

INDUSTRIAL ARBITRATION (No. 2).

No. 121 of 1982.

**AN ACT to amend the Industrial Arbitration Act
1979-1982.**

[Assented to 9 December 1982.]

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

1. (1) This Act may be cited as the *Industrial Arbitration Amendment Act (No. 2) 1982*.

Short title
and citation.

(2) In this Act the Industrial Arbitration Act 1979-1982 is referred to as the principal Act.

Act No. 114 of
1979 as
amended by
Acts Nos. 82
of 1980, 11 of
1981 and 10
of 1982.

(3) The principal Act as amended by this Act may be cited as the Industrial Arbitration Act 1979-1982.

Section 7
amended.

2. Section 7 of the principal Act is amended in subsection (1)—

(a) by inserting after “reward;” in paragraph (c) of the definition of “employee” the following—

“ and ” ;

(b) in the definition of “industrial matter” by—

(i) inserting after “section 6;” in subparagraph (i) of paragraph (g) the following—

“ and ” ;

(ii) deleting “Act, 1912 for a benefit greater than” in paragraph (j) and substituting the following—

“ and Assistance Act 1981 for a benefit different from ” ;

(iii) deleting “a union,” in subparagraph (iii) of paragraph (k) and substituting the following—

“ a union; ” ; and

(iv) inserting after subparagraph (iii) of paragraph (k) the following subparagraph—

“ (iv) housing rentals, collection of union dues and matters of managerial prerogative, ” ;

and

(c) by inserting after the definition of “subsection” the following definition—

“ “the District Court” means The District Court of Western Australia established under the District Court of Western Australia Act 1969; ” .

3. Section 9 of the principal Act is amended in paragraph (a) of subsection (3) by inserting after "Territory" the following— Section 9 amended.

“ of the Commonwealth ” .

4. Section 16 of the principal Act is amended— Section 16 amended.

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

“ (1) The President may—

(a) allocate the work of the Commissioners;

(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 directly to the Commission in Court Session,

but shall delegate those powers to the Chief Industrial Commissioner unless in any particular case, after consultation with the Chief Industrial Commissioner, the President is of the opinion that he should assign—

(d) to a Commissioner or Commissioners; or

(e) to the Commission in Court Session,

as the case requires, a matter falling within the jurisdiction of the Commission. ” ; and

- (b) in subsection (2) by deleting—
 - (i) paragraph (a) and substituting the following paragraph—
 - “ (a) shall, subject to subsection (1), exercise the powers delegated to him under that subsection; ” ; and
 - (ii) “members of the Commission” in paragraph (d) and substituting the following—
 - “ Commissioners ” .

Section 17
amended.

5. Section 17 of the principal Act is amended by inserting after subsection (3) the following subsection—

- “ (4) If, under this section, a person receives an appointment to act in an office, the rights and obligations of the person in relation to the office are, subject to the term of that appointment, as prescribed for the office. ” .

Section 20
amended.

6. Section 20 of the principal Act is amended—

- (a) in subsection (6) by inserting before “ceases to be a contributor” the following—
 - “ , for the purposes of that Act, ” ;
- (b) in subsection (7) by deleting “Tribunal”; and
- (c) in subsection (10) by inserting after “leave of absence” the following—
 - “ and to lump sum payments on ceasing to hold office for the money equivalent of leave of absence ” .

Section 23
amended.

7. Section 23 of the principal Act is amended by deleting “Tribunal” in—

- (a) subparagraph (ii) of paragraph (b) of subsection (1); and
- (b) subparagraph (ii) of paragraph (b) of subsection (3).

8. Section 25 of the principal Act is amended in subsection (5) by inserting after "thinks fit;" in paragraph (a) the following—

Section 25 amended.

" and " .

9. Section 26 of the principal Act is amended in subsection (1) by—

Section 26 amended.

