the coming into operation of section 47 of the Acts Amendment and Repeal (Industrial Relations) Act (No. 2) 1984.

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

By whom
matters may
be referred
to an
Arbitrator.

80F. (1) Subject to subsections (2) and (3) an industrial matter may be referred to an Arbitrator under section 80E by an employer, organization or association or by the Minister.

(2) A claim mentioned in section 80E (2) (a) may be referred to an Arbitrator by the Government officer concerned, or by an organization on his behalf, or by his employer.

(3) A claim mentioned in section 80E (2) (b) may be referred to an Arbitrator by an organization or an employer.

80G. (1) Subject to this Division, the provisions of Division 2 of Part II that apply to or in relation to the exercise of the jurisdiction of the Commission constituted by a Commissioner shall apply with such modifications as are prescribed and such other modifications as may be necessary or appropriate, to the exercise by an Arbitrator of his jurisdiction under this Act.

Provisions
of Part II
Division 2
to apply.

(2) For the purposes of subsection (1), section 49 shall not apply to a decision of an Arbitrator on a claim mentioned in section 80E (2).

80H. (1) For the purpose of an appeal under section 80 I there shall be established, within and as part of the Commission, a board to be known as a Public Service Appeal Board.

Public
Service
Appeal
Boards.

(2) A Board shall consist of 3 members.

(3) In the case of an appeal referred to in section 80 I (1) (a), (b) or (c), the members of a Board shall be—

- (a) the President, who shall be the Chairman;
- (b) an employer's representative appointed by the employer of the appellant; and
- (c) an employee's representative appointed by the relevant organization.

(4) In the case of an appeal referred to in section 80 I (1) (d), (e) or (f), the members of a Board shall be—

- (a) a Public Service Arbitrator, who shall be the Chairman;
- (b) an employer's representative appointed by the employer of the appellant; and
- (c) an employee's representative appointed by the relevant organization.

(5) In subsections (3) and (4) "relevant organization" means the Association unless the appellant is a member of another organization in which case it means that organization.

(6) In this section and section 80J “organization” means an organization of employees registered under Division 4 of Part II, a Trade Union within the meaning of the Trade Unions Act 1902, an association of employees registered as an organization pursuant to the provisions of the Commonwealth Act or, in the case of an appeal by a medical practitioner employed in a public hospital, the Western Australian Branch of the Australian Medical Association Incorporated.

(7) In subsection (4) “Public Service Arbitrator” means a Commissioner who is, for the time being, a Public Service Arbitrator appointed under section 80D.

Appeals.

80 I. (1) A Board has jurisdiction to hear and determine—

- (a) an appeal by any public servant, against any decision of the Public Service Board in relation to an interpretation of any provision of the Public Service Act 1978, and the regulations made thereunder, concerning the conditions of service (other than salaries and allowances) of public servants;
- (b) an appeal by a public servant who is—
 - (i) a Permanent Head within the meaning of the Public Service Act 1978;
 - (ii) the holder of an office included in the Special Division of the Public Service under the Public Service Act 1978; or
 - (iii) both such a Permanent Head and the holder of such an office,

under section 51 of the Public Service Act 1978, from a decision or recommendation made by the Public Service Board in relation to that public servant;

- (c) an appeal, other than an appeal under section 51 of the Public Service Act 1978, by any Government officer who occupies a position that carries a salary not lower

than the prescribed salary from a decision, determination or recommendation of his employer that he be dismissed;

- (d) an appeal by a public servant, other than a person referred to in paragraph (b), under section 51 of the Public Service Act 1978 from a decision or recommendation made by the Public Service Board in relation to that public servant;
- (e) any appeal, other than an appeal under section 51 of the Public Service Act 1978, by any Government officer who occupies a position that carries a salary lower than the prescribed salary from a decision, determination or recommendation of his employer that he be dismissed;
- (f) an appeal by a temporary officer, within the meaning of the Public Service Act 1978, from a determination of the Public Service Board under section 32 (2) of that Act,

and to adjust all such matters as are referred to in the foregoing paragraphs of this subsection.

(2) In subsection (1) "prescribed salary" means the lowest salary for the time being payable in respect of a position included in the Special Division of the Public Service.

80J. An appeal under section 80I—

**Institution
of appeals.**

- (a) shall be instituted in the prescribed manner and within the prescribed time;
- (b) may be instituted by the public servant or other Government officer concerned or by an organization on his behalf.

80K. (1) For the purposes of exercising its jurisdiction a Board may sit at any time and place appointed by the Chairman of the Board and may adjourn to any time and place appointed by him.

**Proceedings
of Boards.**

(2) The decision of a Board shall be given in writing and shall be signed and delivered by the Chairman of the Board.

(3) The jurisdiction of a Board shall be exercised by all the members sitting together and when the members are divided in opinion on a question, the question shall be decided according to the decision of the majority of the members.

(4) To the extent to which it is not prescribed a Board may regulate its own procedure.

Certain provisions of Part II, Division 2 to apply.

80L. (1) Subject to this Division the provisions of sections 26 (1) and (3), 27, 28, 31 (1), (2), (3), (5) and (6), 34 (3) and (4) and 36 that apply to and in relation to the exercise of the jurisdiction under this Act of the Commission constituted by a Commissioner shall apply, with such modifications as are prescribed and such other modifications as may be necessary, to the exercise by a Board of its jurisdiction under this Act.

(2) For the purposes of subsection (1) section 31 (1) shall apply as if paragraph (c) were deleted and the following paragraph were substituted—

“ (c) by a legal practitioner. ”.

Division 3—Railways Classification Board.

Interpretation of this Division.

80M. (1) In this Division unless the contrary intention appears—

“Board” means the Commission constituted by the Railways Classification Board established under this Division;

“head of branch” means an officer in control of one of the recognized divisions of the staff of the Railways Commission who receives his instructions from and communicates with the Railways Commission directly;

“member” means any member of the Board and includes the Chairman;

“Minister for Railways” means the Minister to whom the administration of the Government Railways Act 1904 is for the time being committed;

“railway officer” means any person—

- (a) holding or acting in a salaried position; or
- (b) receiving a daily rate of pay as a temporary clerk in the service of the Railways Commission;

“Railways Commission” means The Western Australian Government Railways Commission constituted pursuant to the provisions of the Government Railways Act 1904;

“salaried position” means a position in the service of the Railways Commission to which an annual salary is assigned but does not include—

- (a) the position of head of branch or sub-head of branch; or
- (b) a position held by a person engaged in a professional capacity;

“sub-head of branch” means an officer in control of some recognized section of a division of the staff of the Railways Commission who receives his instructions from and communicates with the head of the branch directly;

“Union” means the body known as the West Australian Railway Officers Union.

(2) Subject to this Division, the Union shall be deemed to be, and shall have and enjoy all of the rights, privileges and duties of, an organization registered under this Act.

(3) Forthwith after the coming into operation of section 47 of the Acts Amendment and Repeal (Industrial Relations) Act (No. 2) 1984 the Union shall lodge with the Registrar a true copy of its constitution and rules as then in force, certified in writing under the hands of its President and Secretary, and thereafter those rules shall be

deemed to be the registered rules of the Union and shall not be altered other than in accordance with this Act.

Railways
Classifica-
tion Board
established.

80N. (1) There shall be established, within and as part of the Commission, a Board to be known as the Railways Classification Board.

(2) Subject to this Act, the Board shall consist of 3 members, of whom—

- (a) one shall be appointed by the Chief Commissioner from amongst the other Commissioners, after consultation with the Minister for Railways and the Union, and shall be Chairman of the Board;
- (b) one shall be a person nominated for appointment by the Railways Commission and appointed by the Governor; and
- (c) one shall be a person nominated for appointment by the Union and appointed by the Governor.

(3) Whenever it is necessary for a person to be nominated for appointment to an office referred to in subsection (2) (b) or (c) the Minister shall, in writing, request the Railways Commission, or the Union, as the case requires, to submit to him, in writing, the name of a person willing to act as a member of the Board.

(4) Where a request under subsection (3) is made to the Union the Chief Electoral Officer appointed under the Electoral Act 1907, or some other officer appointed by him in writing, shall conduct an election in the prescribed manner amongst the members of the Union for the purposes of determining the name of the person to be nominated by that body for appointment to the office of member, but if, for any reason, a person is not elected for nomination within the period prescribed in that behalf the Union may determine that name in accordance with its rules.

