THE
INDUSTRIAL CONCILIATION AND ARBITRATION
ACTS, 1961 to 1964

Industrial Conciliation and Arbitration Act of 1961, 10 Eliz. 2 No. 25
Amended by
Industrial Conciliation and Arbitration Act Amendment Act of 1963,
No. 43
Industrial Conciliation and Arbitration Acts Amendment Act of 1964,
No. 67

An Act to Re-enact with Amendments “The Industrial Conciliation and
Arbitration Acts, 1932 to 1959”

[Assented to 11 April 1961]

PART I—PRELIMINARY

1. (1) Short title. This Act may be cited as “The Industrial Conciliation
and Arbitration Act of 1961.”

(2) Commencement of Act. This Act shall come into operation on
a date to be fixed by the Governor in Council by Proclamation published
in the Gazette.

Commenced 2 May 1961; Proclamation, Qld. Gov. Ind. Gaz., 29 April 1961,
p. 42.

Collective title conferred by Act of 1964, No. 67, s. 1 (3).

2. Parts of Act. This Act is divided into Parts as follows:—

PART I—PRELIMINARY (ss. 1–6);
PART II—INDUSTRIAL COURT (ss. 7–8);
PART III—INDUSTRIAL CONCILIATION AND ARBITRATION COM-
MISSION (ss. 9–43);
PART IV—INDUSTRIAL UNIONS (ss. 44–74);
PART V—DISPUTED ELECTIONS IN INDUSTRIAL UNIONS
(ss. 75–88);
PART VI—INDUSTRIAL AGREEMENTS (ss. 89–94);
PART VII—GOVERNMENT EMPLOYEES (ss. 95–96);
PART VIIA—TRADING HOURS IN SHOPS AND EXHIBITIONS OF
NON-EXEMPTED GOODS (ss. 96A–96E);
PART VIII—BREACHES OF AWARDS AND OTHER OFFENCES
(ss. 97–117);
PART IX—MISCELLANEOUS (ss. 118–141).

As amended by Act of 1964, No. 67, s. 2.

Acts referred to:
Industrial Conciliation and Arbitration Acts, 1932 to 1959, repealed.
Trade Union Act of 1915, repealed.
Industrial Arbitration Act, 1940-1959 (N.S.W.).
Annual Holidays Act, 1944-1958 (N.S.W.).

3. Construction of Act, etc. This Act and every Proclamation, Order in Council, regulation or rule of court made under this Act, or decision of the Court or Commission shall be read and construed so as not to exceed the legislative power of the State to the intent that where any enactment of this Act, or any provision of any such Proclamation, Order in Council, regulation, rule of court or decision would but for this section have been construed as being in excess of that power it shall nevertheless be a valid enactment or Proclamation, Order in Council, regulation, rule of court or decision, as the case may be, to the extent to which it is not in excess of that power.


Such Acts are in this Act referred to as the repealed Acts.

(2) 6 Geo. 5 No. 31 and 13 Geo. 5 No. 1. "The Trade Union Act of 1915" and "The Trade Unions (Property) Act of 1922" are hereby repealed.

(3) Repeal of s. 30 (1) of 9 Geo. 5 No. 19. Subsection one of section thirty of "The Wages Act of 1918" is hereby repealed.

(4) Sections 534 and 543A of "The Criminal Code." The repeal of the repealed Acts shall not affect the operation or continuance in force of section five hundred and thirty-four of "The Criminal Code," as amended by section eighty-five of the repealed Acts or of section 543A of "The Criminal Code" as inserted by the said section eighty-five.

(5) The repeal of "The Trade Unions (Property) Act of 1922" shall not affect the operation or continuance in force of section twenty-two of "The Real Property Act of 1877," as amended by that Act.

(6) The repeal of "The Trade Union Act of 1915" shall not affect the continuity of the identity of any such trade union, or any rights or obligations of any such trade union, or render defective any legal proceedings by or against any such trade union.

(7) The repeal of the repealed Acts shall not affect the continuity of the identity of any industrial union registered as such thereunder, or any rights or obligations of any such industrial union, or render defective any legal proceedings by or against any such industrial union.
(8) Every decision, ruling, judgment or other act of authority or industrial agreement made, given, done or approved by the Industrial Court under the repealed Acts and in force immediately prior to the commencement of this Act shall continue in force as if it were a decision, ruling, judgment or other act of authority or industrial agreement made, given, done or approved by the Court or Commission, according to their respective functions and jurisdictions, under the corresponding provisions of this Act and accordingly may be revoked, altered, amended or otherwise modified by the Court or the Commission, as the case may be.

(9) All penalties and forfeitures imposed under any provision of the repealed Acts and incurred at the date of the repeal of such provision shall and may be enforced as if such provision had not been repealed.

(10) Every action or proceeding of whatever nature under any provision of the repealed Acts commenced or pending at the date of the repeal of such provision, may be carried on and prosecuted as if such action or proceeding had been instituted under the appropriate provision of this Act, and all of the provisions of this Act shall apply thereto, and no such action or proceeding shall abate or be discontinued by the repeal of the repealed Acts:

Provided that every such action or proceeding which under this Act is prescribed to be within the jurisdiction of the Commission shall be carried on and prosecuted before the Commission as if it had been instituted before the Commission in the first instance.

(11) All registrars, assistant registrars, deputy registrars and other officers appointed under the repealed Acts and in office immediately before the commencement of this Act shall, without further or other appointment, be deemed to have been appointed to their respective offices for the purposes of this Act and, subject to this Act, shall continue to hold those offices respectively in terms of their appointments.

(12) Every Proclamation, Order in Council, rule, regulation or registration made under the repealed Acts and in force at the time of the repeal thereof shall, subject to this subsection, continue in force until it expires by effluxion of time or is sooner repealed, amended, suspended or cancelled under this Act:

Provided that every such Proclamation, Order in Council, rule or regulation shall, while it so continues in force, be read and construed subject to this Act.

Acts referred to:
Criminal Code, title CRIMINAL LAW, Vol. 3.
Real Property Act of 1877, title REAL PROPERTY.

A provision for continuance of an award made under a repealed Act and not applying to railway employees was held not to make such award applicable to those employees, Fielding v. Commissioner for Railways, [1918] Q.W.N. 12; 12 Q.J.P.R. 26. A provision similar to subsection (8) was applied in R. v. Berge (1931), 25 Q.J.P.R. 39.

5. Interpretation. In this Act, unless the context otherwise indicates or requires, the following terms have the meaning respectively set against them, that is to say:—

“Apprentice”—Any person bound by agreement for the purpose of being instructed in the knowledge and practice of any calling;
"Award"—Award of the Commission made under this Act and any award made under the repealed Acts and continued in force by this Act: The term where necessary includes any variation of an award, any industrial agreement, or any variation of an industrial agreement;

"Bonus payment"—A payment by way of the division of the profits of any industry or undertaking, being a payment in excess of a just wage including all proper allowances such as are ordinarily and usually prescribed by an award or industrial agreement;

"Branch"—Any section, division, chapter or other group within an industrial union, howsoever described, having an executive or governing body or office bearers;

"Calling"—Any calling, vocation, craft, business or other occupation or any section of any calling;

"Chief Industrial Inspector"—The Chief Industrial Inspector appointed under this Act, and includes any person for the time being acting in or discharging the duties of that office;

"Commissioner"—A Commissioner appointed under this Act;

"Decision" includes any award, order, determination, direction, or declaration;

"Employee"—Any employee, whether on wages or piecework rates, or a member of a buttygang: The term includes any person whose usual occupation is that of employee in a calling; the fact that a person is working under a contract for labour only or substantially for labour only, or as lessee of any tools or other implements of production or any vehicle used in the delivery of goods, or as the owner, whether wholly or partly, of any vehicle used in the transport of goods or passengers, shall not in itself prevent such person being held to be an employee.

In every case where four or more persons being or alleging themselves to be partners, are working in association in any calling or industry, each of such persons shall be classed as and be deemed to be an employee; and the partnership firm constituted by them or alleged so to be shall be deemed to be the employer of each such person;

"Employer"—Any person employing or usually employing one or more employees, whether on behalf of himself or any other person: The term includes every managing director or manager of any corporation, partnership, firm or association and, in the case of an unincorporated association, its secretary and every member of its governing body, by whatever name called: This definition applies so as not to prejudice the entitlement to long service leave under sections seventeen, eighteen, nineteen or twenty of this Act of any person who is a manager or secretary as hereinbefore mentioned in this definition.

A person carrying on a calling in which employees are usually employed is an employer, notwithstanding that for the time being he does not employ any employee therein;
“Improver”—An employee who, by direction of the Commission given in his case, is serving at a special wage a period of training with an employer for the purpose of becoming a qualified worker in a calling;

“Industrial agreement”—An industrial agreement made or deemed to be made under this Act;

“Industrial cause” includes an industrial matter and an industrial dispute;

“Industrial Commission” or “Commission”—The Industrial Conciliation and Arbitration Commission constituted under this Act: The term includes the Commission sitting as a Full Bench and any Commissioner;

“Industrial Court” or “Court”—The Industrial Court constituted under this Act;

“Industrial demarcation”—The determination of the claim of any one class of employees to do any work to the exclusion of other employees;

“Industrial dispute”—
(a) a dispute including a threatened, pending or probable dispute as to an industrial matter; and
(b) a situation which is likely to give rise to a dispute as to an industrial matter;

“Industrial inspector”—The Chief Industrial Inspector and any other industrial inspector appointed or deemed to be appointed under this Act: The term includes an acting industrial inspector and any other officer appointed from time to time to act as industrial inspector;

“Industrial magistrate”—Any person appointed by or under this Act to be, or to act temporarily in the office of, an industrial magistrate;

“Industrial matter”—Any matter or thing affecting or relating to work done or to be done, or the privileges, rights, or duties of employers or employees, or of persons who have been or intend or propose to be or may become employers or employees not involving questions which are the subject of proceedings for an indictable offence.

Without limiting the generality of the foregoing provisions of this definition, the term includes any and every matter relating to—

(a) the wages, allowances, or remuneration of any persons employed or to be employed, including for work during ordinary working hours and for overtime, and (subject to this Act) on holidays and for other special work; and including the questions whether piecework shall be allowed, and whether employees shall be granted an annual leave or holidays upon full pay, and whether and under what conditions employees may board and lodge with their employers, and whether monetary allowances shall be made by employers to employees in respect of standing back or waiting time imposed by the conditions of the employer's enterprise or because of intermittency of
industrial operations or other causes; and what length of notice, if any, shall be given by an employer or employee to the other before discontinuing or quitting service or employment, and what amount of wages, if any, shall be paid or may be deducted, as the case may be, in lieu of such notice;

(b) subject to this Act, the hours of employment, the lengths of time to be worked to entitle employees to any given wages, allowances, remuneration, or prices, and what times shall be regarded as overtime and including claims to restrict work before or after certain hours, and the sex, age, qualification, or status of employees, and the mode, terms, and conditions of employment or non-employment, including the question whether any persons shall be disqualified for employment, and including claims to have protective appliances, clothing, hot or cold water, and sanitary and bathing accommodation provided for the use of employees, and the fixing of standards of normal temperatures and atmospheric purity in working places below or above ground, and the prescribing of shorter hours, higher wages, or other conditions in respect of persons employed under abnormal conditions or in abnormal working places, and the determination of what are abnormal conditions or abnormal working places;

(c) the employment of children, young workers, or improvers, or of any person or persons or class of persons, including the disqualification of any persons for employment by reason of sex or age or disease, or a claim to dismiss or to refuse to employ any particular person or persons or class of persons, or any question whether any particular person or persons or class of persons ought (having regard to public interests, and notwithstanding the common law rights of employers or employees) to be continued or reinstated in the employment of any particular employer; the number or proportionate number of aged or infirm workers, apprentices, and improvers that may be employed by an employer, and the lowest prices or rates payable to them;

(d) the right to dismiss or to refuse to employ or reinstate in employment any particular person or class of persons in any calling;

(e) any custom or usage as to conditions of employment, either general or in any particular calling, industry, enterprise, or locality;

(f) the interpretation and enforcement of an industrial agreement or award except as otherwise provided by this Act;

(g) any matter which is included in an industrial agreement;

(h) the subject matter of any industrial dispute including any matter which has caused or, in the opinion of the Court or of the Commission, is likely to cause disagreement or friction between employers and employees;
(i) generally all questions as to what is fair and right (having regard to the interests of the persons immediately concerned and of the community as a whole), according to the standard of the average good employer and the average competent and honest employee in all matters pertaining to the relations of employers and employees, whether or not the relationship of employer and employee exists or existed at or before the time of any application to the Court or the Commission or at the time of the making or enforcement of any decision by the Court or the Commission;

(j) the regulation of the relations between employers and employees, or between employees and employees, and for this purpose the imposing of conditions on the conduct of any trade, business, industry, or enterprise, and the provision of benefits to persons engaged therein;

(k) any question of industrial demarcation;

(l) any matter, whether industrial or not, which in the opinion of the Court or of the Commission has been, is, or may be a cause or contributory cause of a strike or lock-out or industrial dispute;

“Industrial union”—A body or association of persons registered as an industrial union under this Act;

“Lock-out”—The act of an employer in closing his place of business or suspending or discontinuing his business or any branch thereof, or a refusal or failure by an employer to continue to employ any number of his employees, with intent—

(a) to compel or induce any employees to agree to terms of employment or comply with any demands made upon them by the said or any other employer contrary to the provisions of this Act; or

(b) to cause loss or inconvenience to his employees or any of them; or

(c) to incite, instigate, aid, abet, or procure any other lock-out; or

(d) to assist any other employer to compel or induce any employees to agree to terms of employment or comply with any demands made by him;

“Minister”—The Minister for Labour and Industry or other Minister of the Crown for the time being charged with the administration of this Act;

“Occupier”—The term shall have the meaning assigned to it by “The Factories and Shops Act of 1960”;

“Office”—In relation to an industrial union or branch of an industrial union—

(a) the office of a member of the committee of management of the industrial union or branch;

(b) the office of president, vice-president, secretary, assistant-secretary or other executive officer, by whatever name called, of the industrial union or branch;
(c) the office of a person holding, whether as trustee or otherwise, property of the industrial union or branch, or property in which the industrial union or branch has any beneficial interest; and

(d) every office within the industrial union or branch for the filling of which an election is conducted within the industrial union or branch;

“Officer”—The holder of an office;

“Part”—Part of this Act;

“Party”—In relation to an award or industrial agreement, includes any person bound by such award or industrial agreement;

“Person”—Shall include a body corporate (including any local authority, harbour board or other statutory corporation) and an industrial union;

“Political objects”—The expenditure of money—
(a) on the payment of any expenses incurred either directly or indirectly by a candidate or prospective candidate for election to the Parliament of the Commonwealth or any State or to any public office before, during or after the election in connection with his candidature or election; or
(b) on the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate; or
(c) in connection with the registration of electors or the selection of a candidate for any such Parliament or any public office; or
(d) on the holding of political meetings of any kind, or on the distribution of political literature or political documents of any kind;

“President”—The President of the Court: The term also includes any person acting as President;

“Public office”—The office of member of any Local Authority or of any local public body which has power to raise money, either directly or indirectly, by means of a rate;

“Registered”—Registered under this Act;

“Registrar”—The industrial registrar appointed or deemed to have been appointed under this Act: The term includes any deputy or assistant industrial registrar so appointed;

“Registry”—The office of the Registrar;

“Repealed Acts”—“The Industrial Conciliation and Arbitration Acts, 1932 to 1959,” including any Order in Council made or purporting to be made under such Acts, whether in addition to or amendment of or in modification of such Acts;

“Rules of Court”—Rules of Court made under this Act;

“Statutory objects”—The regulation of the relations between employees and employers, or between employees and employees, or between employers and employers; the imposing of restrictive conditions on the conduct of any
trade, calling, business or industry; the promotion of the
general and material welfare of members of trade unions,
and the enforcement and defence of their rights and
privileges; the assistance by federation or otherwise of
kindred organisations having the like objects; also the
establishment and maintenance of newspapers or political
objects as herein defined if combined with all or any of
the aforesaid objects; and also the provision of benefits to
members of trade unions.

"Strike"—The act of two or more employees, who are or have
been in the employment either of the same employer or
different employers, in discontinuing their employment,
whether wholly or partially, or in ceasing to work, or in
refusing or failing to continue to work therein, or in breaking
their contracts of service, or in refusing or failing after
any such discontinuance or cessation of work to resume
work or return to their employment, or wilfully delaying or
obstructing the progress of work by what is known as the
“go-slow” method of strike, and the said discontinuance,
cessation, breach, refusal, or failure being due to or in
pursuance of any combination, agreement, or understanding,
whether expressed or implied, entered into by the said
employees or any of them, with intent—

(a) to compel or induce any such employer to agree to terms
of employment, or to employ or cease to employ any
person or class of persons, or to comply with any demands
made by the employees or any of them or by any other
employees; or

(b) to cause loss or inconvenience to any such employer in
the conduct of his business; or

(c) to incite, instigate, aid, abet, or procure any other strike;
or

(d) to assist employees in the employment of any other
employer to compel or induce that employer to agree to
terms of employment, or to employ or cease to employ
any person or class of persons, or to comply with any
demands made by any employees;

“Trade union” or “Union”—Any industrial union and any com-
bination, whether temporary or permanent, the principal
objects of which are under its constitution statutory objects;

“Young worker”—Any person, male or female (other than an
apprentice or an improver) under twenty-one years of age,
who receives a lower wages price or rate than that fixed by
any award for ordinary adult employees.

As amended by Act No. 67 of 1964, s. 3.

Act referred to:

Adoption of the language of New Zealand and English Acts respectively,
which had been authoritatively construed in those countries, was held to show
a legislative intention to adopt such constructions, Re Mount Morgan Gold Mining
Co. and Australian Workers Union, [1917] Q.W.N. 21; Hall v. Carr, [1921]
Q.W.N. 6; 15 Q.J.P.R. 85.

“Employee”—As to Government employees, see also ss. 95, 96.
With respect to partners, see also s. 119.

It was held under the Industrial Peace Act of 1912 (repealed) that the court only had jurisdiction in respect of callings in which the relationship of employer and employee existed and the test of whether such relation existed was whether that of master and servant existed, which depended upon the degree of control as to the manner of doing the work exercised by the person for whom it was done, *Re Life Assurance Canvassers*, [1916] Q.W.N. 25; *Thiel v. Mutual Life and Citizens Assurance Co. Ltd.* (1919), 14 Q.J.P.R. 5; *Stewart v. Brown and Broad Ltd.*, [1920] Qd. Indus. Gaz. 924. The written agreement of employment cannot be allowed to obscure the real relationship, *Thiel v. Mutual Life and Citizens Assurance Co. Ltd.*, supra; *Davis v. Henry* (1938), 32 Q.J.P. 87. A person may be employed even though there is no contract of service or agreement for payment but there must be something in the nature of recognition of the service by the alleged employer, *Ballantine v. Hinchcliffe*, [1915] V.L.R. 69. The definition does not appear to be limited to manual workers. See *Re Water Supply and Sewerage Employees Board*, [1919] N.S.W.A.R. 167. As to a person working for several others at the same time, see *Maudsley v. Miles* (1938), 32 Q.J.P. 62.

As to whether professional men receiving salaries can be employees, see *Re Professional Officers’ Assoc.*, [1916] N.S.W.A.R. 401, 464.


As to a lessee of a taxi-cab, see *Yellow Cabs of Australia Ltd. v. Colgan*, [1930] N.S.W.A.R. 137. As to a lessee of a delivery van, see *Gartrell White Ltd. v. Butt*, [1930] N.S.W.A.R. 174.

As to the effect of termination of the relationship of employee and employer by a strike, see *R. v. Commonwealth Court of Conciliation and Arbitration, Ex parte Broken Hill Pty. Co. Ltd.* (1909), 8 C.L.R. 419, and s. 51, post.

"Employer"—As to the position of the Government as employer, see ss. 95, 96.

Local authorities are empowered to pay their employees wages fixed by award under this Act; see *Local Government Acts, 1936 to 1965, s. 17 (1)*, title LOCAL AUTHORITIES.

"Improver"—Provision for licensing of improvers over 21 years of age is made by First Schedule, clause 13, post. See also Apprenticeship Act of 1964, s. 62, p. 322, ante.

As to when an employee is to be considered an improver, see *Garratt v. Wormald*, [1913] N.S.W.A.R. 129.

As to commencement of employment where worker engaged at one place to work at another, see *Amalgamated Society of Carpenters and Joiners v. Doyle* (1938), 32 Q.J.P.R. 39.

"Industrial matter"—As to enforcement of judgments and orders, see s. 115 and clause 12 of First Schedule, post, and Rules of Court, Order 4, rule 3, p. 567, post.

As to "matters or things affecting or relating to work done or to be done", see *Australian Sugar Producers' Assoc. v. Australian Workers' Union* (1916), 23 C.L.R. 58, at p. 67; [1917] St. R. Qd. 50; [1917] Q.W.N. 12.

Notwithstanding the provision that the initial words of this definition are not to be limited by the special matters set out, the jurisdiction given with respect to each of such special matters is controlled by the specific provisions. See *Magner v. Gohns*, [1916] N.Z.L.R. 529, at p. 549; *Butt v. Frazer*, [1929] N.Z.L.R. 636.

A condition of employment (see paragraph (b)) must be a condition which operates between the employer and the employee, *Re Drake*, [1903] N.S.W.A.R. 299. See also *Magner v. Gohns*, supra; *Australian Sugar Producers' Assoc. Ltd. v. Australian Workers' Union*, supra.

A particular practice which is not generally accepted throughout a calling or locality is not a usage, *Ivanhoe Gold Corp., Ltd. v. Wood* (1925), 27 W.A.L.R. 120. See also *Hackshall's Ltd. v. McDowell*, [1930] N.S.W.A.R. 620.

As to the power of the Industrial Court to interpret awards, see *Australian Timber Workers' Union v. John Sharp & Sons Ltd.* (1922), 16 C.A.R. 1042. It appears that the function of the Industrial Court when exercising its power of interpretation is to interpret the award according to its true meaning and not according to any intention which it does not express. See *Re Government Railways and Tramways Award*, [1928] N.S.W.A.R. 53. See further, notes to s. 12, post.

As to the "interests of the community", (paragraph (i)), see *Re Moynihan*, [1921] Qd. Indus. Gaz. 824; *Re Restaurant and Catering Employees*, [1917] Qd. Indus. Gaz. 266.

The Industrial Court has jurisdiction to provide in an award that wages due to aliens shall be paid to them in the presence of a public officer, *Re Sugar Mill and Sugar Field Workers*, [1916] Qd. Indus. Gaz. 583, at p. 609.

The question whether employees shall be permitted to wear a badge when on duty indicating that they are members of an industrial union is an industrial matter, *Australian Tramway Employees Assoc. v. Prahran and Malvern Tramway Trust* (1913), 17 C.L.R. 680.


"Lock-out"—Legality of lock-outs is governed by s. 98.

There was held to be no suspension or discontinuance of business where the employees had wrongfully and mistakenly temporarily discontinued work and had been dismissed because they would not resume, *McHardy v. Jackson* (1913), 16 N.Z.G.L.R. 96.

For a case in which it was held that there was no evidence that a general dismissal of employees was made in order to bring pressure to bear on employees, see *Western Australian Supply Co. v. Registrar of Friendly Societies* (1904), 6 W.A.L.R. 199.

See also *Ex parte Hart* (1907), 1 C.A.R. 107.

"Strike"—As to legality of strikes, see s. 98.

Unionists are a class of persons within this definition, *Re Mount Morgan Gold Mining Co. Ltd. and Australian Workers' Union*, [1917] Q.W.N. 21, and the Industrial Court has jurisdiction to provide for preference to unionists in an award, ibid.; *Re Wool Store Employees*, [1917] Q.W.N. 41.