(a) deleting "and" at the end of paragraph (b);

(b) deleting "the community as a whole." in paragraph (c) and substituting the following—

" the interests of the community as a whole; and " ; and

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

" (d) shall in having regard for the interests of the community as a whole under paragraph (c) take into consideration—

(i) the state of the national economy;

(ii) the state of the economy of Western Australia;

(iii) the capacity of employers as a whole or of an individual employer to pay wages, salaries, allowances or other remuneration and to bear the cost of improved or additional conditions of employment;

(iv) the likely effects of its decision on the economies referred to in subparagraphs (i) and (ii) and, in particular, on the level of employment and on inflation. " .

Section 27
amended.

10. Section 27 of the principal Act is amended—

- (a) in subsection (1) by deleting paragraph (g); and
- (b) by inserting after subsection (1) the following subsection—

“ (1a) Except as otherwise provided in this Act, the Commission shall, in relation to any matter before it, conduct its proceedings in public unless the Commission, at any stage of the proceedings, is of the opinion that the objects of the Act will be better served by conducting the proceedings in private. ” .

Section 29
amended.

11. Section 29 of the principal Act is amended by inserting after subsection (2) the following subsection—

“ (3) An employee referring a claim to the Commission under subsection (2) and the other party to the claim may appear before the Commission in person or by legal practitioner or agent in connection with the claim. ” .

Section 31
amended.

12. Section 31 of the principal Act is amended in subsection (4) by deleting “Where” and substituting the following—

“ Subject to section 29 (3), where ” .

Section 33
amended.

13. Section 33 of the principal Act is amended in paragraph (c) of subsection (1) by deleting “reasonable excuse” and substituting the following—

“ good cause ” .

Section 35
amended.

14. Section 35 of the principal Act is amended in subsection (1) by inserting, after “Subject to this section”, the following—

“ and to section 45 ” .

15. Section 41 of the principal Act is amended in paragraph (c) of subsection (2) by inserting before "otherwise" the following—

Section 41 amended.

" not " .

16. The principal Act is amended by inserting after section 41 the following section—

Section 41A inserted.

" 41A. As soon as a union or association or an employer—

Notification of industrial action.

(a) becomes aware of the occurrence or continuance of industrial action affecting the union, association or employer, as the case requires; or

(b) is of the opinion that industrial action affecting the union, association or employer, as the case requires, is likely to occur,

it or he shall forthwith notify the Registrar accordingly. " .

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

Section 43 repealed and substituted.

" 43. (1) The Commission shall endeavour by all means reasonable in the circumstances of the case to settle by conciliation all matters which come before it.

Duty of Commission to settle matters by conciliation.

(2) Notwithstanding subsection (1), the Commission may proceed to deal with a matter by arbitration—

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

(b) without first resorting to conciliation if—

(i) the matter involves the ascertainment or declaration of an existing right;

- (ii) the parties to the matter request the Commission so to do; or
- (iii) the matter has been transmitted to the Commission under section 96I.

(3) Notwithstanding subsection (1), the Commission may proceed to deal with a matter referred to in subsection (1) (a) of section 45 by making an order under that subsection without first resorting to conciliation. ” .

Section 44
amended.

18. Section 44 of the principal Act is amended by repealing subsection (7) and substituting the following subsection—

“ (7) The Commission may exercise the power conferred on it by subsection (1)—

(a) on the application of—

- (i) any union, association or employer;
- (ii) the Attorney General on behalf of the State; or
- (iii) an employee in respect of a dispute relating to his entitlement to long service leave;

or

(b) on the motion of the Commission itself whenever industrial action has occurred or, in the opinion of the Commission, is likely to occur. ” .

Section 45
amended.