(5) Where the Railways Commission or the Union has been requested under subsection (3) to submit the name of a person to the Minister—

- (a) if such a name is submitted to the Minister within the prescribed period of the Railways Commission or the Union, as the case requires, receiving the request, the person whose name appears on the submission shall be appointed to the office of member; and
- (b) if default is made within that time in submitting a name to the Minister, the Minister may nominate for appointment to the office of member such person as he thinks fit.

(6) A person who has been dismissed from the service of the Railways Commission for misconduct is not eligible for appointment as a member or the deputy of a member of the Board.

80O. (1) Subject to this Act—

Terms of
office, etc.

- (a) a person appointed as Chairman or as a member pursuant to section 80N (2) (b) shall hold office for such period, not exceeding 2 years as is specified in the instrument of his appointment and is eligible for reappointment;
- (b) a person appointed as a member pursuant to section 80N (2) (c) shall hold office for a period of 2 years and is eligible for reappointment.

(2) The office of the Chairman becomes vacant if—

- (a) he ceases to be a Commissioner; or
- (b) his appointment as a member of the Board is terminated pursuant to subsection (3).

(3) The Chief Commissioner may, after consultation with the Union, at any time terminate the appointment of the Chairman as a member of the Board.

(4) The Governor may terminate the appointment of a member referred to in section 80N (2) (b) or (c) for inability, inefficiency or misbehaviour.

(5) The office of a member referred to in section 80N (2) (b) or (c) shall become vacant if—

- (a) in the case of a member referred to in section 80N (2) (b), the nomination of the Railways Commission of the member is withdrawn;
- (b) he resigns pursuant to subsection (6);
- (c) he is an undischarged bankrupt or has his affairs under liquidation by arrangement with his creditors;
- (d) his appointment is terminated pursuant to subsection (4); or
- (e) he is dismissed from the service of the Railways Commission for misconduct.

(6) A member referred to in section 80N (2) (b) or (c) may resign his office by written notice signed by him and addressed to the Minister and the resignation takes effect on the day on which it is received by the Minister or on such later day as is specified in the notice.

(7) The Chief Commissioner may, after consultation with the Minister for Railways and the Union, appoint a Commissioner to be the deputy of the Chairman and may at any time terminate that appointment.

(8) The Governor may—

- (a) appoint as deputy of a member, other than the Chairman, a person who has been nominated in the manner in which the member was nominated; and

(b) terminate any appointment under paragraph (a) at any time.

(9) A person appointed pursuant to subsection (7) or (8) has all the functions, powers and duties of the member for whom he is the deputy, in his capacity as a member, in the event of—

(a) that member being unable to attend to his duties under this Division, whether on account of illness or otherwise; or

(b) the office of that member being vacant.

80P. (1) Notwithstanding the expiry of the period of appointment of a member or deputy of a member, the Chief Commissioner or the Governor, as the case may be, may continue him in office for such period as the Chief Commissioner or the Governor determines in order to enable the Board to complete all matters, proceedings or inquiries that it has entered upon while he was a member or deputy.

Continuation in office.

(2) The Chief Commissioner or the Governor, as the case may be, may from time to time extend a period determined by him under subsection (1), notwithstanding the expiry of that period, for such further period or periods as he thinks fit.

80Q. An act, proceeding, decision or determination of the Board is not invalid by reason of any defect or irregularity in the election, nomination or appointment of any member or deputy of a member.

Validity of acts of Board.

80R. (1) Subject to Division 3 of Part II, the Board has exclusive jurisdiction to enquire into and deal with any industrial matter relating to a railway officer, a group of railway officers or railway officers generally.

Jurisdiction of Board.

(2) Without limiting the generality of subsection (1) the jurisdiction conferred by that subsection includes jurisdiction—

(a) to classify all salaried positions;

- (b) to create classes and to provide the minimum and maximum salaries of all salaried positions in any class;
- (c) to prescribe the method by which railway officers shall be advanced from the minimum to the maximum of the salary assigned to their positions, or from class to class;
- (d) to hear and determine any application by any railway officer or class of railway officers in respect of the classification, reclassification, or salary of that railway officer or class of railway officers, or his or their position or positions;
- (e) to hear and determine any appeal by the Union in respect of the reclassification of a salaried position by the Railways Commission pursuant to section 80U (1); and
- (f) to hear and determine any application by the Railways Commission in respect of the classification, reclassification or salary of any railway officer or class of railway officers or his or their position.

By whom
matters may
be referred
to the Board.

80S. (1) Subject to section 80R (2) (d), (e) and (f) an industrial matter may be referred to the Board by the Union or the Railways Commission.

(2) An application referred to in section 80R (2) (d) may be made by the railway officer or officers concerned or by the Union on his or their behalf.

Promotions
appeal
provisions to
apply when
positions are
classified or
reclassified.

80T. (1) When and as often as a salaried position is classified or reclassified, as the case may be, pursuant to section 80R, the position shall thereupon by force of this Act be regarded as vacant for the purposes of Division 4 of this Part, notwithstanding that there is then an occupant in the position (in this section referred to as "the occupant").

(2) Where subsection (1) has effect in relation to a reclassified position and some person other than the occupant is appointed to the reclassified position, the classification of the occupant shall not be affected merely by the reclassification or merely by his occupancy of the reclassified position for any period following the reclassification.

(3) The provisions of this section shall not prejudice or affect—

(a) the meaning of the expressions “vacancy” and “vacant office” as used in Division 4 of this Part, but shall be in addition thereto;

or

(b) the continuity of the service of the occupant.

80U. (1) Where any salaried position becomes vacant by reason of the retirement, resignation or voluntary transfer of an officer from that position, the Railways Commission may reclassify that position.

Reclassification of vacant offices by Railways Commission.

(2) Notwithstanding that a salaried position has been classified or reclassified by or under a decision or award of the Board, the Railways Commission shall not be regarded as having—

(a) failed to give due effect to that decision; or

(b) failed to comply with the provisions of that award,

by reason only that it has reclassified that position pursuant to subsection (1).

(3) Where the Board is notified by the Railways Commission that a salaried position classified under an award of the Board has been reclassified pursuant to subsection (1) then, unless the Board upholds an appeal against that reclassification under section 80R(2)(e), the Board shall vary the award in accordance with that reclassification.

Proceedings
of Board.

80V. (1) For the purposes of exercising its jurisdiction the Board may sit at any time and place appointed by the Chairman and may adjourn to any time and place appointed by him.

(2) The jurisdiction of the Board shall be exercised by all the members sitting together and when the members are divided in opinion on a question, the question shall be decided according to the decision of the majority of the members.

(3) The decision of the Board shall be in the form of an award, order, determination or declaration and shall be signed and delivered by the Chairman.

(4) To the extent to which it is not prescribed the Board may regulate its own procedure.

Provisions
of Part II,
Division 2 to
apply.

80W. (1) Subject to this Division, the provisions of Division 2 of Part II that apply to and in relation to the exercise of the jurisdiction under this Act of the Commission constituted by a Commissioner shall apply, with such modifications as are prescribed and such other modifications as may be necessary or appropriate, to the exercise by the Board of its jurisdiction under this Act.

(2) For the purposes of subsection (1), section 49 does not apply to a decision of the Board referred to in section 80R(2).

Division 4—Promotions Appeal Boards.

Interpreta-
tion of
this
Division.

