

# PUBLIC SERVICE ARBITRATION.

No. 41 of 1982.

## AN ACT to amend the Public Service Arbitration Act 1966-1978.

[Assented to 27 May 1982.]

**B**E 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 *Public Service Arbitration Amendment Act 1982*.

Short title  
and citation.

(2) In this Act the Public Service Arbitration Act 1966-1978 is referred to as the principal Act.

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April 1980.

(3) The principal Act as amended by this Act may be cited as the Public Service Arbitration Act 1966-1982.

Section 3  
amended.

2. Section 3 of the principal Act is amended—

- (a) in paragraph (a) of the definition of “employer” by deleting “Officers” and substituting the following—

“ officers ” ;

- (b) in the definition of “Government officer” by deleting “eleven A of the Industrial Arbitration Act, 1912” and substituting the following—

“ 96 of the Industrial Arbitration Act 1979 ” ;

- (c) by inserting, after the definition of “the Board”, the following definitions—

“ “the claimant”, in relation to a claim submitted—

- (a) under section 14 (1) of this Act, means the Association;

or

- (b) under section 14 (2) of this Act, means the employer making that claim;

“the Deputy Arbitrator” means the person appointed to be the deputy of the Arbitrator under section 7 (1) of this Act; ” ;

- (d) in the definition of “the Public Service Board” by deleting “, 1978.” and substituting the following—

“ 1978; ” ; and

- (e) by inserting, after the definition of “the Public Service Board”, the following definition—

“ “the respondent”, in relation to a claim submitted—

- (a) under section 14 (1) of this Act, means the employer affected by that claim; or

(b) under section 14 (2) of this Act, means the Association. ” .

3. Section 7 of the principal Act is repealed and the following sections are substituted—

Section 7 repealed and sections 7 and 7A substituted.

“ 7. (1) The Governor may appoint a person to be the deputy of the Arbitrator for such term not exceeding 7 years as is specified in the instrument of his appointment.

Deputy Arbitrator may be appointed.

(2) The Deputy Arbitrator—

(a) is, on the expiry of his term of appointment or re-appointment, eligible for re-appointment; and

(b) has, while—

(i) the office of the Arbitrator is vacant or the Arbitrator is absent from duty or for any reason unable to perform his duties; or

(ii) a direction given under section 10A of this Act subsists,

all the powers, duties, functions and obligations of the Arbitrator.

(3) The provisions of subsections (3), (4) and (5) of section 5 of this Act and of sections 6, 8, 9 and 10 thereof apply to the Deputy Arbitrator as if references in those provisions to the Arbitrator were references to the Deputy Arbitrator.

7A. (1) The Governor may, whether or not the term of appointment or re-appointment of the Arbitrator or Deputy Arbitrator has expired, continue him in office for such period as the Governor determines in order to enable him to complete all matters, proceedings or inquiries on which he has entered but which he has not completed before that expiry.

Continuation in office of Arbitrator or Deputy Arbitrator.

(2) The Governor may from time to time extend a period determined by him under subsection (1) of this section for such period or periods as he thinks fit. ” .

Section 10A  
inserted.

4. The principal Act is amended by inserting, after section 10, the following section—

Arbitrator  
may direct  
Deputy  
Arbitrator  
to act as  
Arbitrator.

“ 10A. (1) The Arbitrator may at any time direct the Deputy Arbitrator to exercise or perform all or any of the powers, duties, functions and obligations of the Arbitrator for such period as is specified in that direction, and the Deputy Arbitrator shall comply with that direction.

(2) The Arbitrator may at any time cancel a direction given under subsection (1) of this section. ” .

Section 11  
amended.

5. Section 11 of the principal Act is amended in subsection (1) by—

(a) deleting paragraph (b) (i); and

(b) inserting, after paragraph (ea), the following paragraph—

“ (eb) a claim made by an employer concerning any matter in relation to which the Association might make a claim under paragraph (a), (b), (c), (ca), (d), (e) or (ea) of this subsection; ” .

Sections 14  
and 15  
repealed and  
substituted.

6. Sections 14 and 15 of the principal Act are repealed and the following sections are substituted—

Submission  
of claims  
to employers  
or Associa-  
tion.

“ 14. (1) Before the Association may make a claim relating to any of the matters referred to in paragraph (a), (b), (c), (ca), (d), (e) or (ea) of section 11 (1) of this Act to the Arbitrator, it shall first submit that claim to the employer affected by that claim.

(2) Before an employer may make a claim relating to any matter referred to in section 11 (1) (eb) of this Act to the Arbitrator, the employer shall first submit that claim to the Association.

(3) The claimant shall, within 7 days of submitting a claim to the respondent under subsection (1) or (2) of this section, cause a copy of the claim to be filed at the office of the Arbitrator for the information of the Arbitrator.

