

Approved for reprint 21 March 1983.

WESTERN AUSTRALIA.

INDUSTRIAL ARBITRATION ACT 1979-1982.

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SCHEDULE.

Approved for reprint 21 March 1983.

WESTERN AUSTRALIA.

INDUSTRIAL ARBITRATION.

No. 114 of 1979.¹

[As amended by Acts:

No. 82 of 1980, assented to 5 December, 1980;

No. 11 of 1981, assented to 22 May 1981;

No. 10 of 1982², assented to 14 May 1982;

No. 121 of 1982, assented to 9 December 1982,

and reprinted pursuant to the Amendments Incorporation Act 1938.]

AN ACT to consolidate and amend the law relating to the prevention and resolution of conflict in respect of industrial matters, the mutual rights and duties of employers and employees, the rights and duties of unions of employers and employees, and for related purposes.

[Assented to 21 December 1979.]

BE it enacted—

PART I.—INTRODUCTORY.

1. This Act may be cited as the *Industrial Arbitration Act 1979-1982*.

Short title.
Amended
by No. 121
of 1982, s. 1.

2. The provisions of this Act shall come into operation on such day or days as is or are, respectively, fixed by proclamation¹.

Commence-
ment.

¹ Came into operation 1 March 1980; see *Gazette* 8/2/80, p. 383.

² Came into operation 1 July 1982; see s. 2 (1).

Application
off-shore.
Amended by
No. 10 of
1982, s. 28.

3. (1) Subject to subsections (5) and (6) where any industry is carried on—

- (a) partly within the State and partly within an area to which this subsection applies; or
- (b) wholly or partly in an area to which this subsection applies, and—
 - (i) facilities for servicing or supporting that industry are maintained in the State by or on behalf of the employer concerned;
 - (ii) the employer concerned is connected with the State;
 - (iii) that industry is carried on from, or on, or by means of, an aircraft, ship, or vessel certificated, registered, or licensed under a law of the State or by a public authority, or which is required to be so certificated, registered, or licensed;
 - (iv) that industry is carried on from, or on, or by means of, a rig or other structure, installation, or equipment, the use or function of which is regulated by the State or by the State and the Commonwealth, or is required to be so regulated;
 - (v) that industry is authorized or regulated by the State or by the State and the Commonwealth; or
 - (vi) that industry is carried on pursuant to a law of the State,

then this Act applies to and in relation to that industry in so far as any employment relates to the area to which this subsection applies and in any such case this Act also applies to and in relation to any industrial matter or industrial action related thereto, and any jurisdiction, function, duty, or power exercisable, imposed, or conferred by or under this Act extends thereto.

(2) An employer shall, for the purposes of subsection (1), be connected with the State if that employer—

- (a) is domiciled in the State;
- (b) is resident in the State, normally or temporarily;
- (c) being a body corporate, is registered, incorporated, or established under a law of the State or is for the purposes of the Companies (Western Australia) Code deemed to be related to such a body;
- (d) in connection with the industry concerned, has an office or a place of business in the State; or
- (e) is the holder of a licence, lease, tenement, permit, or other authority, granted under a law of the State or by a public authority under or by virtue of which the industry is carried on.

(3) The areas to which subsection (1) applies are—

- (a) that area situate west of one hundred and twenty-nine degrees of East Longitude reckoning from the meridian of Greenwich, that is part of the areas known as and comprised within—
 - (i) the Australian fishing zone as defined by the Commonwealth Fisheries Act 1952; or
 - (ii) the continental shelf, within the meaning of the Convention on the Continental Shelf a copy of which in the English language is set out in Schedule 1 to the Commonwealth Petroleum (Submerged Lands) Act 1967;

- (b) any other area seaward of the State to which from time to time the laws of the State apply or, by a law of the Commonwealth, are applied.

(4) For the purposes of any proceedings under this Act an averment in the application or process—

- (a) that an employer was, pursuant to subsection (2), at a specified time or during a specified period or at all material times connected with the State; or
- (b) that any conduct, event, circumstance, or matter occurred, or that any place is situate, within an area referred to in subsection (3),

shall, in the absence of proof to the contrary, be deemed to be proved.

(5) Subsections (1), (2), and (3) shall not be construed as applying this Act to or in relation to any person, circumstance, thing, or place by reason only of the operation of paragraph (c) of the interpretation of the term “industry” set out in subsection (1) of section 7 unless this Act would also apply by reason of the operation of subsection (1).

(6) Effect shall be given to subsections (1), (2), and (3) only where this Act or any provision of this Act would not otherwise apply as a law of the State, or be applied as a law of the Commonwealth, to or in relation to any person, circumstance, thing, or place.

Repeal.

4. The Industrial Arbitration Act 1912-1979 is hereby repealed.

This Act to
prevail over
the Truck
Act.

5. Where any provision of this Act or of an award or order made or deemed to be made under this Act is contrary to or inconsistent with any provision of the Truck Act 1899 the former provision prevails and the latter provision shall have no force or effect.

6. The principal objects of this Act are—

Objects.

- (a) to promote goodwill and harmony in the community by—
 - (i) encouraging, and providing means for, the prevention and resolution of conflict in industry by reason rather than force; and
 - (ii) encouraging honest and fair dealing between employers, employees, and unions;
- (b) to encourage employers and employees individually and collectively to have regard for the interests of the community and to provide means whereby the public interest may be safeguarded;
- (c) to provide means whereby changing social attitudes may be reflected in conditions of employment peacefully, progressively, and without disrupting industry or the community;
- (d) to recognize unions as lawful and responsible bodies for the protection, representation, and advancement of the interests of their members;
- (e) to facilitate the democratic control of unions;
- (f) to promote and encourage the use of conciliation in preference to all other means of resolving industrial issues; and
- (g) to safeguard, in matters relating to employment, the liberties and rights of the individual.

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

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

Interpreta-
tion.
Amended by
No. 121 of
1982, s. 2.

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

“Assistant Registrar” means an Assistant Registrar appointed pursuant to this Act;

“association” means an association that is registered;

“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 and includes a consent award;

“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;

“Commission” means The Western Australian Industrial Commission continued and constituted under this Act;

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

“Commissioner” means a Commissioner appointed under this Act and includes the Chief Industrial Commissioner and the Senior Commissioner;

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

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

“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;

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

“Deputy Registrar” means the Deputy Registrar of Industrial Unions appointed pursuant to this Act;

“employer” includes—

- (a) persons, firms, companies, and corporations;
- (b) the Crown and any Minister of the Crown, or any public authority; and
- (c) any employer within the meaning of the Public Service Arbitration Act 1966,

employing one or more employees;

“employee” means any person employed by an employer to do work for hire or reward and includes—

- (a) any person whose usual status is that of an employee;
- (b) an apprentice;

- (c) any person employed as a canvasser whose services are remunerated wholly or partly by commission or percentage reward; and
- (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 six boarders or lodgers are therein received for pay or reward;
- (f) any officer within the meaning of that word in the Railways Classification Board Act 1920;
- (g) any officer or person employed on the teaching staff of the Education Department under the Education Act 1928, or the regulations made under that Act; or
- (h) any person who is a member of the academic staff of a post-secondary education institution;

“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;

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

“industrial action” means any act, omission, or circumstance done, effected, or brought about by a union or employer or employee or by any other person—

- (a) for the purpose, or in the opinion of the Commission for the purpose, of compelling an employer or an employee 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; or
- (b) for any purpose if the act, omission, or circumstance is, in the opinion of the Commission, in the nature of a strike by employees or a lock-out by an employer;

“*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” means—

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, 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 union 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) any matter, whether falling within the preceding part of this interpretation or not, which the Commission in Court Session on a reference made by the Attorney General on behalf of the State declares to be—
 - (i) consistent with the objects prescribed in section 6; and

- (ii) necessary or desirable to be dealt with under this Act in the public interest;

- (h) what is fair and right in relation to any industrial matter, having regard to the interests of the persons immediately concerned and of the community as a whole,

but does not include—

- (i) any matter which is or may be the subject of proceedings for an indictable offence;

- (j) any claim for or on behalf of an employee entitled to compensation under the Workers' Compensation and Assistance Act 1981 for a benefit different from that provided by that Act; or

- (k) any of the following matters—

- (i) compulsion to join a union to obtain or hold employment;

- (ii) preference of employment at the time of, or during, employment by reason of being or not being a member of a union;

- (iii) non-employment by reason of being or not being a member of a union;

- (iv) housing rentals, collection of union dues and matters of managerial prerogative,

or any matter relating thereto;

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

“industry” includes each of the following—

- (a) any business, trade, manufacture, handicraft, undertaking, or calling of employers on land or water;
- (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, on land or water,

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,

and expressions cognate with “industry” shall bear correlative meanings;

“irregularity”, in relation to an election for an office, includes a breach of the rules of an industrial union, 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;

“Local Court” means a Local Court established under the Local Courts Act 1904;

“lock-out” includes any closing of a place of employment or any suspension of work or any refusal by an employer to continue to employ any number of his employees with a view to compelling his employees or to aid another employer in compelling his employees to accept any terms or conditions of employment, or with a view to enforcing compliance with the demands made by any employer on any employees;

“office” in relation to a union means—

- (a) the office of a member of the committee of management of the union;
- (b) the office of president, vice president, secretary, assistant secretary, or other executive office by whatever name called of the union;
- (c) the office of a person holding, whether as trustee or otherwise, property of the union, or property in which the union has any beneficial interest;
- (d) an office within the union for the filling of which an election is conducted within the union; 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 union,

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

“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 a union;

“paragraph” means a paragraph of the section or subsection in which the term is used;

“Part” means a Part of this Act;

“post-secondary education institution” has the same meaning as it has in and for the purposes of the Western Australian Post-Secondary Education Commission Act 1970;

“President” means the President of the Commission;

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

“principal executive officer” in relation to a union or association means the President or Chairman of that union or association;

“public authority” means any Government department, State trading concern, State instrumentality, or State agency or any public statutory body established by or under a law of the State;

“Public Service Board” means the Public Service Board established by Part II of the Public Service Act 1978;

“Registrar” means the Registrar of Industrial Unions appointed pursuant to this Act;

“registration” means registration under this Act as an industrial union or an industrial association, as the case requires, and expressions cognate with “registration” shall bear correlative meanings;

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

“Schedule” means the Schedule to this Act;

“section” means a section of this Act;

“strike” includes—

- (a) a cessation or limitation of work or a refusal to work by an employee acting in combination or under a common understanding with another employee or person; and
- (b) a refusal or neglect to offer for or accept employment in the industry in which he is usually employed by a person acting in combination or under a common understanding with another employee or person,

unless and until in any particular case the Full Bench declares the particular cessation, limitation, refusal, or neglect not to be a strike;

“subparagraph” means a subparagraph of the paragraph in which the term is used;

“subsection” means a subsection of the section in which the term is used;

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

“union” means a union that is registered.

(2) Any reference in this Act to an Act of the Commonwealth includes a reference to any Act in amendment or substitution of that Act.

PART II.—THE WESTERN AUSTRALIAN INDUSTRIAL COMMISSION.

Division 1—Constitution of the Commission.

8. (1) The Commission by the name The Western Australian Industrial Commission established under the repealed Act is, under that name, hereby continued in existence subject to this Act.

Constitution
of
Commission.

(2) The Commission shall consist of the following members—

- (a) a President;
- (b) a Chief Industrial Commissioner;
- (c) a Senior Commissioner; and
- (d) such number of other Commissioners as may, from time to time, be necessary for the purposes of this Act,

who shall be respectively appointed to their offices by the Governor by Commission in Her Majesty's name.

(3) The order of seniority of Commissioners is—

- (a) Chief Industrial Commissioner;
- (b) Senior Commissioner;
- (c) other Commissioners according to the dates of their appointments unless two or more of their appointments are made on the same day in which case their order of seniority is such as shall be assigned to them by the Governor when appointing them.

Qualifications for appointment of President and Chief Industrial Commissioner.
Amended by No. 121 of 1982, s. 3.

9. (1) A person shall not be appointed as the President unless he is qualified to be a Judge.

(2) The President during the term of his office—

- (a) is entitled to the style and title of The Honourable (*name*), President of the Western Australian Industrial Commission; and
- (b) in appropriate circumstances—
 - (i) may be addressed as “Your Honour”; or
 - (ii) may be referred to as “His Honour”.

(3) A person shall not be appointed Chief Industrial Commissioner unless he is a person who—

- (a) 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 five years' standing;
- (b) has had experience at a high level in industry, commerce, industrial relations, or the service of a government or an authority of a government; or
- (c) has, not less than five 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 Industrial Commissioner,

and is, in the opinion of the Governor, by reason of his qualifications, experience, and standing in the community, a fit and proper person to discharge the duties of the Chief Industrial Commissioner.

10. Each member of the Commission shall retire from his office upon attaining the age of sixty-five years.

Tenure of members.

11. (1) Subject to subsection (2), before entering upon his office each member of the Commission shall make oath before a Judge that he will faithfully and impartially perform the duties of his office and that he will not, except in the discharge of those duties, disclose to any person any evidence or other matter brought before the Commission.

Oath of office and secrecy.

(2) When a Commissioner is appointed the Chief Industrial Commissioner or the Senior Commissioner he is not required to make again the oath referred to in subsection (1).

Commission
a Court of
Record.

12. (1) The Commission is a Court of Record and shall have an official seal.

(2) All courts, judges, and persons acting judicially shall take judicial notice of the seal of the Commission affixed to a document and shall presume that it has been duly so affixed.

Protection
of members
of the
Commission.

13. A member of the Commission has, in the performance of his functions and duties as such a member, the same protection and immunity as a Judge.

Exercise of
powers and
jurisdiction
of the
President
and the
Commission.

14. (1) The President has the jurisdiction expressly conferred on him by this Act and in the exercise of that jurisdiction he constitutes the Commission and he has and may exercise such powers of the Commission as may be necessary or appropriate thereto.

(2) A Commissioner sitting or acting alone constitutes the Commission and, except as otherwise provided in this Act, he has and may exercise while so sitting or acting, all the powers and jurisdiction of the Commission.

(3) Where more than one member of the Commission is sitting or acting at the same time in the exercise of the jurisdiction of the Commission, each such member of the Commission constitutes the Commission.

Constitution
of Full
Bench and
Commission
in Court
Session.

15. (1) The Full Bench shall be constituted by not less than three members of the Commission one of whom shall be the President.

(2) The Commission in Court Session shall be constituted by not less than three Commissioners sitting or acting together.

16. (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,

Powers and duties of President and Chief Industrial Commissioner.
Amended by No. 121 of 1982, s. 4.

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.

(2) The Chief Industrial Commissioner—

- (a) shall, subject to subsection (1), exercise the powers delegated to him under that subsection;
- (b) shall, before the first day of October in each year, make a written report to the Minister relating to the operation of this Act up to the last preceding thirtieth day of June;
- (c) shall, before making the report referred to in paragraph (b), consult with the President; and
- (d) may require the Commissioners to attend a conference of Commissioners for the purposes of paragraph (b) or for any other purpose.

(3) Where the Chief Industrial Commissioner is unable to attend his duties under this Act, whether on account of illness or otherwise, or where there is a vacancy in the office of Chief Industrial Commissioner, the duties and powers of the Chief Industrial Commissioner devolve on the Commissioner who is next in order of seniority and not himself absent or unable to perform those duties, unless the Governor appoints some other person to be Acting Chief Industrial Commissioner.

Appoint-
ment of
acting
members of
the
Commission.
Amended by
No. 121 of
1982, s. 5.

17. (1) Where a Commissioner is unable to attend to his duties under this Act, whether on account of illness or otherwise, the Governor may in accordance with this Act appoint a person to be an Acting Commissioner during the inability of the firstmentioned Commissioner and, subject to this Act, that person, while so acting has and may exercise all the powers and functions of the Commission.

(2) Subject to subsection (3), subsection (1) applies, with such modifications as are necessary, to the offices of President and Chief Industrial Commissioner, but a person shall not be appointed Acting President or Acting Chief Industrial Commissioner unless he holds the relevant qualifications prescribed in section 9.

(3) Where the appointment of an Acting President is for a period not exceeding three months it may be made by the Minister on the recommendation of the Attorney General.

(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.

18. (1) Notwithstanding the expiry of the period for which a member or acting member of the Commission has been appointed under this Act, the Governor may extend his period of office for such further period as the Governor determines, in order to enable him to complete all matters, proceedings, or inquiries that he has entered upon and has not completed before the expiry.