80X. (1) In this Division, unless the contrary intention appears—

“Board” means the Commission constituted as a Promotions Appeal Board established under this Division;

“eligible employee”, in relation to an office, means any employee except where it is a prerequisite for the appointment of a person to the office for the person to have

successfully completed any course of training, or to possess or to have made progress towards obtaining any educational qualification, in which case it means an employee who has successfully completed that course of training or possesses or has made progress towards obtaining that qualification, as the case may require;

“office” means an office under the Public Service Act 1978 or any other office or position in a public authority but does not include—

- (a) any office for which the remuneration payable is determined or recommended pursuant to the Salaries and Allowances Act 1975;
- (b) any office or position in the teaching staff of the Education Department as defined in section 73A;
- (c) any office or position in the police force;
- (d) any office in the academic staff of a post-secondary education institution;
- (e) any office or position in respect of which the maximum salary or wage exceeds the maximum salary payable to the highest office within the general division established under the Public Service Act 1978;
- (f) any office or position in the staff of either House of Parliament—
 - (i) under the separate control of the President or Speaker or under their joint control;
 - (ii) employed by a Committee appointed pursuant to the Joint Standing Rules and Orders of the Legislative Council and the Legislative Assembly; or
 - (iii) employed by the Crown;

(g) any office or position in the staff on the Governor's Establishment; or

(h) any temporary office or position;

“organization” means an organization of employees registered under Division 4 of Part II, a Trade Union within the meaning of the Trade Unions Act 1902, an association of employees registered as an organization pursuant to the provisions of the Commonwealth Act, or, in the case of an appeal by a medical practitioner employed in a public hospital, the Western Australian Branch of the Australian Medical Association Incorporated;

“promotion” means movement from one office to another office which has a wage or salary and conditions of employment which when viewed as a whole are, in the opinion of a Board, superior to those which the former office had, and does not include reclassification of an office;

“promoting authority”, in relation to promotion of employees, means the person or persons in whom is vested by law authority to promote an employee;

“relevant organization”, in relation to a promotion to an office, means an organization that is a party to an award or industrial agreement under this Act or the Commonwealth Act whereby the terms and conditions of employment pertaining to the office are or will be regulated;

“vacant office” means an office in which a vacancy has occurred or a new office.

(2) For the purposes of the application of this Division in relation to—

(a) an office other than an office in a scheduled authority, “employee” means a person who is a public servant or any other person employed in a public authority other than a scheduled authority;

(b) an office in a scheduled authority, “employee” means a person employed in that scheduled authority.

(3) In subsection (2) “scheduled authority” means a public authority mentioned in Schedule 2.

(4) The Governor may, by order, amend Schedule 2.

80Y. (1) Where a vacancy occurs in an office or a new office is created and the vacancy or new office has not been filled by the transfer of an employee without promotion, the following provisions shall apply—

Provisions
relating to
promotion.

- (a) notice of the vacancy in the office or of the creation of the new office shall be published in the prescribed manner and for the prescribed period;
- (b) such notice shall specify a date on or before which applications by employees for promotion to the office shall be receivable by the promoting authority concerned;
- (c) the promoting authority concerned may recommend the promotion of any applicant employee to the office but no such recommendation shall be made until after the expiration of the period fixed for the receipt of applications;
- (d) after making a recommendation for promotion the promoting authority shall cause notice to be given in the prescribed manner and within the prescribed time giving particulars of the recommendation and stating that, subject to the provisions of this Division, any applicant employee not recommended for promotion to the office may appeal against the recommendation.

(2) The time prescribed for the purposes of subsection (1) (a) shall be such as to afford prescribed employees reasonable opportunity to make application for promotion to vacant offices and the date

fixed pursuant to subsection (1) (b) in respect of any particular vacant office shall be such as to afford prescribed employees reasonable opportunity to make application for promotion to that office.

(3) In subsection (2) “prescribed employees”, in relation to a vacant office, means—

- (a) where the regulations prescribe the class or classes of employees to whom notice of vacancies in that office shall be given, all eligible employees of that class or those classes, as the case may be; or
- (b) where no such class is so prescribed, all eligible employees.

(4) Nothing in or prescribed under this section prevents—

- (a) applications for appointment to a vacant office from being invited from persons who are not employees; or
- (b) the appointment to a vacant office of a person who is not an employee.

Promotions
Appeal
Boards.

80Z. (1) For the purposes of an appeal under this Division there shall be established, within and as part of the Commission, a board to be known as a Promotions Appeal Board.

(2) Subject to subsections (3) and (4), the members of a Board shall be—

- (a) a Commissioner who shall be the Chairman;
- (b) a person appointed by the promoting authority; and
- (c) a person appointed by the relevant organization unless—
 - (i) there is no relevant organization;
 - (ii) the relevant organization fails to appoint a member at the latest 14 days before the date of hearing; or

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- (iii) if there is more than one appellant and 2 or more of the appellants are eligible for and members of different relevant organizations,

in which case a Board shall include—

- (iv) if there is only one appellant, a person appointed by the appellant; or
- (v) if there is more than one appellant, a person appointed unanimously by all appellants, or in default of an agreement thereon, a person appointed by the Chairman of the Board from persons nominated respectively by the appellants.

(3) In the case of a promotion to the office of a Government officer as defined in section 80C, a Commissioner shall not be assigned to act as Chairman of a Board unless he is, for the time being, a Public Service Arbitrator appointed under section 80D.

(4) For the purposes of subsection (2) (c) where there is more than one relevant organization, a member may be nominated unanimously by all relevant organizations, or in default of an agreement thereon, a person shall be selected by the Chairman of that Board from persons nominated respectively by the relevant organizations.

(5) Each nomination under this section shall be on the prescribed form and shall be lodged with the Registrar.

80ZA. (1) A Board shall have jurisdiction to hear ^{Appeals.} and determine an appeal by an eligible employee against the recommendation of another employee for promotion to a vacant office.

(2) Where an employee is recommended for promotion to a vacant office, any other employee who—

(a) was an applicant for promotion to the office; and

(b) is an eligible employee,

may appeal against the recommendation if he considers that he has a better claim to promotion to the office than the employee who has been recommended for promotion.

(3) Whenever 2 or more employees appeal under this Division against the same recommendation for promotion of another employee all appeals shall be heard and determined together.

(4) The Board hearing and determining an appeal or appeals shall make full enquiry into the claims to promotion of the appellant or each appellant, as the case may be, and the employee who has been recommended for promotion.

(5) In determining whether an appellant has a better claim to promotion than the employee who has been recommended for promotion, or than any other appellant, the Board shall have regard to special qualifications and aptitude for the discharge of the duties of the office to be filled together with merit, diligence, experience and good conduct.

(6) For the purposes of subsection (5) the Board shall, subject to subsection (7), have regard to all service, experience and qualification gained prior to the expiration of the period fixed for the receipt of applications for promotion to the office.

(7) Where the office is one in which a vacancy has occurred no regard shall be had to service in an acting capacity in the office unless that service was prior to the occurrence of the vacancy.

(8) Subject to subsection (9), where an appeal is upheld, the appellant shall be promoted to the vacant office.

(9) When 2 or more appeals against the same recommendation for promotion are heard and determined together, and 2 or more of such appeals are allowed by a Board, the Board shall decide, as between the successful appellants, which one of them shall receive the promotion in relation to which the appeals have been successful.

(10) Where notice of a vacant office is published and applications for promotion to that office are invited under section 80Y (1) (a) and (b), and an application for appointment to the office is made in response to the invitation by an employee for whom the appointment would not constitute promotion, the provisions of this Division shall apply, with such modifications as are necessary, to and in relation to that applicant—

- (a) as if he were an applicant for promotion to the office; and
- (b) where he is recommended for appointment to the office, as if that recommendation were a recommendation for promotion.

80ZB. An appeal under this Division—

**Institution
of appeals.**

- (a) shall be instituted in the prescribed manner and within the prescribed time; and
- (b) may be instituted by the applicant concerned.

80ZC. (1) For the purpose of exercising its jurisdiction a Board may sit at any time and place appointed by the Chairman of the Board and may adjourn to any time and place appointed by him.

**Proceed-
ings of
Board.**

(2) The decision of a Board shall be given in writing and shall be signed and delivered by the Chairman of the Board.

(3) The jurisdiction of a Board shall be exercised by all the members sitting together and when the members are divided on a question, the question shall be decided according to the decision of the majority of the members.

(4) To the extent to which it is not prescribed a Board may regulate its own procedure.

Certain provisions of Part II, Division 2 to apply.

80ZD. (1) Subject to this Division the provisions of sections 26 (1) and (3), 27, 28, 31 (1), (2), (3), (5) and (6), 34 (3) and (4) and 36 that apply to and in relation to the exercise of the jurisdiction under this Act of the Commission constituted by a Commissioner shall apply, with such modifications as are prescribed and such other modifications as may be necessary, to the exercise by a Board of its jurisdiction under this Act.

(2) For the purposes of subsection (1), section 31 (1) shall apply as if paragraph (c) were deleted and the following paragraph were substituted—

“ (c) by a legal practitioner. ”.

PART IIB—ENQUIRIES.

