

WESTERN AUSTRALIA.

# PUBLIC SERVICE ARBITRATION.

No. 62 of 1966.<sup>1</sup>

[As amended by Act

No. 82 of 1970, assented to 30th November, 1970;  
No. 82 of 1975, assented to 17th November, 1975;  
No. 16 of 1977,<sup>2</sup> assented to 11th October, 1977;  
No. 24 of 1977, assented to 27th October, 1977;  
No. 87 of 1978,<sup>3</sup> assented to 8th November, 1978,

and reprinted pursuant to the Amendments Incorporation Act,  
1938.]

AN ACT to make provision for the appointment of  
a Public Service Arbitrator, for the establish-  
ment of a Public Service Appeal Board, and for  
incidental and other purposes.

Long title  
amended by  
No. 16 of  
1977, s. 3.

[Assented to 12th December, 1966.]

BE it enacted—

## PART I.—PRELIMINARY.

1. This Act may be cited as the *Public Service  
Arbitration Act, 1966-1978*.

Heading  
added by  
No. 16 of  
1977, s. 4.

Short title.  
Amended by  
No. 87 of  
1978, s. 11.

<sup>1</sup> Came into operation on 9th January, 1967. See *Gazette* 23/12/66, p. 3409.

<sup>2</sup> Came into operation on 1st September, 1978. See *Gazette* 11/8/78, p. 2862.

<sup>3</sup> Came into operation on the date of the coming into operation of the Public  
Service Act, 1978. viz. 16th May, 1979. See *Gazette* 12/4/79, p. 967.

Commence-  
ment.

2. This Act shall come into operation on a date to be fixed by proclamation.<sup>1</sup>

Arrange-  
ment.  
Added by  
No. 16 of  
1977, s. 5.

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

PART I.—PRELIMINARY, ss. 1-4.

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

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

Interpre-  
tation.  
Amended by  
No. 16 of  
1977, ss. 6, 18;  
No. 24 of  
1977, s. 2;  
No. 87 of  
1978, s. 12.

3. In this Act unless the contrary intention appears—

“employer”—

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

means the Public Service Board; and

(b) in relation to any other Government officers,

means the Minister of the Crown, body corporate, or other body or person by or under whom or which 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, in which those Government officers are employed, is administered;

“Government officer” means a person who is a Government officer under and within the meaning of section eleven A of the Industrial Arbitration Act, 1912;<sup>2</sup>

“occupational group” means those Government officers who occupy positions at various levels in a specific occupation or profession within the service of an employer that require as a condition of appointment basically the same educational standard, training, experience and academic qualifications, or any of them;

<sup>1</sup> Came into operation on 9th January, 1967. See *Gazette* 23/12/66, p. 3409.

<sup>2</sup> See now section 96 of the Industrial Arbitration Act, 1979.

“public servant” means a person who is an officer within the meaning of the Public Service Act, 1978;

“the Arbitrator” means the Public Service Arbitrator appointed under Part II of this Act;

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

“the Board” means The Public Service Appeal Board established by Part III of this Act;

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

4. (1) This Act shall be read in conjunction with the Public Service Act, 1978.

Application.  
Amended by  
No. 16 of  
1977, s. 18;  
No. 24 of  
1977, s. 3;  
No. 87 of  
1978, s. 13.

(2) Subject to subsection (3) of this section, this Act applies only to Government officers within the meaning of that term in section three of this Act.

(3) Part II of this Act does not apply to any Government officer if and when he occupies—

- (a) a position included in the Special Division of the Public Service under the Public Service Act, 1978; or
- (b) a position in any State Trading Concern, State instrumentality or State agency or in any public statutory body established by or under a law of the State, that is declared by the Governor, on the recommendation of the Public Service Board, to be not lower in status or salary than a position included in the Special Division of the Public Service; or

- (c) a position, the salary of which is determined by any Act to be at a fixed rate, or is determined or to be determined by the Governor pursuant to the provisions of any Act.

Heading  
added by  
No. 16 of  
1977, s. 7.

PART II.—PUBLIC SERVICE ARBITRATOR.

Public  
Service  
Arbitrator.

5. (1) For the purposes of this Act there shall be a Public Service Arbitrator who shall be appointed by the Governor.

(2) Subject to subsection (3) of this section, the Arbitrator shall be appointed for a term of seven years and shall be eligible for re-appointment.

(3) If the person appointed to be the Arbitrator is at the time of his appointment or re-appointment above the age of fifty-eight years, the term of his appointment, or as the case may be, re-appointment, shall be the period that will expire on his attaining the age of sixty-five years.

