

WESTERN AUSTRALIAN COAL INDUSTRY TRIBUNAL.

No. 108 of 1978.

**AN ACT to provide for the regulation of the Coal
Industry and for related purposes.**

[Assented to 8th December, 1978.]

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. This Act may be cited as the *Western Australian Coal Industry Tribunal Act, 1978.* Short title.

2. This Act shall come into operation on the day which is the commencing date as defined in section 8 of the Mining Act, 1978. Commencement.

Saving.

3. (1) Nothing in this section affects the operation of the Interpretation Act, 1918.

(2) In this section—

“former Tribunal” means the Western Australian Coal Industry Tribunal constituted in pursuance of the repealed provisions;

“new Tribunal” means the Western Australian Coal Industry Tribunal constituted in pursuance of this Act; and

“repealed provisions” means Division 1 of Part XIII of the Mining Act, 1904, as in force immediately before the coming into operation of this Act.

(3) On the coming into operation of this Act—

(a) the former Tribunal is preserved and continues in existence under and subject to this Act and is deemed to have been constituted as the new Tribunal;

(b) a person who was immediately before then the Chairman, Deputy Chairman, employees' representative or substitute thereof, or an employers' representative or substitute thereof shall continue in a like capacity in the new Tribunal for such period as he would have done in the former Tribunal if the repealed provisions were still in force;

(c) all applications, matters, and proceedings commenced under the repealed provisions pending or in progress immediately before then may be continued, completed, or enforced under this Act;

(d) any award, order, or decision in force immediately before then under the repealed provisions shall be deemed to have been made under the authority of this Act and to continue in force and take effect according to its tenor as if expressly authorized by this Act;

- (e) subject to paragraph (g) of this subsection, all parties and persons shall abide by any award, order, or decision referred to in paragraph (d) of this subsection unless and until it is altered under this Act, and, if it be altered, shall then abide by it as so altered;
- (f) when an award, order, or decision referred to in paragraph (d) of this subsection is inconsistent with an award, order, or decision made under this Act, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid; and
- (g) any award, order, or decision referred to in this section shall be subject to review and determination under this Act.

4. In this Act, unless the contrary intention appears— Interpreta-
tion.

“board of reference” means a board of reference constituted in pursuance of this Act;

“industrial dispute” means—

- (a) any dispute as to an industrial matter; or
- (b) any threatened or impending or probable dispute as to any industrial matter;

“industrial matter” means any industrial matter likely to affect the amicable relations of employers and employees in the coal industry;

“Commission” means The Western Australian Industrial Commission established under the Industrial Arbitration Act, 1912;

“Tribunal” means the Western Australian Coal Industry Tribunal constituted in pursuance of this Act;

“union” means the union to which the majority of the workers concerned in an industrial dispute or industrial matter owe membership.

Western
Australian
Coal
Industry
Tribunal.

5. (1) The Governor may constitute a Tribunal which shall be called the Western Australian Coal Industry Tribunal, and the members of which shall be appointed by the Governor.

Five
members.

(2) The Tribunal shall consist of five members, of whom—

(a) one shall be chairman;

Two
employees'
representa-
tives.

(b) two, who shall in each case to be considered and determined by the Tribunal—

(i) be members of the Union;

(ii) be referred to as the employees' representatives; and

(iii) represent the employees; and

Two
employers'
representa-
tives.

(c) two, who shall be referred to as employers' representatives, shall represent employers.

Deputy
Chairman.

(3) At any time the Governor may appoint a Deputy Chairman to act in performing the duties of the Chairman when the Chairman is unable through illness or absence to perform his duties, and the Deputy Chairman, while acting in performing the duties of the Chairman, shall be regarded as the Chairman for the purposes of this Act.

Substitutes
for repre-
sentative
members.

(4) Each of the employees' representatives and employers' representatives may appoint a person as substitute to act in performing his duties in his stead, and while so acting, that person shall be regarded as the representative for the purposes of this Act.

(5) The term of office of the Chairman and employers' representatives shall be for such period not exceeding two years as is respectively specified in their instruments of appointment.

Term of office of Chairman and employers' representatives.

(6) The Chairman and the employers' representatives shall be eligible for re-appointment at the expiration of the term of their office.

Eligibility of Chairman and employers' representatives for re-appointment.

(7) The Governor may appoint a person to fill any vacancy occurring in membership.

Vacancies.

(8) The Governor may remove any member for misbehaviour or incapacity.

Removal.

(9) There shall be payable to the Chairman, Deputy Chairman, and other members of the Tribunal such remuneration as shall be fixed by the Governor, and such expenses as shall be allowed by the Minister.

Remuneration and expenses.

(10) The Chairman and half of the other members of the Tribunal shall constitute a quorum, and when a quorum is constituted the Tribunal may validly function notwithstanding that both employees' representatives or both employers' representatives shall fail to attend.