A mere refusal to accept work under the conditions prescribed by an award is not a strike, *Waterside Workers Federation v. Commonwealth Steamship Owners' Assoc.* (1916), 10 C.A.R. 255.
For a case in which a joint cessation of work was held not to have taken place in order to compel the employer to comply with a demand, see Re Muller, [1927] S.A.I.R. 353.

A refusal to resume work where work has been discontinued by concerted action in order to enforce a demand constitutes a strike notwithstanding that the relationship of employer and employee has been terminated by the cessation of work, Ex parte Brennan (1915), 15 S.R.(N.S.W.) 173.


See also Australian Commonwealth Shipping Board v. Federated Seamen's Union (1925), 35 C.L.R. 462.

6. Application of Act. Qd. s. 5. (1) Subject to this section, this Act applies to all callings whatsoever and to all persons whomsoever.

(2) This Act does not apply to any State child within the meaning of "The State Children Acts, 1911 to 1955."

(3) The Governor in Council may from time to time, by Order in Council, declare that this Act does not apply to any person or class of persons specified in the Order in Council.

While such Order in Council continues in force this Act does not apply to any person or the persons included in any class of persons specified in such Order in Council.

(4) Any award or other decision shall be inoperative to the extent to which it purports to apply to any person to whom this Act does not apply.

(5) The provisions of this Act shall apply so as to not create any right, privilege or benefit in respect of any period of service as an employee in respect of which the like right, benefit or privilege has been granted, received or given under and in accordance with a corresponding provision of the repealed Acts.

Act referred to:
"Calling" is defined by s. 5.
With respect to Orders in Council under this Act, see s. 140.
Cooks employed to cook food for employees engaged in a particular calling are not workers in that calling, Australian Sugar Producers' Assoc. v. Australian Workers' Union, [1917] St. R. Qd. 50; [1917] Q.W.N. 12; 23 C.L.R. 58.

PART II—INDUSTRIAL COURT

7. (1) Industrial Court, constitution. For the purposes of this Act the Industrial Court is hereby preserved, continued in existence and constituted under this Act.

(2) Membership. Qd. s. 6 (1). The Court shall consist of a Judge of the Supreme Court of Queensland who shall be the President of the Court and who, notwithstanding the provisions of any other Act, shall continue to hold and may exercise the office of a Judge of the Supreme Court.

(3) Salary. Qd. s. 6 (3). The Judge of the Supreme Court thereunto appointed shall perform the duties of President of the Court without remuneration or emolument other than his salary as such Judge.
(4) **Term of office.** Qd. s. 6 (4). The President shall be appointed for such term as the Governor in Council may fix and may be reappointed from time to time for any further term fixed by the Governor in Council.

The President in office immediately prior to the commencement of this Act shall continue to hold such office pursuant to his appointment thereto under the repealed Acts:

Provided that the President shall retire from office upon attaining the age of seventy years notwithstanding that he has not then remained in office for the term then current of his appointment.

If the term of office of the President expires during the continuance of any matter on which he has entered, the Governor in Council may (and from time to time if necessary) without reappointment continue him in office for such time as is necessary to enable him to complete such matter.

(5) **Qd. s. 6 (6).** In case of the illness, inability or absence of the President the Governor in Council may appoint a Judge of the Supreme Court or some person qualified to be appointed a Judge of the Supreme Court to act as President, and notwithstanding any Act to the contrary, a Judge of the Supreme Court so appointed shall act as President of the Court without remuneration or emolument other than his salary as a Judge of the Supreme Court.

A person qualified to be appointed a Judge of the Supreme Court so appointed shall be paid salary at the rate applicable to a Judge of the Supreme Court whilst acting as President of the Court.

Such Judge or person so appointed, whilst acting in the capacity of President, shall have all the powers and perform all the duties of a member and President of the Court during the illness, inability or absence as aforesaid of the President.

(6) **Judicial functions.** Qd. s. 6 (7). The President sitting alone shall constitute the Court, and, except as in this Act or any Rules of Court otherwise provided, all the powers and jurisdiction of the Court (including any jurisdiction conferred by any other Act on the Full Bench of the Industrial Court) may be exercised by the President sitting or acting alone:

Provided that for the purpose of proceedings under subparagraphs (iv) or (v) of paragraph (b) of subsection one of section eight or under subsection six of section forty-six of this Act or under any other provision of this Act jurisdiction in respect of which is conferred on the Full Industrial Court, the Court shall be constituted by the President sitting with two Commissioners, and the Court as so constituted shall be known as the Full Industrial Court.

(7) (a) **C'wlth. s. 26.** The President shall have and exercise the function of organising and allocating the work of the Commission amongst the Commissioners and in particular the President may assign a Commissioner or Commissioners to a specific dispute or situation or to disputes or situations of a specified class;

(b) **C'wlth. s. 27.** A Commissioner shall comply with any direction given for the purposes of this subsection which is applicable to him.

(8) **Qd. s. 6 (7).** The Court shall be a superior Court of Record.
(9) Seal. Qd. s. 6 (8). The Court shall have an official seal, which shall be judicially noticed.

As to retirement of members of the Court on attaining seventy years of age, see also Judges' Retirement Act of 1921, title SUPREME COURT.


As to distribution of the business of the Court, see Rules of Court, Order 3, rules 1-4, p. 564, post.

For the extent to which jurisdiction may be exercised in chambers, see ibid., Order 3, rule 7.

As to the seal of the court, see also ibid., Order 2, rule 16.

8. Jurisdiction of the Industrial Court. (1) The Industrial Court shall have jurisdiction—

(a) to exercise any power or jurisdiction conferred on the Industrial Court by this Act or any power or jurisdiction conferred on the Industrial Court, including the Full Bench of such Court, by any other Act;

(b) to hear and determine—

(i) appeals from the Commission under section thirty-four of this Act;

(ii) cases stated by the Commission pursuant to section thirty-five of this Act;

(iii) appeals from industrial magistrates in all proceedings for offences against this Act or for damages or for the recovery of moneys under this Act or under an award or industrial agreement;

(iv) proceedings for offences in respect of which imprisonment or a maximum penalty in excess of one hundred pounds is provided and proceedings for cancellation or suspension of the registration of an industrial union;

(v) proceedings for offences against sections thirty-nine, fifty, fifty-six, subsection one of section sixty, and sections seventy-seven, eighty-two, eighty-six, one hundred and six, one hundred and seven, one hundred and twenty-one or one hundred and thirty of this Act;

(vi) appeals from and references by the registrar on matters of law and procedure;

(c) in respect of contempt of the Court;

(d) to exercise all the powers and jurisdiction of the Supreme Court for the purpose of ensuring, by the issue of the prerogative writs and other appropriate process that the Commission and all industrial magistrates properly exercise and do not exceed their jurisdiction under or pursuant to this Act.

(2) Qd. s. 7 (2). Nothing in this Act shall be interpreted to limit by implication the jurisdiction conferred upon the Court by this Act.
(3) Qd. s. 7 (3). The Court shall have power to make a decision irrespective of any specific relief claimed or applied for by any party and to give any direction with a view to the hearing or determination of any matter within its jurisdiction.

(4) Qd. s. 21 (2). Subject to this Act every decision of the Court shall be final and conclusive, and shall not be impeachable for informality or want of form, or be appealed against, reviewed, quashed, or in any way called in question in any Court on any account whatsoever:

Provided that an appeal shall lie to the Full Court of the Supreme Court at the suit of any person aggrieved as a defendant by a decision of the Full Industrial Court in proceedings under subparagraphs (iv) or (v) of paragraph (b) of subsection one of this section or by a decision of the Court in proceedings under paragraph (c) of subsection one of this section. In such an appeal the validity of a decision of or proceedings in or before the Commission or an industrial magistrate shall not be called in question.

(5) Qd. s. 21 (3). The jurisdiction of the Court under this Act shall be wholly exclusive of the jurisdiction of the Supreme Court and proceedings in the Court shall not be removable by certiorari, and no writ of prohibition shall be issued, and no injunction or mandamus shall be granted by the Supreme Court in respect of or to restrain proceedings in the Court which are within the jurisdiction of the Court under this Act.

(6) Qd. s. 21 (3) (4). The validity of any decision of or proceedings in or before the Commission or an industrial magistrate shall not be challenged except as provided by this Act.

Except as is provided by this Act, such proceedings shall not be removable by certiorari and no writ of prohibition shall be issued and no injunction or mandamus shall be directed to the Commission or an industrial magistrate by any Court, including the Supreme Court, whether for excess of jurisdiction or absence thereof or failure to exercise the same or upon any other ground whatsoever.

(7) Qd. s. 7 (5). In proceedings before the Full Industrial Court the decision of the President upon any question arising as to the jurisdiction of the Court or as to the construction of any of the provisions of this Act or of an award or industrial agreement or of any other Act or law shall prevail and be the decision of the Court, but in all other matters the question shall be decided according to the decision of the majority.

(8) Qd. s. 7 (7). Notwithstanding any other provision of this Act, the Court may refuse to proceed with the hearing and determination of any proceeding, application, question or matter with respect to any award at any time when any of the employees, to whom the award applies (and whether employees whose employment will or may be affected in any respect by the determination of such proceeding, application, question or matter, or not) are involved in an industrial dispute or are contravening or failing to comply with any provision of this Act or of the award or of any order, direction or judgment of the Court or the Commission.
(9) An interpretation of this Act or of an award or industrial agreement given by the Court in the exercise of any jurisdiction under this Act shall be final and conclusive and binding on the Commission and all industrial magistrates and on all industrial unions and persons subject to this Act or bound by the award or industrial agreement as the case may be.

(10) C'wlth. s. 70. The President shall, once in each year, furnish to the Minister for presentation to Parliament a report on the working of this Act and in particular of the working of the Court and of the Commission.

As to the powers and jurisdiction of the Supreme Court, see title SUPREME COURT.

The expressions "industrial matter", "industrial dispute" and "industrial cause" are defined by s. 5. See notes to those definitions.

As to who may initiate proceedings, see also clauses 1 et seq. of First Schedule.

Power to award costs is given by clause 3 of the First Schedule, and by ss. 27 (3), 34 (2).

The Industrial Court has jurisdiction to hear appeals on points of law from decisions of industrial magistrates on claims under the Workers' Compensation Acts, 1916, and on proceedings for offences and for sums due under that Act. See ibid., ss. 13 (2), 19, pp. 782, 804, post.

The Industrial Court being created by statute, its powers are limited to those conferred by statute (cf. Australian Textile Workers Union v. Lincoln Spinning Mills Pty. Ltd. (1932), 31 C.A.R. 114), and these cannot be extended by consent of parties. See W. Angils & Co. Pty. Ltd. v. Australasian Meat Industry Employees' Union (1924), 19 C.A.R. 535. As to the validity of agreements seeking to oust the jurisdiction of the Court, see Australian Agricultural Co. v. Federated Engine-Drivers and Firemen's Assoc. (1913), 17 C.L.R. 261; Australasian Saddlery, etc., Employees Federation v. Carter, Patterson & Co. (1925), 21 C.A.R. 892.

The Industrial Court is entitled to decline to exercise its jurisdiction where an application is made by the Minister but a very strong case must be made out before it will so decline. See Re Local Authorities in South-eastern Division, [1916] Q.W.N. 12. And see clause 2 (g) of the First Schedule.

As to the effect of the power of the Court to make an order or award irrespective of the specific relief claimed, see clause 2 (e) of the First Schedule, post, and Australian Sugar Producers' Assoc. v. Australian Workers' Union, [1917] St. R. Qd. 50; [1917] Q.W.N. 12; 23 C.L.R. 58.

As to how far a member of the Court should regard himself as bound by the prior decision of another member, see Australian Workers' Union v. Commonwealth Railways Commissioner (1920), 14 C.A.R. 496, at p. 567.

As to withdrawal of signatories to a reference, see Re a Reference by Life Assurance Canvassers, [1917] Q.W.N. 26, and Rules of Court, Order 2, rule 12, p. 562, post.

PART III—INDUSTRIAL CONCILIATION AND ARBITRATION COMMISSION

9. Industrial Conciliation and Arbitration Commission. (1) There is hereby established "The Industrial Conciliation and Arbitration Commission" consisting of not more than five persons appointed from time to time by the Governor in Council by commission in Her Majesty's name.

(2) Qd. s. 6 (2). A person appointed to be a Commissioner shall not be capable of being a member of the Executive Council or of the Legislative Assembly, and shall not act as a director or auditor or in any other capacity take part in the management of any bank, joint stock company, trade, or business.
(3) The salary of a Commissioner shall be at the rate applicable from time to time to a Judge of District Courts:

Provided that the salary of a Commissioner who, immediately prior to his appointment as such, was a member of the Industrial Court as constituted under the repealed Acts, shall be at the rate aforesaid or at the rate of his salary as such member when he relinquished his appointment as such member, whichever shall be the higher.

(4) Qd. s. 6 (4). A Commissioner shall be appointed for a term of seven years but may be re-appointed for a further term not exceeding seven years:

Provided that a Commissioner shall retire from office upon attaining the age of seventy years notwithstanding that he has not then remained in office for the term then current of his appointment.

If the term of office of a Commissioner expires during the continuance of any investigation or any matter on which he has entered as a Commissioner, the Governor in Council may (and from time to time if necessary) without re-appointment continue him in office for such time as is necessary to enable him to complete such investigation or matter.

(5) Qd. s. 6 (5). Every Commissioner shall hold office during good behaviour and shall not be removed therefrom unless an address praying for such removal shall be presented to the Governor by the Legislative Assembly.

(6) Qd. s. 6 (6). In the case of illness, inability, or absence of a Commissioner, the Governor in Council may appoint some other person to act as the deputy of such Commissioner during such illness, inability, or absence, and every such person shall, while he acts as such deputy, have all the powers and perform all the duties of and be subject to the same disabilities as such Commissioner.

(7) A Full Bench of the Commission shall be constituted by not less than three Commissioners, and any question before such Full Bench may be decided according to the decision of the majority.

(8) Qd. s. 6 (7). A Commissioner sitting or acting alone shall constitute the Commission and except as by this Act otherwise provided, all the powers and jurisdiction of the Commission shall be exercised by a Commissioner sitting or acting alone.

If more than one Commissioner is sitting at the same time in the exercise of the jurisdiction of the Commission under this Act each such Commissioner shall constitute the Commission.

(9) The Commission shall be a Court of Record.

(10) Qd. s. 6 (8). The Commission shall have an official seal, which shall be judicially noticed.

As to the salary of District Court judges, see District Courts Acts, 1958 to 1965, s. 15, title DISTRICT COURTS, Vol. 4, p. 461.

10. (1) Leave of absence to members of the Commission. Qd. s. 6A (1). Subject as hereinafter in this section provided, the provisions of sections three and four of “The Supreme Court Acts Amendment Act of 1944” shall apply to each Commissioner as if such Commissioner were a Judge of the Supreme Court.
(2) Qd. s. 6A (4). Any reference in the said sections three and four of "The Supreme Court Acts Amendment Act of 1944" to the passing of that Act shall, for the purposes of this section, mean the commencement of this Act.

Qd. s. 6A (2). For the purpose of ascertaining as at any time the number of years of service as a Commissioner completed by any Commissioner, every period during which he has served, whether in pursuance of his first appointment or of any renewal thereof or of any subsequent appointment as a Commissioner or as a member of the Industrial Court, as constituted under the repealed Acts, shall be taken into consideration.

Act referred to:
Supreme Court Acts Amendment Act of 1944, title SUPREME COURT.

11. Jurisdiction of the Commission. Qd. s. 7. (1) The Commission shall hear and determine all questions, whether of law or fact, which may be brought before it or which it may deem it expedient to hear and determine for the purpose of regulating any calling or callings, and any question arising out of an industrial matter or involving the determination of the rights and duties of any person or industrial union in respect of an industrial matter, and any question which it may deem expedient to hear and determine in respect of an industrial matter, and any industrial dispute as to which a Commissioner had held a conference under this Act, and as to which no agreement has been reached, and which a Commissioner has thereupon referred to the Commission, and more particularly, but without limiting the generality of the above provisions, shall have full powers and jurisdiction—

(a) upon reference by an industrial union or employer or any twenty employees (not being members of an industrial union of employees and not covered by an award) in any calling, or the Minister or of its own motion, to regulate the conditions of any calling or callings by an award;

(b) on the application of any person interested or of its own motion, or by direction of the Minister, to hold an inquiry into or relating to any industrial matter and report the result of such inquiry to the Minister;

(c) at the direction of the Minister, or on the application of an industrial union or an employer, to codify into one award, subject to such amendments as it may deem expedient to make, all awards binding or affecting any employer or class or section of a class of employers in any calling or callings, or the members of an industrial union employed by the same employer or class or section of a class of employers when such employer or class or section of a class of employers or such members is or are subject to more than one award;

(d) to define and declare the relative rights and mutual duties of employers and employees according to what in the opinion of the Commission should be the standard of fair dealing between an average good employer and a competent and honest employee.

(2) Nothing in this Act shall be interpreted to limit by implication, the powers or jurisdiction conferred upon the Commission by this Act.
(3) The Commission shall have power to make a decision irrespective of any specific relief claimed or applied for by any party and to give any direction with a view to the hearing or determination of any matter within its jurisdiction.

(4) The Commission in any proceedings before it may by order or direction do anything which it is authorised by this Act to do by an award.

(5) The Commission may in its complete discretion, by general order or for the purposes of a particular case, delegate either to an industrial magistrate or to industrial magistrates generally, or to the Chief Industrial Inspector the working out of any decision of the Commission, or the making of orders, the giving of directions, the preparation of rosters and schedules, or such like function as it shall think fit consequent on any such decision.

(6) Notwithstanding any other provision of this Act, the Commission may refuse to proceed with the hearing and determination of any proceeding, application, question or matter with respect to any award at any time when any of the employees to whom the award applies (and whether employees whose employment will or may be affected in any respect by the determination of such proceeding, application, question or matter, or not) are involved in an industrial dispute or are contravening or failing to comply with any provision of this Act or of the award or of any order, direction or judgment of the Court or the Commission.

Compare s. 8 and see notes thereto.

As to power of Commission to award costs, see s. 27 (3); First Schedule, clause 3, post.

The powers of the Commission are extended by ss. 38, 39, post.

For the principles upon which the Commission must act, see s. 120.

12. (1) Provisions as to awards. Qd. s. 8 (1) (i). Without limiting the generality of the powers of the Commission, the Commission may make an award with reference to a calling or callings—

(a) subject to this Act, fixing the quantum of work or service to be done, and the lowest prices for their work or rates of wages payable to employees other than aged or infirm workers; but in fixing rates of wages of employees in any calling—

(i) the same wage shall be paid to persons of either sex performing the same work or producing the same return of profit to their employer;

(ii) the Commission shall be entitled to consider the prosperity of the economy and the value of the labour of any classification of employee but in so doing it shall not award bonus payments.

Bonus payments shall be a matter for negotiation between employee and employer or an industrial union or industrial unions on their behalf and the President shall, if the parties so request, make available a Commissioner for
the purpose of mediation in relation to such negotiation and any bonus so negotiated may be registered with the Commission:

Provided that any bonus payment provided for by an award or industrial agreement in force immediately prior to the commencement of this Act shall continue in force until the circumstances in which it was awarded shall have so altered as to require the reduction or abrogation thereof and the Commission shall have jurisdiction from time to time to reduce such bonus payments or to abrogate them accordingly;

(b) Qd. s. 8 (1) (ii). subject to this Act, fixing the number of hours and the time to be worked in order to entitle employees to the prices or wages so fixed;

(c) Qd. s. 8 (1) (iii). subject to this Act, fixing the lowest rates for overtime, work on holidays, and other special work, including allowances as compensation for overtime, work on holidays, and other special work;

(d) Qd. s. 8 (1) (iv). subject to this Act and to the provisions of "The Apprentices and Minors Acts, 1929 to 1959," fixing the number or proportionate number of women to men, of young workers to adult workers, and of apprentices and improvers to journeymen in any calling; and fixing in respect of women workers, young workers, apprentices, and improvers in a calling the quantum of work to be done and the number of hours and the times to be worked by them, and the lowest prices and rates payable to them, for ordinary time, overtime, and work on holidays notwithstanding the existence of current indentures or contracts of apprenticeship; and provided that, in the case of apprentices, the increase in such prices or rates fixed for the years of the apprenticeship may be payable contingently upon the passing by the apprentice of any prescribed tests for the obtaining by him of any prescribed certificates of tuition or competency;

(e) Qd. s. 8 (1) (v). rescinding or varying any decision, direction, or industrial agreement;

(f) Qd. s. 8 (1) (vi). abrogating or varying contracts for labour, including contracts of apprenticeship, made at any time before or after the commencement of this Act, subject to such conditions and such exemptions as the Commission thinks just;

(g) Qd. s. 8 (1) (vii). giving such retrospective effect as the Commission may consider right, fair, and honest, or as may be consented to by the parties to the whole or any part of its award: Provided that (except with the consent of the parties) the retrospective effect aforesaid shall not be made to operate prior to the date when the Commission first took cognizance of the matter in question;

(h) Qd. s. 8 (1) (ix). ordering that where an award has fixed a starting time and a ceasing time for employees engaged in any calling in or in connection with any workshop, factory,
warehouse or shop, it shall not be lawful for any person to work at such calling outside of such fixed hours or to engage or be engaged outside such hours in or in connection with the production for sale of any articles ordinarily produced in such calling, subject however to such exemption as the Commission may determine;

(i) Qd. s. 8 (1) (x), directing that a copy of an award or industrial agreement be exhibited in a conspicuous and convenient place on the premises of any employer affected thereby; and

(j) Qd. s. 8 (1) (xi), generally dealing with, determining and regulating any industrial matter.

In respect of an award dealing with transport services, the Commission shall have regard to public safety and convenience.

(2) Preference. Qd. s. 8 (2). Where it is mutually agreed by the parties concerned or considered advisable by the Commission that preference be granted either generally or to any industrial union, such preference shall be granted subject to such conditions as the Commission may approve.

(3) Notwithstanding the provisions of "The Factories and Shops Act of 1960" the Commission may from time to time fix hours of trading in shops as defined in the said Act (whether employees are employed therein or not) either generally, or in respect of a class of shops, or in respect of a specified locality or area, or otherwise as it shall in its complete discretion determine and in particular, but without prejudice to the generality of the foregoing, the Commission may—

(a) fix the hours of opening and closing on any day of the week;

(b) Cf. Qd. s. 8 (1) (viii), modify or alter the early closing provisions or the half-holiday provisions of the said Act to any extent deemed proper or convenient and in particular so that any shop, business or person may be wholly or partly relieved of the incidence of such provisions;

(c) Cf. Qd. s. 8 (1) (viii), from time to time revoke in whole or in part any such modification, alteration or declaration, whereupon and pending the making of further awards or orders the statutory provisions shall revive and again operate if the revocation is complete without modification, alteration or extension of any kind, or, if the revocation is partial, subject to such conditions and limitations as may be expressed.

Acts referred to:

Apprentices and Minors Acts, see now Apprenticeship Act of 1964, p. 291, ante.


As to "calling" and "industrial matter", see s. 5.

An industrial agreement may be declared to have the effect of an award, s. 94. And see s. 40 (2).

With respect to awards applicable to Government employees, see s. 96 (4).

As to awards relating to persons employed in farming operations in respect of wheat subject to the Wheat Pool Acts, 1920 to 1957 (title AGRICULTURE, Vol. 1, p. 464), when that Act is in force, see ibid., ss. 27 (1) (e), 3, and regulations exercising the power under s. 27 (1) (c).
Awards in force at the commencement of this Act are continued by s. 4 (8). Commonwealth awards and their effect upon State laws are dealt with in the Preliminary Note, p. 282, ante.