Enquiries.

80ZE. (1) The Minister may refer to the Commission for enquiry and report under this section any matter that, in the opinion of the Minister, affects or may affect industrial relations and the Commission shall enquire into that matter and report to the Minister thereon.

(2) Subsection (1) does not apply to an industrial matter or a matter that is otherwise within the jurisdiction of the Commission under this Act.

PART IIC—ARRANGEMENTS WITH OTHER INDUSTRIAL
AUTHORITIES.

80ZF. In this Part a reference to the “Australian Commission” includes a reference to a member of the Australian Commission.

References to
“Australian
Commis-
sion”.

80ZG. (1) If in the opinion of the Chief Commissioner it is appropriate to do so, the Commission may, notwithstanding anything in this Act, exercise, in the presence of—

Joint
proceedings.

- (a) the Australian Commission;
- (b) the parties to an industrial dispute in relation to which the Australian Commission is exercising power; and
- (c) any witness summoned by the Australian Commission,

any of the powers of the Commission that are exercisable by it in relation to an industrial matter.

(2) Where the Commission is exercising, as provided by subsection (1), in relation to an industrial matter, any of the powers of the Commission that are exercisable by it, it may, without limiting the generality of section 26 (1) (a) and (b), have regard to any evidence given, in its presence and in the presence of the parties to the industrial matter, to the Australian Commission, being evidence that is relevant to the exercise of those powers.

(3) Nothing in this section shall be taken to prevent the Commission from exercising powers in relation to an industrial matter in the presence of any person other than the Australian Commission or a person referred to in subsection (1) (b) or (c).

80ZH. (1) The Chief Commissioner may, where in his opinion it is appropriate to do so, request the President of the Australian Commission to nominate a member of the Australian Commission to deal with the whole or any part of an industrial matter which has arisen or is threatened or impending.

Reference of
industrial
matters to
Australian
Commission
for deter-
mination
under this
Act.

(2) Where, in accordance with a request under subsection (1), the President of the Australian Commission nominates a member of the Australian Commission, the Chief Commissioner may refer the whole or part of the industrial matter in respect of which the request was made to the member to be inquired into and to be dealt with under this Act by conciliation, by arbitration or by conciliation and, if necessary, by arbitration, and may, at any time before a decision is made by the member in relation to the industrial matter, revoke the reference.

(3) For the purposes of inquiring into and dealing with the whole or part of an industrial matter that has been referred to him under subsection (2), the member of the Australian Commission may exercise all the powers of the Commission under this Act that are exercisable by a Commissioner or by a constituent authority and in the exercise of those powers shall be deemed to be the Commission.

(4) Without limiting subsection (3), a decision made by a member of the Australian Commission in relation to an industrial matter referred to him under subsection (2) shall, for the purposes of this Act, be deemed to be an award, order or declaration as the case may require, made by the Commission under this Act.

Conferences
with other
industrial
authorities.

80ZI. (1) Where it appears to the Chief Commissioner to be desirable, in relation to a matter falling within the jurisdiction of the Commission, that a conference be held with a corresponding authority, he may, if that authority is willing, confer with that authority, or arrange for another member of the Commission to confer with that authority, with a view to securing co-ordination between any decision made or to be made under this Act and any decision made or to be made by that authority.

(2) Where it appears to the Chief Commissioner to be desirable, he may confer with the Australian Commission in relation to the exercise, or the proposed exercise, of the powers of the Commission under section 80ZG.

(3) In subsection (1) "corresponding authority" means the Australian Commission or any Board or Court of Conciliation or Arbitration or other tribunal, body or persons having authority under the laws of another State or a Territory of the Commonwealth to exercise any power of conciliation or arbitration with reference to industrial relations, or any Special Board constituted under any law of another State or a Territory relating to factories, or any other Board, Court, tribunal or body of another State or Territory prescribed for the purposes of this section.

80ZJ (1) Subject to this Act the Commission may exercise the powers conferred on it by or under such of the provisions as may be prescribed of the Commonwealth Act or of any other prescribed enactment.

Exercise of powers conferred under Commonwealth Act.

(2) A decision made by the Commission in exercise of the powers referred to in subsection (1) shall, for the purposes of this Act, be deemed not to have been made by the Commission under this Act. "

48. Part III of the principal Act is amended in the heading by deleting "INDUSTRIAL MAGISTRATES" and substituting the following—

Heading to Part III amended.

" ENFORCEMENT OF ACT, AWARDS, INDUSTRIAL AGREEMENTS AND ORDERS "

49. Section 81 of the principal Act is amended by inserting after subsection (2) the following subsection—

Section 81 amended.

" (2a) In the exercise of his jurisdiction under this Act an Industrial Magistrate has like powers to a stipendiary magistrate sitting as a court of summary jurisdiction. "

Section 82
substituted
and section
82A inserted.

50. Section 82 of the principal Act is repealed and the following sections are substituted—

Jurisdiction
of Industrial
Magistrates
and Full
Bench.

“ 82. (1) An Industrial Magistrate has jurisdiction to hear and determine any application made to him 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 or 66, shall not be made otherwise than to an Industrial Magistrate.

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

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

(5) Subsection (4) 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.

Time for
application.

82A. An application under section 83 or 84A shall be made within 6 years from the time of the alleged contravention or failure to comply. ”.

Section 83
amended.

51. Section 83 of the principal Act is amended—

(a) in subsection (1) by deleting “not being an order referred to in subsection (5) of section 50” and substituting the following—

“ other than an order made under section 32 or 66 ”;

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(b) in subsection (2) by deleting paragraph (a) and substituting the following paragraph—

“ (a) if the contravention or failure to comply is proved, issue a caution or impose such penalty as he considers just but not exceeding \$1 000 in the case of an employer, organization or association and \$250 in any other case; ”;

(c) in subsection (5) in paragraphs (a) and (b) by deleting “12 months” and substituting the following in each case—

“ 6 years ”;

and

(d) by repealing subsection (8) and substituting the following subsection—

“ (8) Unless otherwise prescribed the practice and procedure to be observed before an Industrial Magistrate shall be those observed in civil proceedings. ”.

52. After section 84 of the principal Act the following section is inserted— Section 84A
inserted.

“ 84A. (1) Subject to this section, where a person contravenes or fails to comply with any provision of this Act or a direction, order or declaration made or given under section 32 or 66— Proceedings
before the
Full Bench
for
enforcement
of this Act.

(a) the Minister;

(b) the Registrar or a Deputy Registrar;

(c) an Industrial Inspector;

- (d) any organization, association or employer with a sufficient interest in the matter,

may make application in the prescribed manner to the Full Bench for the enforcement of the provision, direction, order or declaration.

(2) An application alleging a contravention or failure to comply with section 44 (3) may be made only by the Registrar or a Deputy Registrar and only by direction of the Commission.

(3) Subsection (1) does not apply to a contravention or failure to comply that constitutes an offence against this Act.

(4) In dealing with an application under subsection (1) the Full Bench—

(a) shall have regard to the seriousness of the contravention or failure to comply, any undertakings that may be given as to future conduct, and any mitigating circumstances; and

(b) before proceeding to a hearing of the application, shall invite the parties to the application to confer with it, unless in the opinion of the Full Bench such a conference would be unavailing, with a view to an amicable resolution of the matter to which the application relates.

(5) On the hearing of an application under subsection (1) the Full Bench may—

(a) if the contravention or failure to comply is proved—

(i) accept any undertaking given;

or

(ii) by order, issue a caution or impose such penalty as it considers just but not exceeding \$2 000 in the case of an employer, organization, or association and \$500 in any other case; or

(iii) direct the Registrar or a Deputy Registrar to issue a summons under section 73 (1);

or

(b) by order, dismiss the application,

and subject to subsection (6), in any case with or without costs, but in no case shall any costs be given against the Minister, the Registrar, a Deputy Registrar, or an Industrial Inspector.

(6) In proceedings under this section costs shall not be given to any party to the proceedings for the services of any legal practitioner or agent of that party unless, in the opinion of the Full Bench, the proceedings have been frivolously or vexatiously instituted or defended, as the case requires, by the other party.

(7) Where the Full Bench, by an order made under this section, imposes a penalty or costs it 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.

(8) The standard of proof to be applied by the Full Bench in proceedings under this section shall be the standard observed in civil proceedings. ”.