19. Section 45 of the principal Act is amended—

(a) in subsection (1) by deleting—

- (i) “the merits of” in subparagraph (i) of paragraph (a);
- (ii) “, subject to paragraph (a) of subsection (1) of section 43,” in subparagraph (ii) of paragraph (a); and

(iii) paragraph (b) and substituting the following paragraph—

“ (b) where the matter is not, or does not relate to, an industrial matter, enquire into the matter and—

(i) declare that the matter is one which should not be dealt with further under this Act; or

(ii) for the purpose of paragraph (g) of the definition of “industrial matter” in section 7 (1), advise the Attorney General in writing of the matter in relation to which the industrial action has occurred or is, in the opinion of the Commission, likely to occur. ” ;

(b) by inserting after subsection (1) the following subsection—

“ (1a) The institution of an appeal under section 49 from an order made under subsection (1) (a) (ii) does not stay the operation of that order. ” ;

and

(c) by repealing subsection (3) and substituting the following subsections—

“ (3) The Commission shall—

(a) if it gives or makes a direction, order or declaration orally under subsection (1), 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 (1)—

(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 (1) and of the preamble thereto available to the parties as soon as is practicable after that giving or making.

(4) Subject to subsections (5), (6) and (7), only the Registrar or Deputy Registrar may institute proceedings against a person for contravention of or failure to comply with an order made under or for the purposes of this section.

(5) The Registrar or Deputy Registrar shall not institute proceedings under subsection (4) unless the Commission, subject to subsection (6), so directs.

(6) If the Commission wishes to make a direction under subsection (5) and is not at that time constituted by or does not at that time include the

Chief Industrial Commissioner, it shall consult the Chief Industrial Commissioner before making the direction.

(7) The Commission is not obliged to give or refrain from giving a direction under subsection (5) in any case merely because it has given or refrained from giving such a direction in any other case. ” .

20. Section 49 of the principal Act is amended in subsection (4) by deleting paragraph (a) and substituting the following paragraph—

Section 49 amended.

“ (a) shall be heard and determined on the evidence and matters raised in the proceedings before the Commission or, in the case of an appeal from a direction, order or declaration given or made under section 45 (1), on the circumstances set out in the preamble prefacing that direction, order or declaration; and ” .

21. Division 2 of Part II of the principal Act is amended by inserting after section 49 the following section—

Section 49A inserted.

“ 49A. (1) If the Attorney General considers that any decision of the Commission—

Decisions of Commission may be referred to Full Bench at instance of Attorney-General.

(a) is inconsistent with this Act;

(b) is erroneous in law; or

(c) is in excess of jurisdiction,

he may at any time after the making of that decision apply to the Full Bench for that decision to be corrected.

(2) The Full Bench may on an application made under subsection (1)—

- (a) correct the decision concerned; or
- (b) dismiss that application.

(3) When under subsection (2) the Commission corrects a decision, the decision as so corrected shall be in terms which could have been awarded by the Commission that gave the decision.

(4) In this section—

“the Commission” means the Commission constituted by a Commissioner or by the Commission in Court Session, but does not include the Full Bench or the Commission exercising jurisdiction under section 48 (13). ” .

Section 65
repealed and
substituted.

22. Section 65 of the principal Act is repealed and the following section is substituted—

Audit and
filing of
accounts
of union.

“ 65. The secretary of each union shall—

- (a) cause the accounts of that union to be properly audited by a person registered as an auditor under section 18 of the Companies (Western Australia) Code (in this section called “the auditor”) within 6 calendar months after the end of each financial year of that union; and
- (b) within one calendar month after the completion of the audit referred to in paragraph (a), deliver to the Registrar—
 - (i) a balance sheet of the assets and liabilities of that union audited by the auditor and

made up to the date of the closing of the accounts of that union in respect of the financial year concerned; and

- (ii) a statement of the receipts and expenditure of that union during the financial year concerned audited by the auditor.

Penalty: \$1000. ” .