Extension of
appoint-
ment.

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

19. Each member of the Commission shall keep himself acquainted with industrial affairs and conditions.

Duty of
members of
the
Commission.

20. (1) The President shall receive salary and allowances or reimbursements at the same rate as a Puisne Judge.

Conditions
of service of
members of
Commission.
Amended by
No. 121 of
1982, s. 6.

(2) The President is entitled to the same conditions in respect of leave of absence as a Judge.

(3) The provisions of the Judges' Salaries and Pensions Act 1950 that relate to pensions apply, with such modifications as are necessary, to and in relation to the President, and to and in relation to his widow and children after his death, in the same manner as they apply to and in relation to a Judge appointed as such after the coming into operation of that Act, and to and in relation to his widow and children after his death, and for that purpose the term "Judge" in that Act includes the President.

(4) If the President is appointed a Judge of another court created by the Parliament of the State his service as the President shall be regarded for the purposes of the Judges' Salaries and Pensions Act 1950 as a Judge of that other court.

(5) If a person is a contributor within the meaning of the Superannuation and Family Benefits Act 1938, immediately before he is appointed the President, he may continue to be such a contributor notwithstanding his appointment as the President.

(6) While a person to whom subsection (5) applies, continues to be a contributor under the Superannuation and Family Benefits Act 1938, that Act applies to and in relation to the person, and if he for the purposes of that Act, ceases to be a contributor—

- (a) before he attains the age of sixty years he shall be deemed to have resigned;
- (b) on or after he attains the age of sixty years but before he attains the age of sixty-five years he shall be deemed to have elected to retire; or
- (c) on attaining sixty-five years he shall be deemed to have retired,

under that Act on the day he so ceases to be a contributor and, in each case referred to in paragraphs (b) and (c) of this subsection, a pension is payable to him, and his widow and children after his death, without affecting any pension that may be payable to him, and his widow and children after his death, under the Judges' Salaries and Pensions Act 1950, but the pension otherwise payable under that last mentioned Act to him, and his widow and children after his death, shall be reduced in accordance with the provisions of that Act by the amount of the State share of the first mentioned pension paid to him, and his widow and children after his death.

(7) The members of the Commission other than the President, shall be paid such salaries and allowances as are respectively determined for their offices pursuant to the Salaries and Allowances Act 1975.

(8) A Commissioner shall, while he holds his office, be deemed to be an employee within the meaning of and for the purposes of the Superannuation and Family Benefits Act 1938.

(9) Where a Commissioner was immediately before his appointment as a Commissioner, an officer of the Public Service of the State, he retains his existing and accruing rights and for the purpose of determining those rights, his service as a Commissioner shall be taken into account as if it were service within the Public Service of the State.

(10) The rights of a Commissioner to paid leave of absence and to lump sum payments on ceasing to hold office for the money equivalent of leave of absence shall be not less than those of a permanent officer under the Public Service Act 1978.

21. A member of the Commission may resign his office by writing under his hand addressed to the Governor and the resignation takes effect on the day on which it is received by the Governor or such later day as is specified in the writing.

Resignation
from office.

22. The members of the Commission shall hold their offices during good behaviour, subject to a power of removal by the Governor upon the address of both Houses of Parliament, and subject to sections 10 and 21.

Tenure
subject to
good
behaviour.

*Division 2—General Jurisdiction and
Powers of the Commission.*

23. (1) Subject to this Act, the Commission has cognisance of and authority to enquire into any industrial matter and may make an award, order, or declaration relating to any such matter, but,

Jurisdiction
of the
Commission
under this
Act.
Amended by
No. 82 of
1980, s. 2 and
No. 121 of
1982, s. 7.

notwithstanding any provision of this section or any other provision of this or any other Act, the Commission does not have jurisdiction of any kind—

- (a) in any matter of 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 any one or more of the following—

- (i) suspension from duty in that employment;
- (ii) discipline in that employment;
- (iii) dismissal from that employment;
- (iv) termination of that employment,

and there is provision, however expressed, by or under that other Act for an appeal in any one or more of the matters referred to in subparagraphs (i) to (iv) inclusive of this paragraph; or

- (b) in any matter of the suspension from duty in, discipline in, dismissal from, termination of, or reinstatement in, employment of any person as—

- (i) an employee who is a Government officer within the meaning of section 96;
- (ii) a person who holds an office for which the remuneration payable is determined or recommended pursuant to the Salaries and Allowances Act 1975;
- (iii) 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
- (iv) an officer or employee on the Governor's Establishment.

(2) Where by or under any other Act power is conferred on a person or body to appoint officers or employees for the purposes of that Act or to fix or determine the salaries, wages, or other remuneration, or other conditions of employment, of officers or employees appointed for those purposes, or to do both of those things—

- (a) the jurisdiction that the Commission would have but for that other Act to hear and determine any matter or dispute relating to the salaries, wages, or other remuneration, or other conditions of employment, of those officers or employees is not affected by that power conferred by or pursuant to that other Act; and
- (b) where there is any inconsistency between an award, order, or decision of the Commission relating to any such matter or dispute and any decision in the exercise or purported exercise of that power conferred by or under that other Act, to the extent of the inconsistency the former prevails and the latter is of no force or effect.

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

- (a) other than by a consent award which shall not become a common rule—
 - (i) except as provided by section 25, 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 prevents the exercise by the Commission of its powers under subsection (1) to fix 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;

- (ii) prohibit shift work in any industry, except as provided by section 25;
 - (iii) limit the working hours of employees engaged in the agricultural and pastoral industry; or
- (b) regulate the rates of salary or wages, or the conditions of employment of—
- (i) any employee who is a Government officer within the meaning of section 96;
 - (ii) any person who holds an office for which the remuneration payable is determined or recommended pursuant to the Salaries and Allowances Act 1975;
 - (iii) 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
- (iv) any person who is an officer or employee on the Governor's Establishment.

(4) Where there is an industrial matter which is partly within the jurisdiction of the Commission and partly within the jurisdiction of the Australian Commission, the Commission and the Australian Commission may, by agreement between the Chief Industrial Commissioner and the President, or the relevant Deputy President, of the Australian Commission, jointly determine the matter and may hold joint sittings or conferences, or both, to do so, and, for that purpose, the privacy provisions of this Act relating to conferences, and the provisions of this Act relating to representation of the parties, shall be modified accordingly.

(5) Subsection (4) does not derogate from the rights of appeal under this Act against the determination of an industrial matter and, for that purpose, a joint determination by the Commission and the Australian Commission under that subsection is deemed to be a determination by each of those Commissions unless the Commission and the Australian Commission, as a part of the determination of the matter, determine that there should be some other avenue of appeal, which they are hereby empowered to do.

24. (1) The Commission has jurisdiction to determine in any proceedings before it whether any matter to which those proceedings relate is an industrial matter and a finding by the Commission on that question is, subject to sections 49 and 90, final and conclusive with respect to those proceedings.

Jurisdiction
to decide
whether
matter is
industrial.

(2) A determination under subsection (1) is not a decision for the purposes of section 49 or 90 unless and until—

- (a) those proceedings have been concluded; or

- (b) leave to appeal is granted by the Commission making that determination.

Power of
Commission
relating to
shift work.
Amended by
No. 121 of
1982, s. 8.

25. (1) The Commission shall, upon application made to it by any party to an award or a dispute relating to an industrial matter, fix rates of wages and conditions of employment or service to apply to shift work in the industry to which the award or the dispute relates and may fix different rates and conditions for different work.

(2) An inspector appointed under the—

- (a) Factories and Shops Act 1963;
- (b) Construction Safety Act 1972;
- (c) Health Act 1911; or
- (d) Electricity Act 1945,

may exercise all the powers of entry and examination conferred on him by the Act under which he was appointed in relation to any place where shift work is being worked, for the purpose of ascertaining whether that shift work or the manner, conditions, or circumstances in or under which it is being performed, is likely to result in injury to or endanger the health of employees engaged therein.

(3) Any inspector referred to in subsection (2) shall enter any place where shift work is being worked, upon any reasonable request being made by any union of employees whose members are engaged therein.

(4) Where an inspector who has entered a place pursuant to subsection (3) is of opinion that any shift work being carried on therein or thereon, or the manner, conditions, or circumstances in or under which it is being performed, is likely to result in injury to or endanger the health of employees engaged on the work, he shall notify the Commission as soon as practicable and the Commission may make such order as it considers necessary to avoid that result.

(5) An order made by the Commission under subsection (4) may be made—

- (a) unconditionally or subject to such conditions or exceptions, or both, as the Commission thinks fit; and
- (b) without limitation of time or for a specified time or until subsequent order of the Commission,

and the Commission shall specify in the order the person or class of person to whom the order applies.

(6) By subsequent order the Commission may from time to time as it thinks fit, vary, suspend, or cancel the order wholly or in part.

(7) Subsections (2) and (3) do not derogate from any other powers or authority of an inspector under any of the Acts mentioned in subsection (2).

26. (1) In the exercise of its jurisdiction under this Act the Commission—

- (a) shall act according to equity, good conscience, and the substantial merits of the case without regard to technicalities or legal forms;
- (b) shall not be bound by any rules of evidence, but may inform itself on any matter in such a way as it thinks just;
- (c) shall have regard for the interests of the persons immediately concerned whether directly affected or not and, where appropriate, for the interests of the community as a whole; and
- (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;

Commission
to act
according
to equity
and good
conscience.
Amended by
No. 121 of
1982, s. 9.

- (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.

(2) In granting relief or redress under this Act the Commission is not restricted to the specific claim made or to the subject matter of the claim.

(3) Where the Commission, in deciding any matter before it proposes or intends to take into account any matter or information that was not raised before it on the hearing of the matter, the Commission shall, before deciding the matter, notify the parties concerned and afford them the opportunity of being heard in relation to that matter or information.

(4) Subsections (1) to (3) inclusive do not, in any particular case, prevent the use by the Commission, with the consent of the parties concerned, of final offer arbitration.

Powers of
Commission.
Amended by
No. 121 of
1982, s. 10.

27. (1) Except as otherwise provided in this Act, the Commission may, in relation to any matter before it—

- (a) at any stage of the proceedings dismiss the matter or any part thereof or refrain from further hearing or determining the matter or part if it is satisfied—
 - (i) that the matter or part thereof is trivial;
 - (ii) that further proceedings are not necessary or desirable in the public interest;

- (iii) that the person who referred the matter to the Commission does not have a sufficient interest in the matter; or
- (iv) that for any other reason the matter or part should be dismissed or the hearing thereof discontinued, as the case may be;
- (b) take evidence on oath or affirmation;
- (c) order any party to the matter to pay to any other party such costs and expenses including expenses of witnesses as are specified in the order, but so that no costs shall be allowed for the services of any legal practitioner, or agent;
- (d) proceed to hear and determine the matter or any part thereof in the absence of any party thereto who has been duly summoned to appear or duly served with notice of the proceedings;
- (e) sit at any place;
- (f) adjourn to any time and place;
- [(g) *Deleted by No. 121 of 1982, s. 10.*]
- (h) direct any person, whether a witness or intending witness or not, to leave the place wherein the proceedings are being conducted;
- (i) refer any matter to an expert and accept his report as evidence;
- (j) direct parties to be struck out or persons to be joined;
- (k) permit the intervention, on such terms as it thinks fit, of any person who, in the opinion of the Commission has a sufficient interest in the matter;

- (l) allow the amendment of any proceedings on such terms as it thinks fit;
- (m) correct, amend, or waive any error, defect, or irregularity whether in substance or in form;
- (n) extend any prescribed time or any time fixed by an order of the Commission;
- (o) make such orders as may be just with respect to any interlocutory proceedings to be taken before the hearing of any matter, the costs of those proceedings the issues to be submitted to the Commission, the persons to be served with notice of proceedings, delivery of particulars of the claims of all parties, admissions, discovery, inspection, or production of documents, inspection or production of property, examination of witnesses, and the place and mode of hearing;
- (p) enter upon any manufactory, building, workshop, factory, mine, mine-working, ship or vessel, shed, place, or premises of any kind whatsoever, wherein or in respect of which any industry is or is reputed to be carried on, or any work is being or has been done or commenced, or any matter or thing is taking or has taken place, which is the subject of a matter before the Commission or is related thereto;
- (q) inspect and view any work, material machinery, appliance, article, book, document, matter, or thing whatsoever being in any manufactory, building, workshop, factory, mine, mine-working, ship or vessel, shed, place or premises of a kind referred to in paragraph (p);
- (r) question any person who may be in or upon any such manufactory, building, workshop, factory, mine, mine-working, ship or vessel, shed, place or premises in respect or in relation to any such matter or thing;

- (s) consolidate or divide proceedings relating to the same industry and all or any matters before the Commission;
- (t) with the consent of the Chief Industrial Commissioner refer the matter or any part thereof to the Commission in Court Session for hearing and determination by the Commission in Court Session;
- (u) with the consent of the President refer to the Full Bench for hearing and determination by the Full Bench any question of law, including any question of interpretation of the rules of a union, arising in the matter; and
- (v) generally give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of the matter.

(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.

(2) The powers contained in paragraphs (p), (q) and (r) of subsection (1) may, if the Commission so directs in any case, be exercised by an officer of the Commission or by an expert to whom any matter has been referred by the Commission.

28. The powers conferred on the Commission by section 27 may be exercised in relation to a matter at any time after the matter has been lodged in the Commission notwithstanding that the procedures prescribed under this Act have not at that time been complied with to the extent necessary to enable the matter to be heard and determined by the Commission.

Exercise of powers prior to hearing and determination of matter.

By whom
matters may
be referred
to
Commission.
Amended by
No. 121 of
1982, s. 11.

29. (1) An industrial matter may be referred to the Commission by an employer, union, or association, or the Attorney General.

(2) A claim by an employee in relation to whom the Commission may exercise jurisdiction conferred on it by section 23—

- (a) that he has been unfairly dismissed from his employment; or
- (b) 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,

may be referred to the Commission by that employee.

(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.

Intervention
of Crown.

30. (1) The Attorney General for the State may, on behalf of the State, by giving the Registrar notice in writing of his intention to do so, intervene in the public interest in any proceedings before the Commission.

(2) The Attorney-General for the Commonwealth may, on behalf of the Commonwealth, by agreement with the Attorney General for the State, 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.

Representa-
tion of
parties to
proceedings.
Amended by
No. 121 of
1982, s. 12.

31. (1) Subject to this section, a person or body entitled to be heard in proceedings before the Commission may appear in person or by legal practitioner or agent.

(2) A union or association shall be deemed to have appeared in person if it is represented by its secretary or by any officer of the union or association.

(3) A person or body appearing by a legal practitioner or agent is bound by the acts of that legal practitioner or agent.

(4) Subject to section 29 (3), 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 but the Commission shall not otherwise allow legal practitioners to appear and be heard unless all the parties to the proceedings expressly consent thereto.

(5) The Commission may make regulations prescribing the manner in which authorization of any agent is to be given, either generally or for a particular case.

(6) A person who is not a legal practitioner within the meaning of this Act but engages in the practice of the law in a place outside the State shall not appear as an agent in proceedings before the Commission.

32. (1) Subject to subsection (2), the sittings of the Commission shall be held at such time and place as may from time to time be fixed by the Commission, and the parties concerned in the matter to which the sittings relate shall be given at least seven days' notice of the time and place of each sitting other than an adjourned sitting, except where the parties consent to shorter notice or where the Commission is of the opinion that urgency requires shorter notice in which case the notice to be given shall be that fixed by the Commission.

Time and
place of
sittings of
Commission.

(2) The Commission shall not fix a time for the hearing of a claim for an award or for a variation of an award unless and until—

- (a) notice of the claim has been given in a newspaper circulating in the area in which the award applies or is intended to apply; and
- (b) the following have been served with notice of the claim—
 - (i) the Council;
 - (ii) the Confederation;
 - (iii) the Public Service Board;
 - (iv) such unions, associations, persons, and other bodies as the Commission may direct including persons or bodies who, in the opinion of the Commission, are reasonably representative of employers in the industry or industries to which the award applies or is intended to apply.

(3) Subsection (2) does not apply to or in relation to a claim for an award or a variation of an award that is, or is proposed to be, binding only on the parties, or proposed parties, thereto.