Section 85
amended.

53. Section 85 of the principal Act is amended—

- (a) by repealing subsections (2) and (3) and substituting the following subsections—

“ (2) The Court shall consist of 4 members namely—

- (a) a Judge who shall be the Presiding Judge;
- (b) a Judge who shall be the Deputy Presiding Judge; and
- (c) 2 Judges who shall be ordinary members.

(3) 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 Presiding Judge and the Deputy Presiding Judge shall be such of those members as the Chief Justice of Western Australia shall nominate to be the Presiding Judge and the Deputy Presiding Judge, respectively.

(3a) For the purpose of exercising its jurisdiction the Court shall be constituted by—

- (a) the Presiding Judge, the Deputy Presiding Judge and 1 of the ordinary members; or
- (b) the Presiding Judge and the 2 ordinary members; or
- (c) the Deputy Presiding Judge and the 2 ordinary members.

(3b) When the Court is constituted under subsection (3a) (c) a reference in section 87 or 88 to the Presiding Judge shall be read as a reference to the Deputy Presiding Judge. ”;

and

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- (b) by repealing subsection (6) and substituting the following subsection—

“ (6) Where a member of the Court is, or is expected to be, unable to attend to his duties under this Part, whether on account of illness or otherwise, the Chief Justice of Western Australia may appoint a Judge to be acting Presiding Judge, acting Deputy Presiding Judge or an acting ordinary member of the Court, as the case may require, for such period as the Chief Justice determines, and the appointment of the acting member of the Court authorizes him to participate in the completion of the hearing and determination of any proceedings that he may be participating in at the expiration of that period so that he holds an appointment as an acting member of the Court during any further period while such hearing and determination are being completed. ”.

54. Section 90 of the principal Act is amended in subsection (2)— Section 90 amended.

- (a) by inserting after paragraph (a) the following—

“ or ”;

- (b) by deleting “; or” at the end of paragraph (b) and substituting a full stop; and

- (c) by deleting paragraph (c).

55. Part V of the principal Act is amended in the heading by deleting “OF INDUSTRIAL UNIONS”. Heading to Part V amended.

Section 93
amended.

56. Section 93 of the principal Act is amended—

(a) by repealing subsection (1) and substituting the following subsections—

“ (1) There shall be appointed under and subject to the Public Service Act 1978—

(a) a Registrar; and

(b) such number of Deputy Registrars and other officers as may from time to time be necessary for the purposes of this Act.

(1a) Notwithstanding subsection (1) the Minister on the recommendation of the Chief Commissioner shall appoint as officers of the Commission such Associates as he considers necessary, and such officers shall not be appointed under and subject to the Public Service Act 1978. ”; and

(b) by repealing subsection (9) and substituting the following subsection—

“ (9) Subject to this Act, the Commission may direct the Registrar or a Deputy Registrar to make an application under section 83 or 84A or to institute proceedings for an offence against this Act. ”.

Section 95
substituted.

57. Section 95 of the principal Act is repealed and the following section is substituted—

Duties of
Deputy
Registrar.

“ 95. (1) A Deputy Registrar shall have and may exercise such powers and authorities and discharge such duties of the Registrar as—

(a) the Registrar or the Chief Commissioner, after consultation with the Registrar, may in writing assign to him generally; or

(b) the Registrar or the Commission may assign to him in any particular case.

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(2) During the illness, temporary incapacity, or temporary absence from office of the Registrar the designated Deputy Registrar, shall have and may exercise the powers and authorities and shall discharge the duties of the Registrar under this Act.

(3) In subsection (2) "designated Deputy Registrar" means—

- (a) if there is only one Deputy Registrar, that Deputy Registrar;
- (b) if there are 2 or more Deputy Registrars, the Deputy Registrar designated by the Chief Commissioner. ”.

58. Part VI and sections 97 and 97A of the principal Act are repealed. Part VI and sections 97 and 97A of the principal Act are repealed.

59. Section 101 of the principal Act is repealed. Section 101 repealed.

60. Sections 102A and 103 of the principal Act are repealed and the following sections are substituted— Sections 102A and 103 substituted.

“ 102A. (1) Subject to this Act, the Registrar or a Deputy Registrar may, of his own motion, and shall, if he is directed in accordance with this Act to do so, make an application under section 83 or 84A or institute proceedings for an offence against this Act. Institution of proceedings by officers.

(2) Subject to this Act, an Industrial Inspector may, of his own motion, make an application under section 83 or 84A or institute proceedings for an offence against this Act.

Application
may relate
to more
than one
matter in
certain
circum-
stances.

103. (1) Where it is alleged that one and the same breach has been committed by 2 or more persons or that related breaches have been committed respectively by 2 or more persons, the matters may be joined in the one application, notwithstanding that the breach or breaches are alleged to have been committed otherwise than at the same time, and notwithstanding that in cases where there is a principal respondent an application is not made in respect of the principal respondent or that the principal respondent is not amenable to proceedings.

(2) The Full Bench or the Industrial Magistrate, as the case may be, may proceed to deal with the matters joined in the application together, but if of opinion that the respondent is likely to be prejudiced by the joinder, may require the applicant to elect upon which matter he will proceed, and may direct that the matter so elected shall be dealt with separately.

(3) In this section—

“application” means an application made under section 83 or 84A;

“breach” means a contravention or failure to comply with a provision of this Act or an award, industrial agreement, direction, order or declaration, but does not include a contravention or failure to comply that constitutes an offence against this Act. ”.

Section 113
amended.

61. Section 113 of the principal Act is amended in subsection (1) by deleting “Commission” where it first occurs and substituting the following—

“ members of the Commission, or a majority of them, ”.

1984.] *Acts Amendment and Repeal* [No. 94.
(Industrial Relations) (No. 2).

62. Section 114 of the principal Act is amended in subsection (2) by deleting "twelve months" and substituting the following—

Section 114 amended.

" 6 years "

63. After section 115 of the principal Act the following section is inserted—

Section 115A inserted.

" 115A. The provisions of this Part shall be read together with, and shall be subject to, the provisions of Part VI of the Acts Amendment and Repeal (Industrial Relations) Act (No. 2) 1984. "

This Part to be read with superseding transitional provisions.

64. The principal Act is amended by adding the following Schedule—

Schedule 2 added.

" SCHEDULE 2. (Section 80X)

The Dairy Industry Authority of Western Australia established under the Dairy Industry Act 1973.

The Fruit Growing Industry Trust Fund Committee constituted by the Fruit Growing Industry (Trust Fund) Act 1941.

The Grain Pool of W.A. constituted under the Grain Marketing Act 1975.

The Honey Pool of Western Australia constituted under the Honey Pool Act 1978.

The Joondalup Development Corporation established under the Joondalup Centre Act 1976.

The Lotteries Commission constituted by the Lotteries (Control) Act 1954.

The Metropolitan Market Trust constituted by the Metropolitan Market Act 1926.

Any post-secondary education institution.

The Potato Growing Industry Trust Fund Advisory Committee constituted by the Potato Growing Industry Trust Fund Act 1947.

1984.] *Acts Amendment and Repeal* [No. 94.
(*Industrial Relations*) (No. 2).

Provision affected.

Amendment.

	Delete "destroys, defaces, alters, takes, or otherwise interferes" substitute "destroy, deface, alter, take, or otherwise interfere".
	Delete "puts or delivers" substitute "put or deliver".
	Delete "records" in paragraph (d) and (e) substitute "record" in each case.
	Delete "forges or alters" substitute "forge or alter".
	Delete "supplies" substitute "supply".
	Delete "obtains" substitute "obtain".
	Delete "destroys, takes, opens, or otherwise interferes" substitute "destroy, take, open, or otherwise interfere".
	Delete " , commits an offence against this Act".
	Delete the penalty.
Section 70 (2)	Delete "who" substitute "shall not".
	Delete "threatens, offers or suggests" substitute "threaten, offer or suggest".
	Delete "uses, causes, inflicts or procures" substitute "use, cause, inflict or procure".
	Delete " , commits an offence against this Act".
	Delete the penalty.
Section 102 (1)	Delete "who" substitute "shall not".
	Delete "fails" in paragraphs (a) and (b) substitute "fail" in each case.
	Delete "refuses" substitute "refuse".
	Delete "represents" substitute "represent".
	Delete " , commits an offence against this Act".
	Delete the penalty.
Section 102 (2)	Delete "who" substitute "shall not".
	Delete "resists or obstructs" substitute "resist or obstruct".
	Delete "misleads" substitute "mislead".
	Delete " , commits an offence against this Act".
	Delete the penalty.
Section 104	Repeal.
Section 111 (1)	Delete the penalty.
Section 112 (2)	Delete the penalty.