23. Section 73 of the principal Act is amended— Section 73 amended.

- (a) in subsection (13) by deleting “Penalty: \$2 000.”; and

- (b) by inserting after subsection (13) the following subsections—

“ (14) An employer who contravenes subsection (13) commits an offence and is liable—

- (a) in the case of an individual, to a penalty of—

- (i) not less than \$400; and

- (ii) not more than \$5 000;

or

- (b) in the case of a corporation within the meaning of section 5 of the Companies (Western Australia) Code, to a penalty of—

- (i) not less than \$1 000; and

- (ii) not more than \$10 000,

and, if that offence is a continuing one, to a further penalty of not more than \$500 for every day or part thereof during which that offence has continued.

(15) The penalties referred to in subsection (14) (a) (i) and in subsection (14) (b) (i) are irreducible in mitigation notwithstanding anything in the Justices Act 1902, The Criminal Code and the Offenders Probation and Parole Act 1963. ” .

Section 74
amended.

24. Section 74 of the principal Act is amended—

(a) in subsection (2) by inserting after “the President” the following—

“ or, in the absence of the President, from the Chief Industrial Commissioner ” ;

(b) in subsection (6) by deleting “penalty not exceeding \$2 000.” and substituting the following—

“ penalty of—

(e) not less than \$1 000; and

(f) not more than \$10 000,

and, if that offence is a continuing one, to a further penalty of not more than \$500 for every day or part thereof during which that breach has continued. ” ;

(c) by inserting after subsection (6) the following subsection—

“ (6a) The penalty referred to in subsection (6) (e) is irreducible in mitigation notwithstanding anything in the

Justices Act 1902, The Criminal Code and the Offenders Probation and Parole Act 1963. ” ;

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

“ (8) Subject to subsection (8a), when a penalty is imposed on a union under subsection (6) and the union does not forthwith pay the penalty, the rights of the union and its members referred to in subsection (9) are suspended until the penalty is paid.

(8a) The Full Bench may permit a union on which a penalty is imposed under subsection (6) to pay the penalty within such period not exceeding 7 days from that imposition as the Full Bench thinks fit, in which case the rights of the union and its members referred to in subsection (9) are, if the penalty is not paid within that period, suspended from the end of that period until the penalty is paid. ” ;

and

- (e) in subsection (9) by deleting “pursuant to subsection (8)” and substituting the following—

“ under subsection (8) or (8a) ” .

25. Section 82 of the principal Act is amended by inserting after subsection (2) the following subsection—

Section 82
amended.

“ (3) Subject to subsection (4), proceedings under this Act in respect of a matter referred to in subsection (1) shall be commenced within 12 months from the time when the matter arose.

(4) If it is alleged that an employer has contravened or failed to comply with a provision of an award or order by not paying an employee of the employer the amount which that employee was entitled to be paid under that provision and if the employer is convicted of an offence against paragraph (a) or (b) of section 102 (1) by reason of having failed, within a period of 12 months from that alleged non-payment, to produce or exhibit a record relevant to that alleged non-payment or to allow such a record to be examined or to answer a question relevant to that alleged non-payment truthfully to the best of his knowledge, information and belief, as the case requires, an application may be made under section 83 in respect of that alleged non-payment within the period of 12 months from that conviction. ” .

Section 83
amended.

26. Section 83 of the principal Act is amended by repealing subsection (5) and substituting the following subsection—

“ (5) An order may only be made under subsection (4)—

(a) in respect of any amount relating to a period not being more than 12 months prior to the commencement of the proceedings; or

(b) if the employer concerned has been convicted of an offence against paragraph (a) or (b) of section 102 (1) by reason of having failed to produce or exhibit a record relevant to the proceedings or to allow such a record to be examined or to answer a question relevant to the proceedings

truthfully to the best of his knowledge, information and belief, as the case requires, in respect of any amount relating to a period not being more than 12 months prior to that failure,

and, when the order is so made, that amount shall be deemed to be a penalty imposed under this Act and may be recovered accordingly, but on recovery shall be paid as stated in the order under subsection (6). ” .

27. Section 89 of the principal Act is amended in subsection (1) by inserting after “Western Australia,” the following— Section 89 amended.