For the principles upon which the Commission is to proceed, see also s. 120.

In the event of inconsistency between two awards the later award repeals the earlier to the extent of the inconsistency, Huntley v. McSweeney, [1914] N.S.W.A.R. 259; Armitage v. Solomon, [1916] N.S.W.A.R. 383.

As to whether it is competent for employees to waive their rights under an award, see Carmody v. Rockhampton City Council, [1920] Qd. Indus. Gaz. 757.

Fixation of wages—As to aged and infirm workers and university students, see clauses 14 and 15 of First Schedule, p. 533, post.

As to wages in the sugar industry, see the Sugar Growers' Employees Act of 1913, title SUGAR, 1913 Sessional Vol., p. 6038.

With respect to how far it is legitimate to protect one sex against the competition of another in making an award, see also Re Shop Assistants' Union, [1910] N.S.W.A.R. 279; Re Brewery Employees' Union, [1910] N.S.W.A.R. 258.

In fixing wages for any calling the capacity of the industry must be taken into account, Re Coal Working and Lightering Industry, [1916] Q.W.N. 16.

In fixing wages the Court will not interfere with the management of a business or industry further than necessary for the protection of the lives of employees, including the settling of living conditions for them, (Re Coal Working and Lightering Industry, [1916] Q.W.N. 16.

As to whether an award may prescribe that food shall be supplied by employers and the amount which may be deducted from wages in respect of food supplied, see Australian Sugar Producers' Assoc. v. Australian Workers' Union [1917] St. R. Qd. 50; [1917] Q.W.N. 12; 23 C.L.R. 58.

As to principles applicable in fixing wages, see also the cases cited under s. 13.

Subsection (1) (d)—Wages and working conditions of children and young persons are also dealt with by ss. 22, 23; Apprenticeship Act of 1964, p. 291, ante; Factories and Shops Acts, 1960 to 1964, p. 335, ante.

Subsection (1) (g)—This provision alters the law as laid down in Australian Sugar Producers' Assoc. Ltd. v. Australian Workers' Union (1916), 23 C.L.R. 58; [1917] St. R. Qd. 50; [1917] Q.W.N. 12, to the effect that there was no power to make a retrospective award.

Subsection (1) (h)—See also Factories and Shops Acts, 1960 to 1964, ss. 52 et seq., p. 367, ante.

Subsection (1) (i)—See also s. 127.

Other powers in making awards—The Court has power in a proper case to insert in an award a provision for a local tribunal consisting of employees' and employers' representatives with power to deal with any dispute in relation to the meaning of the award or arising out of its operation, Re Coal Mining Awards, [1919] Q.W.N. 8. But such a provision does not oust the jurisdiction of the Industrial Court of an industrial magistrate in the event of a breach of the award, (Re Coal Mining Awards, supra; Federated Engine Drivers v. Metropolitan Water Board, [1919] Q.W.N. 22; 13 Q.J.P.R. 83.

It appears that it is not competent to include in an award a provision for compensation to employees for injuries incurred in their work. See R. v. Commonwealth Court of Conciliation and Arbitration and Australian Builders' Labourers' Federation (1914), 18 C.L.R. 224.

An award may prescribe accommodation in excess of that required by the Workers' Accommodation Act of 1952, p. 739, post, Australian Sugar Producers' Assoc. v. Australian Workers' Union, [1917] St. R. Qd. 50; [1917] Q.W.N. 12; 23 C.L.R. 58.

As to whether power exists to prescribe a rule of evidence in an award, see Re Shop Assistants' Union, [1910] N.S.W.A.R. 279.

As to whether an award can give officials of industrial unions a right to enter premises where members are employed, see Australian Sugar Producers' Assoc. v. Australian Workers' Union, supra, and s. 136.

With regard to severability of valid from invalid portions of an award, see Australian Sugar Producers' Assoc. v. Australian Workers' Union, supra, the case last cited.
Preference to unionists—Prior to the insertion of s. 12 (2) it had been held that the Court could award preference to unionists; see Re Wool Stores Employees, [1917] Q.W.N. 41; Re Mount Morgan Gold Mining Co. Ltd. and Australian Workers' Union, [1917] Q.W.N. 21. It had also been held that the Court could make it a condition of continuance of employment of non-unionists that they should become members of a union and that employment of any worker who failed to join a union shall be discontinued where there was a member of a union qualified and willing to perform the work, Re Mount Morgan Gold Mining Co. Ltd. and Australian Workers' Union, supra. But a general provision in an award for preference to unionists does not apply to require dismissal of employees engaged prior to the award, Re Field and Sugar Mill Workers, [1922] Q.W.N. 4.

This Act gives legislative encouragement to the formation of industrial unions and where there appears to be any systematic attempt to prevent their development the Industrial Court will come to their aid by a grant of preference of employment or such other effective aid as can be given, Re Brisbane Newspaper Board Award, [1918] Qd. Indus. Gaz. 10. As to when preference to unionists should be granted or withheld, see Re Meat Export Industry Award, [1918] Qd. Indus. Gaz. 222; Re Brisbane Newspaper Board Award, supra.

As to whether the Industrial Court has power to require all persons engaged in a calling to become members of an industrial union, see Magnier v. Gohns, [1916] N.Z.L.R. 529; Butt v. Frazer, [1929] N.Z.L.R. 636. Apprentices cannot be compelled to join an industrial union, Apprenticeship Act of 1964, s. 77, p. 327, ante.

As to whether it is competent for the Court to include in an award giving preference to unionists a provision that any employer requiring labour shall notify the secretary of the employees' union, see Trolley Draymen and Carters Union v. Master Carriers Assoc. (1905), 2 C.L.R. 509.

In a complaint alleging an offence against an award requiring preference to returned soldiers or unionists it is not sufficient merely to allege employment of a person not a returned soldier or unionist, Federated Engine-drivers and Firemen's Assoc. v. Metropolitan and Ipswich Water Supply & Sewerage Board (1919), 13 Q.J.P.R. 90.

A provision in an award for preference to unionists was held to have ceased to be effective where the members of the union had gone on an illegal strike, even though notice to the employer of readiness to resume work had subsequently been given, Greymouth Wharf Labourers' Union v. Union Steamship Co. Ltd. (1915), 17 N.Z.G.L.R. 649.

Interpretation of Awards.—An award must be interpreted according to the intention expressed by the words of the award read as a whole, Australian Timber Workers Union v. W. Angliss & Co. Pty. Ltd., (1924), 19 C.A.R. 172. The rules for interpretation of statutes are applicable, Timber Merchants and Sawmillers Assoc. v. Australian Timber Workers Union (1928), 26 C.A.R. 400, at p. 418.

Where an award is ambiguous, the circumstances existing at the time it was made may be considered, and also any usage or practice under it, Jack v. Fairymead Sugar Co. Ltd. (1917), 11 Q.J.P.R. 109, at pp. 111, 114; Thiel v. Fairymead Sugar Co. Ltd. (1918), 12 Q.J.P.R. 131, at p. 134, and the established method of work in the calling, Jack v. Fairymead Sugar Co. Ltd. (1918), 12 Q.J.P.R. 72, at p. 75. But see Australian Timber Workers Union v. W. Angliss & Co. Pty. Ltd. (1924), 19 C.A.R. 172. Where there is a standing custom in an industry and an award is made which is not in terms inconsistent with that custom, the award is to be read as leaving the custom untouched, The Minister v. Dey, [1919] N.S.W.A.R. 19. An award must be interpreted to bear the meaning with which it was made. It cannot be interpreted as it would have been made in the light of subsequent information, Australian Commonwealth Post and Telegraph Officers Assoc. v. Public Service Commissioner (1918), 12 C.A.R. 489. As to whether it is permissible in interpreting awards to consider the proceedings that took place on the making of the award, see Connell v. New South Wales Fresh Food and Ice Co. Ltd. (1924) N.S.W.A.R. 51; Corley v. F. G. Kerr & Co. Ltd., [1920] N.S.W.A.R. 73; Re Government Railways Award, [1923] N.S.W.A.R. 48.

The question whether an employee comes under an award for a particular calling must be determined according to whether the major and substantial part of his employment was in that calling, Hall v. Rayment (1917), 11 Q.J.P. 79.

With respect to payment for time spent idle at the place of employment and at the employers' request, see Re Port Jackson Co-operative Steamship Co., [1906] N.S.W.A.R. 381.

As to the effect of a provision in an award that piecework rates shall not be such as to bring the remuneration of employees below the rates prescribed for day labour, see Kersley v. Fairymead Sugar Co. Ltd., [1915] Q.W.N. 9; 9 Q.J.P.R. 71.

For decisions on the construction of awards, see Waterside Workers' Federation of Australia, Innisfail Branch v. Adelaide Steamship Co. Ltd., [1937] St. R. Qd. 192; 31 Q.J.P.R. 52 (provision requiring even distribution of work between employees necessary); Hammond v. Elstob, [1924] Q.W.N. 35 (what constitutes work on bridge construction); Frederick v. Murgon Shire Council [1923] Q.W.N. 15 (meaning of expression "other employees not classified"); Kelly v. Goicoechea, [1922] Q.W.N. 2 (provision for settlement of disputes under award by an industrial magistrate); O'Brien v. Woodward, [1921] Q.W.N. 27 (meaning of "cases of emergency or necessity"); Martin v. Brisbane Newspaper Co. Ltd., [1920] Q.W.N. 30; 14 Q.J.P.R. 110 (whether period of service meant continuous service); Thiel v. Hornibrook, [1919] Q.W.N. 36; 13 Q.J.P.R. 152 (meaning of "sewerage works"); Federated Engine Drivers v. Metropolitan Water Board, [1919] Q.W.N. 22; 13 Q.J.P.R. 83 (meaning of "winding engine driver" and "winch driver"); Clarke v. Heaslop, [1919] St. R. Qd. 161; [1919] Q.W.N. 29; 13 Q.J.P.R. 107 (whether provision of award limited to adult workers); Thiel v. Tarrant, [1917] Q.W.N. 35; 11 Q.J.P.R. 77 (whether minimum wage applied to week in which holiday occurred), with which cf. Prentice v. Alexander Stewart & Sons Ltd., [1917] St. R. Qd. 69; [1917] Q.W.N. 13; 11 Q.J.P.R. 4; Kersley v. Fairymead Sugar Co. Ltd., [1915] Q.W.N. 9; 9 Q.J.P.R. 71 (whether weighing cane was sugar field work or sugar manufacturing); Finch v. Sampson, [1915] Q.W.N. 21; 9 Q.J.P.R. 132 (whether agreement to give and take employment was within scope of award); R. v. Police Magistrate at Innisfail, Ex parte Colonial Sugar Refining Co. Ltd., [1915] St. R. Qd. 206; [1915] Q.W.N. 32; 9 Q.J.P.R. 206 (meaning of "sugar manufacturing industry"); Clowburn v. Hall-Gibbs Mercantile Agency Ltd., [1914] Q.W.N. 16; 8 Q.J.P.R. 3 (award for "publications issuing from a newspaper office"); Waterside Workers' Federation v. Commonwealth Steamship Owners' Assoc. [1916], 21 C.L.R. 642 (award imposing no obligation to accept employment); Federated Engine Drivers and Firemen's Assoc. v. Colonial Sugar Refining Co. Ltd. [1916], 21 C.L.R. 376 ("crane engine-drivers"); R. v. Hibble (1921), 29 C.L.R. 290 ("employees engaged in or in connection with the coal and shale industry"); Pickard v. John Heine & Son Ltd. (1924), 35 C.L.R. 1 ("stoppage of work by any cause which the employer cannot reasonably prevent"); Fletcher v. A. H. McDonald & Co. Pty. Ltd. (1927), 39 C.L.R. 174 (award only applicable to apprenticeships entered into after its making); Dunlop Perdriau Rubber Co. Ltd. v. Federated Rubber Workers' Union (1931), 46 C.L.R. 329 (dismissal for purpose of saving payment for holidays, "full week" wage); Culbert v. Clyde Engineering Co. Ltd. (1936), 54 C.L.R. 54 (period of apprenticeship required to be prospective); Tudor v. Cleverton (1933), 28 Tas. L.R. 37 ("building" held not to include a pier); Brown v. Mulgrave Central Mill Co. Ltd. [1916], 10 Q.J.P.R. 96 (Mag. Cas.) ("accommodation" included house-room but not food); McDougall v. Vardy (1917), 11 Q.J.P.R. 135 (award not specifically providing for apprentices held to apply to them); Thiel v. Colonial Sugar Refining Co. Ltd. [1916], 10 Q.J.P.R. 105 ("sugar manufacture" held not to include sugar refining); Alden v. Duth (1917), 11 Q.J.P.R. 17 (question of inconsistent clauses); Carmody v. Collier (1917), 11 Q.J.P.R. 69 ("all work done after expiration of 144 hours"); Carmody v. Sandberg (1917), 11 Q.J.P.R. 74 ("painter" included coach
painter); Jack v. Fairymead Sugar Co. Ltd. (1917), 11 Q.J.P.R. 109 ("sugar mill worker"; "drivers of carts engaged in the sugar industry"); Alden v. Blackheathe Collieries Ltd. (1917), 11 Q.J.P.R. 99 ("winding engine driver"; "winch driver"); Thiel v. Fairymead Sugar Co. Ltd (1917), 11 Q.J.P.R. 141 (person may be a "head cook" even though no other cook employed); Dowse v. Mount Cuthbert Co. (1918), 12 Q.J.P.R. 129 (meaning of "continuous work"); Jack v. Fairymead Sugar Co. Ltd (1918), 12 Q.J.P.R. 72 (meaning of "canecutter"); Thiel v. Fairymead Sugar Co. Ltd. (1918), 12 Q.J.P.R. 131 (ironworkers' assistants not covered by sugar workers' award); Federated Engine Drivers and Firemen's Assoc. v. City Electric Light Co. (1919), 13 Q.J.P.R. 37 (meaning of "third-class engine driver"); Atkins v. Hakansan (1919), 13 Q.J.P.R. 40 (meaning of "domestic servant"); Re Monteath Bros. (1921), 15 Q.J.P.R. 101 ("casual employees"; "week"); McKenzie v. Anderson, [1922] St. R. Qd. 210; 16 Q.J.P.R. 114 (liability of employee to pay damages for loss of equipment supplied by employer under award); Ford v. Nouke, [1911] N.S.W.A.R. 235 (award applicable to employee where for considerable fraction of his time he did other work incidental to his employment); The Minister v. Dey, [1919] N.S.W.A.R. 19 ("work done" meant work done at the request or by the order of an employer); Australian Workers' Union v. Parker (1937), 31 Q.J.P.R. 39 (whether "employer" included owner of station where work done); Re Mechanical Engineering Award (1938), 32 Q.J.P. 63 (continuity of service); Re Coal and Shale Mining Industry Award (1938), 32 Q.J.P. 86 ("repair" of tools).

For cases decided in the Commonwealth Court of Conciliation and Arbitration on the construction of awards, see the Australian Digest, 1825-1933, Vol. 10, cols. 872 et seq.

13. (1) Power to declare general rulings. Qd. s. 9. The Full Bench of the Commission may from time to time declare general rulings relating to any industrial matter in order to prevent a multiplication of inquiries into the same matter:

Provided that before entering upon the making of a general ruling the Commission shall give reasonable notice in such manner as it shall deem fit of its intention to do so and shall give an opportunity to all persons interested in the subject of such proposed general ruling to be heard.

(2) A declaration of a general ruling shall have effect as if it were a decision of the Commission.

(3) Instances of such rulings. Without limiting the generality of the power conferred by the two immediately preceding subsections but subject to this section, the said Full Bench may from time to time make declarations as to—

(a) The cost of living;
(b) The standard of living;
(c) The basic wage for males and/or females;
(d) The standard hours.

(4) The basic wage of an adult male employee shall be not less than is sufficient to maintain a well-conducted employee of average health, strength, and competence and his wife and a family of three children in a fair and average standard of comfort, having regard to the conditions of living prevailing among employees in the calling in respect of which such basic wage is fixed.

In fixing such basic wage the earnings of the wife or any child of such employee shall not be taken into account.
(5) The basic wage of an adult female employee shall not be less than is sufficient to enable her to support herself in a fair and average standard of comfort, having regard to the nature of her duties and to the conditions of living prevailing among female employees in the calling in respect of which such basic wage is fixed.

(6) The Commission shall, in the matter of making declarations in regard to the basic wage or standard hours, take into consideration the probable economic effect of such declaration in relation to the community in general and the probable economic effect thereof upon industry or any industry or industries concerned.

(7) **Adjustment of awards or industrial agreements.** Upon a declaration of a general ruling including a declaration as to the basic wage during the currency of an award or industrial agreement the terms of such award or industrial agreement shall be varied to accord with such declaration by the registrar (subject to an appeal to the Commission) and such variation of an award or industrial agreement shall be published in the Gazette or Queensland Government Industrial Gazette and have effect as an award or industrial agreement on and from the date fixed in such declaration.

"Industrial matter" is defined by s. 5.

For principles upon which the Commission is required to proceed, see also s. 120.

Declarations in existence at the commencement of this Act were continued in force by s. 4 (8).


The Industrial Court will not interfere more than is necessary with the way in which an employer carries on his business, and this Act and awards will, in the case of ambiguity, be construed accordingly, *O'Brien v. Woodward*, [1921] Q.W.N. 27. But see *Re Wool Stores Employees*, [1917] Q.W.N. 41.

With respect to consideration of the probable economic effect of a proposed basic wage, see *Re Minimum Wage Declaration*, [1921] Q.W.N. 2.

As to differences in the basic wage for different parts of the State, see ibid.

In fixing the basic wage the Court may take into consideration the wage standards adopted by the Commonwealth wage-fixing authorities and those in New South Wales and Victoria, *Re Minimum Wage Declaration, supra; Re Coal Working and Lightering Industry*, [1916] Q.W.N. 16.

14. (1) **Directions to be observed by the Commission. Qd. s. 10 (1).** Save as hereinafter provided, every award shall be deemed to contain provisions to the following effect, or provisions not less favourable to employees, save in the callings mentioned in the proviso to paragraph (a) of this subsection:—

(a) employees shall not be worked on more than six out of seven consecutive days, and the time worked by them within any period of six consecutive days shall not exceed forty hours; the time worked by employees on each day shall not exceed eight hours, except in those callings where an industrial union of employees and an employer or association or union of employers otherwise agree:

Provided that (notwithstanding the foregoing provisions of this paragraph (a))—

(i) for employees in the callings following, namely station mistresses and female gatekeepers in the employ of the Commissioner for Railways, gatekeepers in the employ of the Department of Main Roads or a Local Authority, employees on coastal, river, and bay vessels, employees in rural industries or employees engaged in such other necessary services as the Commission in its discretion may determine, and employees engaged in domestic service, the Commission in its discretion may determine the maximum number of working days and hours in any week;

(ii) the Commission shall not be required to observe the direction contained in this paragraph (a) if it is of opinion that in respect of any industry or calling (whether the industry or calling immediately concerned or some other industry or calling) substantial unemployment will result or that the community in general will be prejudicially affected by the observance by the Commission of such direction, but in no case where such direction is not observed shall the time worked by any employee within any period of six consecutive days exceed forty-eight hours;

(b) the working time of employees in underground occupations, or occupations in which the conditions as to temperature, ventilation, lighting, and limitation of approaches are similar to those obtaining in underground occupations—

(i) shall include permitted intervals for rest and meals, and

(ii) shall be reckoned from bank to bank, and

(iii) shall, subject as hereinafter provided, but without prejudice to any provision of "The Coal Mining Acts, 1925 to 1952," not exceed six hours per day unless a temperature of less than eighty-three degrees Fahrenheit thermometer, using a wet bulb, is maintained for at least a three-fourths' proportion of the working shift in the working place where the employee is occupied:

Provided that subparagraph (iii) of this paragraph shall not apply with respect to the working place where the employee is occupied if such place is thoroughly ventilated during the whole of the working shift or half-shift, as the
case may be, by a current of air moving at a rate not less than that which can be measured with the instruments ordinarily used for that purpose:

Provided further that in all cases the employee shall be paid as for a full shift or half-shift as the case may be;

(c) overtime, that is, time worked in excess of the times or hours above limited, or before or after the fixed or recognised times of starting or leaving off work on any day in any calling, may be permitted by the terms of any award or industrial agreement at a rate of payment therefor of not less than double time in any calling in or in connection with which more than one shift per day is worked, or not less than time and a-half in any other calling;

(d) notwithstanding the terms of any current award or industrial agreement, the Commission may from time to time, for the purpose of distributing the work available in a calling so as to relieve unemployment, or for any other purpose which appears to the Commission to be good and sufficient, prohibit or restrict to any extent the working of overtime in any calling;

(e) subject to this subsection, where in any calling the ordinary time of work is at the commencement of this Act fixed by award or industrial agreement or by well-established practice in the calling, such time shall not be exceeded in any award or industrial agreement made after such commencement in respect of such calling.

(2) Rest pauses. In all cases where the Commission determines it practicable, every award or industrial agreement shall contain provisions entitling every employee governed thereby to a rest pause of not less than ten minutes duration in the first and second half of his daily work. Such rest pauses shall be taken at such times as will not interfere with continuity of work where continuity is necessary.

(3) Payment for certain holidays. Qd. s. 10 (2). Save as herein-after provided, every award shall be deemed to contain provisions to the following effect, or provisions not less favourable to employees:—

All work done by any employees on Good Friday, Labour Day (the first Monday in May or other day appointed under “The Holidays Acts, 1912 to 1954,” to be kept in place of that holiday), Christmas Day, the twenty-fifth day of April (Anzac Day), the first day of January, the twenty-sixth day of January, Easter Saturday (the day after Good Friday), Easter Monday, the birthday of the Sovereign, and Boxing Day, or any day appointed under “The Holidays Acts, 1912 to 1954,” to be kept in place of any such holiday, shall be paid for at the rate of double time.

Moreover, all work done by an employee in a district specified from time to time by the Minister by notification published in the Gazette or the Queensland Government Industrial Gazette on the day appointed under “The Holidays Acts, 1912 to 1954,” to be kept as a holiday in relation to the annual agricultural, horticultural or industrial show held at the principal city or town, as specified in such notification, of such district shall be paid for at the rate of double time.
Unless the Commission in its discretion otherwise determines, for the purposes of this subsection, where the rate of wages is a weekly rate “double time” shall mean one day’s wages in addition to the prescribed weekly rate, or pro rata if there is more or less than a day.

Nothing in this subsection shall have reference to Sunday work.

Nothing in this section shall prevent the Commission from granting the equivalent of annual leave on full pay in lieu of extra payment for work done on the aforesaid holidays:

Provided that all time worked on any of the aforesaid holidays outside the ordinary starting and ceasing times prescribed by an award for the day of the week on which such holiday falls shall be paid for at double the rate prescribed by the award for such time when worked outside the ordinary starting and ceasing times on an ordinary working day.

Notwithstanding anything hereinbefore in this subsection contained, all awards and industrial agreements (whether made before, on, or after the commencement of this Act) shall be deemed to contain provisions to the effect that all employees governed by such awards or industrial agreements shall be entitled to be paid a full day’s wage for Labour Day (the first Monday in May or other day appointed under “The Holidays Acts, 1912 to 1954,” to be kept in place of that holiday) irrespective of the fact that no work may be performed on such day, and that if any employee concerned actually works on Labour Day, such employee shall be paid a full day’s wage for that day and in addition a payment for the time actually worked by him at the ordinary rates prescribed for such work with a minimum of four hours.