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(Industrial Relations) (No. 2).

Provision affected.

Amendment.

- Section 113 (4) (i) Substitute the following paragraph—
 “ (i) may provide that contravention of or failure to comply with a regulation constitutes an offence and provide for penalties not exceeding a fine of \$40 for offences against the regulations; ”.

Consequ-
 ential
 amendments.

66. The principal Act is amended as follows—

Provision affected.

Amendment.

- Section 8 (3) (a) Delete “Industrial”.
- Section 11 (2) Delete “Industrial”.
- Section 16 (2) and (3) Delete “Industrial”, wherever it occurs.
- Section 23 (2) (b) Delete “an award, order, or” substitute “a”.
- Section 23 (4) and (5) Repeal.
- Section 27 (1) (t) Delete “Industrial”.
- Section 27 (1) (u) Delete “a union” substitute “an organization”.
- Section 31 (2) Delete “A union” substitute “An organization”.
 Delete “union” substitute “organization”.
- Section 35 (1) Delete “and to section 45”.
- Section 37 (2), (3) and (6) Repeal.
- Section 37 (4) Delete “Subject to subsection (6), an” substitute “An”.
- Section 40 (1) Delete “32, 37,” substitute “29A”.
 Delete “by adding to the award a new provision or by adding to, varying, or rescinding an existing provision”.
- Section 40 (2) Delete “union, association,” substitute “organization or association named as a party to the award”.
- Section 44 (2) (b) Delete “Commission or the President” substitute “Commissioner who caused the summons to be given or the Full Bench”.

1984.] *Acts Amendment and Repeal* [No. 94.
(Industrial Relations) (No. 2).

<i>Provision affected.</i>	<i>Amendment.</i>
Section 44 (4)	Repeal.
Section 44 (6) (a)	Delete “, Deputy Registrar, or an Assistant” substitute “or a Deputy”.
Section 44 (11) (a) and (b) and (12)	Delete “Industrial”.
Section 44 (13)	Delete “or award”.
Section 45	Repeal.
Section 46 (1)	Delete “union” substitute “organization”.
Section 46 (2)	Delete “union” substitute “organization”.
Section 46 (5)	Before the full stop insert “and an industrial agreement”.
Section 47 (3) (b)	After “award” insert “or industrial agreement”.
Section 48 (2) and (5)	Delete “Industrial” wherever it occurs.
Section 49 (4) (a)	Delete “45 (1)” substitute “32”.
Section 50 (3)	After “awards” in both places where it occurs insert “or industrial agreements”.
Section 50 (4)	After “awards” where it first occurs insert “and industrial agreements”. After “awards” where it last occurs insert “and industrial agreements or awards or industrial agreements”.
Section 50 (9)	After “awards” insert “and industrial agreements or awards or industrial agreements”. After “award” in both places where it occurs insert “or industrial agreement”.
Section 55 (2)	Delete “society” wherever it occurs substitute “organization” in each case.
Section 57 (1), (3) and (4)	Delete “a union” substitute “an organization” in each case.
Section 57 (3) and (5)	Delete “the union” wherever it occurs substitute “the organization” in each case.
Section 58 (1) and (2)	Delete “a society” substitute “an organization” in each case.

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(Industrial Relations) (No. 2).

<i>Provision affected.</i>	<i>Amendment.</i>
Section 58 (1)	Delete "union" wherever it occurs substitute "organization" in each case.
Section 58 (2) (b)	Delete "society" in both places where it occurs substitute "organization" in each case.
Section 59 (1)	Delete "a society" substitute "an organization".
Section 59 (1) and (3)	Delete "union" substitute "organization".
Section 59 (2)	Delete "union is a union of employers or a union" substitute "organization is an organization of employers or an organization".
Section 60 (1)	Delete "A society" substitute "An organization". Delete "a union" substitute "an organization".
Section 60 (2)	Delete "A union" substitute "An organization".
Section 60 (3)	Delete "a union" substitute "an organization". Delete "the union" in both places where it occurs substitute "the organization" in each case.
Section 61	Delete "union" in both places where it occurs substitute "organization" in each case.
Section 62 (1) and (3) (b)	Delete "union" wherever it occurs substitute "organization" in each case.
Section 62 (3) (c)	Delete "society" where it first occurs substitute "organization".
Section 62 (4)	Delete "52 to 55, both inclusive," substitute "55, 56 and 58 (3)". Delete "a union" substitute "an organization". Delete "of section 55".
Section 63 (1), (2) and (3)	Delete "A union" substitute "An organization".
Section 63 (1), (2) and (7)	Delete "the union" wherever it occurs substitute "the organization" in each case.
Section 63 (7)	Delete "a union" substitute "an organization".

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(Industrial Relations) (No. 2).

<i>Provision affected.</i>	<i>Amendment.</i>
Section 83 (1) (c)	Delete "union, association," substitute "organization or association named as a party to the award".
Section 83 (2)	Delete "the Deputy" substitute "a Deputy".
Section 83 (5) (b)	Delete "convicted of an offence against" substitute "proved before the Full Bench to have contravened or failed to comply with".
Section 84 (1)	Delete "conviction,".
Section 87 (2)	Delete "conviction,".
Section 88 (1)	Delete "such union" substitute "such organization".
Section 88 (1), (2) and (4)	Delete "conviction," wherever it occurs.
Section 88 (1) and (2)	Delete "a union" substitute "an organization" in each case.
Section 88 (2)	Delete "the union" substitute "the organization". Delete "any union" substitute "any organization".
Section 88 (5)	Repeal.
Section 89 (1)	Delete "conviction," where it first occurs.
Section 105	Before "order" in both places where it occurs insert "industrial agreement," in each case. Delete "the Schedule" substitute "Schedule 1".
Section 106 (a) (ii)	Delete "Industrial". Delete "Assistant Registrar".
Section 107	Before "Deputy" insert "a".
Section 108	Delete "A union" substitute "An organization". Delete "such union" substitute "such organization".
Section 109	Delete "a union" substitute "an organization". Delete "any union" substitute "any organization". Delete "the union" substitute "the organization".
Section 110 (1) and (2)	Delete "a union" substitute "an organization" in each case. Delete "any union" substitute "any organization" in each case. Delete "the union" substitute "the organization" in each case.

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(*Industrial Relations*) (No. 2).

<i>Provision affected.</i>	<i>Amendment.</i>
Section 110 (2)	Delete "or any levy imposed under subsection (10) of section 74".
Section 111 (3)	Delete "Notwithstanding the penalties provided by subsections (1) and (2) any money received in contravention of either or both of those subsections" substitute "Where any money is received in contravention of subsection (1) then, notwithstanding any proceedings under this Act in respect of the contravention, the money".
Section 112 (1)	Delete "a union" substitute "an organization".
Section 112 (2)	Delete "A union" substitute "An organization".
Section 112 (3)	Delete "Notwithstanding the penalty provided by subsection (2), any money received in contravention of that subsection" substitute "Where any money is received in contravention of subsection (2) then, notwithstanding any proceedings under this Act in respect of the contravention, the money".
Section 113 (1) (c)	After subparagraph (iii) insert "and". Delete "; and" at the end of subparagraph (iv) substitute a full stop. Delete subparagraph (v).
Section 113 (1) (c) (iv)	Delete "convictions,".
Section 113 (3) and (4) (ii)	Delete "conviction,".
Schedule:	
Heading	After "SCHEDULE" insert "1".
Clause 1	Delete "awards" substitute "industrial agreements".
Clause 3	Delete "union" wherever it occurs substitute "organization" in each case.
Clause 4	Delete "unions" in both places where it occurs substitute "organizations" in each case.
Clause 6	Delete "Industrial".

PART III—EDUCATION ACT 1928.

Principal
Act.
Reprinted as
approved
19 July 1984.

67. In this Part the Education Act 1928 is referred to as the principal Act.

Section 3
amended.