“ the Bailiff of the District Court, ” .

28. Section 92 of the principal Act is amended in subsection (4) by inserting after “on the Full Bench” the following— Section 92 amended.

“ or sitting or acting alone ” .

29. Section 96 of the principal Act is amended— Section 96 amended.

(a) in subsection (1) by deleting “Co-ordination” in subparagraph (iii) of paragraph (b) of the definition of “Government officer”; and

(b) in subsection (6) by deleting “, 1945” in paragraph (e) and substituting the following—

“ 1979 ” .

Part VIA
inserted.

30. The principal Act is amended by inserting after Part VI the following Part—

“ PART VIA.—PROTECTION OF MEMBERS AND NON-MEMBERS OF EMPLOYEE ORGANIZATIONS.

Interpreta-
tion in
Part VIA.

96A. (1) In this Part, unless the contrary intention appears—

“corporation” has the meaning given by section 5 of the Companies (Western Australia) Code;

“employee organization” means—

- (a) industrial union of employees, whether constituted, incorporated or registered under this Act or any other Act or under any Act of the Parliament of the Commonwealth and by whatever name called;
- (b) industrial association of employees registered under section 67; or
- (c) association, society or other body that has applied to be constituted, incorporated or registered as an industrial union of employees referred to in paragraph (a) of this definition;

“officer”, in relation to a corporation, has the meaning given by section 5 of the Companies (Western Australia) Code;

“person” includes a body corporate and an employee organization which is not a body corporate.

- (2) A reference in this Part to—
- (a) dismissal from employment includes a reference to termination of employment;
 - (b) threatening includes a reference to making a statement that can reasonably be interpreted as a threat.

96B. (1) A person who—

- (a) dismisses an employee from, or injures him in, his employment, or alters his position in his employment to his prejudice, or refuses to promote him in his employment;
- (b) refuses to employ another person; or
- (c) directly or indirectly hinders or prevents the employment of another person or the promotion in his employment of an employee,

Conduct by employers and others prejudicing employees and others by reason of membership or non-membership of employee organizations.

when a reason for doing so is that the employee or other person—

- (d) is or is not a member of an employee organization;
- (e) is an officer of an employee organization; or
- (f) is entitled to the benefit of an award or order,

commits an offence.

(2) A person who—

- (a) threatens to dismiss an employee who is—
 - (i) not a member of an employee organization from, or to injure him in, his employment, or to alter his position in his employment to his prejudice, or to refuse to promote him in

his employment, for the purpose of causing him to become; or

- (ii) a member of an employee organization from, or to injure him in, his employment, or to alter his position in his employment to his prejudice, or to refuse to promote him in his employment, for the purpose of causing him to cease to be,

a member of an employee organization; or

- (b) employs or offers to employ a person, or promotes or offers to promote an employee, who is—

- (i) not a member of an employee organization on condition that that person or employee becomes, or undertakes to become; or

- (ii) a member of an employee organization on condition that that person or employee ceases to be, or undertakes to cease to be,

a member of an employee organization,

commits an offence.

- (3) A person who—

- (a) advises, encourages or incites another person to engage in conduct in relation to a person or employee that would constitute an offence under subsection (1) or (2);

- (b) takes, or threatens to take, steps against another person for the purpose of causing the other person

to engage in conduct in relation to a person or employee that would constitute an offence under subsection (1) or (2);

(c) engages, or threatens to engage, in conduct having the effect, directly or indirectly, of prejudicing in his employment an employee who is—

(i) not a member of an employee organization for the purpose of causing that employee to become; or

(ii) a member of an employee organization for the purpose of causing that employee to cease to be,

a member of an employee organization; or

(d) demands from a person who is not a member of an employee organization (in this paragraph called the non-member)—

(i) directly or indirectly for the benefit of an employee organization or of a person acting on behalf of an employee organization; and

(ii) with threats of injury or detriment of any kind whatsoever to be caused to the non-member by any other person if that demand is not complied with,

any thing, or that any thing be procured to be done or omitted to be done by the non-member,

commits an offence.