(4) Provision where on one day two or more classes of work are performed. Qd. s. 10 (2A). Where any person on any one day performs two or more classes of work to which a differential rate fixed by any award or industrial agreement is applicable, such person if employed for more than four hours on the class or classes of work carrying a higher rate shall be paid in respect of the whole time during which he works on that day at the same rate, which shall be at the highest rate fixed by such award or industrial agreement in respect of any of such classes of work, and if employed for four hours or less on the class or classes of work carrying a higher rate he shall be paid at such highest rate for four hours.

(5) Qd. s. 10 (2B). Any and every employee who, having been dismissed or stood down by his employer during the month of December in any year, shall be re-employed by that employer at any time before the end of the month of January in the next succeeding year shall, if that employee shall have been employed by that employer for a continuous period of two weeks or longer immediately prior to being so dismissed or stood down, be entitled to be paid and shall be paid by his employer (at the ordinary rate payable to that employee when so dismissed or stood down) for any one or more of the following holidays, namely, Christmas Day, Boxing Day, and the first day of January occurring during the period on and from the date of his dismissal or standing down to and including the date of his re-employment as aforesaid.

(6) Applications to vary existing awards. Application may be made at any time during the currency of an award in force at the commencement of this Act to make such variations or amendments as are necessary to bring it into conformity with or to give effect to this section.
An employer who dismisses or stands down any employee with the intention of avoiding any obligation imposed upon that employer by this Act or any award or industrial agreement in respect of the payment of that employee for any holiday or leave due or accruing to that employee by way of annual holidays, sick leave, or long service leave shall be guilty of an offence and liable to a penalty of not more than five hundred dollars.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

Acts referred to:
- Coal Mining Acts, 1925 to 1964; title MINING.

With respect to hours of employment in coal mines, see also Coal Mining Acts, 1925 to 1964, s. 83, title MINING.

As to public interest in the question of working longer hours, see Re Restaurant and Catering Employees, [1917] Qd. Indus. Gaz. 266.

Other days may be appointed for the holidays mentioned in subsection (3) under the Holidays Acts, 1912 to 1961, s. 6, title HOLIDAYS, Vol. 7, p. 378.

Except as provided by subsection (3), work done on holidays is not to be regarded as overtime work, Holidays Acts, 1912 to 1961, s. 7.

Sunday work in coal mines is dealt with by the Coal Mining Acts, 1925 to 1964, ss. 84, 85, title MINING.

For what constitutes provisions not less favourable to employees than those under subsection (3), see Hall v. Manahan, [1919] St. R. Qd. 217; [1919] Q.W.N. 39.

For a decision, prior to the enactment of (2) in its present form, that employees were entitled to pay for a day and a-half in addition to the weekly rate in respect of a holiday work on which was declared to be overtime, see Hoffnung & Co. Ltd. v. Hall, [1918] Q.W.N. 31; 12 Q.J.P.R. 122.

For a case in which it was held that a provision in an award for a minimum weekly wage applied to a week in which payment might be reduced below such minimum by virtue of a holiday occurring, see Thiel v. Tarrant, [1917] Q.W.N. 35; 11 Q.J.P.R. 77. Cf. Pretzel v. Alexander Stewart & Sons. Ltd., [1917] St. R. Qd. 69; [1917] Q.W.N. 13; 11 Q.J.P.R. 4.

Awards in existence at the commencement of this Act were continued in force by s. 4 (8), ante.

15. (1) Annual holidays. Qd. s. 10A (1). Notwithstanding any other provision of this Act, or of any award or industrial agreement, all awards and industrial agreements, and whether made before, on, or after the commencement of this Act, shall be deemed to contain provisions to the effect that all employees governed by such awards or industrial agreements shall be entitled to annual holidays under, subject to, and in accordance with the provisions of this section.

(2) Period of annual holiday. Qd. s. 10A (2). Every employee (other than an employee employed at piece-work rates or a casual employee as defined in any award or industrial agreement) shall at the end of each year of his employment by an employer become entitled to an annual holiday on full pay of—

(a) Not less than three weeks, if employed in a calling where three shifts per day are worked over a period of seven days per week, unless in any particular case the Commission in its discretion decides that such employee is otherwise adequately compensated for the disabilities attaching to shift work; or

(b) Not less than two weeks in any other case:

Provided that a period in excess of three months during which the employee is on leave of absence without pay shall not be taken into account in calculating the year of employment for the purpose of this section.
(3) Annual holiday exclusive of statutory holidays. Qd. s. 10A (3).
(a) Any annual holiday shall be exclusive of any statutory holiday which may occur during the period of that annual holiday and shall be paid for by the employer in advance—

(i) In the case of any and every employee in receipt immediately prior to that holiday of ordinary pay at a rate in excess of the ordinary rate payable under the applicable award or industrial agreement, at that excess rate; and

(ii) In every other case, at the ordinary rate payable to the employee concerned immediately prior to that holiday under the applicable award or industrial agreement.

(b) Where an employer to whom an employee has been apprenticed continues to employ that employee upon the completion of his apprenticeship, leave by way of annual holidays accumulated during the period of apprenticeship and taken during or paid for upon the termination of continued employment as aforesaid shall be deemed to be accumulated annual holidays to which this section applies and accordingly shall be paid for as prescribed by paragraph (a) of this subsection.

Except as otherwise directed by the Commission, in calculating for the purposes of this paragraph the amount of leave by way of annual holidays accumulated during the apprenticeship any limitation of that amount imposed under or in pursuance of "The Apprentices and Minors Acts, 1929 to 1959," shall be taken into account, but any limitation imposed by the applicable award or industrial agreement of the amount of leave by way of annual holidays as prescribed by this section which may be accumulated during the continued employment shall not be taken into account in making that calculation.

This paragraph shall apply so as not to prejudice or affect howsoever the right of an employee as such to leave by way of annual holidays additionally to his right, if any, to leave as prescribed by this paragraph.

(4) Holiday pay where holiday is not taken. Qd. s. 10A (4). Where the employment of any employee who has become entitled to the annual holiday provided by this section is terminated whether by the employer or by the employee and the employee has not taken that holiday, the employer shall be deemed to have given the holiday to the employee from the date of the termination of the employment, and shall forthwith pay to the employee, in addition to all other amounts due to him, his ordinary pay for the period of that annual holiday and also his ordinary pay for any statutory holiday occurring during such period.

(5) (a) Subsection four of this section shall apply with respect to every period of employment of an employee by any employer which is less than one year, such period being computed from the date of the commencement of the employment or (where the employee has during the employment become entitled to any annual holiday or holidays under this section) computed from the date upon which he became entitled to that annual holiday or to the last annual holiday, as the case may be.

(b) Where the employment of any employee by an employer is terminated at the end of a period of employment to which this subsection applies, the employer shall forthwith pay to the employee, in addition to all other amounts due to him, if he is an employee to whom paragraph
(a) of subsection two of this section applies an amount equal to one-sixteenth of his ordinary pay for that period of employment, or if he is an employee to whom paragraph (b) of subsection two of this section applies an amount equal to one-twenty-fifth of his ordinary pay for that period of employment.

(6) Cf. N.S.W. (H) s. 3 (3) (7). If the employee and the employer so agree, the annual holiday may be taken wholly or partly in advance before the employee has become entitled to the annual holiday. Where the annual holiday or any part thereof has been taken before the right to the annual holiday has accrued the right to a further annual holiday shall not commence to accrue until after the expiration of the year of employment in respect of which the annual holiday or part has been so taken.

(7) Cf. N.S.W. (H) s. 3 (6). Unless the employee shall otherwise agree the employer shall give the employee at least fourteen days’ notice of the date from which his annual holiday shall be taken.

Act referred to:
Apprentices and Minors Acts, 1929 to 1959, see now Apprenticeship Act of 1964, p. 291, ante.
As to annual holidays of apprentices and improvers, see Apprenticeship Act of 1964, s. 46, p. 317, ante.

16. Sick leave. Qd. s. 10A (7). (1) Notwithstanding any other provision of this Act or of any award or industrial agreement, all awards and industrial agreements (other than any award or industrial agreement to which the Commission may from time to time determine the provisions of this section shall not apply), and whether made before or after the commencement of this Act, shall be deemed to contain provisions to the effect that all employees governed by such awards or industrial agreements shall be entitled to sick leave under, subject to, and in accordance with the provisions of this section.

(2) Every employee shall become entitled to at least one week’s sick leave for each completed year of his employment with an employer.

Moreover as respects any completed period of employment of less than one year with an employer, an employee shall become entitled to one day’s sick leave for each two months of such period.

(3) Every employee absent from work through illness on the production of a certificate from a duly qualified medical practitioner specifying the nature of the illness of the employee and the period or approximate period during which the employee will be unable to work, or of other evidence of illness to the satisfaction of his employer, and subject to his having promptly notified his employer of his illness and of the approximate period aforesaid shall, subject as herein provided in this section be entitled to payment in full for all time he is so absent from work, but it shall not be necessary for an employee to produce such a certificate if his absence from work on account of illness does not exceed two days.

(4) Unless the Commission in its discretion otherwise determines, or the parties to any award or industrial agreement otherwise agree, no employee shall be entitled to receive, and no employer shall be bound to make, payment for more than seven weeks’ absence from work through illness in any one year.
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(5) In this subsection the term “accumulated sick leave,” in relation to an apprenticeship, means the difference between the following periods of time, namely:

(i) two weeks for each completed year of the apprenticeship; and

(ii) the aggregate of all sick leave for which the apprentice has been paid by the employer during his apprenticeship.

Where an employer to whom an employee has been apprenticed continues to employ that employee upon the completion of his apprenticeship accumulated sick leave shall be taken into account for the purposes of calculating time absent from illness during that continued employment for which that employee is entitled to be paid by that employer under the provisions of this subsection:

Provided that—

(a) if that accumulated sick leave exceeds four weeks, that excess shall not be so taken into account; and

(b) unless as otherwise directed by the Commission, the taking into account of accumulated sick leave shall not entitle any employee to receive, or bind his employer to make to him, payment for more than seven weeks’ absence from work through illness in any one year.

For the purposes of this subsection any employer who re-employs an employee at any time within three months after the completion of the apprenticeship of that employee to that employer, shall be deemed to have continued to employ that employee upon the completion of his apprenticeship.

As to sick leave of apprentices and improvers, see Apprenticeship Act of 1964, s. 47, p. 317, ante.

17. (1) Long service leave. Qd. s. 10b (1). The Commission shall upon application therefor insert (by way of variation or otherwise) in any award or industrial agreement, whether made before, on, or after the eleventh day of March, one thousand nine hundred and fifty-two (herein in this section referred to as the “said date”), provisions entitling employees to long service leave on full pay under, subject to, and in accordance with the provisions of this section.

Provisions as aforesaid inserted in an award or industrial agreement shall be deemed to have been so inserted, and to have had effect, on and from the said date.

(2) Qd. s. 10b (2). The entitlement of any and every employee to long service leave on full pay pursuant to this section shall be in respect of his continuous service with one and the same employer (whether wholly within or partly within and partly without Queensland) and the amount and further amounts of that long service leave shall—

(a) in the case of an employee who shall have completed a period of fifteen years’ continuous service with one and the same employer, be thirteen weeks;

(b) in the case of an employee who shall have completed a period of ten years’ service but less than fifteen years’ service with one and the same employer and who himself terminates that service, or whose employer terminates that
service for any cause other than serious misconduct, or who dies, be a proportionate amount on the basis of thirteen weeks for fifteen years' service;

(c) in the case of an employee who, after completing the first or a subsequent period of fifteen years' service with one and the same employer, continues that service until he shall have completed a further period of fifteen years' service with that employer, be a further thirteen weeks; and

(d) in the case of an employee who, after completing the first or a subsequent period of fifteen years' service with one and the same employer continues that service until he shall have completed at least a further five years' service but less than a further fifteen years' service with that employer, and who himself terminates that service, or whose employer terminates that service for any cause other than serious misconduct, or who dies, be a proportionate further amount on the basis of thirteen weeks for fifteen years' service:

Provided that for the purposes of this section the expression "service with one and the same employer" shall include—

(a) service with an employer who becomes a member of a partnership together with service with such partnership;

(b) service with a partnership together with—

(i) service with one or more of the former partners upon the dissolution of such partnership;

(ii) if the partnership shall be reconstituted, service with the partnership as reconstituted.

(3) Qd. s. 10b (2a). For the purposes of this section the continuity of service of an employee with an employer shall be deemed to be not broken by any of the following, whether occurring before, on, or after the commencement of this Act, that is to say—

(a) absence from work on leave granted by the employer including such absence through illness or injury on leave so granted;

(b) the employee having been dismissed or stood down by the employer, or the employee having himself terminated his service with the employer, by reason of illness or injury: Provided that the employee shall have been re-employed by that employer and shall not have been engaged in any calling whether on his own account or as an employee subsequent to having been so dismissed or stood down or to having so terminated his service and before being so re-employed, and provided further that the period during which that employee was absent by reason of such dismissal or standing down or termination of his service shall not by reason only of this paragraph (b) be taken into account in calculating the period of his service with that employer;

(c) the employee having been dismissed or stood down by the employer, or the employee having himself terminated his service with the employer, for any period not exceeding three months: Provided that employee shall have been re-employed by that employer;
(d) by reason only of any interruption or determination of the service of the employee with the employer, if that interruption or determination—

(i) has been made by that employer with the intention of avoiding any obligation imposed on him pursuant to this section by an award or industrial agreement; or

(ii) has arisen directly or indirectly from an industrial dispute; or

(iii) has been made by the employer by reason of slackness of trade:

Provided that, in the case of an employee to whom provision (ii) or provision (iii) of this paragraph (d) applies, the employee shall have been re-employed by the employer, and provided further that, in such a case, the period during which the service of the employee with the employer shall have been so interrupted or determined shall not by reason only of this paragraph (d) be taken into account in calculating the period of the service of the employee with the employer; or

(e) the employee having been dismissed or stood down by the employer or the employee having himself terminated his service with the employer on the date on which a calling was transmitted in accordance with the provisions of subsection sixteen of this section, or during the period of one month immediately preceding such date provided that employee is re-employed by the person to whom the calling is transmitted within three months from such dismissal, standing down or termination of service as aforesaid.

(4) Qd. s. 108 (2b). For the purposes of this section, where the employment of an employee apprenticed to an employer has (whether before, on, or after the said date), been continued by that employer upon, or at any time within three months after, the completion of the apprenticeship, the period of the apprenticeship shall be taken into account in calculating the length of the service had by that employee with that employer.

(5) Qd. s. 108 (3). In calculating for the purposes of this section the length of the service had by an employee with one and the same employer, service by that employee with that employer before, or after, or both before and after the said date shall be taken into account provided that the whole of the service so taken into account shall have been continuous.

This subsection applies subject to subsection (6) of this section.

(6) In calculating for the purposes of this section the length of the service of an employee with one and the same employer—

(a) any excess over twenty years of the service had by that employee with that employer before the said date shall not be taken into account;

(b) any period of the service had by that employee with that employer before the date of the passing of "The Industrial Conciliation and Arbitration Acts Amendment Act of 1964," in respect whereof that employee has received long service
leave on full pay pursuant to his entitlement thereto under the provisions of this section as in force immediately prior to that date or under the corresponding provisions of "The Industrial Conciliation and Arbitration Acts, 1932 to 1959," shall not be taken into account;

(c) subject to paragraphs (a) and (b) of this subsection, so much of the period of the service had by that employee with that employer before the eleventh day of May, one thousand nine hundred and sixty-four, as exceeds the proportion thereof which fifteen bears to twenty shall not be taken into account:

Provided that where the service of an employee to whom paragraph (b) of subsection (2) of this section applies is reduced by reason of this paragraph (c) to less than ten years, such employee shall nevertheless be entitled to long service leave—

(a) of an amount calculated on the basis of thirteen weeks for twenty years' service in respect of the whole period of his service before the eleventh day of May, one thousand nine hundred and sixty-four; and

(b) of an amount calculated on the basis of thirteen weeks for fifteen years' service in respect of the period of his service on and from the eleventh day of May, one thousand nine hundred and sixty-four.

(7) Qd. s. 10b (4a). For the purposes of this section—

(a) where the services of an employee are temporarily lent or let on hire by one employer (in this paragraph called the “first employer”) to another employer (in this paragraph called the “second employer”), the period of that service had by the employee with the second employer shall be deemed to be service had by him with the first employer and shall be taken into account accordingly in calculating the length of the continuous service had by him with the first employer; and

(b) where the services of an employee are transferred by one employer to another employer (in this paragraph called the “second employer”) the periods of service had with them respectively by that employee which, if they were one and the same employer, would aggregate unbroken continuous service shall be taken into account in calculating the length of the continuous service had by that employee with the second employer, and shall be deemed to be service had by him with that employer.

Subject to an employee being employed on or after the twelfth day of December, one thousand nine hundred and fifty-eight, by an employer to whom his services have been temporarily lent or let on hire or transferred as hereinbefore specified in this subsection, service had by him as an employee before as well as on and after that date shall be taken into account in calculating the aggregate of the service to which paragraph (a) or paragraph (b), as the case may be, of this subsection is expressed to apply.
Notwithstanding anything hereinbefore contained in this subsection, in the case of any employee to whom paragraph (b) of this subsection applies, any period of service with the employer who transferred his services in respect whereof that employee has received long service leave on full pay pursuant to his entitlement thereto under this section, shall not be taken into account in calculating the aggregate of the service to which paragraph (b) of this subsection is expressed to apply had by him.

(8) Qd. s. 10B (5). The Commission may approve of the provisions of any industrial agreement whereby the employees of any employer are entitled to benefits in the nature of long service leave not less favourable than the provisions respecting long service leave required by this section to be inserted by the Commission in awards and industrial agreements, but the Commission shall not so approve unless and until it is satisfied that any and every employer who is expressed by that industrial agreement to be a party thereto has concurred in those not less favourable provisions thereof and that the community in general will not be prejudiced thereby.

When the Commission so approves it shall refrain from inserting in the industrial agreement in question the provisions required by this section.

(9) Qd. s. 10B (6). The Commission may exempt any employer from the operation of the provisions of any award or industrial agreement relating to long service leave where the Commission is satisfied that employees of that employer are entitled to benefits in the nature of long service leave under any scheme conducted by or on behalf of their employer which are not less favourable to those employees than the provisions specified in the award or industrial agreement, and that it is in the best interests of the employees that such exemption should be granted.

The Commission shall not so exempt an employer in relation to a scheme as aforesaid unless that scheme contains provisions ensuring that any and every employee entitled to any benefits thereunder may, at his election, take long service leave under and in accordance with the provisions of the applicable award or industrial agreement.

If it is a condition of the employment of any employee or employees by an employer that the employee or employees contribute to a scheme as aforesaid, the Commission shall not so exempt that employer in relation to that scheme unless, regard being had to special circumstances related to both the employment and the scheme in question, the Commission is of opinion that the exemption should be granted.

(10) Qd. s. 10B (7). Subject to subsection two of this section the Commission may also include in any award or industrial agreement such provisions as the Commission deems necessary or desirable with respect to the time when and the mode, terms and conditions under which long service leave may be given and taken and, without limit to the generality of this power, the Commission may provide that any leave in the nature of long service leave taken by an employee before the insertion in the award or industrial agreement applicable to that employee of any provisions as specified in this section shall be deducted from the amount of long service leave to which that employee may be entitled pursuant to that insertion.
Subject to the provisions of the applicable award or industrial agreement with respect to the time when long service leave may be given and taken, that time may in respect of an employee or employees be agreed upon between the industrial union of employees whereof that employee or those employees is or are a member or members and the employer.

(11) Qd. s. 10B (8). Nothing in this section shall apply where employees are by or under any Act, including the regulations, rules or by-laws thereunder, other than this Act entitled to leave in the nature of long service leave.

(12) Qd. s. 10B (9). For the purposes of subsections two and five of this section any period during which a person shall have served as a member of the Naval, Military or Air Forces (other than a permanent such Force and other than the British Commonwealth Occupation Forces in Japan) of the Commonwealth or of the Civil Construction Corps established under the National Security Act 1939, as amended by subsequent Acts, of the Commonwealth, shall be deemed to be service with the employer by whom that person was last employed before he commenced to serve as such member.

In relation to a female, service as a member of Her Majesty's Naval, Military or Air Forces as specified in this subsection includes that service as a member of, or of any service forming part of, those Forces or any of them, including service as medical practitioner, or nurse, or masseuse or otherwise.

This subsection shall not apply in respect of service, whether for a specified period or without limit of time, with any of the permanent Naval, Military or Air Forces of the Commonwealth or with the British Commonwealth Occupation Forces in Japan.

(13) Qd. s. 10B (10). (a) Any long service leave shall be inclusive of any statutory holiday occurring during the period when that long service leave is taken and shall be paid for by the employer as ordinary time deemed for the purposes of such payment to be worked continuously by the employee during the period of his long service leave:

Provided that, in the case of an employee who immediately before the period of his long service leave is being paid for ordinary time worked by him at a rate in excess of the rate payable under the applicable award or industrial agreement, the long service leave shall be paid for at that excess rate as ordinary time deemed for the purposes of such payment at such excess rate to be worked continuously by that employee during the period of his long service leave except that, if the rate payable under the applicable award or industrial agreement is varied during the period of long service leave, then—

(i) if the variation increases the rate payable under the award or industrial agreement to an amount greater than the aforesaid excess rate, the long service leave shall be paid at that increased rate for any part of the period thereof in respect whereof that increased rate is the minimum rate of payment under the award or industrial agreement; or

(ii) if the variation decreases the rate payable under the applicable award or industrial agreement, the long service leave may be paid for at the aforesaid excess rate less the whole
or any portion of the amount of the decrease for any part of the period thereof in respect whereof the amount of the decreased rate is the minimum rate of payment under the award or industrial agreement:

Provided further that, in the case of an employee who at any time before the period of his long service leave was being paid for ordinary time worked by him at a rate in excess of the rate payable under the applicable award or industrial agreement, if the Commission is satisfied that the employer decreased that excess rate with the intention of avoiding the obligation imposed upon that employer by the first proviso to this paragraph (a), the Commission may order the long service leave to be paid for at that excess rate and thereupon the first proviso to this paragraph (a) shall apply with respect to that employee as if he were being paid at that excess rate immediately prior to the period of his long service leave.

(b) Where an employee is paid at piecework rates the Commission may, in the event of a dispute between him and his employer as to ordinary time payment in respect of long service leave, determine the payment to be made.

(c) The employer and employee may agree upon the times when and the manner in which the employee shall be paid in respect of his long service leave, but the Commission may determine any matter relating to payment upon which they fail to agree.

(d) An industrial magistrate may upon application made by an employee, or on behalf of an employee, by the industrial union of employees whereof he is a member or an industrial inspector within three years after the date when a sum shall have become payable to that employee in respect of long service leave order the employer to pay any amount of that sum not paid by him and, save and excepting the provisions thereof limiting the time within which an application thereunder may be made, the provisions of section ninety-seven of this Act shall apply with respect to an application as aforesaid as if it were an application authorised by that section to be made thereunder and so made.

(e) A sum in respect of long service leave shall be deemed to become payable at the time agreed between the employer and the employee or determined by the Commission under paragraph (c) of this subsection, or in a case to which subsection fifteen of this section applies, on the death of the employee.

(f) The provisions of paragraph (d) of this subsection limiting the time within which an application may be made shall have no operation on the entitlement of an employee to long service leave.

