

## PUBLIC SERVICE ARBITRATION.

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No. 16 of 1977

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### AN ACT to amend the Public Service Arbitration Act, 1966-1975.

[Assented to 11th October, 1977.]

**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 *Public Service Arbitration Act Amendment Act, 1977*. Short title and citation.

(2) In this Act the Public Service Arbitration Act, 1966-1975 is referred to as the principal Act. Act No. 62 of 1966 amended by Acts Nos. 62 of 1970 and 62 of 1975.

(3) The principal Act as amended by this Act may be cited as the Public Service Arbitration Act, 1966-1977.

Commence-  
ment.

2. This Act shall come into operation on a date to be fixed by proclamation.

Long title  
amended.

3. The long title of the principal Act is amended by adding after the word "Arbitrator" in line two the passage ", for the establishment of a Public Service Appeal Board".

Heading  
added.

4. The principal Act is amended by inserting before section 1 the heading "PART I.—PRELIMINARY."

Section 2A  
added.

5. The principal Act is amended by adding after section 2 a section as follows—

Arrangement.

2A. The arrangement of this Act is as follows—

PART I.—PRELIMINARY, ss. 1-4.

PART II.—PUBLIC SERVICE ARBITRATOR, ss. 5-30.

PART III.—THE PUBLIC SERVICE APPEAL BOARD, ss. 31-40.

Section 3  
amended.

6. Section 3 of the principal Act is amended—

(a) by deleting paragraph (a) of the interpretation "employer" and substituting a paragraph as follows—

(a) in relation to Government officers who are public servants, ;

(b) by inserting before the interpretation "the Arbitrator" an interpretation as follows—

"public servant" means a person who is employed as an officer or temporary employee within the meaning of the Public Service Act, 1904; ;

(c) by adding after the interpretation "the Association" an interpretation as follows—

"the Board" means The Public Service Appeal Board established by Part III of this Act; ; and

- (d) by deleting the interpretation “the Public Service Commissioner” and substituting an interpretation as follows—

“the Public Service Board” means the Public Service Board established by Part II of the Public Service Act, 1904. .

7. The principal Act is amended by adding after section 4 the heading “PART II.—PUBLIC SERVICE ARBITRATOR.”. Heading added.

8. The principal Act is amended by adding after section 30 a heading and section as follows— Heading and section 31 added.

PART III.—THE PUBLIC SERVICE APPEAL BOARD.

31. (1) In this Part unless the contrary intention appears— Interpretation.

“appeal” means an appeal made to the Board under this Part;

“appellant” means a Government officer by whom or on whose behalf an appeal is made.

(2) References, however expressed, in any law of the State or other document or instrument of any kind to the repealed Act or The Public Service Appeal Board established under the repealed Act shall, unless the context is such that it would be incorrect or inappropriate so to do, be read and construed as references to this Part and the Board, respectively.

(3) In subsection (2) of this section—

“law of the State” means—

(a) an Act;

(b) regulations, rules or by-laws having effect by virtue of an Act; and

(c) an instrument having effect by virtue of an Act or of any regulations, rules or by-laws referred to in paragraph (b) of this subsection;

“repealed Act” means the Public Service Appeal Board Act, 1920 or that Act as amended at any time. .

Section 32 added.

9. The principal Act is amended by adding after section 30 a section as follows—

Establishment and jurisdiction of the Public Service Appeal Board.

32. (1) For the purposes of this Part there is hereby established a board to be known as “The Public Service Appeal Board”.