Quorum.

(11) If on any question before the Tribunal at any meeting, the other members are evenly divided, the opinion of the Chairman shall prevail.

Chairman's opinion to prevail when members not unanimous.

6. Subject to the Commonwealth of Australia Constitution Act, the powers and functions vested in the Tribunal by this Act are so vested to the extent to which they are not in excess of the legislative powers of the State, and the exercise of any such powers by the Tribunal shall have effect to the extent to which such legislative powers are not exceeded.

Limitation of authority of Tribunal.

7. Notwithstanding any of the provisions of the Industrial Arbitration Act, 1912, or of any award or industrial agreement made or registered thereunder, the Tribunal is to have cognisance of—

Jurisdiction.

- (a) any industrial dispute (as defined in this Act) not extending beyond the limits of the State, between the union on the one hand and employers or association of employers on the other hand referred to it by the union, or the employers or associations, parties thereto, or by the Minister;
- (b) any industrial matter arising under any award made under the Industrial Arbitration Act, 1912, or of the Tribunal relating to the coal mining industry in the State referred to it by the union or the employers or associations affected by the matter, or by the Minister;
- (c) any other matter affecting industrial relations in that industry which the Minister declares is in the public interest proper to be dealt with under this Act.

Power of Tribunal.

8. The Tribunal shall consider and determine any industrial dispute, industrial matter or other matter of which it has cognisance, and for any such purpose shall have and may exercise the powers hereinafter in this Act provided.

Conferences.

9. (1) The Chairman may, whenever in his opinion it is desirable for the purpose of preventing or settling an industrial dispute, summon any person to attend, at a time and place specified in the summons, at a conference presided over by himself.

(2) Any person so summoned shall attend the conference and continue his attendance thereat as directed by the Chairman.

Penalty—Five hundred dollars.

(3) The conference may be held partly or wholly in public or in private, at the discretion of the Chairman.

(4) Whenever a conference has been held under this section, and an agreement has been reached as to the whole or some portion of the matters in dispute, the Chairman shall sign and cause to be filed with the Registrar of Industrial Unions appointed under the Industrial Arbitration Act, 1912, a memorandum of the matters upon which an agreement has been reached, and the terms and conditions agreed upon; and unless otherwise ordered, and subject to any direction by the Chairman, such memorandum shall thereupon have the force and effect of an award made under the Industrial Arbitration Act, 1912, and shall be enforceable accordingly, but before any such memorandum is signed all industrial unions and employers that in the opinion of the Chairman may be affected thereby shall be notified, and shall be afforded the opportunity of being heard.

(5) Whenever a conference has been held under this section, and an agreement has been reached as to some of the matters in dispute, but not as to the whole of the matters in dispute, the Chairman may refer to the Tribunal the matters in dispute as to which no agreement has been reached, and the Tribunal shall have jurisdiction to hear and determine such matters so referred to it, and may incorporate in its award all matters as to which an agreement was reached at the conference, and the award shall be enforceable accordingly.

(6) Whenever a conference has been held under this section and no agreement has been reached, the Chairman may refer to the Tribunal all or any of the matters in dispute, and the Tribunal shall have jurisdiction to hear and determine the same.

10. (1) The Tribunal shall act according to equity, good conscience and the substantial merits of the case, without regard to technicalities or legal forms, and shall not be bound by any rules of evidence, but may inform its mind on any matter in such manner as it thinks just.

Tribunal to
act accord-
ing to
equity, etc.

(2) The Tribunal may make its own rules of procedure.

Representa-
tion of
parties at
hearing.

(3) On the hearing, determination or decision of any industrial dispute, industrial matter, or other matter by the Tribunal or a board of reference, as the case may be, under this Act, an organisation may be represented by a member or officer of the organisation, and any party not being an organisation may be represented by an employee of that party, but no party shall (except by leave of the Tribunal or a board of reference, as the case may be) be represented by counsel or solicitor or paid agent.

(4) Pending a determination or decision of any industrial dispute or industrial matter by the Tribunal or a board of reference, the Chairman of the Tribunal, on the application of any party interested in such dispute or matter may by order direct that the conditions or situation out of which such industrial dispute or industrial matter arose shall not be altered pending such decision or determination.

Remissions
to boards
of reference.

11. (1) The Tribunal may at any time—

- (a) remit to a board of reference for inquiry and report, with or without directions, any industrial dispute, industrial matter or other matter of which it has cognisance and which the Tribunal considers is desirable to have included in any reference for investigation and upon which the Tribunal desires information for the purpose of making an award; and the Tribunal may, but shall not be obliged to accept, any conclusion arrived at or any recommendation made by the board of reference, and all persons concerned in those conclusions and recommendations shall be entitled to be heard before the Tribunal;
- (b) remit to a board of reference, with or without directions for determination and award, any industrial dispute, industrial matter, or other matter of which it has

cognisance, whereupon the board of reference shall have power to determine the industrial dispute, industrial matter or other matter and make an award therein;

- (c) withdraw a remission made under paragraph (a) or (b) of this subsection, whether the board of reference has concluded its work or otherwise.