(14) Qd. s. 10b (11). Where the service of an employee with an employer is terminated, whether by the employer or by the employee, and payment is made by the employer to the employee in respect of the amount or any part of the amount of long service leave to which that employee is entitled, and that employee is re-employed by that employer before the expiration of a period commencing on the date of termination of employment equal to the amount or part of the amount of long service leave in respect whereof payment was made, an industrial magistrate may, upon the application of an industrial inspector or of the industrial union of employees of which that employee is a member,
inquire into the matter and if, upon inquiry, the industrial magistrate is satisfied that the employer and employee arranged such termination, payment and re-employment for avoiding the giving by that employer to that employee and the taking by the latter of long service leave or any part thereof in accordance with the entitlement thereto of that employee, then the industrial magistrate may find accordingly and make such order as he deems just, having regard to the objects of this section, in respect of the giving by that employer to and the taking by that employee of long service leave according to the entitlement of that employee thereto, and additionally may punish, by a fine not exceeding two hundred dollars, the employer or employee or both respectively, as for an offence against this Act.

(15) **Qd. s. 10B (12).** If an employee who is entitled to any amount of long service leave dies—

(a) before taking that amount of long service leave; or

(b) after commencing but before completing the taking of that amount of long service leave,

his employer shall pay to that employee’s personal representative a sum equal to payment as prescribed by subsection thirteen of this section for the period of the amount of long service leave not taken or, as the case may be, the taking of which has not been completed by that employee.

Any amount of a sum payable under this subsection and not paid may, without prejudice to any other mode of recovery thereof, be recovered by the personal representative as unpaid wages due and payable to him by the employer concerned and the personal representative may make application as prescribed by subsection thirteen of this section accordingly.

(16) **Qd. s. 10B (13).** For the purposes of this section—

(a) where the calling carried on by a person who is an employer shall have been before, or shall be on or after, the said date transmitted to another person by operation of law or by agreement between them, that transmission shall be deemed not to have broken or otherwise affected, or to break or otherwise affect, the continuity of the service of any employee whose service shall have been or shall be, upon the transmission aforesaid, transmitted from the one to the other person aforesaid; and

(b) the respective periods of the service of that employee with each of the aforesaid persons shall be taken into account in calculating the length of the continuous service had by him with the person to whom his service shall have been or shall be transmitted as aforesaid.

In this subsection the term “transmission” includes but without limit to the generality of the meaning thereof, transfer, assurance, conveyance, assignment or succession, and derivatives of that term shall have a corresponding meaning.

In all proceedings brought in respect of rights conferred by this section on an employee the averment that a calling was at or about a specified time transmitted from one person to another person by operation of law or by agreement between them shall be sufficient evidence of the fact until the contrary is proved.
(17) Qd. s. 10b (13a). For the purposes of this section where one body corporate is a subsidiary of another, or is a subsidiary of any body corporate which is that other's subsidiary, periods of service had with them respectively by an employee which, if they were one and the same employer, would aggregate unbroken continuous service shall be taken into account in calculating the length of the continuous service had by that employee with the one of those bodies corporate by whom he is employed for the time being and shall be deemed to be service had by him with that body corporate.

Subject to an employee having been employed by a body corporate on or after the twelfth day of December, one thousand nine hundred and fifty-eight, service had by him as an employee before as well as on and after that date shall be taken into account in calculating the aggregate of the service to which this subsection is expressed to apply had by him.

Notwithstanding anything hereinbefore contained in this subsection, any period of service in respect whereof an employee has received long service leave on full pay pursuant to his entitlement thereto under this section shall not be taken into account in calculating the aggregate of the service to which this subsection is expressed to apply had by him.

Where if the law relating to companies applied a corporation would be a subsidiary of another, such corporation shall be deemed such subsidiary for the purposes of this subsection notwithstanding that such law does not apply.

As amended by Act of 1964, No. 67, s. 4.
Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

Act referred to:
National Security Act 1939-1946 (Commonwealth), repealed.
Industrial Conciliation and Arbitration Acts Amendment Act of 1964, No. 67, was passed on 23 December, 1964.

As to long service leave for seasonal workers in meat works and sugar mills, see s. 18. As to long service leave for employees not governed by awards or industrial agreements, see s. 19. As to long service leave for other seasonal workers, see s. 20.

18. Long service leave for seasonal workers in meat works and sugar mills. Qd. s. 10d. (1) In this section the term "season" means any and every period (whether falling wholly in one and the same year, or partly in one year and partly in the next succeeding year) during which—
(a) sugar-cane is taken delivery of and crushed at a sugar mill; or
(b) stock are taken delivery of and slaughtered at a meat works, and derivatives of that term have corresponding meanings.

(2) The Commission shall upon application therefor insert (by way of variation or otherwise) in any relevant award or industrial agreement, whether made before, on, or after the commencement of this Act, provisions entitling employees who are employed in or about sugar mills and meat works by the owners thereof, and whose employment is seasonal, to long service leave on full pay under, subject to and in accordance with the provisions of section seventeen of this Act as modified by this section.
(3) For the purposes of this section the provisions of section seventeen of this Act shall apply subject to the following modifications:—
(a) the term "said date", wherever appearing, shall refer to the twenty-fourth day of November, one thousand nine hundred and fifty-five;
(b) the continuity of service with an employer of an employee who—
(i) in a season continued that service until the termination of the season or, if the employer terminated that service at a date earlier than the termination of the season, that earlier date; and
(ii) in the next following season, commenced that service upon the opening of the season or, if the employer required that service to commence at a date later than the opening of the season, that later date, shall be deemed to be not broken by the employee not having been employed in the service of that employer between those seasons;
(c) periods between seasons during which the service of the employee shall have been determined shall not be taken into account in calculating the period of the service of the employee with the employer, but any time before the commencement or after the termination of any season, or during any period between seasons, during which the employee was engaged in the service of the employer, shall be taken into account in calculating the period of the service of the employee with the employer.

In the case of a particular employee the period between seasons means the actual period between the dates of his ceasing service in respect of any one season and commencing service in respect of the next following season;
(d) the amount or any part of the amount of long service leave to which an employee is entitled may be given and taken during the period between seasons and leave so given and taken shall be deemed to have commenced immediately after the employee last ceased service.

(4) This section does not apply to employees employed in or about his business as a grower of sugar-cane by a person who is both such a grower and an owner of a sugar mill.

(5) In this section, in relation to a sugar mill or meat works the term "owner" includes any person who carries on the business of the sugar mill or meat works.

As to long service leave for other seasonal workers, see s. 20.

19. Long service leave for employees not governed by awards or industrial agreements. Qd. s. 10c. (1) This section applies to any and every employee in respect of whose employment there is not in force an award or industrial agreement under this Act or an award, industrial agreement, order or determination under any law of the Commonwealth relating to industrial conciliation and arbitration which deals with long service leave.
(2) Every employee to whom this section applies shall be entitled
to long service leave on full pay under, subject to, and in accordance
with the provisions of this section and of subsections two to seven, both
inclusive, and eleven to seventeen, both inclusive, of section seventeen
of this Act:

Provided that—

(a) the term "the said date", wherever in the said subsections
appearing, shall refer to the twenty-fourth day of November,
one thousand nine hundred and fifty-five; and

(b) in applying the said subsections the provisions thereof related
to awards and industrial agreements shall be read as related
to awards, industrial agreements, orders or determinations
under any law of the Commonwealth relating to industrial
conciliation and arbitration and accordingly, in the case of
any employee, shall be limited in their application to such,
if any, of the aforementioned as apply in his case.

(3) The Commission may exempt any employer from the operation
of this section where the Commission is satisfied that employees of that
employer are entitled to benefits in the nature of long service leave under
any scheme conducted by or on behalf of their employer which are not
less favourable to those employees than the provisions of this section,
and that it is in the best interests of the employees that such exemption
should be granted.

The Commission shall not so exempt an employer in relation to a
scheme as aforesaid unless that scheme contains provisions ensuring that
any and every employee entitled to any benefits thereunder may, at his
election, take long service leave under and in accordance with the
provisions of this section.

If it is a condition of the employment of any employee or employees
by an employer that the employee or employees contribute to a scheme
as aforesaid, the Commission shall not so exempt that employer in
relation to that scheme unless, regard being had to special circumstances
related to both the employment and the scheme in question, the Com­
mision is of opinion that the exemption should be granted.

(4) Subject to subsection two of this section, the jurisdiction of the
Commission shall include power to determine all matters and questions
with respect to the time when and the mode, terms and conditions under
which long service leave may be given and taken and, without limit to the
generality of this power, the Commission may determine that any leave
in the nature of long service leave taken by an employee before the twenty­
fourth day of November, one thousand nine hundred and fifty-five, shall
be deducted from the amount of long service leave to which that employee
may be entitled under this section.

The power had by the Commission under this section extends, but
without limit to that power, to the declaration by the Full Bench of the
Commission of general rulings.

(5) This section shall apply to employees who are employed in or
about meat works by the owners thereof, whose employment is seasonal
within the meaning of section eighteen of this Act and in respect of whom
there is not in force an award or industrial agreement under this Act or
an award, industrial agreement, order or determination under any law of the Commonwealth relating to industrial conciliation and arbitration which deals with long service leave:

Provided that for the purposes of this subsection—

(a) the continuity of service with an employer of an employee who—

(i) in a season continued that service until the termination of the season or, if the employer terminated that service at a date earlier than the termination of the season, that earlier date; and

(ii) in the next following season, commenced that service upon the opening of the season or, if the employer required that service to commence at a date later than the opening of the season, that later date, shall be deemed to be not broken by the employee not having been employed in the service of that employer between those seasons;

(b) periods between seasons during which the service of the employee shall have been determined shall not be taken into account in calculating the period of the service of the employee with the employer, but any time before the commencement or after the termination of any season, or during any period between seasons, during which the employee was engaged in the service of the employer, shall be taken into account in calculating the period of the service of the employee with the employer.

In the case of a particular employee the period between seasons means the actual period between the dates of his ceasing service in respect of any one season and commencing service in respect of the next following season;

(c) in calculating the service of an employee, service had by an employee under an award or industrial agreement which ceased to apply after the twenty-fourth day of November, one thousand nine hundred and fifty-five, shall be taken into account;

(d) the amount or any part of the amount of long service leave to which an employee is entitled may be given and taken during the period between seasons and leave so given and taken shall be deemed to have commenced immediately after the employee last ceased service.

(6) Whoever contravenes or fails to comply with any provision of this section, or of any determination or general ruling made or declared by the Commission pursuant to subsection four of this section, shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

As amended by Act of 1964, No. 67, s. 5.

20. Long service leave for other seasonal workers. Qd. s. 10E. (1) The Governor in Council may from time to time by Order in Council published in the Gazette or in the Queensland Government Industrial Gazette extend the provisions of section eighteen of this Act and of section seventeen of this Act as modified by the said section eighteen
to apply (with and subject to all such further modifications of those provisions as are set out in that Order in Council) with respect to specified employees in any calling whose employment with one and the same employer is seasonal or otherwise of a periodic nature and whose employment is not defined as casual by the applicable award or industrial agreement.

(2) Such an Order in Council—

(i) may specify employees by reference to their calling, employers, places of employment, or in any other manner sufficiently identifying them; and

(ii) may modify as the Governor in Council deems necessary or expedient the provisions of section eighteen or of section seventeen of this Act (including by further modifying any provision of the said section seventeen already modified by the said section eighteen) for the purposes of the application thereof to the employees specified in that Order in Council.

(3) The power to make under this section an Order in Council in respect of any employees shall include power to make in respect of those employees such one or more Orders in Council as the Governor in Council deems fit and either at one and the same time or from time to time.

21. Overtime payments. Qd. s. 11. Notwithstanding anything contained in this Act or in any award or industrial agreement, where in any award or agreement overtime rates are provided to be paid to any employee for working overtime, in any case where such employee receives a rate of wages in excess of the minimum rate prescribed in the award or agreement concerned, such overtime rates payable to such employee shall be calculated on the actual weekly rate of wages paid, at the relevant time, to the employee concerned and not on the basis of the minimum rate of wages prescribed in the award or agreement concerned in respect of such employee.

22. Apprentices and young workers. Qd. s. 12. Subject to the provisions of “The Apprentices and Minors Acts, 1929 to 1959,” therefor, the Court and the Commission shall have jurisdiction in respect of minors under twenty-one years of age.

Act referred to:

Apprentices and Minors Acts, 1929 to 1959, see now Apprenticeship Act of 1964, p. 291, ante.

See, for example, Apprenticeship Act of 1964, s. 42, p. 315, ante, which empowers the Commission to fix percentage proportions of wages.

The provisions of the Apprenticeship Act of 1964, ante, are not affected by the provisions of any other Act or by any award under this Act. See Apprenticeship Act of 1964, s. 76, p. 327, ante.

23. Juniors and minors. Qd. s. 13. Notwithstanding anything to the contrary contained in this Act, the following provision shall apply in respect of any junior or minor (being in each case a person under twenty-one years of age) not being subject to the jurisdiction of “The Apprentices and Minors Acts, 1929 to 1959,” namely:—

The Commission may in any award prescribe the rates of wages to be paid to juniors or minors, which rates may be on a progressive scale based on the rates of wages payable to adult workers in the same
calling, and the Commission shall in the making of any such award take into consideration the age and experience of such juniors or minors.

Act referred to:
Apprentices and Minors Acts, 1929 to 1959, see now Apprenticeship Act of 1964, p. 291, ante.
For juniors and minors subject to the Apprenticeship Act of 1964, see ibid., ss. 3, 4, p. 292, ante.
See also this Act, s. 12 (1) (d), (f).

24. Industrial magistrates. Cf. Qd. s. 14. The following proceedings under this Act shall be commenced before an industrial magistrate and not otherwise and such industrial magistrate shall have jurisdiction to hear and determine the same in the exercise of his summary jurisdiction—

(a) proceedings for offences under this Act in respect of which the maximum penalty prescribed does not exceed two hundred dollars, except as otherwise provided by this Act;
(b) notwithstanding the provisions of section eight of this Act, proceedings for offences, including a second or subsequent offence, against the provisions of subsection one of section one hundred and thirteen, section one hundred and fourteen, or section one hundred and thirty-four of this Act;
(c) claims for wages or other moneys due under any award or industrial agreement;
(d) claims for damages for breach of any agreement made under and in pursuance of any award;
(e) proceedings for the recovery of moneys due by a member to an industrial union under the rules thereof;
(f) proceedings in the exercise of a jurisdiction conferred by any other Act on an industrial magistrate.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

As to appeals to the Court from a decision under this section, see s. 27.

(1) The Commission may at any time by order remit to an industrial magistrate for investigation and report, or for the taking of evidence, or for hearing and determination, as it shall from time to time think fit, any industrial matter or any aspect thereof or any matter or question which may arise in connection therewith and such industrial magistrate shall for the purpose of such remission have the powers of a Commissioner and shall promptly comply with such order of remission.

(2) Every decision of an industrial magistrate made upon or in the course of or pursuant to a remission under this section or under section thirty-six of this Act shall be filed in the registry and upon being so filed shall, subject to any appeal therefrom, become and be a decision of the Commission and shall have operation and effect and be enforceable accordingly.

26. Wages rates in callings in an industry where such callings are under another award. Qd. s. 15. When the Commission makes an award for an industry embracing more than one calling, the Commission shall (unless in the exceptional circumstances of any particular case the
Commission thinks otherwise and so expressly declares) in such award prescribe at least such wages rates for employees whose calling is already governed by another award as are equal to the wages rates fixed by that award.

“Calling” is defined by s. 5.

27. Appeal from industrial magistrate. Cf. Qd. s. 16. (1) An appeal shall lie to the Court at the instance of any person aggrieved thereby from any decision of an industrial magistrate given, made or pronounced in the exercise of the jurisdiction set forth in section twenty-four of this Act.

(2) An appeal shall lie to the Full Bench of the Commission at the instance of any person aggrieved thereby from any decision of an industrial magistrate given, made or pronounced in the exercise of any jurisdiction under this Act other than that set forth in section twenty-four of this Act.

(3) Appeals to be by way of rehearing. Every appeal under this section shall be by way of rehearing, and the Court or the Commission as the case may be, may affirm, reverse or modify the decision appealed against, and may give such decision and direction and make such order as ought to have been given or made in the first instance, and may remit any matter arising out of or involved in the case to the industrial magistrate, with or without directions and whether for report to the Court or the Commission or for determination:

Qd. s. 64. Provided that—

(a) the Court on upholding a conviction may increase the penalty to such amount not exceeding that permitted by this Act, or may reduce such penalty as the Court deems proper;

(b) the Court or the Commission may make such order concerning costs as it deems proper.

For the jurisdiction of industrial magistrates, see ss. 24, 36, 38, 39, 42, 97, 116. Procedure on appeals is regulated by Order 4, rules 14 et seq. of the Rules of Court, p. 571, post.

As to what constitutes a “decision” from which appeal lies, see Bow v. Whitty (1921), 15 Q.J.P.R. 99.

As to the effect of informality or want of form of decisions of industrial magistrates, see s. 37.

Appeals lie to the Industrial Court from decisions of industrial magistrates exercising jurisdiction under the Apprenticeship Act of 1964. See ibid., s. 71, p. 326, ante.

28. Jurisdiction of the Commission exclusive. Qd. s. 17. Subject to this Act, the jurisdiction of the Commission, whether original or by way of appeal, conferred on it by this Act, shall be exclusive of that of the Supreme Court and of all other Courts whatsoever.

As to the finality of decisions of the Industrial Commission, see s. 37.

Where the Industrial Commission has interpreted an award a court of law has no jurisdiction to review its interpretation, Ivanhoe Gold Corpn. Ltd. v. Wood (1925), 27 W.A.L.R. 120; Peachy v. Holmes Bros. (1904), 7 W.A.L.R. 89. See paragraph (f) of the definition of “industrial matter” in s. 5.

The Industrial Commission has not exclusive jurisdiction to enforce a provision of an agreement for service by an employee subject to an award where such provision is outside an award applicable to the employee and not inconsistent with it. See s. 123; Marment v. Young, [1937] St. R. Qd. 212; 31 Q.J.P.R. 94. Where an employee is forbidden by an award to do the work in question,
there is ground for determining against him a claim on a contract of employment, but the jurisdiction of courts other than the Industrial Commission to hear such a claim is not ousted, *Coakley v. Groth*, [1935] St. R. Qd. 220; 29 Q.J.P.R. 138. The Industrial Commission is entitled to enforce by way of an order for damages the provisions of a contract or agreement in a form prescribed by an award and fixing the rate of payment and amount of work, *Coakley v. Groth*, *supra*.

The Industrial Commission does not necessarily have exclusive jurisdiction to hear a charge of a summary offence against an employee in respect of any act done by him in relation to his employment. See *R. v. O'Kelly*, [1936] St. R. Qd. 249.


29. **Form, effect and tenure of award. Qd. s. 18.** (1) Every award shall—

(a) be in the form determined by the Commission in the particular case; and

(b) save as otherwise prescribed pursuant to subsection two of this section take effect and have the force of law throughout the State and without limit of time.

(2) Provisions of an award may prescribe that the award shall be in force in a specified locality, or during a specified period of time, or both in a specified locality and during a specified period of time and in such case the award in question shall take effect and have the force of law according as prescribed by those provisions and not otherwise.

(3) The Commission may at any time and from time to time vary, alter, amend or otherwise modify the provisions of any award (including the provisions thereof specified in subsection two of this section), and the same as so varied, altered, amended or otherwise modified shall become and be for the time being the award in question:

Provided that upon the determination by the Court of an appeal from or case stated by the Commission, the Commission shall, if and so far as may be necessary, forthwith vary, alter, amend or otherwise modify the provisions of any award in question to give effect to the opinion of the Court in the matter of the appeal or stated case.

(4) The Commission may at any time—

(a) determine any award; or

(b) substitute a fresh award for any award.

As to inconsistency between a contract and an award, see also s. 123. As to inconsistency between an industrial agreement and an award, see s. 89 (1) proviso.

An agreement by way of compromise of an industrial cause has the effect of an award, s. 40 (2), as also does an industrial agreement made a common rule, s. 94.

As to evidence of awards, see s. 128 (1).

With respect to the effect of awards on earlier statutory enactments relating to the same matters, see *Hall v. Manahan*, [1919] St. R. Qd. 217; [1919] Q.W.N. 39; 13 Q.J.P.R. 115, the judgment of the Court in which case contains the following passage (at p. 226): "We think the very purpose of the Industrial Arbitration Act, as disclosed by its various provisions . . . was to place these industrial matters exclusively within the province of the Industrial Court, and it was contemplated that in carrying out these functions, awards might come into conflict with existing statutory provisions, but that, subject to the provisions of the Act itself, where the two enactments are inconsistent or repugnant, such award should override such statutory provisions." See also Apprenticeship Act of 1964, s. 76, p. 327, *ante*; Wages Acts, 1918 to 1954, s. 46 (c), p. 731, *post*; s. 97 (11) of this Act; *Australian Sugar Producers' Assoc. v. Australian Workers' Union*, [1917] St. R. Qd. 50; [1917] Q.W.N. 12; 23 C.L.R. 58; *Brown v. See Chun*, [1923] Q.W.N. 38; 17 Q.J.P.R. 130.
The liability to pay wages under an award is a statutory and not a contractual liability, Re Award for Engineers, Mount Crosby, [1921] Q.W.N. 23; 15 Q.J.P.R. 153; Josephson v. Walker (1914), 18 C.L.R. 691. Quere how far, if at all, common law rules governing the contractual relationship of master and servant should be applied by analogy to any matter on which an award is silent, Re Award for Engineers, Mount Crosby, supra. The rule that parties may stipulate that no action for breach of a contractual obligation shall arise until a third party has decided on any dispute does not apply to liability under awards, and the jurisdictions established by this Act cannot be so ousted, Federated Engine Drivers v. Metropolitan Water Board, [1919] Q.W.N. 22; 13 Q.J.P.R. 83.

As to the right of a party bound by an award to termination of the award at the end of the period specified for its continuance, see Federated Storemen and Packers Union v. Butterworth, Hancock & Co. (1926), 24 C.A.R. 61.

30. Where work of employee under award is partly in and partly without the State. Qd. s. 18A. Where any employer has a place of employment in Queensland, or is for the time being present in Queensland, and there employs an employee whose employment is not wholly carried out in Queensland but, with the knowledge and consent of his employer, is in part carried out in any other State or in any other Territory of the Commonwealth, any award which is binding on such employer and employee in respect of the part of such employment carried out by such employee in Queensland shall be equally binding on them in respect of the part of such employment carried out by such employee in such other State or Territory.

For the purposes of this section the term "award" includes an industrial agreement.

31. On whom award is to be binding. Qd. s. 19. An award shall be binding on—

(a) all parties to the industrial cause who appear or are represented before the Commission; and

(b) all parties who have been summoned to appear before the Commission as parties to the cause, whether they have appeared or not, unless the Commission is of opinion that they were improperly summoned before it as parties; and

(c) all industrial unions connected with the calling or callings to which the award applies; and

(d) all members of industrial unions bound by the award; and

(e) all employers and employees in the locality to which the award applies in the calling or callings to which it applies; and

(f) all persons who, whether as employers or employees, are engaged in such calling or callings in that locality at any time while the award remains in force.

As to parties to proceedings, see First Schedule, clause 2 (a), (b), (i), post.


As to how far associate members of an industrial union, not possessing the full privileges of members, are bound by an award, see Re Amalgamated Engineering Union (1931), 30 C.A.R. 729.
Where a member of an industrial union ceases to be a member he ceases to be bound as such, but he is not thereby freed from obligations which have accrued during membership. H. V. McKay Pty. Ltd. v. Court of Arbitration of Western Australia (1929), 28 C.A.R. 333, at p. 338. An employee or employer who becomes a member of an industrial union after the making of an award binding such union may be bound by the award. See Re Amalgamated Engineering Union (1931), 30 C.A.R. 724.

With respect to work done partly within and partly outside a locality to which an award applies, see Walker v. Peel Estate Producers' Co-operative Co. Ltd. (1931), 34 W.A.L.R. 10.

As to application of this section in respect of a memorandum under s. 40 (2), see Monard v. H. M. Leggo & Co. Ltd. (1923), 33 C.L.R. 155.