(2) The Board has jurisdiction to hear and determine—

- (a) any appeal by any public servant, or by the Association on his behalf, against any decision of the Public Service Board in relation to an interpretation of any provision of the Public Service Act, 1904, and the regulations made thereunder, concerning the conditions of service (other than salaries and allowances) of public servants;
- (b) any appeal by any public servant, or by the Association on his behalf, from a decision, determination or recommendation made by the Public Service Board in relation to that public servant under section forty-four of the Public Service Act, 1904;
- (c) any appeal by any Government officer, not being a public servant, who occupies a position that carries a salary not lower than the prescribed salary, or by the Association on his behalf, from a decision, determination or recommendation of his employer that he be dismissed;

- (d) any appeal by any public servant, or by the Association on his behalf, from a decision, determination or recommendation of the Public Service Board in relation to that public servant under section forty-two of the Public Service Act, 1904;
- (e) any appeal by a Government officer, not being a public servant, who occupies a position that carries a salary lower than the prescribed salary, or by the Association on his behalf, from a decision, determination or recommendation of his employer that he be dismissed;
- (f) any appeal by a temporary employee within the meaning of the Public Service Act, 1904, or by the Association on his behalf, from a determination of the Public Service Board under subsection (8) of section thirty-one of that Act,

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

(3) Subsection (2) of this section applies in relation to any decision, determination or recommendation referred to in that subsection whether made before, on or after the date of the coming into operation of the Public Service Arbitration Act Amendment Act, 1977.

(4) In subsection (2) of this section "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. .

10. The principal Act is amended by adding after section 30 a section as follows—

Section 33  
added.

33. (1) The Board shall consist of three members.

Constitution  
of Board.

(2) In the case of an appeal referred to in paragraph (a), (b) or (c) of subsection (2) of section thirty-two of this Act, the members of the Board shall be—

- (a) a judge, 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 Association.

(3) In the case of an appeal referred to in paragraph (d), (e) or (f) of subsection (2) of section thirty-two of this Act, the members of the Board shall be—

- (a) the 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 Association. .

Section 34  
added.

11. The principal Act is amended by adding after section 30 a section as follows—

Right of  
appeal.

34. Any Government officer, or the Association on behalf of any Government officer, may in the prescribed manner and within the prescribed time appeal to the Board upon any matter within its jurisdiction affecting that Government officer. .

Section 35  
added.

12. The principal Act is amended by adding after section 30 a section as follows—

Appearance  
before Board.

35. Any party to an appeal may appear before the Board in person or by a legal practitioner or other agent. .

13. The principal Act is amended by adding after section 30 a section as follows— Section 36 added.

36. (1) The Board shall sit at such time and place as the Chairman of the Board may appoint. Procedure.

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

(3) In the hearing and determination of every appeal the Board 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 fit.

(4) The Board shall keep a record of its proceedings and that record shall be open to public inspection and available for future reference.

14. The principal Act is amended by adding after section 30 a section as follows— Section 37 added.

37. (1) For the purposes of this Part, the Board shall as regards any appeal have power— Powers of Board.

(a) by summons signed by the Clerk to the Board, to summon any witness before it, and to compel the production before it of books, documents and things for the purpose of reference to such matters as relate to the appeal; and

(b) to take evidence on oath or affirmation, and either in public or in camera at its discretion.

(2) Any person who on being summoned by the Board as a witness fails without lawful excuse and after tender of reasonable expenses, to appear in obedience to the summons, or refuses or fails to be sworn or make an

affirmation or produce books, documents and things which he is lawfully required to produce, or answer questions which he is lawfully required to answer commits an offence.

Penalty: One hundred dollars.

(3) Any proceeding for an offence against subsection (2) of this section may be prosecuted and dealt with summarily under and in accordance with the provisions of the Justices Act, 1902.

(4) The Board may, in its discretion, order an appellant to forfeit and pay to the Treasurer a sum not exceeding ten dollars if, in the opinion of the Board, any application is frivolous or unreasonable. .

Section 38  
added.

15. The principal Act is amended by adding after section 30 a section as follows—

Decision  
of Board.

38. The decision of the Board, or of a majority of the members of the Board, on an appeal shall be reported in writing by the Board to the parties to the appeal and shall be final, and effect shall be given to every such decision. .

Section 39  
added.

16. The principal Act is amended by adding after section 30 a section as follows—

Clerk to  
the Board.

39. (1) A person shall be appointed as Clerk to the Board.