(4) Where the Arbitrator was, immediately before his appointment as the Arbitrator, in the employ of the Government of the State, he shall retain his existing and accruing rights and privileges and for the purposes of determining those rights and privileges his service as the Arbitrator shall be taken into account.

(5) Where the Arbitrator was, immediately before his appointment as the Arbitrator, in the employ of the Government of the State, he shall, if he resigns his office as Arbitrator, or if the term of his appointment or re-appointment expires and is not renewed, be entitled to be employed in the Government of the State in a position of no less status than that enjoyed by him immediately prior to his appointment as the Arbitrator.

6. (1) The salary of the Arbitrator shall be at the rate fixed from time to time by the Governor and be paid out of the Consolidated Revenue Fund which to the necessary extent is hereby appropriated accordingly.

Salary of the Arbitrator. Amended by No. 87 of 1978, s. 14.

(2) The Arbitrator shall be paid such travelling expenses as are considered reasonable by the Minister.

(3) Subject to the provisions of the Superannuation and Family Benefits Act, 1938, the Arbitrator shall while he holds his office be deemed to be an employee within the meaning of that Act.

(4) The Arbitrator shall be entitled to such leave of absence from duty as is for the time being prescribed for an officer appointed under the provisions of the Public Service Act, 1978.

7. (1) Where the Arbitrator is unable to attend to his duties under this Act, whether on account of illness or otherwise, or where there is a vacancy in the office of Arbitrator, the Governor may appoint a person to be the acting Arbitrator during the inability of the Arbitrator or the vacancy of the office, and the person so appointed to be the acting Arbitrator, while so acting, shall have and may exercise all the powers and functions of the Arbitrator.

Acting Arbitrator may be appointed. Amended by No. 16 of 1977, s. 18.

(2) Notwithstanding the expiry of the period for which the Arbitrator or acting Arbitrator has been appointed under this Part, the Governor may continue him in office for such 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 such expiry.

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

Removal or  
suspension  
of the  
Arbitrator.

8. (1) The Governor may remove the Arbitrator from office on an address praying for his removal on the ground of proved misbehaviour or incapacity being presented to the Governor by each House of Parliament during the same session of Parliament.

(2) The Governor may suspend the Arbitrator from office on the grounds of misbehaviour or incapacity and in such case a full statement of the grounds of suspension shall be laid by the Minister before each House of Parliament within seven sitting days after the suspension if Parliament is then in session, or if not, then within seven days of the commencement of the next session.

(3) The Arbitrator shall be restored to office unless each House of Parliament, within twenty-one sitting days after the statement has been laid before it pursuant to subsection (2) of this section, presents to the Governor an address praying for the removal of the Arbitrator on the ground of proved misbehaviour or incapacity.

Vacation  
of office.

9. The office of the Arbitrator shall be vacated if—

- (a) he engages in paid employment outside the duties of his office without the approval of the Governor;
- (b) he becomes bankrupt or insolvent, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors, or makes an assignment of his salary for their benefit;
- (c) he becomes permanently incapable of performing the duties of his office;
- (d) he absents himself from duty for an aggregate of more than seven days in any twelve months, except during—
  - (i) a period of leave of absence to which he is entitled under this Act; or
  - (ii) any other period of leave of absence approved by the Governor; or

- (e) he resigns his office by writing under his hand addressed to the Governor and his resignation is accepted,

and the Governor declares by notice published in the *Gazette* that the office has become vacant.

10. Before entering upon his office the Arbitrator 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 his duties, disclose to any person any evidence or other matter brought before him.

Oath of office.

11. (1) Subject to this Act, the Arbitrator is empowered to determine all matters submitted to him relating to—

Matters to be determined by the Arbitrator. Amended by No. 82 of 1970, s. 2; No. 16 of 1977, s. 18; No. 87 of 1978, s. 15.

- (a) a claim made by the Association on behalf of any occupational group concerning salaries, or ranges of salaries and incremental steps therein, applicable to those offices in which that occupational group of Government officers are employed;
- (b) a claim made by the Association on behalf of more than one occupational group, and affecting only Government officers included in the same Division of the Public Service, concerning the salaries or ranges of salaries and incremental steps therein applicable to those offices in which those Government officers are employed if—
  - (i) the Public Service Board consents to the making of the claim on behalf of all of the occupational groups included therein; or
  - (ii) the Arbitrator determines that the claim should be heard as a claim on behalf of all or any number of the occupational groups in respect of which the claim is sought to be made by the Association;