As to the power of parties to vacate an award as between themselves and the power of the Commission to confirm such an arrangement, see Re Federated Engine-drivers and Firemen's Assoc. (1920), 14 C.A.R. 613.

32. Commission may rescind or vary any of its acts. Qd. s. 20. (1) Subject to this Act, the Commission may rescind or vary any industrial agreement or decision, recommendation, appointment, reference or other act made or done by it, and may reopen any reference or proceeding.

But no decision shall be varied or reopened except on the application of the Crown or of a party thereto, or of a person or industrial union bound thereby, or affected or aggrieved by the decision or claiming to be so affected or aggrieved.

(2) Where any recommendation of the Commission has been acted on and the Commission afterwards rescinds or varies the same it shall be in the discretion of the Governor in Council either to cancel any action taken by the Governor in Council in pursuance of such recommendation or to vary it to accord with the rescission or variation of the Commission.

(3) Failure to give notice to any person of all or any of the proceedings leading up to any award binding upon him shall not invalidate or be deemed to have invalidated any award, but such person, if he considers himself prejudiced by such award, may apply to the Commission to vary the same, and the Commission may vary the same accordingly in such manner and to such extent as it thinks proper, and may give retrospective operation to any such variation of such award.

See also s. 13 (7).

Applications under subsection (1) should be made to the member of the Commission who gave the decision sought to be rescinded or varied, Re Sugar Mill and Sugar Field Workers, [1916] Q.W.N. 34.

The period specified in an award for which it is to remain in operation may be varied under this section, Australian Commonwealth Shipping Board v. Federated Seamen's Union of Australasia (1925), 36 C.L.R. 442. As to power to terminate an award, see ibid.

A memorandum under s. 40 may be varied. See R. v. Commonwealth Court of Conciliation and Arbitration, Ex parte North Melbourne Electric Tramway & Lighting Co. Ltd. (1920), 29 C.L.R. 106.

As to inherent power of the Court to vary or cancel its own orders, see Timber Merchants and Sawmillers Assoc. v. Australian Timber Workers Union (1928), 26 C.A.R. 400, at p. 417; Australian Tramway Employees Assoc. v. Melbourne, Brunswick & Coburg Tramways Trust (1930), 28 C.A.R. 724.

33. Reference to Full Bench of Commission. Cf. Qd. s. 21. (1) A Commissioner may, if he thinks fit, at any stage and upon such terms as he thinks proper, refer the matter of any proceeding before him to a Full Bench of the Commission.
Where in the opinion of a Commissioner the decision in the matter of any proceedings before him relating to any award will affect or will be likely to affect any award other than an award to which the matter of such proceedings relates, then the Commissioner shall refer the matter of such proceedings to a Full Bench of the Commission, and may do so at any stage.

(2) The Full Bench shall thereupon hear and determine the said proceeding and may make such order, award or determination and give such decision or direction therein as it shall think fit.

(3) With a view to the proper determination of such proceeding the Full Bench may at any time refer back the whole or any part thereof or any question thereunder to a Commissioner for investigation and report or otherwise as it shall in its absolute discretion determine.

(4) A decision of the Full Bench shall only be rescinded, varied or reopened by the Full Bench.

(5) The Commissioner by whom a reference is made under this section shall not be a member of the Full Bench which hears and determines the matter of such reference.

As amended by Act of 1964, No. 67, s. 6.

For what is an “industrial matter,” see s. 5.

The jurisdiction of the Commission in industrial causes is exclusive, s. 28.

As to whether the full bench has power to remit the case to the member of the Commission who has stated it for the purpose of taking further evidence, see R. v. Industrial Court, Ex parte Central Mill Co. Ltd., [1917] St. R. Qd. 88; [1917] Q.W.N. 19; 10 Q.J.P.R. 143. As to subsection (1), see also Federated Engine-drivers and Firemen’s Assoc. v. Broken Hill Pty. Co. Ltd. (1911), 12 C.L.R. 398; Australian Commonwealth Shipping Board v. Federated Seamen’s Union of Australasia (1925), 36 C.L.R. 442.

34. Appeal from decision of Commission. (1) An appeal shall lie to the Court from every decision of the Commission or of the registrar at the instance of the Crown or of any person aggrieved thereby on the ground that such decision is erroneous in point of law or in excess of jurisdiction but upon no other ground.

(2) Upon the hearing of such appeal the Court may make such order as may be just and in particular may—

(a) remit the subject matter of the appeal to the Commission or the registrar for further hearing and determination according to law;

(b) quash, discharge, modify or set aside the decision appealed from;

(c) make such order as to costs as it shall think fit.

35. Case for opinion of Court. Qd. s. 21. (1) The Full Bench of the Commission or a Commissioner may, if it or he thinks fit, at any stage and upon such terms as it or he thinks proper, state a case in writing for the opinion of the Court upon any question of law arising in such proceeding.

(2) The Court shall hear and determine the question or matter, and remit the case with its opinion thereon to the Commission, and may make such order as to costs as it thinks fit. The Commission shall give effect to such opinion.
36. Industrial dispute or situation to be heard and determined promptly by Commission or industrial magistrate. Qd. s. 21A. (1) Subject to this Act, if it appears to a Commissioner that an industrial dispute or an industrial situation which is likely to give rise to an industrial dispute has occurred he shall, whether he has been notified under this section or not, immediately ascertain the parties to the industrial dispute or situation and the matters which form the subject of that dispute or situation and shall take such steps as he thinks fit for the prompt prevention or settlement of that dispute or situation by conciliation or, if in his opinion conciliation is unlikely to succeed or has failed, by arbitration. Without prejudice to the generality of the foregoing such Commissioner may if he thinks fit—

(a) remit the matter of such dispute or situation to an industrial magistrate for hearing and determination or for the exercise of such of the powers and jurisdiction of an industrial magistrate under this Act for the prompt prevention or settlement of such dispute or situation as such Commissioner shall think fit; and

(b) may exercise the powers of the Commission under section one hundred and two of this Act without any application as mentioned therein and without any summons for directions and shall have full power to make an order in the nature of an interim injunction ex parte.

(2) If an industrial dispute or an industrial situation which is likely to give rise to an industrial dispute occurs between—

(a) any industrial union of employers or any employer of the one part; and

(b) any industrial union of employees or any employees of the other part,

every party to such dispute or situation shall forthwith notify a Commissioner or the registrar of such dispute or situation or, if the industrial dispute or situation has occurred outside the area of the City of Brisbane shall forthwith notify the nearest industrial magistrate thereof.

Such notice may be given by letter or telegram and shall set forth the parties to the dispute or situation, the place where it occurred, and its subject matter.

(3) If the Minister is aware of the existence of an industrial dispute or of an industrial situation which is likely to give rise to an industrial dispute he may notify a Commissioner or the registrar accordingly.

(4) If in the opinion of a Commissioner, conciliation is unlikely to succeed, or has failed, whether he shall have entered upon the settlement by conciliation of the matter of a dispute or situation or not, such Commissioner may, in his complete discretion, make all such orders and give all such directions of an interlucitory character, as he may consider necessary or expedient with a view to the prompt settlement by arbitration of the matter of the dispute or situation and may fix a date for the hearing thereof.

(5) Upon being notified of a dispute or situation as aforesaid an industrial magistrate shall—

(a) forthwith communicate to the registrar the contents of such notice and if he thinks fit convene a compulsory conference pursuant to section thirty-nine of this Act;
(b) if the matter of the industrial dispute or situation so notified is remitted to him by the Commission or if the parties thereto so agree, forthwith hear and determine it or exercise such other powers and jurisdiction for the prompt prevention or settlement of such dispute or situation, as the case may require:

Provided that such magistrate may, and shall, if directed by the Commission so to do, at any time during the proceedings refer the matter to the Commission.

(6) For the purposes of the hearing and determination of any such matter—

(i) by the Commission, the Commission may name a party to the dispute or situation as having the carriage of the proceedings; or

(ii) by an industrial magistrate, such magistrate may name a party to the dispute or situation as having the carriage of the proceedings.

(7) The provisions of this section shall be read and construed so as not to limit the operation and effect of any provision of an award conferring or imposing any power or duty upon an industrial magistrate.

37. Effect of decision of Commission, Commissioner or industrial magistrate. Qd. s. 21 (2). Except as provided by this Act, every decision of the Commission or a Commissioner or industrial magistrate shall be final and conclusive and shall not be impeachable for informality or want of form.

There is no appeal as of right from the Industrial Court of Queensland to the High Court of Australia. *Semble* special leave to appeal may be granted. See *Toowoomba Foundry Pty. Ltd. v. Metcalfe*, [1947] Q.W.N. 32.

38. Commissioner or industrial magistrate to act whenever his mediation desirable. Qd. s. 22. A Commissioner or industrial magistrate may act as a mediator in any industrial cause, whether or not it is within the jurisdiction of the Commission or of an industrial magistrate, in all cases in which it appears to him that his mediation is desirable in the public interest.

For what constitutes an “industrial cause,” see s. 5.

39. Commissioner or industrial magistrate may convene compulsory conference. Qd. s. 23. (1) A Commissioner or outside the area of the City of Brisbane an industrial magistrate may, whenever in his opinion it is desirable for the purpose of preventing or settling an industrial dispute, summon any person to attend, at a time and place specified in the summons at a conference presided over by himself.

(2) Any person may be so summoned, notwithstanding that he is not connected with the dispute, if such Commissioner or industrial magistrate thinks that such person's presence at the conference is likely to conduce to the prevention or settlement of the dispute.

(3) Any person so summoned shall attend the conference and continue his attendance thereat as directed by such Commissioner or industrial magistrate, and in default shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.
(4) The conference may be held partly or wholly in public or in private, at the discretion of such Commissioner or industrial magistrate.

(5) Any person so summoned who attends pursuant to the summons and continues his attendance as directed by such Commissioner or industrial magistrate, shall be entitled to be paid by the Crown such (if any) amount as such Commissioner or industrial magistrate certifies to be a reasonable recompense for his expenses and loss of time.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

For what constitutes an "industrial dispute," see s. 5.
As to summonses under this section, see Rules of Court, Order 4, rule 2, p. 567, post.

"Person" in this section does not include a corporation. See per Higgins, J., in R. v. Hibble (1921), 29 C.L.R. 290, at p. 301.

The Industrial Commission may call a compulsory conference between employers and employees governed by a Commonwealth award where a dispute has arisen and has not been brought before a Commonwealth industrial authority, but not where such dispute has been dealt with by such an authority, Re Waterside Workers' Federation, [1920] Qd. Indus. Gaz, 1060.

As to admissibility in evidence of proceedings at a conference, see Re Resch's Ltd., [1907] N.S.W.A.R. 100 (admissible to explain award); Re Drake, [1903] N.S.W.A.R. 299 (not otherwise admissible).

40. (1) Conciliation. Qd. s. 24. In the course of the hearing, inquiry, or investigation (including any compulsory conference summoned by a Commissioner or an industrial magistrate as hereinbefore provided) of any industrial cause, the Commissioner or industrial magistrate shall make all such suggestions and do all such things as appear to him to be right and proper for dealing with the cause or bringing about the settlement of the cause by amicable agreement.

(2) Agreement to have effect of award. If an agreement is arrived at, a memorandum of its terms shall be made in writing and certified by a Commissioner or industrial magistrate, and such memorandum shall be filed in the office of the registrar, and, unless otherwise ordered and subject as may be directed by the Commission, shall as between the parties thereto have the same effect as and be deemed to be an award of the Commission.

For the effect of an award, see ss. 29–31.

It is the duty of the Commission not to make an award unless an agreement cannot be procured, Federated Gas Employees' Union v. Metropolitan Gas Co. (1913), 7 C.A.R. 58, at p. 63. With respect to a similar provision in the Commonwealth Conciliation and Arbitration Act 1904, Higgins, J., said: "I conceive it to be my duty, under s. 24 of the Act, to watch a case closely throughout the trial with an eye to the reconciliation of the parties, and to a voluntary agreement. The scheme of the Act seems to be conciliation as the first object, and arbitration only when conciliation fails", Australian Tramway Employees' Assoc. v. Prahran and Malvern Tramways Trust (1912), 6 C.A.R. 130.

An agreement incorporating some of its terms only by reference to another document cannot be certified and filed, Radio Telegraphists Institute v. Commonwealth (1918), 12 C.A.R. 488.

A member of the Commission has no discretion with respect to giving his certificate under subsection (2), but may in such certificate give directions, short of depriving the agreement of its operation as an award, as to the effect of the agreement, Australasian Institute of Marine Engineers v. Commonwealth Steamship Owners' Assoc. (1909), 3 C.A.R. 91; Federated Engine Drivers' and Firemen's Assoc. v. Pastoral Finance Assoc. Ltd. (1909), 3 C.A.R. 106.

An agreement cannot be enforced as an award unless it is filed, Federated Glass Founders' Assoc. v. Melbourne Glass Bottle Works Pty. Ltd. (1913), 7 C.A.R. 43.
A memorandum under this section to which industrial unions of employers and employees are parties applies to give a member of the employees' union a right of action under it. See *Monard v. H. M. Leggo & Co. Ltd.* (1923), 33 C.L.R. 155.


As to the effect of the provision that the memorandum shall have the same effect as an award, see also *Carter v. Roach and Milton Pty. Ltd.* (1921), 29 C.L.R. 515.

In construing an agreement under this section the intention of the parties as expressed by the agreement must be ascertained and the negotiations leading up to the award cannot be considered, *Australian Tramway Employees' Assoc. v. Prahran and Malvern Tramways Trust* (1917), 11 C.A.R. 936. The actual intention of the parties cannot be given effect to where not expressed in the agreement, *Australian Tramway Employees' Assoc. v. Kalgoorlie Electric Tramways Ltd.* (1918), 12 C.A.R. 366.

### 41. (1) Appointment of registrar. Qd. s. 25.

The Governor in Council may appoint an industrial registrar and one or more assistant industrial registrars, who shall have the prescribed powers and duties in relation to both the Court and the Commission.

(2) **Deputy registrar.** The Governor in Council may appoint any person to act as a deputy for the registrar while such registrar is absent from his duties for any reason; and every such deputy shall while so acting have the same jurisdiction and powers and perform the same duties as if he were the registrar.

(3) **Certifying barrister.** T.U. s. 6. The Governor in Council may from time to time appoint a barrister of the Supreme Court to be the certifying barrister under this Act.

As to the registrar, his powers and functions, see further the First Schedule, p. 527, post, and Rules of Court, p. 559, post.

### 42. Industrial magistrates. Qd. s. 26.

(1) Every stipendiary magistrate shall by virtue of his appointment to that office and without any further or other appointment whatsoever hold and be deemed to hold office as an industrial magistrate while he continues to be a stipendiary magistrate.

Every person appointed to act temporarily in the office of a stipendiary magistrate shall, by virtue of that appointment and without any further or other appointment whatsoever, hold and be deemed to hold office as an industrial magistrate while he continues to act as a stipendiary magistrate.

(2) The Governor in Council may from time to time appoint any clerk of petty sessions, or any person appointed to act temporarily in the office of a clerk of petty sessions, to be, or to hold office temporarily as, an industrial magistrate.

(3) Every industrial magistrate and acting industrial magistrate shall, with respect to all of the powers and authorities conferred on an industrial magistrate by this Act or by any other Act, have and may exercise jurisdiction throughout the State of Queensland.
He shall have power to do alone and shall do alone any act required for any purpose of or connected with the exercise by him of his jurisdiction as an industrial magistrate.

The court constituted by him for the purpose of hearing and determining judicially, according to law, any matter shall be a court of record.


Jurisdiction is conferred on industrial magistrates by ss. 36, 38, 39, 97, 116, and Rules of Court, Order 4, rules 4 et seq., p. 568, post.

For right of appeal from decisions of industrial magistrates, see s. 27.

Industrial magistrates have jurisdiction to decide claims for compensation and proceedings for offences and sums due under the Workers' Compensation Acts, 1916 to 1965, p. 757, post. See ibid., ss. 13 (1), 19, 19c and the Schedule clauses 11, 19.

43. Powers and procedure of the Court. First Schedule. Qd. s. 27.

(1) The provisions set forth in the First Schedule to this Act shall be applicable in all matters with respect to which the Court and the Commission have jurisdiction, whether original or by way of appeal, and shall be observed.

(2) The Governor in Council may from time to time, by Order in Council, amend such Schedule by revoking, amending, altering or otherwise modifying any of the provisions thereof, or by adding to the provisions thereof and such Schedule as so amended shall thereupon become for the time being the First Schedule to this Act and, shall have effect accordingly.

PART IV—INDUSTRIAL UNIONS

44. Registration of industrial union of employees. Qd. s. 28 (1) (2).

(1) The registrar may, on application made as prescribed, register as an industrial union of employees under this Act any trade union of employees.

(2) Such application shall be in the form prescribed, and shall be signed by the secretary and the president or chairman of the union.

Notice of such application shall be published as prescribed.

(3) Particulars to be furnished on application for registration. Qd. s. 29. Such application shall be accompanied by—

(a) a list of the members of the union;

(b) a list of the following officers of the union, namely—the president or chairman, the secretary, the members of the committee of management or executive committee, the trustees and all paid officers, with their official designations;

(c) two copies of the rules of the union and the prescribed fee;

(d) a copy of a resolution passed in accordance with the rules by a majority of the members present at a general meeting of the union, or by other competent authority in the union, in favour of registration of the union under this Act;

(e) a list of callings comprised in the membership or objects of the union;

(f) the localities or districts in which the members of the union exercise their callings.
(4) T.U. s. 7 (6). The registrar shall submit such rules for the approval of the certifying barrister, who, upon being satisfied that such rules are in conformity with this Act, and that the purposes of the union are lawful, shall issue a certificate to that effect.

For the procedure to be followed in registering an industrial union of employees, see Regulations, p. 537, post.

Rules of the Trades and Labour Council and amendment thereof must be filed with the registrar and are open to inspection by members of affiliated unions, Trades and Labour Hall Management Acts, 1934 to 1957, s. 6, title BUILDINGS, Vol. 3, p. 141.

As to the effect of registration on the rules, see United Grocers, etc., Employees' Union v. Linaker (1916), 22 C.L.R. 176.

45. Registration of industrial union of employers. Qd. s. 30. (1) The registrar may, on application made as prescribed, register as an industrial union of employers under this Act any person or association of persons who or which has in the aggregate throughout the six months next preceding the date of the application for registration employed on an average, taken per month, not less than fifty employees.

Notice of such application shall be published as prescribed.

(2) Particulars to be furnished on application by employers. Qd. s. 31; T.U. s. 7 (2) (6). Such application shall be accompanied by—

(a) the name of the employer or the names of the employers constituting the association, and the place or places in which such employer carries on or such employers carry on business;

(b) a list of the following officers of the association, namely—the president or chairman, the secretary, the members of the committee of management or executive committee, the trustees and all paid officers, with their official designations;

(c) two copies of the rules of the association and the prescribed fee;

(d) if the association consists of more than one person, a copy of a resolution passed in accordance with the rules by a majority of the employers constituting the association, or by other competent authority in the association in favour of registration of the association under this Act;

(e) a list of the callings in which employees are employed by the person or persons constituting the association;

(f) the manner of control of the property of the association as such, and the investment of funds of the association as distinguished from the property and funds respectively of the constituent member or members of the association.

(3) The registrar shall submit such rules for the approval of the certifying barrister, who, upon being satisfied that such rules are in conformity with this Act, and that the purposes of the union are lawful, shall issue a certificate to that effect.

It is a condition precedent to the registration that the industrial union should be in existence, Re National Union of Ship Stewards, [1925] Ch. 20.

As to where one of the stated purposes is illegal, see Ex parte Brennan, 15 S.R.(N.S.W.) 173.
46. Determination of application. Qd. s. 28 (3)-(9); T.U. ss. 7 (4), 8 (1). (1) Upon an application, the registrar may require such evidence as to him seems fit, either oral or on affidavit—

(a) of the authority of the person signing the form of application;
(b) that the persons on whose behalf the application is made should not in the public interest or for other good reason join an industrial union which has already been registered;
(c) that the rules of the applicant association or union and their administration provide reasonable facilities for the admission of new members, and do not impose unreasonable conditions upon the continuance of their membership, and are not in any other way tyrannical or oppressive;
(d) that the registration of the applicants will not unjustly affect any other industrial union;
(e) in the case of an application to register a trade union—
(i) that such rules contain provisions in respect of the several matters mentioned in the Second Schedule to this Act;
(ii) if it be a union of employees, that the application is bona fide in the interests of employees, and not in the interests of an employer or employers;
(iii) that the principal objects of the applicants are statutory objects.

(2) Within the prescribed time and in the prescribed manner any industrial union or employer may, by notice to the registrar, oppose such application.

(3) The registrar shall fix a day for considering any objection on any of the above grounds to the granting of the application, and shall notify the same as prescribed.

(4) No branch of a trade union shall be separately registered as an industrial union of employees unless it is a bona fide branch of sufficient importance to be so registered.

(5) No alteration of any rule of an industrial union shall be valid until registered.

Every application for such alteration shall be accompanied by the prescribed fee.

It shall be the duty of the registrar, before registering any alteration to submit it to the certifying barrister for his certificate as aforesaid and to satisfy himself that the alteration is not in conflict with any order or award.

(6) Any decision of the registrar under this section with respect to an objection taken as aforesaid, or on registration or refusal of registration, and every certificate or refusal to certify by a certifying barrister shall be subject to appeal to the Full Industrial Court.

(7) Any industrial association consisting of employees employed by the Government shall be qualified for registration as an industrial union under this Act, provided it would be so qualified if its members were not employed by the Government.
(8) **Qd. s. 28 (1).** On such registration the industrial association or trade union shall be an industrial union until such registration is duly cancelled.

With subsection (1) (c), cf. s. 73 (1) (c), and see notes thereto.

Further provision with respect to Government employees is made by ss. 95, 96.

Unions of employees other than craft unions may be registered, *Re Milling, Baking, etc., Union of Employees.* [1917] Qd. Indus. Gaz. 191.

As to re-registration of a union a prior registration of which has been cancelled, see *Metropolitan Coal Co. v. Australian Coal and Shale Employees' Federation* (1917), 24 C.L.R. 85.

The Registrar may inquire whether an applicant body is one entitled to be registered, *R. v. Deputy Industrial Registrar of Commonwealth Court of Conciliation and Arbitration* (1912), 15 C.L.R. 576.


As to when a rule is tyrannical and oppressive, see *Morgan v. Australian Hairdressers, etc., Employees Federation* (1932), 31 C.A.R. 401. As to the amount of membership fees which may be imposed by union rules, see *Queensland Plasterers' Union v. Stuart Bros. Ltd.* [1937] Q.W.N. 9; 32 Q.J.P. 28; *Re Marine Cooks, Bakers and Butchers Assoc.* (1928), 27 C.A.R. 43. See also the notes to s. 73.

As to attempted alteration of rules after lodging of the application for registration and prior to registration, see *R. v. Commonwealth Court of Conciliation and Arbitration and Australian Tramways Employees' Assoc.* (1914), 19 C.L.R. 43.

As to the fact that an industrial union has under its rules an illegal object, see *Ex parte Brennan* (1915), 15 S.R.(N.S.W.) 173.

As to the right of a person to be admitted to membership of a union where the right to award wages is dependent upon such membership, see *Ex parte Hanley.* [1922] Q.W.N. 6; 16 Q.J.P.R. 49. With respect to the right of a member of an industrial union to resist illegal expulsion, see *Edgar v. Meade* (1916), 23 C.L.R. 29.

The rules of a trade union will not be construed to involve a breach of the law where effect can be given to them without doing so. A power of the governing body to order a strike was therefore held to apply only to strikes not involving breach of contracts, *Amalgamated Society of Engineers v. Smith* (1913), 16 C.L.R. 537.