(4) A person who conspires with another person to commit an offence under subsection (1), (2) or (3) commits an offence.

(5) A person who hinders or prevents the supply of goods or services by a second person to a third person or the acquisition of goods or services by a second person from a third person with intent to cause the commission of an offence under subsection (1), (2) or (3) commits an offence.

Responsibility of corporations and officers thereof.

96C. (1) If a corporation is guilty of an offence under section 96B, any officer of the corporation who was in any way, by act or omission and directly or indirectly, knowingly concerned in or party to the commission of that offence is also guilty of that offence.

(2) If an officer of a corporation is guilty of an offence under section 96B, the corporation is also guilty of that offence unless it is proved that all reasonable steps were taken by the corporation to prevent the commission by the corporation or its officers of offences under section 96B.

Responsibility of employee organizations and officers and members thereof.

96D. (1) If an employee organization is guilty of an offence under section 96B, any officer or member of the employee organization who was in any way, by act or omission and directly or indirectly, knowingly concerned in or party to the commission of that offence is also guilty of that offence.

(2) If an officer or member of an employee organization is guilty of an offence under section 96B, the employee organization is also guilty of that offence unless it is proved that all reasonable steps were taken by the employee organization to prevent the commission by the employee organization or its officers or members of offences under section 96B.

96E. When in any proceedings for an offence under section 96B (1) it is proved that an employee was dismissed from, or injured in, his employment, or his promotion was hindered, prevented or refused, or his position in his employment was altered to his prejudice, or a person was refused employment or his employment was hindered or prevented, while he—

Onus of proof in certain cases.

- (a) was or was not a member of an employee organization;
- (b) was an officer of an employee organization; or
- (c) was entitled to the benefit of an award or order,

it shall be taken to be proved that a reason for that dismissal, injury, hindrance, prevention, refusal or alteration, as the case requires, was the reason that the employee or person was or was not such a member, was such an officer or was so entitled, unless the contrary is proved.

96F. (1) A person who—

(a) threatens that—

(i) discriminatory action will or may be taken against a second person; or

(ii) the free and lawful exercise of his trade, profession or occupation by a second person will or may be interfered with,

by reason of the circumstance that the second person or a third person is not a member of;

(b) advises, encourages or incites a second person to take discriminatory action against a third person by reason of the circumstance that the third person or a fourth person is not a member of;

Discriminatory and other action against persons by reason of non-membership of employee organizations.

(c) takes, or threatens to take, industrial action against an employer with the intent to coerce the employer to take discriminatory action against a second person by reason of the circumstance that the second person or a third person is not a member of; or

(d) takes, or threatens to take, industrial action against an employer with the intent to coerce him to join,

an employee organization, commits an offence.

(2) If in any proceedings for an offence under subsection (1) all the relevant facts and circumstances, other than the reason or intent of the action alleged in the complaint, are proved, it lies on the defendant to prove that that action was not actuated by that reason or taken with that intent.

(3) If an employee organization is guilty of an offence under subsection (1), any officer or member of the employee organization who was in any way, by act or omission and directly or indirectly, knowingly concerned in or party to the commission of that offence is also guilty of that offence.

(4) If an officer or member of an employee organization is guilty of an offence under subsection (1), the employee organization is also guilty of that offence unless it is proved that all reasonable steps were taken by the employee organization to prevent the commission by the employee organization or its officers or members of offences under subsection (1).

(5) In this section—

“discriminatory action”, in relation to a person, means—

- (a) refusing to make use of, or refusing to agree to make use of, any service offered by the person;
- (b) refusing to receive, or refusing to agree to receive, any goods offered by the person; or
- (c) refusing to supply, or refusing to agree to supply, goods or services to the person.