- (c) a claim not affecting the Public Service Board that is made by the Association on behalf of more than one occupational group concerning salaries or ranges of salaries and incremental steps therein, applicable to those offices in which those occupational groups of Government officers are employed, if—
  - (i) the employer affected by the claim consents to the making of the claim on behalf of all of the occupational groups included therein; or
  - (ii) the Arbitrator determines that the claim should be heard as a claim on behalf of all or any number of the occupational groups in respect of which the claim is sought to be made by the Association;
- (ca) a claim not affecting the Public Service Board made by the Association concerning hours of duty of, or leave of absence of any kind for, Government officers;
- (d) a claim made by the Association concerning allowances to be paid to Government officers in addition to salary, including those to be paid to specific occupational groups, and the circumstances in which any such allowances shall be payable;
- (e) a claim made by the Association concerning—
  - (i) rates to be paid in addition to ordinary salary; or
  - (ii) leave or time off from duty to be granted,  
for shift work or overtime worked by Government officers, including rates to be paid, or leave or time off from duty to be granted, to specific occupational groups, and the circumstances in which payment shall be made or leave or time off from duty granted, for overtime or shift work;



- (ea) a claim made by the Association concerning the provision of protective clothing for Government officers, including the provision of protective clothing for specific occupational groups, and the circumstances in which protective clothing shall be provided;
- (f) an application by the Association or any employer relating to any dispute or disagreement concerning the application of any provision of an award, order or decision of the Arbitrator or of any provision of an agreement entered into by the Association and an employer in accordance with this Part;
- (g) an appeal by any Government officer in respect of the salary, range of salary or title allocated by an employer in accordance with section twelve of this Act to the office occupied by that Government officer on the date on which the award or agreement applicable to the office took effect and, where a range of salary was so allocated to the office occupied by him on that date, in respect of the particular salary within that range of salary so allocated to him;
- (h) an appeal by the Association in respect of the salary, range of salary or title allocated by an employer in accordance with section twelve of this Act to an office which was vacant on the date on which the award or agreement applicable to the office took effect;
- (ha) an appeal by the Association in respect of the salary, range of salary or title allocated by an employer in accordance with section twelve of this Act to an office which became vacant after the date on which the award or agreement applicable to the office took effect but on or before the date of the publication of the determination by which the salary or range of salary and title were so allocated;

- (hb) an appeal by the Association against the failure by an employer to include an office or a group of offices in a determination made and published by him in accordance with subsection (1) of section twelve of this Act;
- (i) an appeal by the Association against a decision of an employer to downgrade any office that is vacant;
- (j) an appeal by any Government officer that he has jurisdiction to hear and determine under the Public Service Act, 1978.

(1a) In determining—

- (a) a claim relating to any matter referred to in paragraph (ca) of subsection (1) of this section; or
- (b) an application submitted to him under section seventeen of this Act to vary an award in relation to any matter referred to in paragraph (ca) of subsection (1) of this section,

the Arbitrator shall not make an award which is, in any respect concerning hours of duty or leave of absence of any kind, more favourable than the hours of duty or leave of absence applicable to Government officers who are permanent officers or temporary officers, as is appropriate to the particular case, under and within the meaning of the Public Service Act, 1978.

(2) Nothing in subsection (1) of this section shall affect or interfere with the exercise by an employer in relation to any Government officer, office or occupational group under his administration of any power in relation to any of the matters referred to in that subsection within the jurisdiction of the Arbitrator, but any act, matter or thing done by an employer in relation to any matter in respect whereof the Arbitrator has such jurisdiction is liable to be reviewed, nullified, modified or varied by the Arbitrator in the course of the exercise by him of his jurisdiction in respect of that matter under this Part.

12. (1) Whenever a new award is made by the Arbitrator or a new agreement is entered into between an employer and the Association, concerning salaries or salary ranges and the incremental steps therein applicable to offices in which Government officers are employed, the employer affected by that award or agreement shall, within two months after the award was made or the agreement entered into, or such further time as the Arbitrator on the application of the employer may approve—

Determination to be made by employer on new award or agreement. Amended by No. 82 of 1970, s. 3.

- (a) review the offices to which that award or agreement applies; and
- (b) make a determination, by notice published in the *Government Gazette*—
  - (i) allocating titles to those offices;
  - (ii) allocating to those offices such of the salaries or salary ranges contained in that award or agreement as he considers appropriate to those offices; and
  - (iii) allocating, in any case where a range of salary is allocated pursuant to subparagraph (ii) of this paragraph to an office which was, at the date the award or the agreement took effect, occupied by a Government officer, a particular salary within that salary range to be applicable to that Government officer.

(2) The determination of an employer referred to in paragraph (b) of subsection (1) of this section shall have and take effect from and including the operative date of the new award or agreement, as the case may be.