Evidence
before
Commission.
Amended by
No. 121 of
1982, s. 13.

33. (1) With respect to evidence in proceedings before the Commission—

- (a) the Registrar shall, on the application of any party, or by direction of the Commission, issue a summons in the prescribed form to any person to appear and give evidence before the Commission and the summons may require that person to produce before the Commission any books, papers, or other documents in his possession, or under his control, in any way relating to the proceedings;

- (b) a person who attends the Commission in accordance with such summons shall be entitled to receive from the party at whose instance he was summoned an allowance for expenses according to the prescribed scale;
- (c) subject to subsection (2), a person duly served with such summons, who without good cause, proof of which is on him, fails to attend or to duly produce any book, paper, or document as required or refuses to be sworn as a witness or to answer any question which he is required by the Commission to answer shall be liable to a penalty of \$200, or 3 months' imprisonment;
- (d) the Commission may, whenever it shall appear just or convenient so to do, make any order for the examination upon oath or otherwise before the Commission or any officer of the Commission, or any other person, and at any place of any witness or person, and may empower any party to give the deposition of such witness or person in evidence on such terms, if any, as the Commission may direct; and
- (e) the Commission shall take evidence on oath or affirmation.

(2) Where a summons is issued to, and duly served on, a person to appear and give evidence before the Commission, the person may make application to the Commission for cause to be shown for him to so appear and, if on the hearing of the application such cause is not shown, he is not required to so appear.

(3) Evidence relating to any trade secret, or to the profits or financial position of any witness or party, shall not be disclosed except to the Commission, or published without the consent of the person entitled to the trade secret or non-disclosure.

Penalty \$1 000 or 3 months' imprisonment.

(4) The evidence referred to in subsection (3) shall, if the witness or party so requests, be taken in private.

(5) All books, papers, and other documents produced in evidence before the Commission may be inspected by the Commission and also by such of the parties as the Commission allows, but the information obtained therefrom shall not be made public without the permission of the Commission, and such parts of the documents as in the opinion of the Commission do not relate to the matter at issue may be sealed up, but such books, papers, and documents relating to any trade secret or to the profits or financial position of any witness or party shall not, without the consent of that witness or party, be inspected by any party.

Penalty \$1 000 or 3 months' imprisonment.

(6) Paragraphs (a), (b), and (c) of subsection (1) do not apply to or in relation to a summons issued pursuant to section 44.

Decision to
be in form
of award,
order, or
declaration.

34. (1) The decision of the Commission shall be in the form of an award, order, or declaration and shall in every case be signed and delivered by the Commissioner constituting the Commission that heard the matter to which the decision relates or, in the case of a decision of the Commission in Court Session, shall be signed and delivered by the senior Commissioner among the Commissioners constituting the Commission in Court Session.

(2) When the members of the Commission in Court Session are divided in opinion on a question, the question shall be decided according to the decision of the majority of the members.

(3) Proceedings before the President, the Full Bench, or the Commission shall not be impeached or held bad for want of form nor shall they be removable to any court by *certiorari* or otherwise.

(4) Except as provided by this Act, no award, order, declaration, or proceeding of the President, the Full Bench, or the Commission shall be liable to be challenged, appealed against, reviewed, quashed, or called in question by any court on any account whatsoever.

35. (1) Subject to this section and to section 45, the decision of the Commission, except an order for dismissal shall, before it is delivered, be drawn up in the form of minutes which shall be handed down to the parties concerned and, unless in any particular case the Commission otherwise determines, its reasons for decision shall be published at the same time.

Decision to
be first
drawn up
as minutes.
Amended by
No. 121 of
1982, s. 14.

(2) At the discretion of the Commissioner giving the decision the minutes and reasons for decision may be handed down by the Registrar.

(3) The parties concerned shall, at a time fixed by the Commission, be entitled to speak to matters contained in the minutes of the decision and the Commission may, after hearing the parties, vary the terms of those minutes before they are delivered as the decision of the Commission.

(4) The Commission, with the consent of the parties, may waive the requirements of this section in any case in which it is of the opinion that the procedures therein prescribed are inappropriate or unnecessary.

36. Every decision of the Commission shall—

Decision to
be sealed
and
deposited.

- (a) be sealed with the seal of the Commission;
- (b) be deposited in the office of the Registrar;
and
- (c) be open to inspection without charge during office hours by any person interested.

Effect, area,
and scope of
awards.

37. (1) An award has effect according to its terms, but unless and to the extent that those terms expressly provide otherwise it shall, subject to this section—

(a) extend to and bind—

(i) all employees employed in any calling mentioned therein in the industry or industries to which the award applies; and

(ii) all employers employing those employees;

and

(b) operate throughout the State, other than in the areas to which subsection (1) of section 3 applies.

(2) The area of the operation of an award or of any provision of an award may be varied whether by enlargement or reduction on the application in the prescribed manner of any employer, union, or association, but, before acting under this subsection, the Commission shall give all parties, likely in its opinion to be affected, notice, whether by advertisement or otherwise, of its intention to extend the operation of the award, and shall hear any parties desiring to be heard in opposition thereto.

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

(a) each Minister of the Crown who is, in that capacity, an employer shall be deemed to be in a different industry from each other such Minister; and

(b) a public authority which is an employer shall not be deemed to be in the same industry as any other employer unless that employer is a public authority of the same kind established under the same law of the State as the public authority first mentioned.

(4) Subject to subsection (6), an award, and any provision of an award, whether or not it has been made for a specified term, shall, subject to any variation made under this Act, remain in force until cancelled, suspended, or replaced under this Act unless, in the case of an award or a provision made for a specified term, it is expressly provided that the award or the provision, as the case may be, shall cease to operate upon the expiration of that term.

(5) Subsection (4) does not prevent the cancellation, suspension, or replacement of an award in part.

(6) Where a consent award—

(a) has been made for a specified term; and

(b) has not been declared a common rule of the industry or industries to which it applies,

any party thereto may, at any time after or not more than thirty days before the expiry of that term, file in the office of the Registrar a notice in the prescribed form signifying his intention to retire from the award on such date as may be specified in the notice, not being earlier than thirty days from the date of such filing and that party shall, on the date so specified, cease to be a party to that award.

38. (1) Each employer, union, and association who or which, immediately prior to the delivery of an award, was a party to the proceedings leading to the making of the award, shall be specified in the award as a party thereto. Parties to award.

(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 union which is registered by reference to any calling mentioned in the award or by reference to any industry to which the award applies; or
- (c) any association on which any such union is represented,

join as a party to the award any employer, union, or association.

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

Date of
operation of
award.

39. (1) An award comes into operation on the day on which it is delivered or on such later date as the Commission determines and declares when delivering the award.

(2) Subject to subsection (3), the provisions of an award have effect on such day or days as is or are, respectively, specified in the award.

(3) The Commission may, by its award, give retrospective effect to the whole or any part of the award—

- (a) if and to the extent that the parties to the award so agree; or
- (b) if, in the opinion of the Commission, there are special circumstances which make it fair and right so to do,

but in a case to which paragraph (b) applies, not beyond the date upon which the application leading to the making of the award was lodged in the Commission.

(4) For the purpose of subsection (3), an award or a provision of it has retrospective effect if and only if it has effect from a date earlier than the day on which the award is delivered.

40. (1) Subject to subsections (2), (3) and (4) and to sections 32, 37, and 38, the Commission may by order at any time vary an award by adding to the award a new provision or by adding to, varying, or rescinding an existing provision.

Power to vary and cancel award.

(2) An application to the Commission to vary an award may be made by any union, association, or employer bound by the award.

(3) Where an award or any provision thereof is limited as to its duration the Commission—

(a) may, subject to such conditions as it considers fit, reserve to any party to the award liberty to apply to vary the award or that provision, as the case may be;

(b) shall not, within the specified term, vary the award or that provision, as the case may be unless and to the extent that—

(i) it is satisfied that, by reason of circumstances which have arisen since the time at which the specified term was fixed, it would be inequitable and unjust not to do so;

(ii) on an application made under paragraph (a), it is satisfied that it is fair and right so to do; or

(iii) the parties to the award agree that the award or provision should be varied; and

(c) may within the specified term cancel the award if the parties to the award agree that it be cancelled.

(4) Section 39 applies, with such modifications as are necessary, to and in relation to an order made under this section.

Consent
awards.
Amended by
No. 121 of
1982, s. 15.

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 a union or association of employees and any employer or union or association of employers.

(2) Subject to this Act, where the parties to an agreement referred to in subsection (1) lodge a memorandum of the terms of the agreement in the Commission and, in the prescribed manner, apply to the Commission for an award in those terms the Commission shall, if and to the extent that those terms are—

- (a) not inconsistent with this Act;
- (b) not contrary to or inconsistent with any decision of the Commission in Court Session expressed, subject to its terms, to be intended for general application; or
- (c) not otherwise contrary to the public interest,

deliver an award in those terms.

(3) Before delivering an award under subsection (2), the Commission may require the parties thereto to effect such variation as the Commission considers necessary or desirable for the purpose of giving clear expression to the true intention of the parties.

(4) An award made under this section—

- (a) for all purposes of this Act, shall be deemed to be a decision of the Commission; and
- (b) shall be known as a consent award.

(5) Subject to subsection (6) a consent award extends to and binds—

- (a) all employees who are employed—
 - (i) in any calling mentioned in the award in the industry or industries to which the award applies; and

(ii) by an employer who is—

(I) a party to the award; or

(II) a member of a union of employers that is a party to the award or that is a member of an association of employers that is a party to the award; 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 award.

(6) Subject to this section and to subsection (3) of section 23, the Commission may declare a consent award to be a common rule of the industry or industries to which it applies and upon the coming into operation of such declaration—

(a) the Commission shall, by order, vary the scope of that award to give effect thereto; and

(b) the Commission may, by order, vary such other provisions of the award as may be necessary as a consequence of that declaration; and

(c) section 37 shall thereafter apply in relation to that award.

(7) A declaration under subsection (6) may be made on the application of any person who, in the opinion of the Commission, has a sufficient interest in the matter.

(8) Before making a declaration under subsection (6), the Commission shall require the Registrar to give at least twenty-eight days notice of its intention to do so to—

(a) the Council;

- (b) the Confederation;
- (c) the Public Service Board;
- (d) such unions, associations, persons, and other bodies as the Commission may direct including persons or bodies who, in the opinion of the Commission, are reasonably representative of employers in the industry or industries to which the common rule is intended to apply; and
- (e) the parties to the award where those parties are not the applicants for the declaration.

(9) Any person who, in the opinion of the Commission, has a sufficient interest in the matter may, within the twenty-eight days referred to in subsection (8), object to the making of the declaration and thereupon shall at a time fixed by the Commission be afforded an opportunity of being heard.

(10) A declaration made pursuant to subsection (6), has effect on and from the date on which it is made or such later date as is specified in the declaration.

Notification
of industrial
action.
Inserted by
No. 121 of
1982, s. 16.

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

- (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.

42. (1) Every party to a question, dispute, or disagreement relating to an industrial matter shall endeavour to resolve that question, dispute, or disagreement by amicable discussion.

Duty of parties to endeavour to resolve matters amicably.

(2) Pending the resolution pursuant to this Act of any matter referred to in subsection (1), it is the intention of this Act that every employer and union concerned and every officer and member of any such union shall refrain from taking industrial action, and, where industrial action has occurred or is continuing, shall endeavour by all means reasonable in the circumstances to prevent that action from being repeated or continued.

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. Substituted by No. 121 of 1982, s. 17.

(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.

Compulsory
conference.
Amended by
No. 121 of
1982, s. 18.

44. (1) Subject to this section, the Commission constituted by a Commissioner may summon any person to attend, at a time and place specified in the summons, at a conference before the Commission.

(2) A summons under this section—

(a) may be given in the prescribed manner; and

(b) when so given shall, in any proceedings under this Act relating thereto, be deemed to have been served on the person to whom it is directed unless that person, in those proceedings, satisfies the Commission or the President, as the case may be, that he did not receive the summons.

(3) Any person so summoned shall, except for good cause, proof of which is on him, attend the conference at the time and place specified in the summons and continue his attendance thereat as directed by the Commission.

Penalty: \$1 000.

(4) Proceedings for the imposition of a penalty under this section—

(a) may be instituted only by the direction of the Commission; and

(b) shall be instituted before and dealt with by the President.

(5) A conference under this section shall be held in private unless the Commission, at any stage of the conference, is of the opinion that the objects of the Act will be better served by holding the conference in public.

(6) The Commission may, at or in relation to a conference under this section, make such suggestions and give such directions as it considers appropriate and, without limiting the generality of the foregoing may—

- (a) direct the parties or any of them to confer with one another or with any other person and without a chairman or with the Registrar, Deputy Registrar, or an Assistant Registrar as chairman;
- (b) direct that disclosure of any matter discussed at the conference be limited in such manner as the Commission may specify; and
- (c) exercise such of the powers of the Commission referred to in subsection (1) of section 27 as the Commission considers appropriate.

(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.

(8) Where, at a conference held in accordance with this section, agreement is reached between the parties or any of them in relation to any industrial matter the Commission may—

- (a) make an order in the terms of that agreement binding only on those parties who consent thereto;

- (b) subject to section 41, deliver a consent award in those terms binding only on the parties who consent thereto;
- (c) subject to subsections (2) and (3) of section 32, by order vary any award by which the consenting parties are bound so as to give effect to the agreement; or
- (d) where the nature or subject matter of the agreement does not, in the opinion of the Commission, require that any of the foregoing courses of action be followed, make, sign, and file a memorandum of the terms of the agreement.

(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—

- (a) make an order or award binding only the parties in relation to whom the matter has not been so settled; or
- (b) subject to subsections (2) and (3) of section 32, by order vary any award by which those parties are bound so as to give effect to the determination.

(10) Subject to subsections (11) and (12), the Commission may, for the hearing and determination of a matter under subsection (9), be constituted by the Commissioner who presided over the conference.

(11) Where the Commissioner referred to in subsection (10) proposes to constitute the Commission for the purpose mentioned in that subsection, he shall, at the conclusion of the conference advise the parties thereto of his intention so to do, and, if any party thereupon objects to the Commission

being so constituted for that purpose, that Commissioner shall not enter upon the hearing of the matter concerned unless—

- (a) he has discussed with the Chief Industrial Commissioner the propriety of his so doing; and
- (b) the Chief Industrial Commissioner, after interviewing the objecting party, has directed him so to do.

(12) Where the Chief Industrial Commissioner does not give the direction referred to in paragraph (b) of subsection (11), he may—

- (a) allocate the matter in dispute for hearing and determination by the Commission constituted by a Commissioner other than the Commissioner who presided over the conference; and
- (b) exercise in relation to the matter such powers of the Commission referred to in subsection (1) of section 27 as he considers appropriate and are not inconsistent with the hearing and determination under paragraph (a).

(13) Section 39 applies, with such modifications as are necessary, to an order or award made under this section.

45. (1) Where industrial action has occurred or is, in the opinion of the Commission, likely to occur in relation to a matter the Commission may—

- (a) where the matter is or relates to an industrial matter—

- (i) enquire into the matter notwithstanding that industrial action has occurred or is continuing; and

Powers of
Commission
where
industrial
action has
occurred.
Amended by
No. 121 of
1982, s. 19.

- (ii) give such directions and make such orders as it considers fair and right for dealing with the matter or its consequences;

and

- (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.

(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.

(2) Without limiting the generality of the powers conferred by paragraph (a) of subsection (1), the directions and orders which the Commission may give or make under that paragraph include—

- (a) orders directed to any person or group or class of persons directing them to cease or restraining them from commencing industrial action;
- (b) where any employees of any employer concerned are taking industrial action, orders suspending, unconditionally or subject to such conditions as may be specified in the order, the contracts of employment of any or all employees of that employer; and

- (c) any direction or order which the Commission constituted by a Commissioner is otherwise authorized to give or make under any provision of this Act,

and, where it appears to the Commission that any person to whom any such direction or order is directed is a member of a union, shall cite that union as a party.

(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.

Interpreta-
tion of
awards and
orders.

46. (1) At any time while an award is in force under this Act the Commission may, on the application of any employer, union, or association bound by the award—

(a) declare the true interpretation of the award; and

(b) where that declaration so requires, by order vary any provision of the award for the purpose of remedying any defect therein or of giving fuller effect thereto.