(4) On receiving a claim submitted to it under subsection (1) or (2) of this section, the respondent shall consider that claim and within a period of one month after the date of its receipt confer with the claimant concerning the matters the subject of that claim.

(5) After considering the claim submitted to it under subsection (1) or (2) of this section and conferring with the claimant in accordance with subsection (4) of this section, the respondent may—

(a) enter into an agreement in writing with the claimant concerning all or any;

(b) decline to enter into an agreement with the claimant concerning any;

or

(c) if it is an employer—

(i) make any determination the employer is empowered to make concerning all or any;

or

(ii) decline to make any determination concerning any,

of the matters the subject of that claim.

15. (1) If, when the claimant has submitted a claim to the respondent under

Submission  
of claims to  
Arbitrator.

subsection (1) or (2) of section 14 of this Act—

- (a) the respondent does not confer with the claimant within the period referred to in section 14 (4) of this Act; or
- (b) the claimant and the respondent are unable to reach agreement on the matters the subject of the claim within 2 months after the date of receipt by the respondent of the claim or within such longer or shorter period as may be agreed on between the claimant and the respondent,

the claimant may submit the claim to the Arbitrator for determination in accordance with this Part.

(2) On receiving a claim submitted to him under subsection (1) of this section, the Arbitrator shall forthwith forward to the respondent—

- (a) a copy of that claim; and
- (b) a notice requesting the respondent to lodge with the Arbitrator an answer to that claim within a period of 7 days after the receipt by the respondent of that notice.

(3) If no answer to a claim is lodged with the Arbitrator within the period referred to in subsection (2) (b) of this section, the Arbitrator may determine the claim.

(4) If the respondent lodges an answer to a claim with the Arbitrator, the Arbitrator shall—

- (a) call a conference, to be presided over by himself, of the claimant and the respondent; and
- (b) following the conference called under this subsection and after having heard such evidence, if any, as he

thinks necessary in respect of such matters as have not been agreed on at that conference, determine the claim.

(5) In determining a claim submitted to him under subsection (1) of this section, the Arbitrator may determine that his award shall be deemed to have commenced to take effect on a day that preceded the date of the making of his award, but did not precede the day on which that claim was so submitted to him.

(6) If 2 or more claims are submitted to the Arbitrator under subsection (1) of this section concerning an employer or employers and the Association, the Arbitrator shall hear those claims in such order as is agreed on between the employer or employers and the Association or, in default of such an agreement, in such order as the Arbitrator decides. ” .

7. Section 17 of the principal Act is amended in subsection (1) by deleting “or (ea)” and substituting the following—

Section 17  
amended.

“ , (ea) or (eb) ” .

8. Section 23A of the principal Act is amended in subsection (1) by—

Section 23A  
amended.

(a) deleting “and” at the end of paragraph (a);

(b) deleting the full stop at the end of paragraph (b) and substituting the following—

“ ; and ” ; and

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

“ (c) notwithstanding the expiry of the term of the agreement and subject to any order made under subsection (2) of this section in relation to

the agreement, continue in force until—

- (i) an award replacing the agreement is made; or
- (ii) a new agreement replacing the agreement is entered into under this Part. ” .

Section 26  
amended.

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

- (a) “established under Part IVA of the Industrial Arbitration Act, 1912” and substituting the following—

“ continued in existence and constituted under Part IV of the Industrial Arbitration Act 1979 ” ; and

- (b) “or (ea)” and substituting the following—  
“ , (ea) or (eb) ” .

Section 27  
amended.

10. Section 27 of the principal Act is amended—

- (a) in subsection (1) by deleting “or (ea)” and substituting the following—

“ , (ea) or (eb) ” ; and

- (b) by deleting paragraph (d) of subsection (2) and substituting the following paragraph—

“ (d) notwithstanding the expiry of the term of an award, the award shall, subject to any variation ordered by the Arbitrator, continue in force after that expiry until—

- (i) an agreement replacing the award is entered into under this Part; or
- (ii) a new award replacing the award is made. ” .

11. Section 28 of the principal Act is repealed and the following section is substituted—

Section 28  
repealed and  
substituted.

“ 28. The provisions of this Part, insofar as they relate to the Association, shall operate or have effect while the registration of the Association as a union under the Industrial Arbitration Act 1912-1979 is continued under and subject to the Industrial Arbitration Act 1979 and no longer. ” .

Application  
of this Part  
to Associa-  
tion.

12. Section 29 of the principal Act is repealed.

Section 29  
repealed.

13. Section 40 of the principal Act is amended—

Section 40  
amended.

(a) in subsection (1) by deleting “required as” and substituting the following—

“ required or ” ; and

(b) by repealing subsection (2).

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