13. (1) Whenever an amendment to an award is made by the Arbitrator or an amendment to an agreement is entered into between an employer and the Association, in accordance with this Part, the employer affected by that amendment shall apply

Application by employer of provisions of amendments to awards or agreements. Amended by No. 16 of 1977, s. 18.

the provisions of that amendment to the offices to which it applies.

(2) The application by an employer of the provisions of any amendment referred to in subsection (1) of this section shall have and take effect from and including the operative date of that amendment.

Association  
to submit  
claim to  
employer.  
Amended by  
No. 82 of  
1970, s. 4.

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

(1a) The Association shall, within seven days of submitting a claim to an employer in accordance with subsection (1) of this section, cause a copy of the claim to be filed at the office of the Arbitrator for the information of the Arbitrator.

(2) Upon his receiving a claim pursuant to subsection (1) of this section, the employer shall consider the claim and within one month after the date of its receipt confer with the Association concerning the matters the subject of the claim.

(3) After considering the claim and conferring with the Association as required by this section, the employer may—

- (a) enter into an agreement in writing with the Association concerning all or any of the matters the subject of the claim;
- (b) make any determination he is empowered to make concerning all or any of those matters; or
- (c) decline to enter into an agreement with the Association, or to make any determination, concerning any of those matters.

15. (1) Where pursuant to section fourteen of this Act the Association submits a claim to an employer affected by that claim and—

Association may submit claim to Arbitrator if agreement not reached with employer. Amended by No. 82 of 1970, s. 5; No. 16 of 1977, s. 18.

- (a) the employer fails to confer with the Association within the time specified in subsection (2) of that section; or
- (b) the employer and the Association are unable to reach agreement on the matters the subject of the claim within two months after the date of receipt by the employer of the claim, or such further time as may be agreed upon between the Association and the employer,

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

(2) The Arbitrator shall forthwith forward to the employer affected by the claim—

- (a) a copy of the claim; and
- (b) a notice requiring the employer to lodge with the Arbitrator an answer to the claim within seven days after the receipt by the employer of the notice,

and the employer shall, within that period, lodge with the Arbitrator an answer to the claim.

(3) If no answer to the claim is lodged with the Arbitrator pursuant to subsection (2) of this section, the Arbitrator may determine the claim.

(4) If the employer lodges an answer to the claim the Arbitrator shall call a conference, to be presided over by himself, of the employer affected by the claim and of representatives of the Association, and following the conference the Arbitrator shall, after hearing such evidence, if any, as he thinks necessary, in respect of such matters as have not been agreed on at the conference, determine the claim.

(4a) In determining a claim submitted to him for his determination pursuant to subsection (1) of this section, the Arbitrator may determine that his award shall be deemed to have commenced to take effect on a day that preceded the date of the making of the award, but did not precede the day on which the claim was so submitted to him for his determination pursuant to subsection (1) of this section.

(5) Where more than one claim is submitted to the Arbitrator concerning an employer or several employers and the Association, the claims shall be heard by the Arbitrator in such order as may be agreed upon between the employers and the Association and in default of such agreement in such order as the Arbitrator decides.

Appeals to  
Arbitrator.  
Amended by  
No. 82 of  
1970, s. 6;  
No. 87 of  
1978, s. 16.

16. (1) A Government officer or the Association, as the case may be, may submit to the Arbitrator any appeal relating to the matters mentioned in paragraphs (g), (h), (ha), (hb) and (i) of subsection (1) of section eleven of this Act, or an appeal referred to in paragraph (j) of that subsection.

(2) An appeal pursuant to subsection (1) of this section shall be commenced by notice in writing lodged with the Arbitrator within one month after the date of the determination or decision in respect of which the appeal is brought, or where that determination or decision is published in the *Gazette*, within one month from the date of the publication.

(3) The Arbitrator shall forthwith forward a copy of the notice of appeal to the employer affected by the appeal, and as soon as reasonably practicable shall determine the appeal.

Application  
for variation  
of award.  
Amended by  
No. 82 of  
1970, s. 7;  
No. 16 of  
1977, s. 18.

17. (1) Subject to the provisions of section twenty-seven of this Act, and subject also to compliance with the provisions of subsections (2) and (3) of this section an employer affected by any award of the Arbitrator relating to any of the

matters referred to in paragraphs (a), (b), (c), (ca), (d), (e) or (ea) of subsection (1) of section eleven of this Act, or the Association, may submit to the Arbitrator an application to vary that award either wholly or in part.