(2) A declaration under this section may be made in the Commission's reasons for decision but shall be made in the form of an order if, within seven days of the handing down of the Commission's reasons for decision, any union, association, or employer bound by the award so requests.

(3) Subject to this Act, a declaration made under this section is binding on all courts and all persons with respect to the matter the subject of the declaration.

(4) Section 35 does not apply to or in relation to this section unless an order is made under paragraph (b) of subsection (1) or under subsection (2).

(5) In this section "award" includes an order, including a General Order, made by the Commission under any provision of this Act other than this section.

47. (1) Subject to subsections (3), (4), and (5), where, in the opinion of the Commission, there is no employee to whom an award applies, the Commission may on its own motion, by order, cancel that award.

Cancellation of defunct awards, and deletion of employers from awards in certain cases.

(2) Subject to subsections (3), (4), and (5), where the Commission is of the opinion that a party to an award who is named as an employer is no longer carrying on business as an employer in the industry to which the award applies or is, for any other reason, not bound by the award, the Commission may on its own motion, by order, strike out that party to the award.

(3) The Commission shall not make an order under subsection (1) or (2) unless before making the order—

(a) it has directed the Registrar to make such enquiries as it considers necessary, and the Registrar has reported on the result of those enquiries to the Commission in writing; and

(b) after receiving the report of the Registrar, the Commission has—

(i) caused the Registrar to give general notice in a newspaper circulating in the area of the State in which the award operates and in the *Industrial Gazette* of the intention of the Commission to make the order; and

(ii) directed the Registrar to serve copies of the notice on such persons as the Commission may specify.

(4) Any person may, within thirty days of the publication in the newspaper or in the *Industrial Gazette*, whichever is the later, of the notice referred to in subsection (3), object to the Commission making the order referred to in the notice.

(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 on each union of employees that is party to the award, on such other party to the award as the Commission thinks fit, and on the Council and the Confederation.

Boards of
Reference
to be
established.

48. (1) For each award in force under this Act there shall be a Board of Reference.

(2) Subject to subsection (5), each Board of Reference shall consist of a Chairman appointed by the Chief Industrial Commissioner and an equal number of employers' and employees' members nominated and appointed in the manner prescribed, not being more than two in number on each side unless the Chief Industrial Commissioner, in any particular case or for the purposes of a specified award, approves the appointment of a greater number.

(3) The appointment of a Chairman of a Board of Reference for or in relation to any award may be made at the instance of the Chief Industrial Commissioner or at the request of any union, association, or employer bound by the award.

(4) A request under subsection (3) shall be made to the Registrar and may be made orally, by telegram, in writing, or by such other method as may be prescribed.

(5) The Chief Industrial Commissioner may appoint a person as Chairman of a Board of Reference—

(a) for the purpose of dealing with a particular matter; or

(b) for a specified period of time,

and, in the case of an appointment in accordance with paragraph (b) may terminate such appointment and make another appointment within that specified period, or may extend that specified period.

(6) A Board of Reference may allow, approve, fix, determine, or deal with—

- (a) any matter or thing that, under the award, may require to be allowed, approved, fixed, determined, or dealt with by a Board of Reference; and
- (b) any matter or thing arising under or out of the provisions of an award, not involving the interpretation of any such provision, which the Commission may at any time, by order, authorize a Board of Reference to allow, approve, fix, determine, or deal with,

in the manner and subject to the conditions specified in the award or order, as the case may be.

(7) The powers conferred on a Board of Reference under the provisions of this section may be exercised by the Commission constituted by a Commissioner.

(8) Where the nominated employers' and employees' members of a Board of Reference are equally divided in opinion on any matter before the Board of Reference the decision of the Board of Reference shall be in accordance with the opinion of the Chairman.

(9) The Chairman shall, after consultation with the nominated members, record in a memorandum signed by him—

- (a) all facts found by the Board of Reference; and
- (b) the decision of the Board of Reference,

and shall forward that memorandum to the Registrar for filing in his office.

(10) Subject to subsection (11), the decision referred to in subsection (9) is, upon being filed as prescribed therein, enforceable under this Act as if it were an award.

(11) Subject to subsections (12), (13), and (14), any union, association, or employer affected by a decision of a Board of Reference may, within twenty-one days from the date of that decision appeal against that decision to the Commission in Court Session in the manner prescribed.

(12) An appeal under subsection (11) shall be heard and determined on the facts referred to in paragraph (a) of subsection (9) and the Commission in Court Session may, if it upholds the appeal, rescind or vary the decision in such manner as it sees fit or may remit the matter to the Board of Reference for further hearing and determination.

(13) Subject to subsection (14) the jurisdiction and powers of the Commission in Court Session under this section may, at the direction of the Chief Industrial Commissioner, be exercised by the Commission constituted by a Commissioner.

(14) Subsection (13) does not apply to or in relation to an appeal against a decision of a Board of Reference established under section 50 or pursuant to the long service leave provisions of any award.

(15) The Commission may, in any order made by it under this Act, provide that any matter or thing arising under or out of the provisions of the order, not involving the interpretation of any such provision, may be allowed, approved, fixed, determined, or dealt with by a Board of Reference and the provisions of this section apply to such an order in all respects as if it were an award.

Appeals to Full Bench from decision of Commission under this Act.
Amended by No. 121 of 1982, s. 20.

49. (1) In this section "the Commission" means the Commission constituted by a Commissioner, but does not include the Commission exercising jurisdiction under subsection (13) of section 48.

(2) subject to this section, an appeal lies to the Full Bench in the manner prescribed from any decision of the Commission.

(3) An appeal under this section shall be instituted within twenty-one days of the date of the decision against which the appeal is brought and may be instituted by—

- (a) any party to the proceedings wherein the decision was made;
- (b) any person who was an intervener in those proceedings; or
- (c) the Attorney General on behalf of the State in the public interest.

(4) An appeal under this section—

- (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
- (b) shall, if brought by a person referred to in paragraph (b) of subsection (3), be dismissed unless, on the hearing of the appeal, that person obtains leave of the Full Bench,

and, for the purpose of paragraph (a), “proceedings” includes any proceedings arising under subsection (3) of section 35.

(5) In the exercise of its jurisdiction under this section the Full Bench may, by order—

- (a) dismiss the appeal;
- (b) uphold the appeal and quash the decision or, subject to subsection (6), vary it in such manner as the Full Bench considers appropriate; or

- (c) suspend the operation of the decision and remit the case to the Commission for further hearing and determination.

(6) Where the Full Bench varies a decision under paragraph (b) of subsection (5) the decision as so varied shall be in terms which could have been awarded by the Commission that gave the decision.

(7) The decision of the Full Bench shall be signed and delivered by the President.

(8) When the members of the Full Bench are divided on a question, the question shall be decided according to the decision of a majority of the members unless the members are evenly divided on the question in which case the question shall be decided according to the decision of the President.

(9) When any question of law arises in any proceedings before the Full Bench, the President may state a case for the decision of the Court thereon and shall do so if a majority of the members of the Full Bench so request.

(10) Subsections (7), (8), and (9) apply to and in relation to all proceedings before the Full Bench whether under this section or otherwise.

Decisions of
Commission
may be
referred to
Full Bench
at instance
of Attorney
General.
Inserted by
No. 121 of
1982, s. 21.

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

- (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).

Division 3—General Orders.

50. (1) In this Division “Commission” means Commission in Court Session.

Power of the Commission to make General Orders.

(2) Subject to this Act, the Commission may, of its own motion or on the application of the Council, the Confederation, the Attorney General, or the Public Service Board—

- (a) make General Orders relating to industrial matters, including the prescription of a minimum wage for adult employees, in accordance with and subject to this Division; and
- (b) add to, vary, or rescind any General Order so made.

(3) A General Order may be made to apply generally to employees throughout the State whether or not they are employed under and subject to awards or may be limited to employees—

- (a) who are employed under and subject to awards; or

(b) who are not so employed,

but shall not apply to any employee whose conditions of employment may not be determined by the Commission.

(4) A General Order applying to or with respect to employees of the kind referred to in paragraph (a) of subsection (3) may add to or vary all awards or may be limited in its effect to such awards as may be specified in the General Order.

(5) A General Order applying to or with respect to employees of the kind referred to in paragraph (b) of subsection (3) may prescribe—

- (a) a minimum wage for adult employees;
- (b) minimum conditions as to sick leave;
- (c) minimum conditions as to annual leave;
- (d) minimum conditions as to long service leave; and
- (e) minimum conditions as to such other industrial matters as the Council, the Confederation, and the Attorney General may agree.

(6) Where the Commission makes a General Order under subsection (5) it may in the Order declare that, in the manner and subject to the conditions specified therein, the provisions of the Order apply in substitution for or in addition to, or operate so as to vary, provisions relating to the same subject matter in or by virtue of such Act or Acts as may be specified in the Order, and the General Order has effect according to its tenor.

(7) The Commission shall, for the purposes of a General Order referred to in subsection (5), appoint a Board of Reference which shall consist of a person nominated by the Council and a person nominated by the Confederation or, where the General Order

applies to employees of a public authority, a person nominated by the Attorney General, and a Chairman who shall be the Registrar or the Deputy Registrar.

(8) All claims arising under or out of that General Order not involving the interpretation of any provision of that General Order shall be referred to the Board of Reference for hearing and determination, and the provisions of subsections (8), (9), (10), (11), and (12) of section 48 apply with respect to decisions of that Board of Reference as if it were a Board of Reference established under that section.

(9) Where the Commission makes a General Order which affects awards in force under this Act it may, in respect of each award so affected, direct the Registrar to prepare and publish in the *Industrial Gazette* the provisions of that award resulting from the operation of that General Order.

(10) The Commission shall not make a General Order under this section or under section 51 until it has afforded the Council, the Confederation, the Public Service Board, the Attorney General, and any other person who, in the opinion of the Commission, has a sufficient interest in the matter, an opportunity to be heard in relation thereto.

51. (1) In this section, "National Wage Decision" means a decision which—

Powers and duties of Commission in respect of National Wage Decisions.

(a) is made by a Full Bench of the Australian Commission;

(b) relates to rates of wages; and

(c) is applicable generally to awards made under the Commonwealth Act.

(2) Subject to subsection (10) of section 50, when and as often as a National Wage Decision is made after the coming into operation of this section the Commission shall of its own motion consider that

decision and, unless it is satisfied that there are good reasons not to do so, shall make a General Order giving effect to that National Wage Decision in such manner and subject to such conditions as the Commission considers appropriate in awards in force under this Act.

(3) Where the Commission makes a General Order under this section it may vary, to such extent as it considers proper, any General Order made under subsection (5) of section 50 which prescribes a minimum wage.

Division 4—Industrial Unions and Associations.

Interpreta-
tion.

52. In this Division, unless a contrary intention appears—

“collegiate electoral system”, in relation to an election for an office in a union, means a method of election comprising a first stage, at which persons are elected to a number of offices by a direct voting system, and a subsequent stage or subsequent stages at which persons are elected by secret ballot by and from the persons elected at the immediately preceding stage;

“direct voting system”, in relation to an election for an office in a union, means a method of election by secret postal ballot at which all financial members, or all financial members included in such branch, section, or other division, or in such class, as is appropriate, having regard to the nature of the office, are, subject to reasonable provisions with respect to enrolment, eligible to vote;

“one-tier collegiate electoral system” means a collegiate electoral system comprising only one stage after the first stage;

“postal ballot” means a ballot for the purposes of which a ballot paper is sent by prepaid post to each person entitled to vote and facilities are provided for the return of the completed ballot paper by post by the voter without expense to him.

53. (1) Subject to this Act, any society consisting of not less than two hundred employees associated for the purpose of protecting or furthering the interests of employees—

Qualifications for and basis of registration of unions of employees.

(a) in any specified industry; or

(b) in any specified calling,

may be registered as a union by reference to that industry or, as the case may be, that calling.

(2) A society consisting of less than two hundred employees may be registered if the Full Bench is satisfied—

(a) that the number of members in the society constitutes a substantial proportion of all employees in the industry or calling by reference to which the society seeks registration; or

(b) that there is good reason, consistent with the objects prescribed in section 6, to permit the registration of the society.

(3) The Full Bench may, if in its opinion it is in the interests of employees thereby affected or likely to be affected to do so, permit a society to be registered—

(a) by reference to more than one industry; or

(b) by reference to more than one calling; or

(c) by reference to any combination of industries and callings.

Qualifications
and basis for
registration of
unions of
employers.

54. (1) Subject to this Act, any society consisting of two or more employers who—

- (a) have, in the aggregate throughout the six months immediately preceding the date of application for registration employed on an average, taken per month, not less than two hundred employees; and
- (b) are associated for the purpose of protecting or furthering the interests of employers in any specified industry,

may be registered by reference to that industry.

(2) A society which does not comply with paragraph (a) of subsection (1) may be registered if the Full Bench is satisfied—

- (a) that the number of employees employed by the members of the society constitutes a substantial proportion of all employees in the industry by reference to which the society seeks registration; or
- (b) that there is good reason, consistent with the objects prescribed in section 6, to permit the registration of the society.

(3) The Full Bench may, if in its opinion it is in the interests of employers thereby affected or likely to be affected to do so, permit a society referred to in subsection (1) to be registered by reference to more than one industry.

Require-
ments
attaching to
society
seeking
registration.

55. (1) A society seeking registration shall lodge in the office of the Registrar—

- (a) a list of the members, officers, and trustees (if any) of the society with their addresses;
- (b) three copies of the rules of the society; and
- (c) the prescribed form of application.

(2) When the society has complied with the requirements of subsection (1) the Registrar shall publish in the *Industrial Gazette*—

- (a) a notice of the application;
- (b) a copy of such rules of the society as relate to the qualification of persons for membership of the society and, without limiting the generality thereof, including any rule by which the area of the State within which the society operates, or intends to operate, is limited; and
- (c) notice that any person who objects to the registration of the society and who, having given notice of that objection within the time and in the manner prescribed, satisfies the Full Bench that he has a sufficient interest in the matter, may appear and be heard in objection to the application.

(3) An application under this section shall not be listed for hearing before the Full Bench until after the expiration of thirty days from the date of the issue of the *Industrial Gazette* in which the matters referred to in subsection (2) are published.

(4) The Full Bench may refuse to authorize the registration of a society if, in the opinion of the Full Bench, such registration is not necessary or desirable for, or would not be likely to advance, the purposes and objects of this Act, and shall so refuse unless it is satisfied that—

- (a) the person who made the application is the person authorized in accordance with the rules of the society to do so;
- (b) reasonable steps have been taken to adequately inform the members—
 - (i) of the intention of the society to apply for registration;
 - (ii) of the proposed rules of the society;

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 society 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 society—
 - (i) less than five per centum has objected to the making of the application or to those rules or any of them, as the case may be; or
 - (ii) a majority, 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 society, those rules provide for reasonable notice of any proposed alteration to be given to the members of the society and for reasonable opportunity for the members to object to any such proposal;
- (e) rules of the society relating to elections for office—
 - (i) provide that the election shall be by secret ballot; and
 - (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 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 society 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 twelve months.

56. (1) In addition to any other requirement of this Act, the conditions to be complied with by any society applying after the coming into operation of this section for registration include a condition that the rules of the society—

Rules to provide for secret ballots, etc.

(a) shall provide for the conduct of every election to an office within the union (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 union;

(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 seven days after his being so notified;

(c) shall provide for the election of the holder of each office within the union, 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;

and

(d) shall not permit a person to be elected to hold an office within the union for a period exceeding four years without being re-elected.

(2) Where the rules of a union which was, immediately prior to the coming into operation of this section, registered under the repealed Act do not, in the opinion of the Registrar, conform with the requirements of subsection (1), the Registrar may, after inviting the union to consult with him on the matter, allow the union 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 union to his satisfaction, pursuant to subsection (2) and thereupon the rules shall be deemed to be altered accordingly.

Elections
to be by
secret
postal ballot.

57. (1) Every election by a direct voting system for an office in a union shall be by secret postal ballot.

(2) The regulations may make provision for and in relation to the conduct of an election in accordance with the requirements of this section.

(3) Where the rules of a union as in force at the date of the coming into operation of this section provide for an election or elections to which this section applies to be by a secret ballot other than a secret postal ballot, the Registrar may, upon application by the union in accordance with the regulations, by instrument in writing under his hand, exempt the union in respect of an election from the application of this section if he is satisfied that the conduct of the election in accordance with those rules—

- (a) is likely to result in a fuller participation by members of the union in the ballot than would result from a postal ballot; and
- (b) will afford members entitled to vote an adequate opportunity of voting without intimidation.

