

INDUSTRIAL ARBITRATION (No. 2).

No. 81 of 1975.

**AN ACT to amend the Industrial Arbitration Act,
1912-1973.**

[Assented to 17th November, 1975.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Industrial Arbitration Act Amendment Act (No. 2), 1975.*

Short title
and citation.

(2) In this Act the Industrial Arbitration Act, 1912-1973 is referred to as the principal Act.

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approved for
reprint 16th
May, 1974.

(3) The principal Act as amended by this Act may be cited as the Industrial Arbitration Act, 1912-1975.

Section 42
repealed and
re-enacted.

2. Section 42 of the principal Act is repealed and re-enacted as follows—

Power of
Commission
to vary
industrial
agreement
in certain
instances.

42. On the application of any party to an industrial agreement the Commission may, by order, cancel, amend or vary any provision of the industrial agreement at any time while the agreement is in force—

(a) if, in the opinion of the Commission—

(i) circumstances have arisen since the making of the agreement that at the time the agreement was made could not reasonably have been foreseen by the parties to the agreement; and

(ii) those circumstances render that provision of the agreement no longer just; or

(b) if all the parties to the agreement agree that the provision be so cancelled, amended or varied by the Commission,

and the provision shall be cancelled, amended or varied accordingly.

Section 54
amended.

3. Section 54 of the principal Act is amended by adding after subsection (1) the following subsection—

(1a) The Commissioner who, after the Chief Industrial Commissioner, is first in order of seniority, shall be known as the Senior Commissioner. .

Section 56
amended.

4. Section 56 of the principal Act is amended by adding before the word “becomes”, in line one of paragraph (b), the word “he”.

5. Section 92 of the principal Act is amended by deleting paragraph (aa) and substituting the following paragraph—

Section 92
amended.

(aa) give such retrospective effect to the whole or any part of the award as the Commission may consider equitable but not beyond—

(i) the date upon which the Commission first took cognizance of the matter in respect of which the award or part of the award was made; or

(ii) such earlier date as the parties may agree; and .

6. Section 93 of the principal Act is amended by deleting the word “Notwithstanding” in line one and substituting the passage “Subject to any order made under section ninety-eight B of this Act, notwithstanding”.

Section 93
amended.

7. The principal Act is amended by adding after section 94 the following section—

Section 94A
added.

94A. (1) In this section “the Attorney General”, “the Commission”, “the Confederation” and “the Council” have the same meaning as those terms respectively bear in section one hundred and twenty-three of this Act.

General
orders.

(2) Subject to this section, the Commission may, on its own motion or on the motion of the Confederation, the Council or the Attorney General make a general order in relation to all industrial agreements or awards, or both, in force at the date of such general order adding to, varying or rescinding any provision of those industrial agreements or awards, or both, and may by that general order exclude from the

operation of the general order such industrial agreements or awards, or both, as are therein specified.

(3) The Commission shall not make a general order under this section—

- (a) in relation to any industrial agreement or award by which any government department, State instrumentality, State trading concern or State agency is bound, unless the Attorney General and the Council agree to the making of the order; or
- (b) in relation to any other industrial agreement or award, unless the Confederation and the Council agree to the making of the order.

(4) In any proceedings with respect to a general order under this section—

- (a) the Attorney General, the Confederation and the Council; and
- (b) any other person who, in the opinion of the Commission, has a sufficient interest in those proceedings and who obtains leave of the Commission,

may appear and be heard. .

Section 98B
added.

8. The principal Act is amended by adding after section 98A the following section—

Power to
cancel in
certain
instances.

98B. (1) Subject to this section, where an industrial agreement or an award continues in force pursuant to subsection (5) of section thirty-seven or to section ninety-three of this Act, and, in the opinion of the Commission, there is no worker to whom that industrial

agreement or award, as the case may be, applies, the Commission may on its own motion, by order, cancel that industrial agreement or award.

(2) Subject to this section, where an award continues in force pursuant to section ninety-three of this Act, and the Commission is of the opinion that a party to the 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) of this section unless before making the order—

(a) it has directed the Registrar to make such enquiries as it deems 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, it has caused the Registrar to give general notice in a newspaper circulating in the area of the State in which the industrial agreement or award operates of the intention of the Commission to make the order, and the Commission has directed the Registrar to serve copies of the notice on such persons as the Commission may specify.

(4) A person who has a sufficient interest in the matter may, within thirty days of the publication in the newspaper of the notice referred to in subsection (3) of this section, 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 the Commission shall, as soon as may be thereafter, direct the Registrar to serve a copy of the order—

(a) where the order relates to an industrial agreement, on each party to the agreement; and

(b) where the order relates to an award, on each union of workers that is party to the award and such other party to the award as the Commission thinks fit. .

Section 103A
amended.

9. Subsection (2) of section 103A of the principal Act is amended by deleting the word “in” in line two and substituting the words “within the time and in the”.

Section 108F
amended.

10. Subsection (4) of section 108F of the principal Act is amended by deleting the passage “The Western Australian Employers’ Federation (Incorporated)” in lines four and five and substituting the passage “The Confederation of Western Australian Industry (Incorporated)”.

Section 108J
amended.

11. Section 108J of the principal Act is amended by deleting the passage “made.” at the end of the section and substituting the following passage—

made,

unless all of the parties to the proceedings agree that an earlier date be fixed. .

12. Section 123 of the principal Act is amended— Section 123 amended.

(a) by adding after the definition “the Commission” the following definition—

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

and

(b) by deleting the definition “the Federation”.

13. Section 127 of the principal Act is amended by deleting the words “the Federation” where occurring in— Section 127 amended.

(a) lines four and five of subsection (1); and

(b) line one of paragraph (a) of subsection (3),

and substituting the words “the Confederation” in each case.

14. Subsection (3) of section 127A of the principal Act is amended by deleting the words “the Federation” in the penultimate line and substituting the words “the Confederation”. Section 127A amended.