(2) Before the applicant, whether an employer or the Association, may submit the application to the Arbitrator pursuant to subsection (1) of this section, such applicant shall first submit the application to the party affected thereby, and upon receiving the application the party so affected shall consider the matters the subject thereof and within one month after the date of such receipt confer with the applicant concerning those matters.

(2a) The applicant shall, within seven days of submitting the application to the party affected thereby in accordance with subsection (2) of this section, cause a copy of the application to be filed at the office of the Arbitrator for the information of the Arbitrator.

(3) Where pursuant to subsection (2) of this section an application is submitted to the party affected thereby and—

- (a) that party fails to confer with the applicant within the time specified in that subsection; or
- (b) that party and the applicant are unable to reach agreement on the matters the subject of the application within two months after the date of receipt by that party of the application, or such further time as may be agreed upon between the applicant and that party,

the applicant may submit the application to the Arbitrator for determination in accordance with this Part.

18. (1) Where an application is submitted to the Arbitrator for his determination pursuant to subsection (2) of section seventeen of this Act,

Procedure on  
submission  
of applica-  
tion to the  
Arbitrator.  
Amended by  
No. 82 of  
1970, s. 8.

the Arbitrator shall forthwith forward to the Association, or as the case may be, the employer, affected by the application—

- (a) a copy of the application; and
- (b) a notice requiring the Association or the employer to lodge with the Arbitrator an answer to the application within seven days after the receipt of the notice.

(2) The Association or, as the case may be, the employer affected by the application, shall, within seven days after the receipt of the copy of the application and notice, lodge with the Arbitrator an answer to the application.

(3) If no answer to the application is lodged with the Arbitrator pursuant to subsection (2) of this section, the Arbitrator may determine the application.

(4) If an answer to the application is lodged, the Arbitrator shall call a conference, to be presided over by himself, of the employer affected by the application and of representatives of the Association, and following the conference the Arbitrator shall, after hearing such evidence, if any, as he thinks necessary, determine the application.

(5) In determining an application submitted to him for his determination pursuant to subsection (3) of section seventeen of this Act, the Arbitrator may determine that his decision to vary or alter the award shall be deemed to have commenced to take effect on a day that preceded the date of the making of the decision but did not precede the day on which the application was so submitted to him for his determination pursuant to subsection (3) of section seventeen of this Act.

Arbitrator  
to act  
according  
to equity.  
Amended by  
No. 16 of  
1977, s. 18.

19. In relation to every claim, appeal or application made to him pursuant to the provisions of this Part, the Arbitrator shall act according to equity, good conscience and the substantial merits of the



case, without regard to technicalities or legal forms, and shall not be bound by any rules of evidence, but may inform his mind on any matter in such manner as he thinks fit.

20. (1) For the purposes of this Part, the Arbitrator shall as regards any claim, appeal or application submitted to him under this Part have power—

Powers of  
Arbitrator.  
Amended by  
No. 16 of  
1977, s. 18.

- (a) to summon any witness before him, and to compel the production before him of books, documents and things for the purpose of reference to such matters as relate to the matter of the claim, appeal or application;
- (b) to take evidence on oath or affirmation, and either in public or in camera at his discretion;
- (c) to direct the payment of witness fees to witnesses, other than witnesses employed by the Government, such witness fees to be payable by the party calling the witness;
- (d) to allow the amendment or withdrawal of any claim, appeal or application;
- (e) to direct the parties to confer;
- (f) to adjourn proceedings from time to time;
- (g) to dismiss any claim, appeal or application;
- (h) to determine any dispute between any employer and the Association as to whether Government officers, or offices, included in any claim or application constitute an occupational group within the meaning of this Act;
- (i) subject to subsection (2) of this section, to declare by any order that any provision of an award shall, subject to such conditions, exceptions and limitations as are specified in the order, be a common rule relating to such Government officers as the Arbitrator may determine;

- (j) generally to give all such directions and do all such things as the Arbitrator deems necessary or expedient to give effect to the intention of this Part.

(2) Before any common rule is declared pursuant to the power conferred by paragraph (i) of subsection (1) of this section, the Arbitrator shall, by notification in the *Gazette* and in such manner, if any, as he directs, specifying the matter in relation to which it is proposed to declare a common rule, make known that all persons interested and desirous of being heard may, on or before a day specified in the notification, appear or be represented before the Arbitrator, and the Arbitrator shall hear such persons so appearing or represented.

(3) Any person who on being summoned by the Arbitrator as a witness refuses or fails, without lawful excuse and after tender of reasonable expenses, to appear in obedience to the summons, or refuses or fails without lawful excuse to be sworn or make an affirmation or to produce books, documents and things which he is lawfully required to produce, or to answer questions which he is lawfully required to answer, commits an offence.