96G. (1) A person who—

Penalties.

(a) being an individual, commits an offence under section 96B or 96F is liable to a penalty of—

- (i) not less than \$400; and
- (ii) not more than \$5 000;

or

(b) being a corporation or an employee organization, commits an offence under section 96B or 96F is liable to a penalty of—

- (i) not less than \$1 000; and
- (ii) not more than \$10 000,

and, if that offence is a continuing one, to a further penalty of not more than \$500 for every day or part thereof during which that offence has continued.

(2) The penalties referred to in subsection (1) (a) (i) and in subsection (1) (b) (i) are irreducible in mitigation notwithstanding anything in the Justices Act 1902, The Criminal Code and the Offenders Probation and Parole Act 1963.

(3) Subject to subsection (4), when a penalty is imposed on an employee organization in respect of an offence under section 96B or 96F and the employee organization does not forthwith pay the penalty, the rights of the employee organization and its members referred to in subsection (5) are suspended until the penalty is paid.

(4) An Industrial Magistrate may permit an employee organization on which a penalty referred to in subsection (3) is imposed to pay that penalty within such period not exceeding 7 days from that imposition as the Industrial Magistrate thinks fit, in which case the rights referred to in subsection (3) are, if that penalty is not paid within that period, suspended from the end of that period until the penalty is paid.

(5) In and with respect to any period during which rights are suspended under subsection (3) or (4)—

- (a) a proceeding of any kind may not be instituted under this Act by or on behalf of the employee organization concerned or any of its members;
 - (b) the employee organization concerned shall not be joined as an applicant in any proceeding referred to in paragraph (a);
 - (c) an award or order shall not be made or be deemed to have been made for the benefit of the employee organization concerned or any of its members;
- and

- (d) rights or entitlements shall be deemed not to become due to the employee organization or its members under this Act or any award or order in force thereunder.

96H. A prosecution for an offence under section 96B or 96F shall not be instituted except by the Attorney General or an Industrial Inspector, who is hereby empowered to institute such a prosecution.

Prosecution
by Attorney
General or
Industrial
Inspector
only.

96I. When a person has been convicted of an offence under section 96B or 96F, the Industrial Magistrate before whom the proceedings were brought shall, after imposing such penalty for that offence as he considers just, transmit the case to the Commission, and the Commission may, after affording the person so convicted and the employee or person against whom that offence was committed (in this section called the complainant) an opportunity to be heard—

Power of
Commission
to make
certain
orders after
conviction.

- (a) if the person so convicted is an employer, order the employer—
 - (i) to reinstate the complainant in his employment;
 - (ii) to pay to the complainant such sum of money as the Commission considers adequate as compensation for loss of employment or loss of earnings; or
 - (iii) both to reinstate the complainant in his employment and to pay him the sum of money referred to in subparagraph (ii) of this paragraph,

as is appropriate in the circumstances and as the Commission considers just; or

- (b) if the person so convicted is a person other than an employer, order that person to pay the complainant such sum of money as the Commission considers adequate as compensation for loss of employment or loss of earnings,

but the complainant is not entitled to compensation both under this section and otherwise for the same loss of employment or loss of earnings. ” .

Section 97A
inserted.

31. The principal Act is amended by inserting after section 97 the following section—

Employers
may deduct
wages in
certain
circum-
stances.

“ 97A. (1) An employer is not obliged to pay any wages, salary, allowances or other remuneration to an employee for any day or portion of a day on which the employee cannot usefully be employed by the employer because of—

- (a) any strike by an employee organization;
- (b) the breakdown of any machinery of the employer; or
- (c) any stoppage of work from any cause which the employer cannot reasonably prevent.

(2) In the event of any inconsistency between this section and any award, this section shall prevail to the extent of that inconsistency.

(3) In subsection (1) (a)—

“employee organization” means union of employees or association of unions of employees. ” .