Rules cannot provide for constitution of a sub-branch of a union, *Australian Transport Workers' Union v. Stewart* (1916), 10 Q.J.P. 150 (Mag. Cas.). The power to make levies and impose fines on members cannot be delegated to a sub-branch by the rules, ibid.

As to the powers of a committee of management, see *Craddock v. Davidson,* [1929] St. R. Qd. 328.

As to admissibility in evidence of the minutes of a meeting of a management committee, see *Atkinson v. Lamont,* [1938] St. R. Qd. 33.

As to the circumstances in which members of a committee of management will render themselves liable for damages at the suit of a member in respect of a wrongful act done in performance of their official duties, see *Atkinson v. Lamont,* supra.
47. (1) **Persons entitled to membership of union. N.S.W. s. 115.** All persons who are, by the nature of their occupation or employment, of the callings in respect of which an industrial union is registered, have the appropriate qualifications, and who are not of general bad character, shall be entitled to be admitted to membership of the union, and to remain members thereof and enjoy all advantages of membership so long as they shall comply with the rules of the union.

(2) Any question or dispute as to the qualifications or character of any applicant or the reasonableness of any admission fee, subscription, fine or levy or other requirements of the rules of any industrial union, shall be determined by the Court, which shall also have power to direct that the rules of an industrial union shall be altered or annulled in any particular in order to bring them into conformity with what it declares to be reasonable in the circumstances, and upon any such direction being given the rules affected shall be deemed to have been altered or annulled accordingly.

(3) Any industrial union which—
   (a) fails to admit to its membership a person, who is entitled to be admitted to membership of that union pursuant to the provisions of subsection (1) of this section, within three months of the date of that person's application made in that behalf or, when a question or dispute within the application of subsection (2) of this section has, within that period, been referred to the Court for its determination, within one month of the date of the Court's determination thereon; or
   (b) fails to provide a person who—
      (i) is entitled to be admitted to membership of that union, or to remain a member thereof, pursuant to the provisions of subsection (1) of this section; and
      (ii) has complied with the rules of that union which relate to obtaining membership thereof or to a renewal of such membership,

shall be guilty of an offence which shall be deemed to be a continuing offence, and shall be liable to a penalty of not less than one hundred dollars nor more than five hundred dollars and, in addition, shall be liable to a penalty not exceeding ten dollars for each day during which such failure constituting the offence continues.

In this subsection the term "union ticket" means a receipt, document or writing acknowledging that the person named therein is a member, or has renewed his membership of the industrial union or that he has complied with the rules of the industrial union relating to the obtaining of membership thereof or to the renewal of such membership.

As amended by Act of 1963, No. 43, s. 2.
Decimal currency references substituted pursuant to section 7 of Decimal Currency Act of 1965.

48. **Resignation from membership of an industrial union. C'with. s. 145.** A member may resign his membership of any industrial union—
   (a) if he accepts employment in an industry other than that represented by the industrial union; or
   (b) on giving three months' notice and the payment of all dues to the date of his resignation.
49. Disallowance of rules. C'wlth. s. 140. (1) The Court may, upon its own motion or upon application made under this section, disallow any rule of an industrial union which, in the opinion of the Court—
   (a) is contrary to law, or to an order or award;
   (b) is tyrannical or oppressive either in its operation or as to the manner in which it was made or adopted;
   (c) prevents or hinders members of the industrial union from observing the law or the provisions of an order or award; or
   (d) imposes unreasonable conditions upon the membership of any member or upon any applicant for membership,
   and any rule so disallowed shall be void.

(2) The Chief Industrial Inspector or any member of an industrial union may apply to the Court for the disallowance of any rule of the industrial union on any of the grounds specified in subsection one of this section.

(3) The Court may, in its discretion, instead of disallowing the rule, direct the industrial union concerned to alter that rule, within a specified time, so as to bring it into conformity with the requirements of this Act and, if, at the expiration of that time, the rule has not been so altered, the Court may then disallow the rule and the rule shall be void.

50. Direction for performance of rules. C'wlth. s. 141. (1) The Court may, upon complaint by the Chief Industrial Inspector or any member of an industrial union and after giving any person against whom an order is sought an opportunity of being heard, make an order giving directions for the performance or observance of any of the rules of an industrial union by any person who is under an obligation to perform or observe those rules.

(2) Any person who fails to comply with such directions shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

51. Financial assistance. C'wlth. s. 141. (1) A member of an industrial union who proposes to take proceedings under sections forty-nine or fifty of this Act may apply to the Minister for the grant of financial assistance under this section.

(2) If it appears to the Minister that there are reasonable grounds for taking the proceedings and that the proceedings are proposed to be taken in good faith, the Minister may direct that financial assistance shall be given by the State to the member in respect of the cost of those proceedings and such amount or amounts as the registrar from time to time determines shall, subject to subsection three of this section, be paid to or on behalf of the member accordingly.

(3) Subject to appropriation by Parliament, all amounts determined by the registrar under subsection two of this section to be payable shall be paid out of Consolidated Revenue.

52. (1) No registration under same name. Qd. s. 32. No two associations or unions shall be registered as industrial unions under the same name.
(2) Registration of several unions for the same calling. Qd. s. 33.
Where two or more industrial associations or trade unions exist in any calling, any two or more of them may apply for joint registration as an industrial union.

(3) Where an industrial association or trade union applies for registration for a calling for which another industrial union is already registered, the registrar may accept the application and shall thereupon bracket together, with respect to the calling concerned, the registrations of the unions concerned. And the registrar may deal similarly with any subsequent application for registration by any other industrial association or trade union in the same calling:

Provided that the industrial union first registered shall be given fourteen days' notice by the registrar of his intention to bracket with the registration of such union the registration of another industrial union, and within the prescribed time and in the prescribed manner such first registered union may oppose such bracketing of the registrations.

Industrial unions which for the purpose of any calling have had their registrations bracketed shall have joint rights under this Act.

In any proceedings before the Court, or the Commission, or an industrial magistrate, such unions may appear jointly or separately.

"Calling" is defined by s. 5.

As to the duty of the Registrar on receiving two applications for registration in the same name, see R. v. Registrar of Friendly Societies (1872), 7 L.R.Q.B. 741.

53. Amalgamation of unions. Qd. s. 34. (1) Any two or more industrial unions consisting of employees engaged in the same calling or in related callings may apply to the registrar for registration as one union.

Any two or more industrial unions consisting of employers engaged in the same calling or industry or in related callings or industries may apply to the registrar for registration as one union.

(2) Every application under this section shall be deemed to be an application for registration under this Act, and the provisions hereinbefore contained with respect to such applications shall be observed.

(3) On the proposed new union being registered as an industrial union—

(a) the registration of every industrial union affected shall be deemed to have been cancelled;

(b) all the property, rights, duties and obligations whatever vested in or imposed on the industrial unions affected shall become vested in or imposed on the new union.

For what constitutes a calling, see s. 5.

54. Rules to provide for secret ballots. Qd. s. 31A. (1) The registrar shall not register—

(a) as an industrial union of employees under this Act any trade union; or

(b) as an industrial union of employers under this Act, any association of persons,

unless and until he is satisfied that the rules of the union or association relating to an election for an office therein or in a branch thereof (being
an office specified in paragraphs (a), (b) or (c) of the definition "Office" in section five of this Act) provide that the election shall be by secret ballot and 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 those rules are such as will ensure, as far as practicable, that no irregularity can occur in connection with the election.

(2) The rules of any industrial union, including the rules accompanying an application under this Part, relating to any election to which subsection one of this section applies may provide for compulsory voting.

(3) A reference in this section to the rules of an industrial union shall be read as including a reference to the rules of a branch of the industrial union.

55. Certificate of registration. Qd. s. 35. The registrar shall issue to each industrial union registered under this Act a certificate of registration in the prescribed form, which certificate shall, until proof of the suspension or cancellation of such registration, be conclusive evidence of the registration of the union therein mentioned, and that it has complied with the prescribed conditions to entitle it to be registered.

The certificate is not conclusive evidence that the organization in respect of which it was issued is one capable of registration as an industrial union, *Federated Engine-drivers and Firemen's Assoc. v. Broken Hill Pty. Co. Ltd.* (1911), 12 C.L.R. 398.

56. Register of members of union. Qd. s. 35A. (1) Every industrial union shall keep in one or more books a register of its members, and enter therein the following particulars:—

(a) the name and address of every member, such address being in the case of an individual person his residential address and, in the case of a body corporate, which is a member of an industrial union of employers, the address of its registered office;

(b) in the case of a member who at the date upon which he becomes a member or renews his membership is residing away from his permanent residence, both his permanent residential address and his residential address as at such date;

(c) the date at which each person was entered in the register as a member;

(d) the date at which any person ceased to be a member.

All particulars required by this subsection to be entered in the register in respect of a member shall be entered in the register opposite and relative to his name.
(2) Every industrial union having more than one hundred members shall, if its register of members is not in such form as to constitute an index, keep an index in alphabetical order of the names of its members, which index may be in loose leaf or card index form.

(3) Every industrial union shall within seven days after it becomes registered under this Act, or within such extended period as the Commission may allow, file in the office of the registrar a full and correct copy as at the date of such filing of the register of its members.

(4) (a) Every industrial union shall, not later than the thirty-first day of March, or such later date as the registrar (who is hereby thereunto authorized) may allow, in each and every year, file in the office of the registrar a true and correct copy of the register, as at the next preceding thirty-first day of December, of its members.

(b) Every industrial union shall, not later than thirty days after the expiration of any and every quarter, file in the office of the registrar a written return showing in respect of that quarter all additions, deletions, and other alterations whatsoever made in the register of its members.

In this paragraph “quarter” means a period of three months ending on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, or the thirty-first day of December, in each and every year.

(5) Every industrial union shall, at all times during which any person is a member of such union, keep a butt of any union ticket issued to him during the preceding twelve months and shall, upon the butt of any union ticket issued to a member, enter the residential address of such member and, if such member is residing away from his permanent residential address upon the date when such ticket is issued to him, his residential address at such date.

In this subsection “union ticket” includes any receipt, document or writing acknowledging that any person is a member or has renewed his membership of the union or that he has paid any dues or other moneys payable in respect of his membership or the renewal thereof, and “butt” includes a duplicate original or copy of the union ticket issued to the member.

(6) The Commission may at any time order all such rectifications of the register of members of any union as it deems necessary to ensure that such register is a full, true, and correct record of the persons who are members of such union at such time.

The union shall rectify the register and the registrar shall rectify the copy of the register filed with him as ordered by the Commission.

(7) The register of members and the index shall be open to inspection at the office of the union by the registrar or by any person authorized by him or by any member at all times during which such office is open for the transaction of business.

(8) The registrar may by notice in writing direct the union to deliver the register of members and the index to him or to any person named by him at such time and place as are specified in such notice and the union shall comply with such direction.

A direction under this subsection shall not be given by the registrar unless the register and index are required for the purpose of taking a ballot or unless by direction of the Court or of the Commission for any other purpose.
(9) Where the registrar is satisfied that the register of members of an industrial union, or the part or section of the register of members of an industrial union that relates to a branch thereof, is maintained in such a form and manner that it would, for the purposes of the conduct of a ballot required to be taken under or for the purposes of this Act, provide in a convenient form accurate particulars of the membership of the industrial union or of the branch, as the case may be, he may issue to the industrial union a certificate exempting it wholly or in relation to the branch from the application of the provisions of subsections three and four of this section.

(10) While a certificate under subsection nine of this section is in force—

(a) if the certificate exempts the industrial union wholly—the provisions specified in that subsection do not apply to the industrial union; or

(b) if the certificate exempts the industrial union in relation to a branch—those provisions apply as if the part or section of the register of members of the industrial union that relates to that branch did not form part of that register, and as if the members of that branch were not members of the industrial union.

(11) Where—

(a) it appears to the registrar that the register, or the relevant part or section of the register, of members of an industrial union to which a certificate under subsection nine of this section has been issued is no longer maintained in such form and manner as to justify the continuance in force of the certificate; or

(b) such an industrial union refuses or fails to give to the registrar information or facilities required by him for the purpose of deciding whether the exemption should be continued,

he may revoke the certificate and shall give notice in writing of the revocation to the industrial union.

(12) Where a certificate under subsection nine of this section in relation to an industrial union is revoked, that industrial union shall, within one month after the first day of the quarter (as defined in paragraph (b) of subsection four of this section) next following the revocation of the certificate, or within such longer time as the registrar allows, file with the registrar a true and correct copy as at that first day of its register of members or, where the certificate was in relation to a branch, of the part or section of the register of its members that relates to that branch.

(13) If default is made in complying with any provision of this section, or of any order made by the Commission or by the registrar under this section, or with the requirements of any direction given under this section the industrial union which is in default and the president and secretary of such union shall be severally guilty of an offence and liable to a penalty of not more than two hundred dollars.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.
57. Register of employees. Qd. s. 35B. (1) Every employer shall keep in one or more books a register of his employees, and enter therein the following particulars:—

(a) the name and residential address of every employee;
(b) in the case of an employee who at the date upon which he becomes an employee of such employer is residing away from his permanent residence, both his permanent residential address and his residential address as at such date;
(c) the calling in which each employee is engaged;
(d) the industrial union of employees, if any, of which each employee is a member;
(e) the date at which each employee became an employee of the employer;
(f) the date at which any employee ceased to be an employee of such employer.

All particulars required by this subsection to be entered in the register in respect of an employee shall be entered in the register opposite and relative to his name.

(2) Every employer having more than one hundred employees shall, if his register of employees is not in such form as to constitute an index, keep an index in alphabetical order of the names of his employees, which index may be in loose leaf or card index form.

(3) Every employer shall, within fourteen days after any change in the calling of an employee, enter in the register, opposite and relative to the name of such employee, particulars of such change in his calling and the date upon which such change took place.

(4) An employee shall—

(a) whenever requested by his employer so to do, inform his employer of his residential address, or of the union whereof he is a member, or of both those matters; and
(b) whenever he changes his residential address or union membership, inform his employer forthwith of his changed address or, as the case may be, of the union to which he has changed his membership.

(5) The register of employees and the index shall be open to inspection at the office of the employer by the registrar or by any person authorized by him at all times during which such office is open for the transaction of business.

(6) The registrar may by notice in writing direct the employer to deliver the register of employees and the index to him or to any person named by him at such time and place as are specified in such notice and the employer shall comply with such direction.

A direction under this subsection shall not be given by the registrar unless the register and index are required for the purpose of taking a ballot or unless by direction of the Court or of the Commission for any other purpose.

(7) If default is made in complying with any provision of this section, or of any order made by the Commission or by the registrar under this section, or with the requirements of any direction given under
this section the employer who is in default shall be guilty of an offence and being an individual person shall be liable to a penalty of not more than two hundred dollars or, being a body corporate, to a penalty of not more than two hundred dollars and, in addition, every person charged with the conduct of the business of such body corporate shall be deemed to be guilty of such offence and shall be severally liable to a penalty of not more than two hundred dollars.

(8) This section shall apply so as to require an employer to keep in respect of each place at which he carries on business a separate register of employees.

Decimal currency references substituted pursuant to section 7 of Decimal Currency Act of 1965.

58. Union to account annually to members. T.U. ss. 22, 24. (1) A trade union shall each year compile a just and true account as at the thirtieth day of June or the close of its financial year showing fully the assets and liabilities of the union as at that date, and the receipts and expenditure during the year preceding that date in respect of each of the several funds of the union. Such accounts shall be in such form and comprise such particulars as may be prescribed.

(2) T.U. s. 22. Such union shall cause such account to be audited and certified by such auditor being—

(a) in the case of a trade union having an annual income of two thousand dollars or more, an accountant registered under the provisions of “The Public Accountants Registration Acts, 1946 to 1954”; and

(b) in the case of a trade union having an annual income of less than two thousand dollars, a person who is in possession of a Certificate of Accountancy issued by the University of Queensland or a recognized Accountancy Institute or who has passed the examination prescribed by the Public Accountants’ Registration Board or the final examination of any Accountancy Institute recognized by the Board or the University aforesaid, as the union may in accordance with its rules appoint, or if no such appointment is made, or if the registrar is dissatisfied with the manner in which any audit is made, or with such account hereinbefore mentioned, then by such auditor or auditors as he may appoint, and the cost of such audit shall be borne by the union.

(3) T.U. s. 24. Every financial member of and depositor in the union shall be entitled to receive on application to the treasurer or secretary of the union a copy of such account without making any payment for the same.

(4) Such union shall lodge with the registrar before the first day of September each year or within two months of the close of the financial year of the union as the case may require a true copy of such account together with a copy of all alterations of rules and new rules made during the preceding year and a return of the officers of the union comprising such particulars as may be prescribed.

(5) If a trade union contravenes this section, such union and every officer of such union shall each be guilty of an offence and liable to a penalty not exceeding two hundred dollars for each contravention.
(6) Every person who wilfully makes or causes to be made any false entry in or any omission from any such account shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

Decimal currency references substituted pursuant to section 7 of Decimal Currency Act of 1965.

59. Secretary to account to trustees. T.U. s. 22. The secretary or other officer shall, if thereunto required, upon the said account being audited, forthwith hand over to the trustees the balance which on such audit appears to be due from him, and shall also, if required, hand over to such trustees all securities and effects, books, papers and property, of the union in his hands or custody.

If he fails to do so, the trustees may sue him before an industrial magistrate for the balance appearing to be due from him upon the account last rendered by him, and for all the moneys since received by him on account of the union, and for the securities and effects, books, papers and property, in his hands or custody, leaving him to set off in such action the sums, if any, which he may have since paid on account of the union; and in such action the trustees shall be entitled to recover their full costs of suit, to be taxed as between solicitor and client.

60. (1) Duties of officers. T.U. s. 23. An officer of a trade union shall from time to time furnish to the registrar such information with respect to the funds and accounts of the union as he may require, and shall from time to time comply with the requirements of the registrar in relation to the books and forms of account kept or to be kept, and the entries made or to be made therein, and the manner in which such entries are made or are to be made therein.

The registrar may at any time require any such officer to produce to him, or to an auditor or auditors appointed by him, any books of the union, and such officer shall comply with such requirement.

Any such officer who acts in contravention of this section shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

(2) Offences by officers. T.U. s. 25. Any officer, member or other person being or representing himself to be a member of a trade union, or the nominee, executor, administrator or assignee of a member thereof, or any other person whatsoever who by false representation or imposition obtains possession of any moneys, securities, books, papers or other effects of such union, or who having the same in his possession, wilfully withholds or fraudulently misapplies the same, or wilfully applies any part of the same to purposes other than those expressed or directed in the rules of such union, shall be guilty of an offence and liable to a penalty of not more than two hundred dollars, and an industrial magistrate, upon a complaint made by any person on behalf of such union, may order such officer, member or other person to deliver up all such money, securities, books, papers or other effects to the union, or to repay the amount of money applied improperly.

In default of such delivery of effects, or repayment of such amount of money, or payment of such penalty such industrial magistrate may order the person so convicted to be imprisoned, with or without hard labour, for any time not exceeding three months.

Decimal currency references substituted pursuant to section 7 of Decimal Currency Act of 1965.
Subsection (2)—The liability imposed by this subsection is a criminal liability, and therefore there must be fraud or criminal intent for it to arise *Trivett v. McDonald* (1919), 26 C.L.R. 156; *Madden v. Rhodes*, [1906] 1 K.B. 534; [1904-7] All E.R. Rep. 789.


As to summary proceedings against officers, see *R. v. Dodd* (1868), 18 L.T. 89 (forgery); *R. v. Stainer* (1870), L.R. 1 C.C.R. 230 (embezzlement); *R. v. Blackburn* (1868), 33 J.P. (Eng.) 55 (larceny). As to civil action, see *Knight v. Whitmore* (1885), 53 L.T. 233; *Madden v. Rhodes*, supra.

61. Registered office of trade union. T.U. s. 9. (1) Every trade union shall have a registered office to which all communications and notices may be addressed.

(2) If any trade union is in operation for seven days without having such an office, such union and every officer thereof shall each be guilty of an offence and liable to a penalty not exceeding ten dollars for every week during which it is so in operation.

(3) Notice of the situation of such registered office, and of any change therein, shall be given to the registrar and recorded by him; and until such notice is given the union shall not be deemed to have complied with this Act.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

62. Documents open to inspection. Qd. s. 37. (1) The list of members and officers and the rules of an industrial union filed in the office of the registrar shall be open to inspection by any person on payment of the prescribed fee.

(2) T.U. s. 8 (2). A copy of the rules shall be delivered by a trade union to every person on demand on payment of a sum not exceeding fifty cents.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.


63. Change of name. Qd. s. 38. An industrial union may, in the prescribed manner, and on compliance with the prescribed conditions, change its name, and the registrar shall thereupon record the change of name in the register and upon the certificate of registration.

As to “prescribed conditions,” see *R. v. Industrial Registrar of Commonwealth Court of Conciliation and Arbitration* (1918), 25 C.L.R. 9.

64. Change of callings. Qd. s. 39. (1) The registrar may from time to time on the application of an industrial union amend its registration in respect of the callings it represents.

(2) Any decision of the registrar under this section shall be subject to appeal to the Commission.

For the meaning of the word “calling” in this Act, see s. 5.

65. Objects other than statutory objects. T.U. s. 13. The fact that a combination has under its constitution objects or powers other than statutory objects shall not prevent the combination being a trade union for the purposes of this Act, and it shall have power to apply its funds for any lawful objects or purposes for the time being authorised under its constitution.

As to the legality of the objects of a trade union apart from this section, see *Amalgamated Society of Railway Servants v. Osborne*, [1910] A.C. 87.
66. Membership of minors. T.U. s. 17. A person under the age of twenty-one years may—
   (a) be a member of a trade union, unless provision is made in the rules thereof to the contrary; and
   (b) subject to the rules of the union, enjoy all the rights of a member except as herein provided; and
   (c) execute all instruments and give all acquittances necessary to be executed or given under the rules,
but shall not be a member of the committee of management, trustee, or treasurer of the union.

67. (1) Buildings for trade unions may be purchased or leased. T.U. s. 20. A trade union may purchase or take upon lease (in the official name of “The Trustees of the (naming the union)”) any land, and may sell, exchange, mortgage or let the same; and no purchaser, assignee, mortgagee or tenant shall be bound to inquire whether the trustees have authority for any sale, exchange, mortgage or letting; and the receipt of the trustees shall be a discharge for the money arising therefrom.
   (2) For the purpose of this section every branch of a trade union shall be considered a distinct union.
   (3) Property of trade unions vested in trustees. T.U. s. 21. All real and personal property whatsoever belonging to a trade union, including an industrial union registered under this Act, shall be vested in and be under the control of the trustees for the time being of the union (in such official name as aforesaid) for the use and benefit of the union and the members thereof.

   The real or personal property of any branch of such trade union shall be vested in and be under the control of the trustees of such branch (in the official name of “The Trustees of the (naming the branch) of the (naming the union)”), unless the rules of the union provide that it shall be vested in and be under the control of the trustees of the union, in which case it shall be vested in and be under the control of such last-mentioned trustees accordingly.

   (4) Upon the death or removal of any trustee the same shall vest in the continuing or succeeding trustees for the same estate and interest as the former trustees had therein, and subject to the same trusts, without any conveyance or assignment whatsoever.

   In all actions or proceedings, whether civil or criminal, before any court touching or concerning any such property, the same shall be stated to be the property of the trustees by such official name as aforesaid without any further description.

   (5) The Registrar of Titles or other person or authority charged with registering instruments of title to any land or other property shall, upon application made in that behalf, make in any deed or certificate of title or other instrument of title and in any register thereof all such entries or endorsements as are in his opinion necessary or desirable to give effect to this section.