(4) This section, and the regulations made for the purposes of this section, have effect notwithstanding anything contained in the rules of a union.

(5) This section does not apply to an election any step in which was taken, in accordance with the rules of the union, before the date of the coming into operation of this section.

58. (1) Where, under this Act, the Registrar is authorized by the Full Bench to register a society he shall so register it by registering—

Registration
of society.

- (a) its name;
- (b) its rules; and
- (c) the address of the office where the business of the union is conducted,

and shall thereupon give to the union a certificate in the prescribed form which until cancelled is, subject to this Act, conclusive evidence of the

registration of the union under this Act and of the union having complied with the prescribed conditions that entitle it to be so registered.

(2) Where the Full Bench authorizes the Registrar to register a society it may do so—

(a) unconditionally; or

(b) subject to the compliance by the society with any direction given to it by the Full Bench in dealing with the application by the society for registration.

Registered
name.

59. (1) The Full Bench shall not authorize the registration of a society under a name identical with that by which any other union has been registered or which by reason of its resemblance to the name of another union or body or for any other reason is, in the opinion of the Full Bench, likely to deceive or mislead any person.

(2) The registered name shall clearly indicate whether the union is a union of employers or a union of employees.

(3) This section does not prevent the Full Bench from authorizing a union to which a certificate has been issued under section 71 to change its name so as to correspond with the name of its Counterpart Federal Body under that section.

Incorporation
of
society upon
registration.

60. (1) A society shall, upon and during registration, become and be, for the purposes of this Act, a body corporate by the registered name, having perpetual succession and a common seal, but, subject to this Act, a union may at any time, with the consent of the Full Bench, change its name.

(2) A union may sue and be sued and may purchase, take on lease, hold, sell, lease, mortgage, exchange, and otherwise own, possess, and deal with any real or personal property.

(3) The service on a union of any process, notice, or document of any kind may be effected by delivering it to the secretary or principal executive officer of the union or by leaving it at the office referred to in section 58 or by posting it to that office in a duly registered letter addressed to the secretary of the union or in such other manner as may be prescribed.

61. Upon and after registration, the union and its members for the time being shall be subject to the jurisdiction of the Court and the Commission and to this Act; and, subject to this Act, all its members shall be bound by the rules of the union during the continuance of their membership.

Effect of
registration.

62. (1) Upon and after the registration of rules in accordance with subsection (1) of section 58, an alteration to those rules by the union concerned shall not be or become effective until the Registrar has given to the union a certificate that the alteration has been registered.

Alteration
of
registered
rules.

(2) Where the Registrar has been authorized by the Full Bench to register an alteration to any rule of a kind referred to in subsection (2) of section 55 or in subsection (5) of section 71, he shall register that alteration in accordance with the terms of that authorization.

(3) Subject to subsection (2) and to subsection (8) of section 71, the Registrar shall not register an alteration to any rule unless, after consulting with the President, he is satisfied that—

- (a) the alteration to the rule has been made in accordance with the rules of the union concerned;

- (b) reasonable steps have been taken to adequately inform the members—
 - (i) of the proposal for alteration and the reasons therefor; and
 - (ii) that the members or any of them may object to the proposed alteration by forwarding a written objection to the Registrar,

and, having regard to the structure of the union, and any other relevant circumstance, the members have been afforded a reasonable opportunity to object to the alteration; and

- (c) less than five per centum of the members of the society has objected to the proposed alteration or a majority of the members of the society, in a ballot conducted in a manner approved by the Registrar, has authorized or approved the proposed alteration.

(4) Sections 52 to 55, both inclusive, apply, with such modifications as are necessary, to and in relation to an application by a union for alteration of a rule of a kind referred to in subsection (2) of section 55.

Records to
be kept by
union.

63. (1) A union shall keep the following records—

- (a) a register of its members showing the name and postal address of each member;
- (b) a list of the names, postal addresses, and occupations of the persons holding offices in the union;
- (c) an account, in proper form, of the receipts, payments, funds, and effects of the union; and

(d) such other records as are prescribed.

Penalty: \$200, and an additional penalty of \$50 for each week the offence continues.

(2) A union shall file with the Registrar once in each year, at such time as is prescribed, a copy of the records required to be kept under paragraph (b) of subsection (1) and a record of the number of members in the union, certified by statutory declaration by the Secretary or other prescribed officer of the union to be a correct statement of the information contained therein.

Penalty: \$200, and an additional penalty of \$50 for each week the offence continues.

(3) A union shall file with the Registrar in such manner and within such time as is prescribed notification of changes in the holding of offices.

Penalty: \$200, and an additional penalty of \$50 for each week the offence continues.

(4) In subsection (5) "union ticket" includes a receipt or other document acknowledging or certifying that a person is a member or has renewed his membership of the union or has paid any dues or other moneys payable in respect of his membership of the union or the renewal of his membership.

(5) A union shall, at all times during which a person is a member of the union, keep a record or butt of the latest union ticket issued to him, showing his name and usual postal address.

Penalty: \$200.

(6) All documents filed with the Registrar pursuant to this section and section 65 shall be made available for inspection at the office of the Registrar as prescribed.

(7) The register of members of a union shall be made available by the union for inspection by such persons as are authorized by the Registrar, at such times as are appointed by him, at the office of the union.

Penalty: \$200.

(8) The records shall be kept in the prescribed manner.

Penalty: \$200.

Registrar
may require
form of
membership
record to
be altered.

64. (1) Where it appears to the Registrar that the register of members of a union is not being maintained in such a form and manner as to provide, for the purpose of the conduct of a ballot or election pursuant to this Act, a convenient form of the accurate particulars of the membership of the union, he may direct the union to make such rectifications in the register and such changes in the form or manner in which the register is being maintained, as he considers necessary for that purpose.

(2) A union to which a direction is given under subsection (1) shall comply therewith.

Penalty: \$200.

(3) A certificate from the Registrar stating that a person specified in the certificate was at a time so specified a member or officer of a union so specified is, in all courts and proceedings, evidence of the facts so stated.

Audit and
filing of
accounts of
union.
Substituted
by No. 121
of 1982, s. 22.

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: \$1 000.

66. (1) The following persons may apply to the President for an order or direction under this section—

Power of President to deal with complaints by members or Registrar against union.

- (a) a person who is or has been a member of a union; or
- (b) a person who has applied for and not been admitted to membership in a union; or
- (c) the Registrar acting on the complaint of or on behalf of a person referred to in paragraph (a) or by reason of any matter arising from the discharge of his duties under this Act.

(2) On an application made pursuant to this section, the President may make such order or give such directions relating to the rules of the union, their observance or non-observance or the manner of their observance, either generally or in the particular case, as he considers to be appropriate and without limiting the generality of the foregoing may—

- (a) disallow any rule which, in the opinion of the President—
 - (i) is contrary to or inconsistent with any Act or law, or an award, order, or direction made or given under this Act;
 - (ii) is tyrannical or oppressive;
 - (iii) prevents or hinders any member of the union from observing the law or the provisions of an award, order, or direction made or given under this Act;
 - (iv) imposes unreasonable conditions upon the membership of a member or upon an applicant for membership; or
 - (v) is inconsistent with the democratic control of the union by its members;
- (b) instead of disallowing a rule under paragraph (a), direct the union to alter that rule within a specified time in such manner as the President may direct;
- (c) disallow any rule which has not been altered by the union after a direction to do so pursuant to paragraph (b);
- (d) declare the true interpretation of any rule;
- (e) inquire into any election for an office in the union if it is alleged that there has been an irregularity in connection with that election and make such orders and give such directions as the President considers necessary—
 - (i) to cure the irregularity including rectifying the register of members of the union; or
 - (ii) to remedy or alter any direct or indirect consequence thereof; and

(f) in connection with an inquiry under paragraph (e)—

- (i) give such directions as the President considers necessary to the Registrar or to any other person in relation to ballot papers, envelopes, lists, or other documents of any kind relating to the election;
- (ii) order that any person named in the order shall or shall not, as the case may be, for such period as the President considers reasonable in the circumstances and specifies in the order, act or continue to act in and be deemed to hold an office to which the inquiry relates;
- (iii) declare any act done in connection with the election to be void or validate any act so done;
- (iv) recommend to the Attorney General that costs and expenses in respect of an inquiry of any person named in the recommendation should be paid by the State.

(3) The decision of the President shall be signed and delivered by him.

(4) Any person to whom an order or direction given or made under this section applies shall comply with that order or direction whether or not it is contrary to or inconsistent with any rule of the union concerned.

(5) The Attorney General shall consider a recommendation made pursuant to subparagraph (iv) of paragraph (f) of subsection (2) and may authorize payment by the State of the whole or part of the costs and expenses referred to therein; and the Public Account is, to the extent of that authorization, hereby appropriated.

(6) A rule disallowed pursuant to paragraph (a) or (c) of subsection (2) is void.

(7) Forthwith after the coming into operation of this section the Registrar shall, subject to subsection (8), review the rules of each union and shall, by application pursuant to this section, bring before the President the rules of any union if, in the opinion of the Registrar—

- (a) any such rule is contrary to or inconsistent with any provision of this Act; or
- (b) the rules or any of them do not provide adequately for the control of the Union by the members thereof.

(8) This section does not apply to or in relation to a union to which a certificate has been issued under section 71.

(9) The power of the President under paragraph (d) of subsection (2) may, on a reference made under paragraph (u) of subsection (1) of section 27, be exercised by the Full Bench.

**Registration
of industrial
associations.**

67. (1) A council or other body, however designated, formed by and for the purpose of representing two or more unions of employers or two or more unions of employees in any specified industry may, subject to this Act, be registered as an industrial association under this Act.

(2) A council or other body formed by and for the purpose of representing two or more unions of employees may be registered as an industrial association in respect of a specified industry, whether or not each such union is registered in respect of that industry if the Full Bench is satisfied that—

- (a) members of each such union are or are usually employed in that industry;

- (b) the members of the unions represented on that council or body constitute a substantial proportion of the employees in that industry who have industrial interests in common; and
- (c) the registration of the council or body as an association would be likely to serve the objects of this Act.

(3) An association registered pursuant to subsection (2) may, upon or at any time after registration, be authorized by the Full Bench to act on behalf of all employees referred to in paragraph (b) of that subsection notwithstanding that some of those employees may not be eligible to be a member of any of the unions represented on the council or body.

(4) The Full Bench shall not act under subsection (3) except upon application by the association referred to in that subsection and then only if it is satisfied that it would be in the best interests of the employees concerned so to do.

(5) Where every union having members employed in the industry in respect of which a council or other body seeks registration under subsection (2) is not represented on that council or body, the rules of the council or body shall be so framed as to permit every such union the members of which have industrial interests in common with the members of the unions represented on the council or other body to become a member thereof.

(6) No more than one association for the representation of employees having industrial interests in common may be registered under subsection (2) in respect of any specified industry.

(7) Subject to this section, the provisions of this Act relating to unions, their rules, records, officers, trustees, and members shall extend and apply, with such modifications as are necessary, to an association, its rules, records, officers, trustees, and

members respectively, and any question arising therefrom shall be settled according to the opinion of the President after consultation with the Registrar.

Declaration
re office in
a union.

68. The Full Bench may, on its own motion or on the application of a person of a kind referred to in subsection (1) of section 66, declare all or any of the functions of an office to be those of an office in a union.

Conduct of
election by
Registrar or
Electoral
Office.

69. (1) An election for an office in a union may be conducted pursuant to this section where the Registrar decides that a request that the election be so conducted has been duly made.

(2) A request is duly made if it is made in writing within the time prescribed—

- (a) by an officer of a union on behalf of the union; or
- (b) by a person authorized to make the request by and on behalf of not less than one-twentieth of the members of, or two hundred and fifty of the members of the union, whichever is the lesser number.

(3) Where a request is made or purports to be made in accordance with this section, the Registrar shall, after making such inquiries, if any, as he considers necessary, decide whether or not the request has been duly made.

(4) Where the Registrar decides that a request has been duly made, he shall inform the union accordingly, and make arrangements with the Chief Electoral Officer appointed under the Electoral Act 1907 for the conduct of the election by an officer holding office under that Act or by some other person authorized in writing by the Chief Electoral Officer.

(5) Notwithstanding anything contained in the rules of the union, the person conducting the election may take such action and give such directions as he considers necessary in order—

- (a) to ensure that no irregularities occur in or in connection with the election;
 - (b) to rectify the register of members of the union; or
 - (c) to remedy procedural defects which appear to him to exist in those rules.
- (6) A person who—
- (a) refuses or fails to comply with a direction given in accordance with subsection (5);
or
 - (b) obstructs or hinders—
 - (i) the person conducting an election under this section in the conduct of the election or the taking of any action in accordance with subsection (5); or
 - (ii) any other person in the carrying out of a direction given in accordance with subsection (5),

commits an offence against this Act.

Penalty: \$500 or 6 months' imprisonment, or both.

(7) An election conducted pursuant to this section is not invalid by reason only of an irregularity in the request in pursuance of which the election was conducted or by reason of a breach of the rules of the union involved in anything done or omitted, or in compliance with a direction given, in accordance with this section.

(8) The expense of any election conducted in accordance with this section shall be borne by the State; and the Public Account is to the necessary extent appropriated accordingly.

(9) The Secretary of the union shall, within such time as the Registrar may require, lodge with the Registrar—

- (a) a copy of the register of members referred to in section 63; and
- (b) two copies of the registered rules of the union,

as the register and those rules existed on the date on which the request was made.

(10) In proceedings before the Commission or any court in connection with anything done or proposed to be done by reason of a request duly made in accordance with this section the copy register referred to in subsection (9) is evidence that the persons shown therein as members of the union were, at the date referred to in that subsection, members of the union.

(11) Where the Registrar decides that a request has not been duly made under this section he shall inform the union and, where the request has been made by a person referred to in paragraph (b) of subsection (2), that person, accordingly.

(12) The officer or person who made the request for the conduct of the election under this section may, within seven days of the union or that person, as the case may be, being informed by the Registrar of his decision that the request has not been duly made, appeal to the Full Bench in the manner prescribed against that decision.

70. (1) A person who, without lawful authority or excuse, in or in connection with an election for an office—

Offences in relation to elections.

- (a) personates another person to secure a ballot paper to which the personator is not entitled, or personates another person for the purpose of voting;
- (b) destroys, defaces, alters, takes, or otherwise interferes with a nomination paper, ballot paper, or envelope;
- (c) puts or delivers a ballot paper or other paper—
 - (i) into a ballot box or other ballot receptacle;
 - (ii) into the post; or
 - (iii) to a person receiving ballot papers for the purposes of the election;
- (d) records a vote which he is not entitled to record;
- (e) records more than one vote;
- (f) forges or alters, knowing it to be forged, a nomination paper, ballot paper, or envelope;
- (g) supplies a ballot paper;
- (h) obtains, or has in his possession, a ballot paper; or
- (i) destroys, takes, opens, or otherwise interferes with a ballot box,

commits an offence against this Act.

Penalty: \$500 or 6 months' imprisonment, or both.

(2) A person who, in or in connection with an election for an office—

- (a) threatens, offers or suggests violence, injury, punishment, damage, loss, disadvantage, or any form of intimidation for or on account of, or to induce—
 - (i) candidature or withdrawal of candidature;
 - (ii) a vote or an omission to vote;
 - (iii) support or opposition to a candidate; or
 - (iv) a promise of a vote, or an omission to vote, or of support for, or of opposition to a candidate; or
- (b) uses, causes, inflicts, or procures violence, punishment, damage, loss, disadvantage, or any form of intimidation for or on account of any such candidature, withdrawal, vote, omission, support, or opposition,

commits an offence against this Act.

Penalty: \$500 or 6 months' imprisonment, or both.

Provisions
relating to
State
branches of
Federal
organiza-
tions.

71. (1) In this section—

“Branch” means the Western Australian Branch of an organization of employees registered under the Commonwealth Act; and

“Counterpart Federal Body”, in relation to a union, means a Branch the rules of which—

- (a) relating to the qualifications of persons for membership; and

- (b) prescribing the offices which shall exist within the Branch,

are, or, in accordance with this section, are deemed to be, the same as the rules of the union relating to the corresponding subject matter.