68. Section 3 of the principal Act is amended—

(a) in the definition of “teacher” by deleting from paragraph (b) the following—

“ is—

(i) a Government officer as defined in section eleven A of the Industrial Arbitration Act, 1912; or

(ii) a Worker as defined in section six of the Industrial Arbitration Act, 1912.”

and substituting the following—

“ is an officer within the meaning of the Public Service Act 1978; ”; and

(b) in the definition of “teaching staff” by deleting the following—

“ are—

(a) Government officers as defined in section eleven A of the Industrial Arbitration Act, 1912; or

(b) Workers as defined in section six of the Industrial Arbitration Act, 1912,

and any position or office in the Department to which the Government Employees (Promotions Appeal Board) Act, 1945 or the Public Service Act, 1978 applies;”

and substituting the following—

“ are officers within the meaning of the Public Service Act 1978; ”.

69. Section 7 of the principal Act is amended— Section 7
amended.

- (a) in subsection (3) by deleting “the Government School Teachers Arbitration and Appeal Act, 1979” and substituting the following—

“ Division 1 of Part IIA of the Industrial Relations Act 1979 ”; and

- (b) in subsection (4) by deleting “, the Government Employees (Promotions Appeal Board) Act, 1945 and the Public Service Arbitration Act, 1966, do” and substituting the following—

“ does ”.

70. Section 7D of the principal Act is amended— Section 7D
amended.

- (a) in subsection (1) by deleting the definitions of “the Tribunal” and “the Tribunal Act” and substituting the following definition—

“ “the Tribunal” means The Western Australian Industrial Relations Commission constituted by the Government School Teachers Tribunal established under Division 1 of Part IIA of the Industrial Relations Act 1979. ”;

- (b) in subsection (3) by deleting from subparagraph (ii) of paragraph (c) “under the Tribunal Act” and substituting the following—

“ in force under Division 1 of Part IIA of the Industrial Relations Act 1979 ”;
and

- (c) in subsection (4)—

- (i) by deleting “29 (1) (e) of the Tribunal Act” and substituting the following—

“ 78 (1) (b) (iii) of the Industrial Relations Act 1979 ”; and

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(ii) by deleting “in the Tribunal Act” and substituting the following—

“ in Division 1 of Part IIA of that Act ”.

Effect of
Part VI
not limited.

71. Nothing in this Part limits the operation of Part VI or of section 16 of the Interpretation Act 1984 as applied by that Part.

PART IV—PUBLIC SERVICE ACT 1978.

Principal
Act.
Reprinted as
approved
28 May 1984.

72. In this Part the Public Service Act 1978 is referred to as the principal Act.

Section 1
amended.

73. Section 1 of the principal Act is amended by deleting the following—

“ *Division 1—General.*
Division 2—Promotions. ”.

Section 3
amended.

74. Section 3 of the principal Act is amended—

(a) by deleting the “Public Service Arbitration Act, 1966” wherever it occurs and substituting the following in each case—

“ Division 2 of Part IIA of the Industrial Relations Act 1979 ”; and

(b) in subsection (1) by deleting “that Act” and substituting the following—

“ that Division ”.

Section 5
amended.

75. Section 5 of the principal Act is amended in subsection (1) by deleting the definition of “Promotions Appeal Board”.

Heading to
Division 1
of Part III
deleted.

76. Part III of the principal Act is amended by deleting the heading “*Division 1—General.*”.

77. Section 25 of the principal Act is amended— Section 25 amended.

- (a) in subsection (1) by deleting “in or under this Act relating to appeals against promotions” and substituting the following—

“ of Division 4 of Part IIA of the Industrial Relations Act 1979 ”; and

- (b) in subsection (2) by deleting “the Public Service Arbitration Act, 1966, appeal to the Arbitrator appointed under that Act” and substituting the following—

“ Division 2 of Part IIA of the Industrial Relations Act 1979 appeal to The Western Australian Industrial Relations Commission constituted by a Public Service Arbitrator appointed under that Division ”.

78. Section 31 of the principal Act is amended— Section 31 amended.

- (a) in subsection (1) by deleting “under and within the meaning of section 96 of the Industrial Arbitration Act 1979” and substituting the following—

“ as defined by section 80C of the Industrial Relations Act 1979 ”; and

- (b) in subsection (2) by deleting “in and under this Act relating to appeals against promotions” and substituting the following—

“ of Division 4 of Part IIA of the Industrial Relations Act 1979 ”.

Section 32
amended.

79. Section 32 of the principal Act is amended in subsection (2) by deleting "The Public Service Appeal Board established by Part III of the Public Service Arbitration Act, 1966" and substituting the following—

" The Western Australian Industrial Relations Commission constituted by a Public Service Appeal Board appointed under Division 2 of Part IIA of the Industrial Relations Act 1979 ".

Division 2
of Part III
repealed.

80. The principal Act is amended by repealing Division 2 of Part III.

Section 51
amended.

81. Section 51 of the principal Act is amended—

(a) by deleting "The Public Service Appeal Board established by Part III of the Public Service Arbitration Act, 1966" and substituting the following—

" The Western Australian Industrial Relations Commission constituted by a Public Service Appeal Board appointed under Division 2 of Part IIA of the Industrial Relations Act 1979 "; and

(b) by deleting "that Act" and substituting the following "that Division".

Effect of
Part VI
not limited.

82. Nothing in this Part limits the operation of Part VI or of section 16 of the Interpretation Act 1984 as applied by that Part.

PART V—REPEALS.

83. The following Acts, namely—

**Repeal of
Acts.**

- (a) the Government Employees (Promotions Appeal Board) Act 1945;
- (b) the Government School Teachers Arbitration and Appeal Act 1979;
- (c) the Public Service Arbitration Act 1966;
and
- (d) the Railways Classification Board Act 1920,

are hereby repealed.

PART VI—SAVING AND TRANSITIONAL.

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

**Interpreta-
tion of
this Part.**

“amended provisions” means the principal Act as amended by this Act;

“constituent authority” has the same meaning as it has in the amended provisions;

“principal Act” means the Industrial Arbitration Act 1979;

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approved
21 March
1983.**

“repealed provisions” means provisions repealed by section 80 or 83.

85. (1) The person holding an office mentioned in column 1 of Table 1 to this section immediately before the coming into operation of the section mentioned in column 2 of that Table opposite that office, shall, after the coming into operation of that section, be deemed to have been appointed under and subject to the amended provisions or to the Public Service Act 1978, as the case may require, to the office mentioned in column 3 of that Table opposite the first-mentioned office.

**Office
holders;
references to
office
holders and
bodies.**

(2) Where subsection (1) applies to a person holding office for a term or period that section shall have effect for the balance of that term or period and for such further period, if any, as the Governor determines.

(3) Unless the context otherwise requires, a reference however expressed in any written law to an office mentioned in column 1 of Table 1 or 2 to this section or a body mentioned in column 1 of Table 3 to this section shall, after the coming into operation of the section mentioned in column 2 of the relevant Table opposite that office or body, be read and construed as a reference to the office or body mentioned in column 3 of the relevant Table opposite the first-mentioned office or body and may be altered accordingly on a reprint of an Act, regulations, by-laws or rules pursuant to statutory authority.

(4) The person holding any of the following offices, namely—

- (a) Chairman of the Government School Teachers Tribunal established under the Government School Teachers Arbitration and Appeal Act 1979, or deputy of that Chairman;
- (b) Public Service Arbitrator appointed under the Public Service Arbitration Act 1966, or deputy of that Arbitrator; and
- (c) Chairman of the Railways Classification Board established under the Railways Classification Board Act 1920, or deputy of that Chairman,

immediately before the coming into operation of section 83, shall vacate that office on the coming into operation of section 83.

(5) Where section (4) (c) applies to a person who is a Commissioner under the principal Act subsection (4) does not prevent him from being appointed as Chairman of the Railways Classification Board established under the amended provisions or as deputy of that Chairman.

(6) Nothing in subsection (4) affects the operation of section 89.

TABLE 1.