Penalty: One hundred dollars.

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

Arbitrator  
may decline  
to hear  
certain  
claims.  
Amended by  
No. 16 of  
1977, s. 18.

21. The Arbitrator may refrain from hearing, or from further hearing, or from determining a claim, appeal or application submitted to him under this Part, or a matter forming part of or arising out of such a claim, appeal or application, if the subject matter of the claim, appeal, application or matter is trivial, or that on any other ground it is unnecessary or undesirable in the public interest to deal with that claim, appeal, application or matter.

Costs not  
allowable.  
Amended by  
No. 16 of  
1977, s. 18.

22. No costs shall be allowed in respect of any proceedings under this Part.

23. (1) Any employer, being a party to any claim, appeal or application under this Part, may appear before the Arbitrator in person, or by his agent duly appointed in writing for that purpose.

Appearance  
before  
Arbitrator.  
Amended by  
No. 16 of  
1977, s. 18;  
No. 87 of  
1978, s. 17.

(2) The Association, being a party to any claim, appeal or application under this Part, may appear before the Arbitrator by its President or General Secretary, or by any person appointed in writing by the President for that purpose.

(3) Any Government officer, being a party to an appeal under paragraph (g) or (j) of subsection (1) of section eleven of this Act, may appear in person or by an officer of the Association appointed in writing by that Government officer for that purpose, or, subject to subsection (5) of this section, by a legal practitioner.

(4) Every party appearing by a representative shall be bound by the acts of such representative.

(5) (a) Except where this Act provides otherwise, no legal practitioner, whether of this State or any other State, whether on the Rolls or not, or solicitor's clerk, shall be allowed to appear or be heard before the Arbitrator in proceedings under this Part if he is not a party to or a witness before the proceedings, or to attend the Arbitrator to advise the representative of any party before the Arbitrator in any such proceedings, unless all parties to the claim, appeal or application or other matter expressly consent thereto.

(b) Where a question of law is raised or argued or is likely, in the opinion of the Arbitrator, to be raised or argued in proceedings before him under this Part, the Arbitrator may allow legal practitioners to appear and be heard.

23A. (1) Every agreement entered into under this Part that has been filed in the prescribed manner shall—

Agreements.  
Added by  
No. 82 of  
1970, s. 9.  
Amended by  
No. 82 of  
1975, s. 2;  
No. 16 of  
1977, s. 18.

(a) be binding on the parties who have executed the agreement; and

(b) be enforced in the same manner as an award, order or decision of the Arbitrator.

(2) Subject to subsection (3) of this section, the Arbitrator is empowered to determine any application made by a party to an agreement to vary or rescind any provision of the agreement and may for that purpose make an order varying or rescinding any provision of an agreement.

(3) The provisions of this Part relating to the power or jurisdiction of the Arbitrator to vary an award, and the provisions of this Part relating to things or conditions which are required to be done or fulfilled before the Arbitrator may vary an award and, in particular, the provisions of subsections (2) and (3) of section twenty-seven of this Act relating to the times at which awards may be altered and applications made therefor shall, except to the extent otherwise provided for in the agreement or any variation thereof, apply to and in relation to any amendment, or application therefor, of an agreement pursuant to subsection (2) of this section.

Arbitrator  
may make  
awards, etc.  
Amended by  
No. 82 of  
1970, s. 10;  
No. 16 of  
1977, s. 18.

24. (1) The Arbitrator may make such awards, orders or decisions as in his opinion are necessary for the proper exercise by him of his jurisdiction under this Part and effect shall be given to those awards, orders or decisions according to their tenor.

(2) The Arbitrator may give an interpretation of an award, order or decision made under this Part or of any provision of an agreement duly entered into under this Part, and may amend the provision of an award for the purpose of remedying any defect therein or of giving proper effect thereto.

Compulsory  
conferences.  
Added by  
No. 82 of  
1970, s. 11.  
Amended by  
No. 16 of  
1977, s. 18.

24A. (1) Whenever in the opinion of the Arbitrator it is desirable so to do for the purpose of preventing or settling a dispute or disagreement between an employer and the Association in relation to any of the matters concerning which a claim or

application may be made under this Part, the Arbitrator may, at the request of an employer or the Association or on his own motion, direct a person, either orally or in writing, to attend at a time and place specified in the direction, at a conference presided over by the Arbitrator.

(2) Any conference convened by the Arbitrator under subsection (1) of this section shall be held in private unless the Arbitrator and all the parties at the conference otherwise agree.