32. Section 98 of the principal Act is amended by repealing subsection (3) and substituting the following subsections—

Section 98
amended.

“ (3) An Industrial Inspector may, for the purposes of carrying out his functions under this Act—

- (a) enter any building, structure, conveyance or place of any kind whatsoever wherein or in respect of which there are reasonable grounds to suspect that any industry is being or has been carried on or any work is being done or has been done or commenced or any matter or thing is taking or has taken place (in this subsection called an industrial location) for the purpose of ascertaining whether or not the provisions of this Act or of any awards or orders in force thereunder are being or have been observed;
- (b) inspect and view any work, material, machinery, appliance, article, record, matter or thing whatsoever which is in an industrial location;
- (c) take with him into an industrial location any person he may require to provide assistance which he considers to be necessary;
- (d) question, either alone or in the presence of some other person, with respect to anything to which this Act relates any person he finds in an industrial location;
- (e) by notice in writing or orally require a person having the control of, or access to, a record, whether kept in an industrial location entered by him under this subsection or elsewhere, to produce or exhibit that record for his examination in accordance with that requirement;

- (f) examine, and seize or take extracts from or copies of, any record produced or exhibited for his inspection in compliance with a requirement made under this subsection;
- (g) if he has reasonable cause to apprehend any obstruction in the carrying out of those functions, call to his assistance any member of the Police Force; and
- (h) exercise any power, other than a power referred to in paragraph (a), (b), (c), (d), (e), (f) or (g), conferred on him by this Act or by any direction given thereunder.

(4) When an Industrial Inspector uses the assistance of an interpreter, any question, inquiry or requirement put or made to a person by the interpreter on behalf of the the Industrial Inspector shall for all purposes be deemed to be put or made to the person by the Industrial Inspector, and any answer or other statement given or made by the person to the interpreter shall for all purposes be deemed to be given or made to the Industrial Inspector.

(5) A person who acts as an interpreter for an Industrial Inspector shall not, otherwise than for the purposes of this Act and to assist an Industrial Inspector in the performance of his duties under this Act, disclose to any person any information that he acquires in the performance of his duty as such an interpreter.

Penalty: \$1 000.

(6) In subsection (3) (a)—

“conveyance” means vehicle, vessel, hovercraft, aircraft or other means of transportation made, adapted or used or intended to be used for the carriage of persons or goods.

(7) In subsection (3)—

“record” means any thing or process on or by which information is recorded or preserved or by means of which a meaning can be conveyed by any means in a visible or recoverable form, whether or not the assistance of some electronic, electrical, mechanical, chemical or other machine or process is required to convey that information or meaning. ” .

33. Section 100 of the principal Act is repealed. Section 100 repealed.

34. Section 102 of the principal Act is amended in subsection (1) by deleting “a document or allow a document to be examined” and substituting the following— Section 102 amended.

“ , or allow to be examined, a record as defined by section 98 (7) ” .

35. The principal Act is amended by inserting after section 102 the following section— Section 102A inserted.

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

(2) The Registrar shall, subject to this Act, institute proceedings for an offence against or under this Act on the request of a person who claims to be adversely affected by that offence unless in the opinion of the Registrar, there is good cause not to do so. ” .

Section 106
amended.

36. Section 106 of the principal Act is amended in paragraph (a) by—

(a) inserting after “the official signature of” the following—

“ any person holding ” ; and

(b) deleting “Senior Industrial Commissioner” in subparagraph (ii) and substituting the following—

“ Senior Commissioner, Commissioner ” .

Section 113
amended.

37. Section 113 of the principal Act is amended in paragraph (c) of subsection (1) by—

(a) deleting “and” after the semicolon at the end of subparagraph (iii);

(b) deleting “the Commission;” in subparagraph (iv) and substituting the following—

“ the Commission; and ” ; and

(c) inserting after subparagraph (iv) the following subparagraph—

“ (v) appeals, and the procedure on applications under section 49A; ” .