(2) The rules of the union and its Counterpart Federal Body relating to the qualifications of persons for membership are deemed to be the same if, in the opinion of the Full Bench, they are substantially the same.

(3) The Full Bench may form the opinion that the rules referred to in subsection (2) are substantially the same notwithstanding that a person who is—

- (a) eligible to be a member of the union is, by reason of his being a member of a particular class of persons, ineligible to be a member of that union's Counterpart Federal Body; or
- (b) eligible to be a member of the Counterpart Federal Body is, for the reason referred to in paragraph (a), ineligible to be a member of the union.

(4) The rules of a Counterpart Federal Body prescribing the offices which shall exist in the Branch are deemed to be the same as the rules of the union prescribing the offices which shall exist in the union if, for every office in the union there is a corresponding office in the Branch.

(5) Where, after the coming into operation of this section—

- (a) the rules of a union are altered pursuant to section 62 to provide that each office in the union may, from such time as the Committee of Management of the union may determine, be held by the

person who, in accordance with the rules of the union's Counterpart Federal Body, holds the corresponding office in that body; and

- (b) the Committee of Management of the union decides and, in the prescribed manner notifies the Registrar accordingly, that from a date specified in the notification all offices in the union will be filled in accordance with the rule referred to in paragraph (a),

the Registrar shall issue the union with a certificate which declares—

- (c) that the provisions of this Act relating to elections for office within a union do not, from the date referred to in paragraph (b), apply in relation to offices in that union; and
- (d) that, from that date, the persons holding office in the union in accordance with the rule referred to in paragraph (a) shall, for all purposes, be the officers of the union,

and the certificate has effect according to its tenor.

(6) A union to which a certificate issued under this section applies may, notwithstanding any provision in its rules to the contrary, make an agreement with the organization of which the union's Counterpart Federal Body is the Branch, relating to the management and control of the funds or property, or both, of the union.

(7) Where a memorandum of an agreement referred to in subsection (6) is—

- (a) sealed with the respective seals of the union and the organization concerned;
- (b) signed on behalf of the union and the organization by the persons authorized under their respective rules to execute such an instrument; and

(c) lodged with the Registrar,

the Full Bench may, if it is satisfied that the terms of the agreement are not detrimental to the interests of persons who are eligible to be members of the union and of its Counterpart Federal Body and will not prevent or hinder the union from satisfying any debt or obligation howsoever arising, approve the agreement.

(8) Where the Full Bench approves an agreement under subsection (7) the Registrar shall—

- (a) register the memorandum as an alteration to the rules of the union;
- (b) amend, where necessary, the certificate issued to the union under subsection (5) by declaring that the union is, from the date of registration of the memorandum, exempted from compliance with such provisions of this Act and to such an extent as the Full Bench may, having regard to the terms of the memorandum, direct; and
- (c) notify the union in writing of the matters referred to in paragraphs (a) and (b).

(9) After the issue to a union of a certificate or an amended certificate under this section—

- (a) the rule referred to in paragraph (a) of subsection (5) and a memorandum registered under paragraph (a) of subsection (8) shall not be altered unless the alteration is approved by the Full Bench;
- (b) an alteration to any rule of the union other than the rule referred to in paragraph (a) may be registered by the Registrar if he is satisfied that the rule as so altered is the same as a rule of the union's Counterpart Federal Body; and

- (c) every member of the union's Counterpart Federal Body who is eligible to be a member of the union shall, for all the purposes of this Act and of any award or order, be deemed to be a member of the union.

(10) Before granting approval to an alteration of the rule or memorandum referred to in paragraph (a) of subsection (9), the Full Bench may require compliance by the union with such conditions as the Full Bench considers appropriate.

Amalgama-
tion of
unions.

72. (1) Where a society seeking registration is one which has been formed at the instance of two or more unions (referred to in this section as "the amalgamating unions") and consists of persons who are and are eligible to be members of one or more of those unions the society shall comply with the requirements of section 55 subject to the following—

- (a) each of the amalgamating unions shall lodge a list of the members, officers, and trustees (if any) of the union with their respective addresses;
- (b) the rules of the society referred to in subsection (2) of section 55 shall be such that a person is not eligible to be a member of the society unless, by reason of—
 - (i) the calling in which he is employed;
 - (ii) the industry in which he is employed; and
 - (iii) the area or locality of the State in which he is employed,
 he is eligible to be a member of at least one of the amalgamating unions;
- (c) subsection (3) of section 55 shall be applied as if the word "sixty" were substituted for the word "thirty" therein;

- (d) subsection (4) of section 55 shall be applied as if the words "each amalgamating union" were substituted for the word "society" in paragraphs (b) and (c) thereof; and
- (e) the application shall be under the respective seals of the amalgamating unions and shall be signed by the secretary and principal executive officer of each such union.

(2) paragraph (b) of subsection (1) does not prevent the alteration, pursuant to this Act, at any time after a society has been registered under this section, of the rules referred to in that paragraph.

(3) On and from the date on which a society is registered under this section—

- (a) the registration of each of the amalgamating unions is cancelled; and
- (b) all the property, rights, duties, and obligations whatever held by, vested in or imposed on each of those unions shall be held by, vested in, or imposed on, as the case may be, the new union.

73. (1) Subject to this section, the Commission may of its own motion or at the request of the Attorney General or any employer or union at any time direct the Registrar in writing to issue to a union a summons to appear before the Full Bench on a date specified in the summons, and show cause why the registration of the union under this Act should not be cancelled or suspended, as the case may be.

Summons
for cancel-
lation or
suspension
of registra-
tion of
union.
Amended
by No. 121
of 1932,
s. 23.

(2) The Registrar shall ascertain from the President the date to be specified in the summons referred to in subsection (1) and that date shall not, without good cause, be less than fourteen days from the date on which the summons is issued by the Registrar.

(3) In respect of a request made under subsection (1)—

- (a) where the request is made by the Attorney General and is accompanied by a declaration by him that the safety, health, or welfare of the community or a part of it is at risk, the Commission shall give a direction under that subsection; and
- (b) in any other case, the Commission may give a direction under that subsection if, by reason of the conduct of the union or its officers or members or any of them, either generally or in a particular case, it appears to the Commission that the continuance of the registration is not consistent with or will not serve the objects of this Act, but the Commission shall not give such a direction in a case to which this paragraph applies unless it has advised the union of its intention to do so and has invited such officers of the union as the Commission considers appropriate to consult with it in respect of that conduct.

(4) A direction to the registrar under subsection (1) shall include a statement of the reasons for which the direction is given and a copy of that statement shall be attached to the summons referred to in that subsection and served therewith.

(5) The union concerned may apply to the Registrar for further particulars of the statement of reasons referred to in subsection (4) and the Registrar shall supply such further particulars as the Commissioner who constituted the Commission that gave the direction may direct.

(6) For the hearing and determination of a matter under this section the Commissioner referred to in subsection (5) shall not be a member of the Full Bench.

(7) On the return of the summons the Full Bench may make such order in respect of the registration

of the union as it considers appropriate and, without limiting the generality of the foregoing may, by order—

- (a) cancel the registration of the union;
- (b) cancel the rights of the union under this Act either generally or with respect to any employee or group or class of employees specified in the order; or
- (c) suspend, for a time specified in the order or without limit of time and, in either case, subject to such conditions or exceptions, or both, as the Full Bench thinks fit, that registration or those rights.

(8) For the purposes of subsection (7) the orders which the Full Bench may make include—

- (a) an order with respect to the rules of the union cancelling or suspending or varying in any way the rules or any part of the rules referred to in subsection (2) of section 55; and
- (b) an order cancelling or suspending an award or order or any provision of an award or order.

(9) An order made under this section comes into operation and has effect from such date on or after the making of the order as the Full Bench may determine and specify therein, but it may be prescribed in the order that the order shall not commence to operate from the date specified therein if, before that date, the union satisfies the Full Bench that it has complied or is complying with conditions or requisitions made by the Full Bench when making the order.

(10) An order made under this section may provide for the cancellation of the registration of a union after such period of suspension of rights under this Act as the Full Bench considers necessary to enable any debts, liabilities, or obligations incurred by the union to be met and the period of sus-

pension under this subsection may be extended by the Full Bench to such extent as may appear to the Full Bench to be necessary.

(11) An order made under this section has effect according to its tenor and the Registrar shall, where necessary, amend his records accordingly.

(12) The Full Bench may cancel the registration of a union if it is satisfied on the application of the Registrar that—

- (a) the number of members of the union or, the number of employees of the members of the union would not entitle it to registration under section 53 or section 54, as the case may be;
- (b) the union is defunct; or
- (c) the union has, in the manner prescribed, requested that its registration be cancelled.

(13) During any period in which—

- (a) a union is not registered; or

(b) the registration of a union is suspended, an employer shall not deduct from the wages of any employee any amount for or in respect of membership of the union.

(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.

74. (1) Subject to this section, the Commission may, of its own motion or at the request of the Attorney General or any employer or union, direct the Registrar in writing to issue to a union a summons to appear before the Full Bench on a date specified in the summons, and to show cause why it should not be dealt with under this section for or in relation to the contravention or non-observance of an order made under paragraph (a) of subsection (1) of section 45, but where such a request of the Attorney General is accompanied by a declaration by him that the safety, health, or welfare of the community or part of it is at risk, the Commission shall so direct.

Summons
for breach
of certain
orders.
Amended by
No. 121 of
1982, s. 24.

(2) The Registrar shall ascertain from the President or, in the absence of the President, from the Chief Industrial Commissioner the date to be specified in the summons referred to in subsection (1) and that date shall not, without good cause, be less than fourteen days from the date on which the summons is issued by the Registrar.

(3) The Commission shall not give a direction under subsection (1) unless—

(a) the Registrar, by direction of the Commission, has made such investigations relating to the observance of the order as he considers necessary, and has reported to the Commission in writing his findings as a result of those investigations;

- (b) the Commission, having regard to those findings, considers that the direction ought to be given; and
- (c) the Commission has advised the union of its intention so to do and has invited such officers of the union as the Commission considers appropriate to consult with it in respect of those findings,

but the foregoing provisions of this subsection do not apply to or in relation to a direction that the Commission is required to make under subsection (1).

(4) In a case to which subsection (3) applies, a copy of the report and findings of the Registrar referred to in that subsection shall be attached to the summons referred to in subsection (1) and served therewith and the union concerned may apply to the Registrar for further particulars of any matter contained in the report and the Registrar shall supply such further particulars as the Commissioner who constituted the Commission that gave the direction under subsection (1) may direct.

(5) For the hearing and determination of a matter under this section the Commissioner referred to in subsection (4) shall not be a member of the Full Bench.

(6) Where, on the return of the summons referred to in subsection (1) it appears to the Full Bench that—

- (a) a person; or
- (b) all or a substantial number of—
 - (i) a group of persons; or
 - (ii) the members of a class of persons,

as the case may be, to whom the order concerned has been directed has or have contravened or failed to comply with the order or any provision thereof; and that—

(c) that person; or

(d) all or a substantial number of those persons,

as the case may be, is or are members of any union which is a party to that order, the Full Bench may convict that union of a breach of that order and impose a 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.

(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.

(7) Where a union which is—

(a) a party to an order referred to in subsection (6); and

(b) a union to which a certificate issued under section 71 is in force,

alleges that any person to whom that order was directed was not, at the relevant time or times, a member of that union, that person shall, if he was at that or those times eligible to be a member of that union, be deemed, for the purposes of this section, to have been such a member unless it is proved to the satisfaction of the Full Bench that he was not, at that or those times a member of the union's Counterpart Federal Body within the meaning of section 71 or a member of the union.

(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.

(9) In and with respect to any period during which rights are suspended under subsection (8) or (8a)—

- (a) a proceeding of any kind may not be instituted under this Act by or on behalf of the union or any of its members;
- (b) the union shall not be joined as an applicant in any such proceedings;
- (c) an award or order shall not be made or be deemed to have been made for the benefit of the union or any of its members; and
- (d) rights or entitlements shall be deemed not to become due to the union or its members under this Act or any award or order in force thereunder.

(10) Where a penalty has been imposed on a union under this section the union may, by the authority of this subsection and notwithstanding any rule of the union to the contrary, but subject to section 66, impose a levy on any member of the union whose contravention or failure to comply with the order referred to in subsection (6) caused or contributed to the imposition of that penalty.

(11) This section, with such modifications as are necessary, apply to and in relation to the contravention or non-observance by an employer of an order referred to in subsection (1).

Division 5—Submission of Matters to Secret Ballot.

75. (1) Where the Commission considers that the views of the members or of a section or class of the members of a union or, where the registration of a union has been cancelled, that the views of the persons or a section or class of the persons who were at the time of the cancellation members of the union upon a matter, ought to be ascertained, the Commission may order that the matter be submitted to a vote of those members, or of the members of that section or class, taken by secret ballot, with or without provision for absent voting, in accordance with directions given by the Commission.

Commission
may order
secret ballot.

(2) Where a union of employees is concerned in any matter and that matter has caused or contributed to, or in the opinion of an officer of that union or any employer affected thereby is likely to cause or contribute to, industrial action, that union shall, for the purpose of the exercise by the Commission of its power under subsection (1), notify the Registrar accordingly.

76. (1) The Commission may make such orders as it thinks necessary for the effectual exercise of its powers and functions and the enforcement of its orders under this Division.

Enforcement
of orders.

(2) A person who refuses or fails to comply with an order of the Commission under this Division or hinders or obstructs the carrying out of any such order commits an offence against this Act.

Penalty: \$500 or 6 months' imprisonment, or both.

77. The Commission may order that such steps shall be taken as are necessary to ensure that ballot papers, envelopes, lists, and other documents used in connection with, or relevant to a ballot ordered under section 75 are preserved and kept at such place and for such period after the completion of the ballot, as the Commission thinks fit.

Ballot
papers, etc.,
to be
preserved.

Persons
having the
conduct of
ballots.

78. (1) The Commission may direct the Registrar to conduct the ballot or may direct other officers of the Commission or any member of a union or employer referred to in subsection (2) of section 75 to do so, or direct the Registrar to make arrangements with the Chief Electoral Officer holding that office under the Electoral Act 1907 for the conduct of the ballot by an officer holding office under that Act.

(2) Notwithstanding anything contained in the rules of the union, the person conducting the ballot may take such action and give such directions as he considers necessary in order to ensure that no irregularities occur in or in connection with the ballot or to remedy procedural defects which appear to him to exist in those rules.

(3) A person who—

(a) refuses or fails to comply with a direction given under subsection (1) or (2); or

(b) obstructs or hinders—

(i) the person conducting the ballot or the taking of any action under subsection (2); or

(ii) any other person in the carrying out of a direction under subsection (2),

commits an offence against this Act.

Penalty: \$500 or 6 months' imprisonment, or both.

(4) A ballot conducted under this Division is not invalid by reason only of a breach of the rules of the union involved, in anything done or omitted, or in compliance with a direction given, pursuant to this Division.

(5) The expenses of a ballot conducted under this Division, but not including the salary of an officer of the State performing a duty in relation to the ballot, shall be borne by the union concerned, unless in exercise of the authority conferred upon him by subsection (6) the Attorney General authorizes payment of the expenses by the State.

(6) Where the Attorney General considers the circumstances justify him in doing so, he may authorize payment of all or part of those expenses by the State.

(7) Authorization by the Attorney General under subsection (6) of payment, is sufficient for appropriation of the payment from the Public Account.

79. Section 70 applies, with such modifications as are necessary, to and in relation to a ballot conducted pursuant to this Division.

Offences.

80. Sections 76 to 79, inclusive, do not derogate from the generality of the power conferred upon the Commission by section 75 to direct how the secret ballot is to be taken.

Saving of the powers conferred.

PART III.—INDUSTRIAL MAGISTRATES.

81. (1) There shall be such number of Industrial Magistrates as may, from time to time, be necessary for the purposes of this Act.

Appointment of Industrial Magistrates.

(2) A person shall not be appointed or hold office as an Industrial Magistrate unless he is a stipendiary magistrate.

(3) An Industrial Magistrate may, in addition to the powers and jurisdiction otherwise conferred on him by this Act, exercise the powers and jurisdiction of the Court under section 88.

(4) A judgment, order, conviction, direction, or other decision of an Industrial Magistrate may be enforced in accordance with the regulations made under subsection (3) of section 113.

Proceedings
to be
commenced
before
Industrial
Magistrate.
Amended by
No. 121 of
1982, s. 25.