(3) At any conference convened by the Arbitrator under subsection (1) of this section, the Arbitrator may examine the parties and may make all such suggestions and recommendations as he considers desirable for effecting a reconciliation and for preventing and settling any dispute.

(4) The Arbitrator may prepare a report in writing of any of the proceedings of any conference convened by him under subsection (1) of this section and shall forward a copy of any such report to each of the parties.

25. Subject to the provisions of sections twenty-one and twenty-six of this Act, no award, order or decision of the Arbitrator made under this Part shall be challenged, appealed against, reviewed, quashed or called in question, or be subject to any prohibition or mandamus, in any Court on any account whatever.

Determinations of Arbitrator to be final. Amended by No. 16 of 1977, s. 18.

26. (1) An appeal shall lie to the Western Australian Industrial Appeal Court, established under Part IVA of the Industrial Arbitration Act, 1912,<sup>1</sup> against an award, order or decision of the Arbitrator relating to any of the matters referred to in paragraphs (a), (b), (c), (ca), (d), (e) or (ea) of subsection (1) of section eleven of this Act, on the

Appeals to Western Australian Industrial Appeal Court. Amended by No. 82 of 1970, s. 12.

<sup>1</sup> Continued in existence under Part IV of the Industrial Arbitration Act, 1979.

ground that the award, order or decision is erroneous in law or is in excess of jurisdiction, but upon no other ground.

(2) Jurisdiction is conferred on the Court referred to in subsection (1) of this section to hear and determine an appeal made under this section.

(3) On the hearing of an appeal made under this section the Court may confirm, reverse, vary, amend, rescind, set aside or quash the award, order or decision the subject of appeal and may remit the matter to the Arbitrator for further hearing and determination according to law.

(4) An appeal under this section shall be made within one month after the date of the award, order or decision appealed against, and may be made by—

- (a) any party to the award, order or decision against which the appeal is brought; or
- (b) the Minister on behalf of the Crown where in his opinion the public interest is, or is likely to be, adversely affected by that award, order or decision.

Duration of  
award.  
Amended by  
No. 82 of  
1970, s. 13;  
No. 82 of  
1975, s. 3;  
No. 16 of  
1977, s. 18.

27. (1) The term of any award made by the Arbitrator relating to any of the matters referred to in paragraphs (a), (b), (c), (ca), (d), (e) or (ea) of subsection (1) of section eleven of this Act, shall be three years from the date of the award.

(2) Notwithstanding the provisions of subsection (1) of this section—

- (a) the Arbitrator may, with the consent of the Association and the employer concerned in an award, fix the term of the award for a period less than three years;
- (b) the Arbitrator may direct in an award that all or any of the provisions thereof be referred to him for review, at such intervals of time as he may think fit, and the Arbitrator shall have power to vary or rescind all or any of those provisions;

- (c) at any time after the expiration of the first twelve months from the date of commencement of the operation of an award or after the expiration of any period of twelve months from the date of commencement of the operation of any variation thereof, application may in manner prescribed by section seventeen of this Act be made to the Arbitrator for a review of all or any of the provisions of the award, and the Arbitrator shall have power to vary or rescind all or any of those provisions;
- (d) notwithstanding the expiry of the term of an award, that award, subject to any variation ordered by the Arbitrator, shall continue in force until a new award is made.

(3) Notwithstanding the provisions of subsection (1), and paragraph (c) of subsection (2), of this section, the Arbitrator may, on application made in the manner prescribed in section seventeen of this Act, vary or rescind all or any of the provisions of an award if in his opinion—

- (a) circumstances have arisen which, at the time the award was made, or when the provisions were, or the provision was, last reviewed under this Part, could not reasonably have been foreseen by the parties; and
- (b) those circumstances render those provisions or that provision of the award no longer just.

28. The provisions of this Part, insofar as they relate to the Association, shall not operate or have effect unless and until the Association is registered as an industrial union pursuant to the provisions of section eleven A of the Industrial Arbitration Act, 1912.<sup>1</sup>

Application  
of this  
Part to  
Association.  
Amended by  
No. 16 of  
1977, s. 18.

29. Without prejudice to the hearing and determination of any appeals lodged under the Public Service Appeal Board Act, 1920, and not

Existing  
salaries, etc.  
to continue  
until altered  
under this  
Act.

<sup>1</sup> Continued under Part VI of the Industrial Arbitration Act, 1979.

determined at the commencement of this Act, but subject otherwise to this Act, any salaries, salary ranges or allowances of any Government officers in force or operation at the commencement of this Act, shall continue in force and operation unless and until the same are revised, altered or amended in accordance with the provisions of this or any other Act.