(2) The Clerk to the Board shall be a public servant and may hold office in conjunction with any other office in the Public Service. .

Section 40  
added.

17. The principal Act is amended by adding after section 30 a section as follows—

Regulations.

40. (1) The Governor may make regulations for any purpose for which regulations are contemplated, or required as permitted by this

Part and may make all such other regulations as may, in his opinion, be necessary or expedient for giving full effect to the provisions of, and for the due administration of, this Part.

(2) The regulations in force under the Public Service Appeal Board Act, 1920-1966 immediately before the coming into operation of the Public Service Appeal Board Act Repeal Act, 1977 shall, in so far as they are not inconsistent with this Part, subsist and enure for the purposes of this Part, and shall continue as if this Part had been in operation when they were made and they had been made under subsection (1) of this section. .

18. The principal Act is amended as set out in the Schedule to this Act. Minor amendments.

#### THE SCHEDULE.

Provision amended	Amendment
Section 3 .. ....	Delete "Commissioner" in line 7 of the interpretation "employer", substitute "Board".
Section 3 .. ....	After "under" in line 2 of the interpretation "the Arbitrator", add "Part II of".
Section 4(3) ....	Delete "This" in line 1, substitute "Part II of this".
Section 4(3) ....	Delete "Commissioner" in line 5 of paragraph (b), substitute "Board".
Section 7(2) ....	Delete "Act" in line 3, substitute "Part".
Section 11(1) ....	Delete "Commissioner" in line 1 of subparagraph (i) of paragraph (b), substitute "Board".
Section 11(1) ....	Delete "Commissioner" in line 2 of paragraph (c) substitute "Board".
Section 11(1) ....	Delete "the" in line 3 of subparagraph (ii) of paragraph (c).
Section 11(1) ....	Delete "Commissioner" in line 2 of paragraph (ca), substitute "Board".
Section 11(1) ....	Delete "Act" in the last line of paragraph (f), substitute "Part".
Section 11(2) ....	Delete "Act" in the last line, substitute "Part".
Section 13(1) ....	Delete "Act" in line 4, substitute "Part".
Section 15(1) ....	Delete "Act" in the last line, substitute "Part".

Provision amended	Amendment
Section 17(3) ....	Delete "Act" in the last line, substitute "Part".
Section 19 ....	Delete "Act" in line 3, substitute "Part".
Section 20(1) ....	Delete "Act" in line 1 and again in line 3, substitute "Part" in each case.
Section 20(1) ....	Delete "Act" in the last line of paragraph (j), substitute "Part".
Section 20(3) ....	After "summoned" in line 1, add "by the Arbitrator".
Section 21 ....	Delete "Act" in line 4, substitute "Part".
Section 22 ....	Delete "Act" in line 2, substitute "Part".
Section 23(1) ....	After "application" in line 2, add "under this Part".
Section 23(2) ....	After "application" in line 2, add "under this Part".
Section 23(5) ....	After "Arbitrator" in line 5 of paragraph (a), add "in proceedings under this Part".
Section 23(5) ....	After "Arbitrator" in line 8 of paragraph (a), add "in any such proceedings".
Section 23(5) ....	After "him" in line 3 of paragraph (b), add "under this Part".
Section 23A(1) ....	Delete "Act" in line 2, substitute "Part".
Section 23A(3) ....	Delete "Act" in line 1 and again in line 4, substitute "Part" in each case.
Section 24(1) ....	Delete "Act" in line 4, substitute "Part".
Section 24(2) ....	Delete "Act" in line 2 and again in line 4, substitute "Part" in each case.
Section 24A(1) ....	Delete "Act" in line 6, substitute "Part".
Section 25 ....	Delete "Act" in line 3, substitute "Part".
Section 27(3) ....	Delete "Act" in line 4 of paragraph (a) substitute "Part".
Section 28 ....	Delete "Act" in line 1, substitute "Part".
Section 30 ....	Delete "Act" in line 3 and again in the last line, substitute "Part" in each case.