(2) The Tribunal may at any time itself conduct any investigation, inquiry, or proceeding which has been remitted to a board of reference under this Act and upon intimation of its intention to do so being given to the chairman of the board of reference the chairman of the board of reference shall forward to the Chairman of the Tribunal a copy of the evidence taken before the board of reference and the exhibits therein referred to, and upon that intimation being given, the jurisdiction of the board of reference to continue the investigation, inquiry, or proceeding shall cease, but the Tribunal may at any time again remit to the board of reference any matter arising in the investigation or inquiry for report and upon that remission the jurisdiction of the board of reference to inquire into and report upon the matter shall revive.

12. (1) For the purposes of this Act, the Tribunal Boards of reference. may appoint boards of reference.

(2) Each board of reference shall consist of a chairman, who shall be nominated by the Minister, and two representative members or their deputies nominated by the employer concerned as to one, and by the union as to one, and notice of the nomination of any deputy shall be given to the Tribunal and to the employer concerned by the union or by the employer concerned to the union, as the case may be.

(3) The board of reference shall hold its meetings in private unless the two representative members or the chairman decide otherwise.

(4) A majority of the members of a board of reference, one of which majority shall be the chairman, shall constitute a quorum, and when a quorum is present the board may validly function, notwithstanding that one representative member is absent.

(5) A board of reference shall meet at such times and places and may adjourn a meeting from time to time and place to place as shall be agreed upon by the chairman and representative members, but failing agreement, as the chairman may determine.

(6) If, on any question before the board of reference, the chairman and representative members are not unanimous, the opinion of the chairman shall prevail, and the decision shall be signed and dated by the chairman and a copy thereof shall be sent to all parties concerned and to the Tribunal.

(7) The decision of a board of reference may be reviewed and altered by the Tribunal on the application of the union or the employer concerned, as the case may be, if—

- (a) notice of the application is given by the union or the employer concerned, as the case may be, to the chairman of the board of reference and to the other party concerned within seven days of the date of the decision, or such further period of time as the Tribunal may allow; and
- (b) the application is lodged with the Tribunal within fourteen days of the date of the decision or such further period as the Tribunal may allow.

(8) All parties and persons shall abide by the decision of a board of reference, unless and until it is altered by the Tribunal, and if it be altered shall then abide by it as so altered.

(9) Subject to the provisions of this section, when in regard to any industrial dispute or industrial matter, or other matter of which the Tribunal has cognisance—

- (a) an award or order is made by the Tribunal or a board of reference; or
- (b) an agreement as to the whole or part thereof is entered into by the parties concerned,

the award, order, or agreement shall be binding on the parties concerned and shall be filed with the Commission and shall be enforceable as an award or order of the Commission.

13. (1) On the application of any party to the reference within one calendar month of any decision, the Commission in Court Session may permit any decision or settlement given or effected by the Tribunal to be reviewed by the Commission in Court Session and pending such review may by order stay the operation of the decision or settlement.

*Review by
Court.*

(2) On any such review, the Commission in Court Session may re-hear the whole or any part of the industrial dispute or matter in respect of which the decision or settlement was given or effected, and determine the same.

14. Except as provided by section 13 of this Act, an award, order or determination of the Tribunal under this Act shall not be challenged, appealed against, quashed, or called into question, or be subject to prohibition, mandamus or injunction in any Court on any account whatever.

*Awards, etc.,
not to be
challenged
or
questioned.*

15. During the currency of any award or order made by the Tribunal under this Act, no award or order made by the Commission or by any Tribunal having jurisdiction in industrial matters in the coal

*Awards of
Tribunal
inconsistent
with award
or industrial
authority.*

mining industry dealing with the same subject matter and inconsistent with the award or order made by the Tribunal (except an award, order, or decision made under this Act), shall be effective.

Witnesses

16. (1) Allowances payable to persons attending under this Act as witnesses before the Tribunal and the fees and travelling expenses payable to the chairman and representative members of boards of reference shall be as prescribed by regulations.

(2) In the making of regulations for the purposes of this section, provision shall be made for compensation for loss of wages incurred by witnesses by reason of their attendance as such.

Regulations.

17. The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed in relation to any matter within the powers and functions vested by this Act in the Minister or in the Tribunal, and generally for regulating and carrying into effect any action taken by the Minister or the Tribunal in the exercise of any such power or function.