82. (1) Proceedings under this Act in respect of the following matters shall be instituted before an Industrial Magistrate and not otherwise, that is to say—

- (a) offences against this Act or the regulations except those in respect of which exclusive original jurisdiction is conferred on the Full Bench or the President; and
- (b) applications made under section 83.

(2) An Industrial Magistrate has jurisdiction to hear and determine the matters referred to in subsection (1), and for that purpose—

- (a) an Industrial Magistrate has like powers to a stipendiary magistrate sitting as a court of summary jurisdiction; and
- (b) the practice and procedure of such a court apply to and in relation to the exercise of the powers and jurisdiction of an Industrial Magistrate, except to the extent that it is otherwise provided by or under this Act.

(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.

83. (1) Subject to this Act, where a person contravenes or fails to comply with any provision of an award or order, not being an order referred to in subsection (5) of section 50—

Enforcement
of awards
and orders
of the
Commission.
Amended by
No. 121
of 1982, s. 26.

- (a) the Registrar or Deputy Registrar;
- (b) an Industrial Inspector;
- (c) any union, association, or employer bound by the award or order; or
- (d) any person on his own behalf to whom the award or order applies,

may apply in the prescribed manner to an Industrial Magistrate for the enforcement of the award or order.

(2) On the hearing of an application under subsection (1) the Industrial Magistrate may, by order—

- (a) where he is satisfied that the contravention or failure to comply with the provisions of the award or order was deliberate, impose such penalty as he considers just but not exceeding \$1 000 in the case of an employer, union, or association and \$250 in any other case; or

(b) dismiss the application,

and, subject to subsection (3), in any case with or without costs, but in no case shall any costs be given against the Registrar, the Deputy Registrar, or an Industrial Inspector.

(3) 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 Industrial Magistrate, the proceedings have been frivolously or vexatiously instituted or defended, as the case requires, by the other party.

(4) Where in any proceedings brought under subsection (1) against an employer it appears to the Industrial Magistrate that an employee of that employer has not been paid by that employer the amount which he was entitled to be paid under an award or order the Industrial Magistrate shall, subject to subsection (5), order that employer to pay to that employee the amount by which he has been underpaid.

(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).

(6) Where the Industrial Magistrate, by an order made under this section, imposes a penalty or costs he 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.

(7) The standard of proof to be applied by the Industrial Magistrate in proceedings under this section shall be the standard observed in civil proceedings.

(8) Proceedings for enforcement of an order made under section 45 shall not be commenced under this section without a certificate signed by the Chief Industrial Commissioner authorizing those proceedings.

84. (1) In this section "decision" includes a conviction, penalty, order, order of dismissal, and any other determination of an Industrial Magistrate.

Appeal to
Full Bench
from
Industrial
Magistrate.

(2) Subject to this section, an appeal lies to the Full Bench in the manner prescribed from any decision of an Industrial Magistrate.

(3) An appeal under this section shall be instituted within twenty-one days from the date of the decision against which the appeal is brought and may be instituted by any party to the proceedings wherein the decision was made.

(4) On the hearing of the appeal the Full Bench—

(a) may confirm, reverse, vary, amend, rescind, set aside, or quash the decision the subject of the appeal;

- (b) may remit the matter to the Industrial Magistrate or to another Industrial Magistrate for further hearing and determination according to law; and
- (c) subject to subsection (5), may make such order as to costs as the Full Bench considers appropriate.

(5) 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.

PART IV.—WESTERN AUSTRALIAN INDUSTRIAL APPEAL COURT.

Constitution
of Western
Australian
Industrial
Appeal
Court.

85. (1) The Court by the name "Western Australian Industrial Appeal Court" established under the repealed Act is, under that name, hereby continued in existence under and subject to this Act.

(2) The Court shall consist of three members namely—

- (a) a Judge who shall be the Presiding Judge; and
- (b) two Judges.

(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 shall be such one of those members as the Chief Justice of Western Australia shall nominate to be the Presiding Judge.

(4) The Court is a Court of Record and shall have an official seal.

(5) All courts and persons acting judicially shall take judicial notice of the seal of the Court affixed to a document and shall presume that it has been duly so affixed.

(6) Sections 17 and 18 apply to and in relation to a member and acting member of the Court and in so applying those sections any reference therein to a Commissioner or acting Commissioner shall be read as a reference to a member of the Court or an acting member of the Court respectively, and any reference to the Governor shall be read as a reference to the Chief Justice of Western Australia.

(7) There shall be appointed under and subject to the Public Service Act 1978 a Clerk of the Court and such other officers as are necessary for the purposes of the proper functioning of the Court, and each of them may hold the office to which they are so appointed in conjunction with any other office under that Act.

86. (1) Subject to this Act, the Court has jurisdiction to hear and determine appeals under section 90.

Jurisdiction
of Court.

(2) In the exercise of its jurisdiction under this Act the Court may make such orders as it thinks just as to the costs and expenses (including the expenses of witnesses) of proceedings before the Court, including proceedings dismissed for want of jurisdiction, but 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 Court, the proceedings have been frivolously or vexatiously instituted or defended, as the case requires, by the other party.

Decision of
Court.

87. (1) When the members of the Court are divided in opinion on a question, the question shall be decided according to the decision of the majority of the members.

(2) A decision, order, declaration, judgment, conviction, or penalty, given, made, or imposed by the Court in the exercise of its jurisdiction under this Act, shall not be liable to be challenged, appealed against, reviewed, quashed, or called in question by or in the Supreme Court or any other court.

(3) A member of the Court authorized by the Presiding Judge, on the application of any party to any proceedings or matters before the Court, may on summons returnable before that member sitting in chambers, make in relation to that proceeding or matter any order that he thinks just as to any interlocutory proceeding to be taken before the hearing, including, without affecting the generality of the foregoing, the costs of the interlocutory proceeding, the issues to be submitted to the Court and the persons, if any, to be served with notice of those proceedings.

(4) An order made by a member of the Court under subsection (3), does not prejudice the exercise by the Court of any power conferred on the Court by this Act.

Property
liable to
execution.

88. (1) Subject to this section, all property belonging to any person or body bound by any judgment, order, conviction, or direction of the Court, including, in the case of a union or association, property held by trustees for such union or association, shall be available in or towards the satisfaction of the judgment, order, conviction, or direction.

(2) Where the property of a union or association is insufficient to satisfy fully the amount due under a judgment, order, conviction, or direction of the Court, the members of the union or the members

of any union represented on the association, as the case may be, shall be jointly and severally liable for the deficiency, but no member shall be liable for more than \$20 under this subsection.

(3) All goods protected from seizure on an execution under a judgment of a Local Court are protected against seizure under this Act to the extent to which such goods are from time to time protected from such seizure under the Local Courts Act 1904.

(4) The Court or the Presiding Judge may, on the application of the person or body entitled to claim the enforcement of a judgment, order, conviction, or direction, make such order or give such directions, or both, as are considered necessary, and any such order or direction, or both, shall have effect accordingly.

(5) This section does not apply to or in relation to a conviction or penalty under section 74.

89. (1) The Sheriff of Western Australia, the Bailiff of the District Court, the Bailiffs of Local Courts, and all members of the Police Force shall be deemed to be officers of the Court, and shall exercise the powers and perform the duties prescribed by any regulations made under this Act, and for the purpose of carrying out the provisions of this Act and in relation to any proceedings before the Court or the Commission and in relation to the making, carrying out and enforcing of any award, order, conviction, or direction of the Court or the Commission shall, except where otherwise provided in the regulations, exercise the same powers and perform the same duties as they may exercise and perform in relation to any judgment, order, conviction, or direction of the Supreme Court or any Local Court or court of summary jurisdiction.

Sheriff,
Bailiffs, and
members of
Police Force
to be officers
of the Court.
Amended by
No. 121 of
1982, s. 27.

(2) All prison officials shall obey and carry out the writs, warrants, and orders of the Court so far as they are addressed to them.

(3) Any writ or warrant of execution may, subject to this Act, be declared, by regulations, to have effect against any property (including land under the Transfer of Land Act 1893) as a writ of *fiery facias*, and it shall have such effect in respect of such property accordingly.

Appeal to
Court from
Commission.

90. (1) Subject to this section, an appeal lies to the Court in the manner prescribed from any decision of the President, the Full Bench, or the Commission in Court Session on the ground that the decision is erroneous in law or is in excess of jurisdiction but upon no other ground.

(2) An appeal under this section shall be instituted within twenty-one days from the date of the decision against which the appeal is brought and may be instituted—

- (a) by any party to the proceedings wherein the decision was made;
- (b) by any other person who was an intervener in those proceedings; or
- (c) by the Attorney General on behalf of the State in the public interest.

(3) On the hearing of the appeal the Court may confirm, reverse, vary, amend, rescind, set aside, or quash the decision the subject of appeal and may remit the matter to the President, the Full Bench, or the Commission in Court Session, as the case requires, for further hearing and determination according to law.

Representa-
tion.

91. (1) Subject to this section, in proceedings before the Court under this Act, a party—

- (a) may appear personally or by his agent; or
- (b) may be represented by a legal practitioner.

(2) In this section, "party" includes an intervenor.

(3) A person who is not a legal practitioner within the meaning of this Act but engages in the practice of the law outside the State shall not appear as agent in proceedings before the Court.

92. (1) The Court has the same power to punish contempts of its power and authority as has the Supreme Court in respect of contempts of Court, and without prejudicing the generality of the power, where the Court considers that a contempt may be appropriately punished by a fine, it may inflict a fine.

Powers of Court in respect of contempt. Amended by Act No. 121 of 1982, s. 28.

(2) A person who counsels, procures, aids, abets, instigates, or incites a contempt of the Court is deemed to have committed a contempt and shall be punishable accordingly.

(3) A person who by act or omission contravenes an order made by the Court in exercise of authority conferred by this Act commits a contempt of the Court.

(4) The President, in the exercise of the jurisdiction conferred on him by this Act and when presiding on the Full Bench or sitting or acting alone, has and may exercise like powers as are conferred on the Court by this section.

PART V.—THE REGISTRAR OF INDUSTRIAL UNIONS
AND OTHER OFFICERS OF THE COMMISSION.

93. (1) There shall be appointed under and subject to the Public Service Act 1978 the following officers—

Appointment and duties of officers.

(a) a Registrar of Industrial Unions;

(b) a Deputy Registrar of Industrial Unions;
and

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

(2) The duties of officers of the Commission shall be as prescribed and as directed by the Commission.

(3) The Registrar shall publish in the *Industrial Gazette* all awards and orders filed in his office and all notices and matters set out in the Schedule to this Act.

(4) The *Industrial Gazette* shall be printed by the Government Printer in such form and at such intervals as the Registrar, after consultation with the Chief Industrial Commissioner, directs.

(5) Subject to provisions of or under any other Act relating to the maintenance, retention, or destruction of public or court records, the Registrar shall maintain or cause to be maintained in an accurate and convenient form the records of the Commission.

(6) The Registrar shall keep all awards under review and, where he considers it necessary or desirable or is directed by the Commission so to do, shall publish in the *Industrial Gazette* a consolidation of any such award.

(7) Whenever the Registrar becomes aware of the occurrence or continuance of industrial action in any industry or is of the opinion that such industrial action is likely he shall forthwith acquaint the Chief Industrial Commissioner accordingly.

(8) The Commission may at any time of its own motion direct the Registrar or any other officer of the Commission to make such investigations and reports in relation to any matter within the jurisdiction of the Commission as it deems necessary.

(9) Subject to this Act, the Commission may direct the Registrar or Deputy Registrar to institute proceedings for an offence against this Act.

(10) In the carrying out and discharge of his duties under this Act the Registrar is entitled to the assistance of all officers of the Court and of the Commission.

94. Wherever this Act authorizes the Commission to direct the Registrar or any other officer of the Court or of the Commission to do any act or thing, the Act is to be construed as imposing on that officer the duty to do that act or thing and as empowering him to do so.

Authority
to do acts as
directed.

95. The Deputy Registrar—

Duties of
Deputy
Registrar.

- (a) during the illness, temporary incapacity, or temporary absence from office of the Registrar, shall have and may exercise the powers and authorities and shall discharge the duties of the Registrar under this Act; and
- (b) at any other time, shall have and may exercise such powers and authorities and discharge such duties of the Registrar as—
 - (i) the Registrar or the Chief Industrial Commissioner, after consultation with the Registrar, may in writing assign to him generally; or
 - (ii) the Registrar or the Commission may assign to him in any particular case.

PART VI.—GOVERNMENT OFFICERS.

96. (1) In this section—
“Government officer” includes—

- (a) every person employed as an officer under and within the meaning of the Public Service Act 1978;

Power of
Commission
in Court
Session to
declare
certain
persons to
be
Government
officers.
Amended by
No. 11 of
1981, s. 2;
No. 121 of
1982, s. 29.

(b) every person employed on the salaried staff of—

(i) the Commissioner of Main Roads appointed under the Main Roads Act 1930;

(ii) the Forests Department under the Forests Act 1918;

(iii) the Commissioner of Transport constituted under the State Transport Act 1966;¹

(iv) the Metropolitan Market Trust under the Metropolitan Market Act 1926;

(v) any public hospital that is managed and controlled by a Minister of the Crown under and for the purposes of the Hospitals Act 1927; or

(vi) any port authority, harbour trust or harbour board,
and who is, or is eligible to become, a member of the Association; and

(c) every person who is employed in any public authority named in an order made under subsection (4) or in force pursuant to subsection (3), and who is declared by that order to be a Government officer, and who is, or is eligible to become, a member of the Association;

“the Association” means the Civil Service Association of Western Australia Incorporated.

(2) The registration of the Association as a union under the repealed Act is hereby continued under and subject to this Act.

(3) The order made by the Commission in Court Session as amended or varied from time to time under the repealed Act and in force immediately prior to the coming into operation of this section whereby certain persons were declared to be Government officers is hereby continued in force as if it were an order made under this Act.

¹ See State Transport Co-ordination Act 1981.

(4) The Full Bench may, on application made by the Association or by any other union or employer, make an order varying the order referred to in subsection (3) so as to include within or exclude from the operation of that order persons employed in any public authority.

(5) Where in any Act by or under which a public authority is established, it is provided that the terms and conditions of employment and related matters are or may be subject to any award in force under this Act or the repealed Act such provision shall not preclude the Commission in Court Session from varying the order referred to in subsection (3) of this section so as to include within the operation of that order persons employed in the public authority and where that order is so varied, the relevant reference to this Act or the repealed Act in the Act by or under which the public authority was established, shall be construed as a reference to the Public Service Arbitration Act 1966 in so far as persons who are Government officers within the meaning of this section are concerned.

(6) Notwithstanding subsection (1), the following persons are deemed not to be Government officers, namely—

- (a) 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;
- (b) any person who is an officer or employee on the Governor's Establishment;

- (c) any officer employed on the teaching staff of the Education Department under the Education Act 1928, or the regulations made under that Act;
- (d) any officer within the meaning of that word in the Railways Classification Board Act 1920;
- (e) any officer or other servant appointed or employed by the State Energy Commission under the State Energy Commission Act 1979.

Heading
inserted
by No. 121 of
1982, s. 30.

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

Interpreta-
tion in
Part VIA.
Inserted by
No. 121 of
1982, s. 30.

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.

Inserted by No. 121 of 1982, s. 30.

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.

Responsi-
bility
of corpora-
tions and
officers
thereof.
Inserted by
No. 121 of
1982, s. 30.

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.

Responsi-
bility of
employee
organiza-
tions and
officers
and members
thereof.
Inserted
by No. 121 of
1982, s. 30.

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.

Onus of
proof in
certain
cases.
Inserted by
No. 121 of
1982, s. 30.

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—

- (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.
Inserted by No. 121 of 1982, s. 30.

- (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.
Inserted by
No. 121 of
1982, s. 30.

- (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.

Prosecution
by Attorney
General or
Industrial
Inspector
only.
Inserted by
No. 121 of
1982, s. 30.

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.

Power of
Commission
to make
certain
orders after
conviction.
Inserted by
No. 121 of
1982, s. 30.

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—

(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.

PART VII.—MISCELLANEOUS.

97. (1) Subject to this section, a union of employees or employers commits an offence under this Act if—

Certain strikes and lock-outs prohibited.