<i>Column 1.</i>	<i>Column 2.</i>	<i>Column 3.</i>
The Chief Industrial Commissioner	Section 8	The Chief Commissioner
The Registrar of Industrial Unions	Section 56	The Registrar
The Deputy Registrar of Industrial Unions	Section 56	A Deputy Registrar
A member, other than the Chairman, of the Government School Teachers Tribunal established under the Government School Teachers Arbitration and Appeal Act 1979 or a deputy of such a member	Section 47	The corresponding office of a member or deputy of a member of the Government School Teachers Tribunal established under Division 1 of Part IIA of the Industrial Relations Act 1979
A member, other than the Chairman, of the Railways Classification Board established under the Railways Classification Board Act 1920 or a deputy of such a member	Section 47	The corresponding office of a member or deputy member of a member of the Railways Classification Board established under Division 3 of Part IIA of the Industrial Relations Act 1979

TABLE 2.

<i>Column 1.</i>	<i>Column 2.</i>	<i>Column 3.</i>
The Chairman of the Government School Teachers Tribunal established under the Government School Teachers Arbitration and Appeal Act 1979	Section 47	The Chairman of the Government School Teachers Tribunal established under Division 1 of Part IIA of the Industrial Relations Act 1979
The Public Service Arbitrator appointed under the Public Service Arbitration Act 1966	Section 47	A Public Service Arbitrator appointed under Division 2 of Part IIA of the Industrial Relations Act 1979
A member of the Public Service Appeal Board established under the Public Service Appeal Board Act 1920 or Part III of the Public Service Arbitration Act 1966	Section 47	A member of a Public Service Appeal Board established under Division 2 of Part IIA of the Industrial Relations Act 1979

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<i>Column 1.</i>	<i>Column 2.</i>	<i>Column 3.</i>
The Chairman of the Railways Classification Board established under the Railways Classification Board Act 1920	Section 47	The Chairman of the Railways Classification Board established under Division 3 of Part IIA of the Industrial Relations Act 1979
A member of The Promotions Appeal Board established under the Government Employees (Promotions Appeal Board) Act 1945 or a Promotions Appeal Board established under Division 2 of Part III of the Public Service Act 1978	Section 47	A member of a Promotions Appeal Board established under Division 4 of Part IIA of the Industrial Relations Act 1979

TABLE 3.

<i>Column 1.</i>	<i>Column 2.</i>	<i>Column 3.</i>
The Western Australian Industrial Commission established under the Industrial Arbitration Act 1912 or continued and constituted under the Industrial Arbitration Act 1979	Section 8	The Western Australian Industrial Relations Commission continued and constituted under the Industrial Relations Act 1979
The Government School Teachers Tribunal established under the Education Act 1928 or the Government School Teachers Arbitration and Appeal Act 1979	Section 47	The Government School Teachers Tribunal established under Division 1 of Part IIA of the Industrial Relations Act 1979
The Public Service Appeal Board established under the Public Service Appeal Board Act 1920 or Part III of the Public Service Arbitration Act 1966	Section 47	A Public Service Appeal Board established under Division 2 of Part IIA of the Industrial Relations Act 1979
The Railways Classification Board established under the Railways Classification Board Act 1920	Section 47	The Railways Classification Board established under Division 3 of Part IIA of the Industrial Relations Act 1979

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<i>Column 1.</i>	<i>Column 2.</i>	<i>Column 3.</i>
The Promotions Appeal Board established under the Government Employees (Promotions Appeal Board) Act 1945 or a Promotions Appeal Board established under Division 2 of Part III of the Public Service Act 1978	Section 47	A Promotions Appeal Board established under Division 4 of Part IIA of the Industrial Relations Act 1979

86. Notwithstanding section 9 the person holding office as President of The Western Australian Industrial Commission under the principal Act immediately before the coming into operation of section 9—

Style and title of President.

(a) is entitled to the style and title of The Honourable (name), President of The Western Australian Industrial Relations Commission; and

(b) in appropriate circumstances—

(i) may be addressed as “Your Honour”;
or

(ii) may be referred to as “His Honour”,

for as long thereafter as he continues in office as President of The Western Australian Industrial Relations Commission under the amended provisions.

87. (1) After the coming into operation of section 34 each registration of a union in force under the principal Act immediately before the coming into operation of section 34 shall continue in force as the registration of an organization under the amended provisions.

Unions and organizations.

(2) Unless the context otherwise requires, a reference however expressed in any written law to the registration of a union under the Industrial Arbitration Act 1912 or the principal Act shall be read and construed as a reference to the registration of an organization under the amended provisions.

Awards,
consent
awards and
industrial
agreements.

88. (1) After the coming into operation of section 26, a consent award or deemed consent award in force under the principal Act immediately before the coming into operation of section 26, other than a consent award that has been declared under section 41(6) of the principal Act to be a common rule, shall, for all the purposes of the amended provisions, be deemed to be an industrial agreement registered under the amended provisions.

(2) Unless the context otherwise requires, after the coming into operation of section 26 a reference however expressed in any written law to—

- (a) an award under the principal Act shall be read and construed as including;
- (b) a consent award under the principal Act shall be read and construed as,

a reference to an industrial agreement registered or deemed to be registered under the amended provisions and may be altered accordingly on a reprint of an Act, regulations, rules or by-laws pursuant to statutory authority.

(3) Where an award, order or other decision in force under the principal Act immediately before the coming into operation of section 7 contains a provision of the kind commonly known as a "preference clause" (however that clause may be described in the award, order or decision) or any other provision in relation to a matter mentioned in section 50(7) in the amended provisions, that provision shall, on and after the coming into operation of section 7, be deemed to have been deleted from the award, order or decision.

(4) After the coming into operation of section 47—

- (a) an award, order or other decision of a former tribunal in force under repealed provisions immediately before the coming into operation of section 47 shall, for all the purposes of the amended provisions and of any other written law, be deemed to be an award, order or decision made by a

constituent authority under the amended provisions except that any matter which the Government School Teachers Tribunal, a Public Service Arbitrator or the Railways Classification Board, as the case may be, may not include in an award, order or decision under the amended provisions is deemed to have been deleted from the award, order or decision;

- (b) an agreement made, reached or filed under repealed provisions and in force under those provisions immediately before the coming into operation of section 47 shall, for all the purposes of the amended provisions and of any other written law, be deemed to be an industrial agreement registered by a constituent authority under the amended provisions.

(5) In subsection (4) "former tribunal" means the Government School Teachers Tribunal, the Public Service Arbitrator, or the Railways Classification Board, established under repealed provisions.

89. (1) In this section—

Pending
proceedings
continued.

"former tribunal" means the Government School Teachers Tribunal, the Public Service Arbitrator, the Public Service Appeal Board, The Promotions Appeal Board, a Promotions Appeal Board, or the Railways Classification Board, established under repealed provisions;

"pending proceedings" means any application, appeal or other claim made to a former tribunal under repealed provisions that was commenced before that former Tribunal before the coming into operation of section 47.

(2) Pending proceedings may be continued and dealt with under repealed provisions as in force immediately before the coming into operation of section 47.

(3) Notwithstanding sections 80, 83 or 85 (4) or the amended provisions, for the purposes of continuing and dealing with pending proceedings a former tribunal shall continue as constituted under repealed provisions.

(4) Notwithstanding sections 80 or 83, repealed provisions shall be deemed to remain in force to the extent necessary for the purposes of subsections (2) and (3).

(5) An award, order or other decision made in pending proceedings shall, for all the purposes of the amended provisions and of any other written law, be deemed to be an award, order or decision made by a constituent authority under the amended provisions.

Jurisdiction
in relation
to existing
matters.

90. Subject to section 89 and the amended provisions, a constituent authority may exercise jurisdiction in relation to a matter whether that matter arose before or after the coming into operation of section 47.

Regula-
tions, etc.

91. After the coming into operation of section 47, regulations or administrative instructions in force under repealed provisions immediately before the coming into operation of section 47 shall, in so far as they are not inconsistent with the amended provisions, subsist and enure for the purposes of the amended provisions and shall, for all the purposes of the amended provisions, be deemed to be regulations made under the amended provisions.

Interpreta-
tion Act
1984, ss. 16
and 36 to
apply.

92. Subject to the preceding provisions of this Part sections 16 and 36 of the Interpretation Act 1984 apply to and in relation to the repeals and amendments effected by this Act and for that purpose a portion of the amended provisions mentioned in column 1 of the Table to this section shall be deemed to repeal and re-enact and be substituted for the portion or portions of the repealed provisions mentioned in column 2 of that Table opposite the first-mentioned portion.