Regulations.  
Amended by  
No. 16 of  
1977, s. 18.

30. The Governor may make regulations for any purpose for which regulations are contemplated, or required or permitted by this Part, and may make all such other regulations as may, in his opinion, be necessary or expedient for giving full effect to the provisions of, and for the due administration of, this Part.

#### PART III.—THE PUBLIC SERVICE APPEAL BOARD.

Interpre-  
tation.  
Added by  
No. 16 of  
1977, s. 8.

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

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

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

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

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

“law of the State” means—

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



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

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

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

Establishment and jurisdiction of the Public Service Appeal Board.

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

Added by No. 16 of 1977, s. 9. Amended by No. 87 of 1978, s. 18.

- (a) any appeal by any public servant, or by the Association on his behalf, against any decision of the Public Service Board in relation to an interpretation of any provision of the Public Service Act, 1978, and the regulations made thereunder, concerning the conditions of service (other than salaries and allowances) of public servants;

(b) any appeal by a public servant who is—

- (i) a Permanent Head within the meaning of the Public Service Act, 1978;
- (ii) the holder of an office included in the Special Division of the Public Service under the Public Service Act, 1978; or
- (iii) both such a Permanent Head and the holder of such an office,

or by the Association on his behalf, under section fifty-one of the Public Service Act, 1978, from a decision or recommendation made by the Public Service Board in relation to that public servant;

- (c) any appeal, other than an appeal under section fifty-one of the Public Service Act, 1978, by any Government officer who occupies a position that carries a salary not lower than the prescribed salary, or by the

Association on his behalf, from a decision, determination or recommendation of his employer that he be dismissed;

- (d) any appeal by a public servant other than a person referred to in paragraph (b) of this subsection, or by the Association on his behalf, under section fifty-one of the Public Service Act, 1978, from a decision or recommendation made by the Public Service Board in relation to that public servant;
- (e) any appeal, other than an appeal under section fifty-one of the Public Service Act, 1978, by any Government officer who occupies a position that carries a salary lower than the prescribed salary, or by the Association on his behalf, from a decision, determination or recommendation of his employer that he be dismissed;
- (f) any appeal by a temporary officer within the meaning of the Public Service Act, 1978, or by the Association on his behalf, from a determination of the Public Service Board under subsection (2) of section thirty-two of that Act,

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

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

(4) In subsection (2) of this section "prescribed salary" means the lowest salary for the time being payable in respect of a position included in the Special Division of the Public Service.

Constitution  
of Board.  
Added by  
No. 16 of  
1977, s. 10.

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

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

- (a) a judge, who shall be the Chairman;
- (b) an employer's representative appointed by the employer of the appellant; and
- (c) an employee's representative appointed by the Association.

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

- (a) the Arbitrator, who shall be the Chairman;
- (b) an employer's representative appointed by the employer of the appellant; and
- (c) an employee's representative appointed by the Association.

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

Right of  
appeal.  
Added by  
No. 16 of  
1977, s. 11.

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

Appearance  
before Board.  
Added by  
No. 16 of  
1977, s. 12.

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

Procedure.  
Added by  
No. 16 of  
1977, s. 13.

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

(3) In the hearing and determination of every appeal the Board shall act according to equity, good conscience and the substantial merits of the case,

without regard to technicalities or legal forms, and shall not be bound by any rules of evidence but may inform its mind on any matter in such manner as it thinks fit.

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

*Powers of  
Board.  
Added by  
No. 16 of  
1977, s. 14.*

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

- (a) by summons signed by the Clerk to the Board, to summon any witness before it, and to compel the production before it of books, documents and things for the purpose of reference to such matters as relate to the appeal; and
- (b) to take evidence on oath or affirmation, and either in public or in camera at its discretion.

(2) Any person who on being summoned by the Board as a witness fails without lawful excuse and after tender of reasonable expenses, to appear in obedience to the summons, or refuses or fails to be sworn or make an affirmation or produce books, documents and things which he is lawfully required to produce, or answer questions which he is lawfully required to answer commits an offence.

Penalty: One hundred dollars.

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

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

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

Decision  
of Board.  
Added by  
No. 16 of  
1977, s. 15.

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

Clerk to  
the Board.  
Added by  
No. 16 of  
1977, s. 16.

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

40. (1) The Governor may make regulations for any purpose for which regulations are contemplated, or required as permitted by this Part and may make all such other regulations as may, in his opinion, be necessary or expedient for giving full effect to the provisions of, and for the due administration of, this Part.

Regulations.  
Added by  
No. 16 of  
1977, s. 17.

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