(a) its members or any of them take part in a strike or lock-out; and

- (b) an officer or employee of the union has, whether directly or indirectly, ordered or induced the members concerned to strike or to institute the lock-out, as the case may be.

Penalty: \$2 000.

(2) Subsection (1) does not apply in relation to a strike or lock-out if, before the commencement of the strike or lock-out—

- (a) a secret ballot of the members concerned has been conducted pursuant to Division 5 of Part II; and
- (b) a majority of the members concerned has voted in favour of striking, or of instituting the lock-out, as the case may be.

(3) Subsections (1) and (2) do not affect the operation of any of the provisions of this Act relating to industrial action.

(4) Subsections (1), (2), and (3) apply, with such modifications as are necessary, to an association.

Employers
may deduct
wages in
certain
circum-
stances.
Inserted by
No. 121 of
1982, s. 31.

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.

98. (1) Industrial Inspectors for the purposes of securing the observance of the provisions of this Act and of awards and orders in force thereunder may be appointed under and subject to the Public Service Act 1978.

Industrial
Inspectors.
Amended
by No. 121 of
1982, s. 32.

(2) Subject to this Act, an Industrial Inspector shall perform such duties and shall make such investigations and reports in relation to the observance of the provisions of this Act, the regulations and of any award or order, as the Minister directs.

(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 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.

99. The repeal effected by this Act shall not affect the operation under this Act of any award or industrial agreement in force under the repealed Act immediately prior to the commencement of this Act in so far as the wage rates prescribed in any such award or industrial agreement included as a constituent a basic wage determined and declared under the repealed Act.

Wage rates in awards not affected by repeal of basic wage provisions.

[100. *Repealed by No. 121 of 1982, s. 33.*]

101. (1) A person shall not—

Contempt of Commission.

- (a) wilfully insult or disturb a member of the Commission when he is exercising powers or functions under this Act;
- (b) interrupt the proceedings of the Commission;
- (c) use insulting language towards a member of the Commission; or

(d) by writing or speech use words calculated—

- (i) to influence improperly a member of the Commission or a witness before the Commission; or
- (ii) to bring the Commission or a member of the Commission into disrepute.

Penalty: \$500 or 12 months' imprisonment, or both.

(2) Proceedings under this section may be instituted only by the Registrar or Deputy Registrar and then only by direction of the Commission and shall be instituted before and dealt with by the President.

(3) In this section "Commission" does not include the Full Bench or the President.

Obstruction.
Amended by
No. 121 of
1982, s. 34.

102. (1) A person who—

- (a) being lawfully required to do so fails to produce or exhibit, or allow to be examined, a record as defined by section 98 (7);
- (b) being lawfully asked a question by a person under this Act, fails to answer truthfully to the best of his knowledge, information and belief;
- (c) being an officer of a union, refuses to assist in the taking of any ballot by providing for the use of the Returning Officer or his assistants such register and lists of the members of the union as the Returning Officer requires; or
- (d) falsely represents in an application made under this Act that he is a member of a union,

commits an offence against this Act.

Penalty: \$500 or 6 months' imprisonment.

(2) A person who—

- (a) resists or obstructs a person in the performance of a duty imposed or the exercise of a power conferred by or under this Act; or
- (b) wilfully misleads a person in any particular likely to affect the exercise of a power so conferred or the discharge of a duty so imposed,

commits an offence against this Act.

Penalty: \$100.

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. Inserted by No. 121 of 1982, s. 35.

(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.

103. (1) Where it is alleged that one and the same offence has been committed by two or more persons, or that related offences have been committed respectively by two or more persons, charges of the offence or the offences, as the case may be, may be joined in the one complaint, notwithstanding that the offence or offences are alleged to have been committed otherwise than at the same time, and notwithstanding that in cases where there is a principal offender a complaint is not made against the principal offender or that the principal offender is not amenable to justice.

Offences may be joined in certain circumstances.

(2) The President or the Industrial Magistrate, as the case may be, before whom the complaint is brought, may proceed with the trial of the matters of complaint together, but if of opinion that a defendant is likely to be prejudiced by the joinder, may require the complainant to elect upon which matter of complaint he will proceed, and may direct that the matter of complaint so elected shall be tried separately.

Daily
penalty.

104. Where this Act prescribes an act or omission as an offence and prescribes a penalty for the offence but does not prescribe a further penalty if the offence is a continuing one, nevertheless there shall be a further penalty, of one-twentieth of the penalty prescribed, for each day the offence continues.

Publication
of awards,
etc.

105. The production of the *Government Gazette* or the *Industrial Gazette* in which is published any award, order, or notification made under the authority of this Act, or any of the notices or matters set out in the Schedule shall, before all courts and persons acting judicially, be evidence of the award, order, notification, notice, or matter and of any of the matters stated therein.

Judicial
notice of
signatures
and
appoint-
ments.
Amended by
No. 121
of 1982,
s. 36.

106. All courts and all persons acting judicially shall take judicial notice of—

- (a) the official signature of any person holding—
 - (i) an office under any provision of the Industrial Arbitration Act 1912 in force from time to time before the repeal of that Act;
 - (ii) the office of Presiding Judge, President, Chief Industrial Commissioner, Senior Commissioner, Commissioner, Industrial Magistrate, Clerk of the Court, Registrar, Deputy Registrar Assistant Registrar, or Industrial Inspector;

and

- (b) the appointment and official character of any such person.

107. No order for costs shall be made against the Registrar, Deputy Registrar, or an Industrial Inspector in proceedings instituted by him pursuant to a direction given under this Act.

No costs to be awarded against Registrar, Deputy Registrar or Industrial Inspector.

108. A union or association shall not, on and from the date of its registration, and while so registered, be affected by the provisions of any Act of the Imperial Parliament against corresponding societies or unlawful combinations in respect of any matters done in compliance with the registered rules of such union or association.

Unions not affected by certain Imperial Acts.

109. All fines, fees, levies, and dues payable under its rules to a union or association by any member thereof or to any association by any union represented therein may, in so far as they are owing to the union or association for any period subsequent to the registration thereof, be sued for and recovered in a court of competent jurisdiction as a debt due to the union or association, but every action for the recovery of such fines, fees, levies, and dues shall be commenced within twelve months from the time when the cause of action arose.

Dues payable to union may be sued for summarily.

110. (1) Every dispute between a union and any of its members, or between an association and any union represented therein, shall, subject to section 66, be decided in the manner directed by the rules of the union, or, as the case may be, by the rules of the association.

Disputes between union and its members.

(2) On the application of a union or association, the Industrial Magistrate may order the payment by any member or, in the case of an association, by any union represented therein of any fine, penalty, or subscription payable in pursuance of the rules of the union or the association, as the case may be, or any levy imposed under subsection (10) of section 74 or any contribution, not exceeding \$20 in the case of any member, to a penalty incurred or money payable under an award or order.

No pre-
miums to
be taken
for employ-
ment.

111. (1) An employer or employee or a person acting on behalf of an employer or employee shall not ask, demand, or receive, or pay or provide or offer to pay or provide, any premium, payment, or reward for or in respect of the employment or engagement of any employee in any industry which is the subject of an award or order, but this subsection does not apply to an employment or engagement through the agency of an employment agent acting in the ordinary course of his business under the Employment Agents Act 1976.

Penalty: \$500.

(2) A person shall not accept for publication or publish in a newspaper, periodical, or otherwise any advertisement of an offer to accept or receive any premium, payment, or reward of a kind referred to in subsection (1).

Penalty: \$100.

(3) Notwithstanding the penalties provided by subsections (1) and (2) any money received in contravention of either or both of those subsections may be recovered in any court of competent jurisdiction—

(a) by the person by or on whose behalf the money was paid; or

(b) by an Industrial Inspector on behalf of that person,

as a debt due to that person.

112. (1) Where the rules of a union contain a provision that authorizes or purports to authorize the imposition of a penalty by way of a fine or levy or otherwise on an employee who complies with his contract of service the provision is invalid.

Invalidity of certain provisions in union rules.

(2) A union or any person shall not enforce or attempt to enforce a provision that is invalid by virtue of subsection (1).

Penalty: \$100.

(3) Notwithstanding the penalty provided by subsection (2), any money received in contravention of that subsection may be recovered in any court of competent jurisdiction—

(a) by the person by or on whose behalf the money was paid; or

(b) by an Industrial Inspector on behalf of that person,

as a debt due to that person.

113. (1) The Court with respect to any of the following purposes that relate to the Court, and the Commission with respect to any of those purposes that relate to the Commission may make regulations—

Regulations. Amended by No. 121 of 1982, s. 37.

(a) prescribing the forms of certificates, notices, returns, or other instruments or documents to be used for the purposes of this Act;

(b) prescribing the duties of the Registrar and of all other officers and persons acting in the administration of this Act;

- (c) regulating the practice and procedure of the Court and the Commission and providing for the effective exercise of its jurisdiction and, without limiting the generality thereof, regulating—
 - (i) the times and places for the sitting of the Court and the Commission;
 - (ii) the summoning of parties and of witnesses;
 - (iii) the allowances to witnesses;
 - (iv) the enforcement of the awards, orders, judgments, directions, convictions, and sentences of the Court and the Commission; and
 - (v) appeals, and the procedure on applications under section 49A;
- (d) prescribing what fees shall be paid in respect of any proceeding before the Court and the Commission, and the party by whom such fees shall be paid;
- (e) prescribing any act or thing necessary to supplement or render more effectual the provisions of this Act as to proceedings or the conduct of proceedings before the Court and the Commission; and
- (f) providing for any matters which by this Act are required or permitted to be prescribed or which it may be necessary or convenient to regulate (either generally or in any particular case) for giving effect to this Act,

but regulations so made do not prevent the issuing by the Court or the Commission, and publication in the *Industrial Gazette*, of practice notes for the guidance of persons having business in the Court or the Commission.

(2) Regulations made by the Commission shall, as far as practicable, prescribe one form for the reference of all matters to the Commission and may provide for the attachment thereto of such statements, statutory or other declarations, or other documents as the case may require.

(3) The Governor may make regulations for the purpose of regulating the practice and procedure before an Industrial Magistrate, for and incidental to the exercise of his powers and jurisdiction under this Act, and prescribing the costs to be allowed in proceedings before an Industrial Magistrate, and the fees to be paid, and the allowances to witnesses in respect thereof and the enforcement of a judgment, order, conviction, direction, or other decision of an Industrial Magistrate.

(4) Any regulations made under this Act—

- (i) may impose a penalty not exceeding \$40 for any breach thereof; and
- (ii) may provide for the imprisonment of any person in default of payment of any fine or penalty payable under any award, order, judgment, conviction, or sentence of the Court or the Commission or an Industrial Magistrate, but so that the term of imprisonment shall not exceed the term that a person might be required to serve under the Justices Act 1902, in respect of the nonpayment of a fine.

114. (1) Subject to this Act, a person shall not be freed or discharged from any liability or penalty or from the obligation of any award or order of the Commission by reason of any contract made or entered into by him or on his behalf, and every contract, in so far as it purports to annul or vary such award or order of the Commission, shall, to that extent, be null and void without prejudice to the other provisions of the contract which shall be deemed to be severable from any provisions hereby annulled.

Prohibition
of contract-
ing out.

(2) Each employee shall be entitled to be paid by his employer in accordance with any award or order of the Commission binding on his employer and applicable to him and to the work performed, notwithstanding any contract or pretended contract to the contrary, and the employee may recover as wages the amount to which he is hereby declared entitled in any court of competent jurisdiction, but every action for the recovery of any such amount shall be commenced within twelve months from the time when the cause of action arose, and the employee is not entitled to recovery of wages under this subsection and otherwise, in respect of the same period.

PART VIII.—TRANSITIONAL.

Operation
of Interpre-
tation Act,
1918.

115. Nothing in this Part affects the operation of the Interpretation Act 1918.

Interpreta-
tion.

116. In this Act—

“former Commission” means The Western Australian Industrial Commission established under and subject to the repealed Act;

“new Commission” means The Western Australian Industrial Commission continued under and subject to this Act;

“proclaimed date” means the date on which this Part comes into operation.

Continua-
tion.

117. (1) On and after the proclaimed date—

(a) each person who, immediately prior to the proclaimed date, held office on the former Commission shall be deemed to have been

appointed under and subject to this Act to the corresponding office on the new Commission and each Commissioner other than the Chief Industrial Commissioner and the Senior Commissioner shall, for the purposes of paragraph (c) of subsection (3) of section 8, be deemed to have been so appointed on the day on which he was appointed to that office under the repealed Act;

- (b) an oath of office and secrecy made under the repealed Act by a person to whom paragraph (a) applies shall be deemed to be an oath of office and secrecy made under this Act by that person;
- (c) each person who, immediately prior to the proclaimed date, held office as an Industrial Magistrate under and subject to the repealed Act shall be deemed to hold office as an Industrial Magistrate under and subject to this Act;
- (d) the person who, immediately prior to the proclaimed date, held the office of Assistant Registrar of Industrial Unions for the purposes of the repealed Act shall be the Deputy Registrar of Industrial Unions for the purposes of this Act but under and subject to the Public Service Act 1978;
- (e) each registration of a union or association which, immediately prior to the proclaimed date, was in force under the repealed Act shall be deemed to have been made under this Act and shall continue in force under and subject to this Act if there is jurisdiction for such a registration under this Act;
- (f) subject to paragraph (h), each industrial agreement which immediately prior to the proclaimed date, was in force under the repealed Act shall, for all purposes of this Act except for the purposes of subsection

(6) of section 41—

- (i) be deemed to be a consent award made under this Act; and
- (ii) continue in force until cancelled, suspended, replaced, or retired from under this Act,

but not in respect of any matter which the Commission may not include in an award or order under this Act, and any such matter is deemed to have been deleted from the agreement;

- (g) subject to paragraph (h), each award, order, or decision which, immediately prior to the proclaimed date, was in force under the repealed Act shall be deemed to have been made under this Act and shall continue in force under and subject to this Act but not in respect of any matter which the Court, the Commission, or an Industrial Magistrate may not include in an award or decision under this Act, and any such matter is deemed to have been deleted from the award, order, or decision;
- (h) a deemed consent award, an award or order, or a decision referred to in paragraph (f) or (g), as the case may be, is subject to review and determination under this Act;
- (i) all applications, matters, and proceedings commenced under the repealed Act pending or in progress immediately prior to the proclaimed date may be continued, completed, or enforced under this Act but not in respect of any application, matter, or proceeding which is not within the jurisdiction, powers, and rights provided in this Act to do so; and
- (j) for the purposes of paragraph (a), the Commissioner under the repealed Act who, immediately prior to the proclaimed date,

was known as the Senior Commissioner shall be deemed to have, immediately prior to the proclaimed date, held office on the former Commission as Senior Commissioner.

(2) Where a person is deemed to have been appointed under subsection (1), he shall continue to retain his existing and accruing rights including his rights, if any, under the Superannuation and Family Benefits Act 1938, as if his service under and subject to the repealed Act were service under and subject to this Act.

118. A reference, however expressed, in any other Act or in any regulation, notice, or statutory instrument of any kind made, published, or in force under this or any other Act to the Western Australian Industrial Appeal Court, The Western Australian Industrial Commission, the Chief Industrial Commissioner, the Senior Commissioner, a Commissioner, an Industrial Magistrate, an Industrial Inspector, or to officers of the former Commission shall, unless the contrary intention appears, be read and construed as a reference to the corresponding term in this Act except that a reference to the Assistant Registrar of Industrial Unions shall be read and construed as a reference to the Deputy Registrar of Industrial Unions.

References to the Court, the Commission, Commissioners, an Industrial Magistrate, or officers.

SCHEDULE.

MATTERS TO BE PUBLISHED IN THE "WESTERN AUSTRALIAN INDUSTRIAL GAZETTE".

1. Retirements from awards.
2. All decisions and published reasons for decision of—
 - (a) the Court;
 - (b) the Full Bench;
 - (c) the President;
 - (d) the Commission;
 - (e) Industrial Magistrates; and
 - (f) Boards of Reference.

3. All directions and orders which alter the qualifications for membership of any union the area in respect of which the union is registered, or the name of the union.
4. A list of unions registered under the Act and the registered offices of those unions.
5. Notification of the appointment of any person as Chairman or member of a Board of Reference.
6. Any matter which is prescribed or which is directed by the Court, the President, or the Chief Industrial Commissioner to be published or which the Registrar may consider should be published.