Subsection (1):—The word “purchase” is here used in its popular and not in its technical meaning, Re Amos, Carrier v. Price, [1891] 3 Ch. 159; [1891-4] All E.R. Rep. 320. The right to acquire real property is statutory and not at common law, and land may not be acquired “as forming part of the substratum of the society itself,” Re Amos, Carrier v. Price, supra.
Subsection (3):—As to the right to hold personal property, see Taff Vale Railway Co. v. Amalgamated Society of Railway Servants, [1901] A.C. 426, at p. 441; Osborne v. Amalgamated Society of Railway Servants, [1909] I Ch. 163, at p. 191.


Where money was given to the president for union purposes, on his subsequently being removed it was held that the continuing trustees could sue, Dodds v. Innes (1891), 10 N.Z.L.R. 53.

68. Actions, etc., by or against trustees, etc. T.U. s. 29. (1) The trustees of a trade union are hereby empowered to bring or defend, or cause to be brought or defended, any action, prosecution or complaint in any court, touching or concerning any property, or any right or claim to property, of the union; and shall and may, in all cases concerning any property of the union or arising out of their ownership thereof, sue and be sued in any court of justice, in such official name as aforesaid without other description.

No such action, prosecution or complaint shall be discontinued or shall abate by the death or removal from office of such persons or any of them, but the same shall and may be proceeded in by their successor or successors as if such death, resignation or removal had not taken place; and such successors shall pay or receive the like costs as if the action, prosecution or complaint had been commenced in their names on behalf of the union.

Any summons or other process issued against any such trustee may be served by leaving the same at the registered office of the union.

(2) A trustee of a trade union shall not be liable to make good any deficiency which may arise or happen in the funds of such union, but shall be liable only for the moneys which are actually received by him on account of such union.

A contract made before registration of a union was held to be enforceable against the trustees after registration, McPherson v. Hilberg (1912), 14 W.A.L.R. 48.

For actions against trustees, see Curle v. Lester (1893), 9 T.L.R. 480 (action for salary); Cope v. Crossingham, [1909] 2 Ch. 148 (injunction against misapplication of funds); and see also Madden v. Rhodes, [1906] 1 K.B. 534; [1904-7] All E.R. Rep. 789 (wilfully withholding money without fraud).


As to liability of a trade union for acts of its branches, see Waterside Workers' Federation v. Burgess Bros. Ltd. (1916), 21 C.L.R. 129; Waterside Workers' Federation v. Burke (1916), 21 C.L.R. 140.

69. (1) **Incorporation of union.** Qd. s. 41. An industrial union shall, upon and during registration, become and be for the purposes of this Act a body corporate by its registered name, having perpetual succession and a common seal.

(2) **Registered name.** There shall be inserted in the registered name of every industrial union the words “union of employees” or “union of employers” as the case may require, and also the locality in which the majority of its members reside or exercise their calling.


70. **Prohibition of actions of tort against trade unions.** T.U. s. 30. (1) An action against a trade union, including an industrial union registered under this Act, or against any members or officials thereof on behalf of themselves and all other members of the union in respect of any tortious act alleged to have been committed by or on behalf of the union, shall not be entertained by any court.

(2) Nothing in this section shall affect the liability of the trustees of such trade union to be sued in the events provided for in section sixty-eight of this Act, except in respect of any tortious act committed by or on behalf of the union in contemplation or in furtherance of an industrial dispute.


The immunity does not extend to individual members, *Bussy v. Amalgamated Soc. of Railway Servants*, supra.

71. **Trade union not criminal nor unlawful.** T.U. s. 31. The purposes of a trade union whether an industrial union registered under this Act or not shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful—

(a) so as to render any member of such trade union liable to a criminal prosecution for conspiracy or otherwise; or

(b) so as to render void or voidable any agreement or trust.

As to restraint of trade, see *Strick v. Swansea Tin-Plate Co.* (1887), 36 Ch. D. 558.

Criminal liability for conspiracy is created by Criminal Code, ss. 541 et seq., title CRIMINAL LAW, Vol. 3, p. 493.


72. (1) Restriction of civil remedies against individuals. T.U. s. 28.
An act done in pursuance of an agreement or combination by two or
more persons shall, if done in contemplation or furtherance of an
industrial dispute, not be actionable unless the act, if done without any
such agreement or combination, would be actionable.

(2) Removal of liability for interfering with another person's
business, etc. An act done by a person in contemplation or furtherance
of an industrial dispute shall not be actionable on the ground only that
it induces some other person to break a contract of employment or that
it is an interference with the trade, business or employment of some other
person, or with the right of some other person to dispose of his capital
or his labour as he wills.

Provision similar to subsection (1) is made with respect to criminal liability by

For the law apart from this section see Brisbane Shipwrights' Provident
Union v. Heggie (1906), 3 C.L.R. 886. This section alters the law of conspiracy
where there is a trade dispute, Conway v. Wade, [1908] 2 K.B. 844, at p. 849;
[1908-10] All E.R. Rep. 344; Vacher & Sons v. London Society of Compositors,

For what constitutes an "industrial dispute," see s. 5, ante, and Riley v. Organ,
[1921] St. R. Qd. 28; [1921] Q.W.N. 5.

Acts were held not to have been done "in contemplation or furtherance of" an
industrial dispute in Riley v. Organ, supra.

A union is not excluded from the protection of subsection (2) because some
of the things which it does are not among the authorized objects of trade unions
as defined by this Act, Gaskell v. Lancashire & Cheshire Miners' Federation (1912),
28 T.L.R. 518:

The existence of malice does not make the protection given by subsection (2)
void, Dallimore v. Williams (1914), 30 T.L.R. 432, but no protection is given
against an action for an injunction to restrain officers of the union from mis­
application of the funds, Royal London Mutual Insurance Soc. Ltd. v. Williamson
(1921), 37 T.L.R. 742.

73. Cancellation of registration of union. Qd. s. 40; T.U. s. 10 (1).
(1) If it appears to the Full Industrial Court, on the application of any
industrial union or person interested, or of the registrar—

(a) that for any reasons the registration of an industrial union
ought to be cancelled either wholly or as to one or more
of the callings it represents, or as to all or one or more of
the areas or establishments in which such callings are

(b) that an industrial union has been registered erroneously or
by mistake; or

(c) that the rules of an industrial union or their administration
do not provide reasonable facilities for the admission of
new members, or impose unreasonable conditions upon the
continuance of their membership, or are in any way tyrannical
or oppressive; or

(d) that the constitution of the industrial union has been altered
in such a manner that the principal objects of the union
are no longer statutory objects; or

(e) that the principal objects for which the union is actually

(f) that an industrial union has wilfully neglected to obey any
order of the Court or of the Commission; or
(g) that a majority in number of the members of the union, by ballot taken as prescribed, require such cancellation, the Court may order the registration of the union—

(i) to be suspended for such period or upon such conditions as the Court specifies in such order either wholly or as to one or more of the callings it represents, and as to all or one or more of such areas or establishments; or

(ii) to be cancelled either wholly or as to one or more of the callings it represents, and as to all or one or more of such areas or establishments,

and thereupon it shall be suspended or cancelled accordingly.

(2) Qd. s. 40 (3). Save where otherwise mentioned in this Act, such suspension or cancellation shall not relieve the industrial union or any member thereof from the obligation of any award or industrial agreement (whether made under the repealed Acts or this Act) or order of the Court or of the Commission, or from any penalty or liability incurred prior to such suspension or cancellation.

(3) T.U. s. 10 (3). Upon cancellation of the registration of an industrial union, such union shall cease to enjoy the status, privileges, powers, rights and immunities of an industrial union under this Act either wholly or as to such of the callings it represents, and as to all or one or more of such areas or establishments, as the Court shall order.

(4) During the suspension of the registration of an industrial union such union and the members and officials thereof shall be deprived of the following but no other privileges, powers, rights and immunities of an industrial union under this Act, namely—

(a) such union and the officials thereof shall have no standing or right of audience as applicants in or before the Court or the Commission or an industrial magistrate in any proceeding save an application for the removal of such suspension; and

(b) the provisions of awards or industrial agreements whereby preference in employment is to be accorded to the members of such industrial union shall be deemed to be suspended, either as to all such awards and industrial agreements or as to those in respect of such callings, or as to their operation in all or one or more of such areas or establishments, as the case may require.

Quære, whether an application can be made under this section for the purpose of enforcing a personal right, Ex parte Hanley, [1922] Q.W.N. 6; 16 Q.J.P.R. 49.

The parties to an award under which the industrial union receives benefits are “persons interested” (Acting Public Service Commissioner v. Australian Commonwealth Post and Telegraph Officers’ Assoc. (1917), 11 C.A.R. 960), as are also employers whose employees belonging to the industrial union have gone on strike, Metropolitan Coal Co. v. Australian Coal and Shale Employees’ Federation (1917), 24 C.I.R. 85. As to “person interested,” see also Re Australian Tramway Employees’ Assoc. (1912), 6 C.A.R. 49.

The Court is entitled to ascertain facts for the purpose of this section, Australian Commonwealth Shipping Board v. Federated Seamen’s Union of Australasia (1925), 36 C.I.R. 442.

Where any of the conditions in subsection (1) are found to exist the Court has no discretion to refuse cancellation, Re Australian Tramway Employees Assoc. (1912), 6 C.A.R. 49.

The power under subsection (1) (a) will not be exercised for the mere purpose of punishment, Re Australasian Coal and Shale Employees’ Federation (1917), 11 C.A.R. 984; Re Waterside Workers’ Federation (1917), 11 C.A.R. 600.
This Act contemplates the possibility of more than one union existing as to a calling, and the mere fact that a union's members in a particular calling are also represented by another union is not a ground for cancellation of registration, *Re Milling, Baking, etc., Union of Employees*, [1917] Qd. Indus. Gaz. 191. Cf. *Re Police Magistrates' and Wardens' Assoc.*, [1921] Qd. Indus. Gaz. 128.

As to when power to cancel under subsection (1) (a) will be exercised, see also *Re Waterside Workers' Federation* (1917), 11 C.A.R. 821.

As to "registered erroneously or by mistake," see *Re Australian Actors' Union* (1912), 6 C.A.R. 89; *Re Federated Masters and Engineers Assoc.* (1913), 7 C.A.R. 47.

Rules are not tyrannical or oppressive because they are coercive or quasi-coercive devices to enable a union to use any economic advantage that its members may have in furthering their interests and to bring the employees to united action, *Amalgamated Society of Engineers v. Australasian Institute of Marine Engineers* (1909), 3 C.A.R. 97. "Oppressive" implies undue pressure, *Re Australian Tramway Employees' Assoc.* (1912), 6 C.A.R. 49, at p. 55. See also the cases cited under s. 72.

**74. How union may be dissolved. T.U. s. 27.** (1) A trade union including an industrial union registered under this Act may be dissolved—

(a) upon the happening of any event declared by the rules to be the termination of the union; or

(b) by the consent of three-fourths of the members, testified by their signatures to the instrument of dissolution.

(2) The instrument of dissolution shall set forth—

(a) the liabilities and assets in detail;

(b) the number of members and the nature of their respective interests;

(c) the claims of creditors (if any) and the provision to be made for their payment;

(d) the intended appropriation or division of the funds and property.

Alterations in the instrument of dissolution may be made with the like consents as hereinbefore provided, testified in the same manner.

(3) **Statutory declaration.** A statutory declaration shall be made by one of the trustees or by three members and the secretary that this Act has been complied with, and shall be sent to the registrar with the instrument of dissolution.

Any person who makes a false or fraudulent declaration in the matter shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

(4) **Registry of instrument.** The instrument of dissolution and all alterations therein shall be registered and shall be binding upon all the members.

(5) **Notice of dissolution.** The registrar shall cause a notice of the dissolution to be advertised at the expense of the union in the Gazette or in the Queensland Government Industrial Gazette and in some newspaper generally circulating in the district where the principal office of the union is situated.

(6) **Effect of dissolution.** Unless within three months from the date of the Gazette or Queensland Government Industrial Gazette in which such advertisement appears a member or other person interested in or having any claim on the funds commences proceedings to set aside the dissolution, and such dissolution is set aside accordingly, the union shall be legally dissolved from the date of such advertisement, and the requisite consents to the instrument of dissolution shall be considered to have been duly obtained without proof of the signatures thereto.
Appeal. If any member of a dissolved union, or person claiming any other benefit from the funds thereof, is dissatisfied with the provisions made for satisfying his claim, such member or other person may apply to the Court and the Court may make such orders and grant such relief as shall seem just and equitable in the circumstances.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

PART V—DISPUTED ELECTIONS IN INDUSTRIAL UNIONS

75. Application of Part V. Qd. s. 41A. This Part does not apply to, or to any branch of, any industrial union which is an organisation under and within the meaning of the Conciliation and Arbitration Act 1904–1959 of the Commonwealth, or to any branch of an industrial union which is such an organisation.

Act referred to:

76. Applications for inquiries respecting elections. Qd. s. 41B. (1) Where a financial member of an industrial union, or a person who, within the preceding period of twelve months, has been a financial member of an industrial union, claims that there has been an irregularity in or in connection with an election for an office in the industrial union, or in a branch of the industrial union, he may lodge an application for an inquiry by the Commission into the matter.

(2) An application under this section shall—
(a) be in writing in accordance with the prescribed form;
(b) be lodged with the registrar before the completion of the election or within six months after the completion of the election;
(c) specify the election in respect of which the application is made and the irregularity which is claimed to have occurred, and state the facts relied on in support of the application; and
(d) be accompanied by a statutory declaration by the applicant declaring that the facts stated in the application are, to the best of the applicant’s knowledge and belief, true.

77. Action by registrar. Qd. s. 41C. (1) Where an application under section seventy-six of this Act is lodged with the registrar, he shall—
(a) if he is satisfied—
(i) that there are reasonable grounds for an inquiry into the question whether there has been an irregularity in or in connection with the election, which may have affected or may affect the result of the election; and
(ii) that the circumstances of the matter justify an inquiry by the Commission under this Part,
grant the application and refer the matter to the Commission; or
(b) if he is not so satisfied, refuse the application and inform the applicant accordingly.

(2) The registrar may exercise his powers under subsection one of this section upon the basis of the matters stated in the application, but he may nevertheless take into account any relevant information coming to his knowledge.

(3) At any time after the lodging with the registrar of an application for an inquiry in connection with an election, the Commission may authorise the registrar, by himself or by a person acting on his behalf, to—
(a) inspect any ballot-papers, envelopes, lists or other documents which have been used in connection with or are relevant to the election;

(b) for the purpose of any such inspection, enter with such assistance as he considers necessary, any premises used or occupied by the industrial union or a branch of the industrial union in which he believes any such ballot-papers, envelopes, lists or documents to be;

(c) require a person to deliver to him, in accordance with the requirement, any such ballot-papers, envelopes, lists or other documents in the possession or under the control of that person;

(d) take possession of any such ballot-papers, envelopes, lists or other documents;

(e) retain any ballot-papers, envelopes, lists or other documents delivered to him, or of which he has taken possession, until the completion of the proceedings arising out of the application or until such earlier time as the Commission orders.

(4) Before authorizing any action under subsection three of this section, the Commission shall, if of opinion that, having regard to all the circumstances, any person should be given an opportunity of objecting to the proposed action, give such an opportunity to that person.

(5) A person who—

(a) refuses or fails to comply with a requirement under this section; or

(b) obstructs or hinders the registrar or any other person in the exercise of his powers under this section,

shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

(6) An act or decision of the registrar under this section shall not be subject to appeal to the Commission.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

78. (1) Jurisdiction of Commission. Qd. s. 41D. Upon the reference of a matter to the Commission under section seventy-seven of this Act, the inquiry shall be deemed to have been instituted in the Commission.

(2) Directions as to hearing. Where an inquiry has been instituted, the Commission shall fix a time and place for conducting the inquiry, and may give such directions as it deems necessary to ensure that all persons who are or may be justly entitled to appear or be represented at the inquiry are notified of the time and place so fixed.

79. Interim orders. Qd. s. 41E. (1) At any time after an inquiry in connection with an election has been instituted, the Commission may, if it thinks fit, make one or more of the following orders:—

(a) an order that no further steps shall be taken in the conduct of the election or in carrying into effect the result of the election;

(b) an order that a person who has assumed an office, continued to act in an office, or claims to occupy an office, being an office to which the inquiry relates, shall not act in that office;
(c) an order that a person who holds, or who last held before the election, an office to which the inquiry relates may act or continue to act in that office;

(d) where it considers that an order under paragraph (c) of this subsection would not be practicable or would be prejudicial to the efficient conduct of the affairs of the industrial union or branch of an industrial union or would be inappropriate having regard to the nature of the inquiry, an order that a member of the industrial union or branch or another person specified in the order may act in an office to which the inquiry relates;

(e) an order incidental or supplementary to an order under this subsection; and

(f) an order varying or discharging an order under this subsection.

(2) Where the Commission orders that a person may act, or continue to act, in an office, that person shall, while the order remains in force, and notwithstanding anything contained in the rules of the industrial union or of a branch of the industrial union, be deemed, for all purposes, to hold the office.

(3) An order under this section shall continue in force, unless expressed to operate for a shorter period or unless sooner discharged, until the completion of proceedings in the Commission in connection with the election and of all matters ordered (otherwise than under this section) by the Commission in those proceedings.

80. Procedure at hearing. Qd. s. 41F. (1) The Commission shall allow to appear or be represented at an inquiry all persons who apply to the Commission for leave to appear or be represented, being persons who appear to the Commission to be justly entitled to be heard, and the Commission may order any other person so to appear or be represented:

Provided that no person shall be represented at an inquiry by counsel or solicitor save with the consent of all parties allowed or ordered by the Commission to appear or be represented thereat.

(2) The persons appearing or represented, or ordered to appear or be represented, at an inquiry shall be deemed to be parties to the proceedings.

(3) Section one hundred and twenty-four of this Act shall apply with respect to an inquiry.

(4) For the purposes of this Part—

(a) the procedure of the Commission is, subject to this Act and the Rules of Court and regulations, within the discretion of the Commission;

(b) the Commission is not bound to act in a formal manner and is not bound by any rules of evidence but may inform itself on any matter in such manner as it thinks just; and

(c) the Commission shall act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal forms.
81. Functions and powers of Commission. Qd. s. 41G. (1) At an inquiry the Commission shall inquire into and determine the question whether any irregularity has occurred in or in connection with the election, and such further questions concerning the conduct and results of the election as the Commission thinks necessary.

(2) In the course of conducting an inquiry the Commission may make such orders (including an order for the recounting of votes) as the Commission thinks necessary for the purposes of the inquiry.

(3) If the Commission finds that an irregularity has occurred, the Commission may, in its discretion, but subject to subsection four of this section, make one or more of the following orders:—

(a) an order declaring the election, or any steps taken in or in connection with the election, to be void;

(b) an order declaring a person purporting to have been elected not to have been elected, and declaring another person to have been elected;

(c) an order directing a new election to be held, or any step in or in connection with the election (including the submission of nominations) to be taken again, in accordance (subject to any order under paragraph (d) of this subsection) with the rules of the industrial union or branch or with those rules as varied or added to in such manner as the Commission thinks necessary to rectify procedural defects in those rules which appear to the Commission to exist;

(d) an order directing, notwithstanding anything contained in the rules of the industrial union or branch, the taking of such safeguards as the Commission thinks necessary against irregularities in or in connection with—

(i) any such new election;

(ii) any such step so ordered to be taken again; or

(iii) any uncompleted steps in the election,

and, for the purposes of any such order, an order appointing and authorising a person to act as a returning officer in conjunction with the returning officer (if any) acting under the rules of the industrial union or branch in connection with the election, and to exercise such powers as the Commission directs; and

(e) an order incidental or supplementary to any order under this section.

(4) The Commission shall not declare an election, or any step taken in or in connection with an election, to be void, or declare that a person was not elected, unless the Commission is of opinion that, having regard to the irregularity found, and any circumstances giving rise to a likelihood that similar irregularities may have occurred or may occur, the result of the election may have been affected, or may be affected by irregularities.

82. Enforcement of orders. Qd. s. 41H. (1) The Commission may make such orders for injunctions (including mandatory injunctions) as it thinks necessary for the effectual exercise of its powers and functions and the enforcement of its orders under this Part.
(2) Any person who refuses or fails to comply with an order of the Commission under this Part or hinders or obstructs the carrying out of any such order shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

83. Validation of certain acts, etc. Qd. s. 41j. (1) Where the Commission declares void the election of a person who has, since the election, purported to act in the office to which he purported to have been elected, all acts done by him while so purporting to act and which could validly had been done by him if he had been duly elected shall, subject to this section, be valid and effectual for all purposes.

(2) The Commission may, if it considers it desirable so to do, declare any such act to have been void, and thereupon that act shall, for all purposes, be deemed not to have been validly done.

(3) Where an election is held, or any step in or in connection with an election is taken, in pursuance of an order of the Commission, that election or step shall not be invalidated by reason only of any departure from the rules of the industrial union or branch involved in compliance with the order of the Commission.

84. Costs. Qd. s. 41k. (1) Where, upon an inquiry, the Commission finds that an irregularity has occurred, the Minister may, if he considers the circumstances to justify him in so doing, authorize payment by the State to the person who applied for the inquiry of the whole or a part of his costs and expenses (including expenses of witnesses).

(2) Where, upon an inquiry, the Commission does not find that any irregularity has occurred, but certifies that the person who applied for the inquiry acted reasonably in so applying, the Minister may authorize payment by the State to that person of the whole or a part of his costs and expenses (including expenses of witnesses).

(3) Where the Minister is satisfied that, having regard to the findings of the Commission upon an inquiry, it is not just that a person (not being the person who applied for the inquiry) should be required to bear, or to bear in full, any expenses (including expenses of witnesses) incurred by him in connection with the inquiry, the Minister may authorize payment by the State of the whole or a part of those expenses.

(4) Nothing in this section shall limit the power of the Commission to make an order as to the costs and expenses (including expenses of witnesses) of proceedings before the Commission in or in connection with an inquiry.

(5) Subject to appropriation by Parliament, all costs and expenses authorized to be paid by the Minister under this section shall be paid out of Consolidated Revenue.

85. Ballot-papers, etc., to be preserved. Qd. s. 41l. Notwithstanding anything contained in the rules of an industrial union or of a branch of the industrial union, an industrial union and every officer of an industrial union or branch of an industrial union who is able to do so, shall take such steps as are necessary to ensure that all ballot-papers, envelopes, lists and other documents used in connection with, or relevant
to, an election for an office are preserved and kept at the office of the industrial union (or, if the election is for an office in a branch of the industrial union, at the office of that branch) for a period of one year after the completion of the election.

Any person who contravenes this section shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

86. Registrar to conduct elections upon request. Qd. s. 41M. (1) An industrial union or a branch of an industrial union may, in writing, request the registrar that an election for an office in the industrial union or in the branch (as the case may be) be conducted under this section with a view to ensuring that no irregularity occurs in or in connection with the election.

(2) For the purposes of subsection one of this section a request by an industrial union or branch may be made—

(a) by or on behalf of the committee of management of the industrial union or of the branch, as the case may be; or

(b) by a number, being not less than ten per centum or five hundred, whichever is the lesser, of the members of the industrial union; or

(c) by a number, being not less than twenty per centum or two hundred and fifty, whichever is the lesser, of the members of the branch.

(3) The regulations may make provision with respect to the times at which requests may be made under this section.

(4) Where a request is made or purports to be made under 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.

(5) Where the registrar decides that a request has been duly made under this section, he shall inform the industrial union or branch accordingly, and may conduct the election, direct any deputy or assistant registrar appointed under this Act or other officer employed in the registry to conduct the election, or may make arrangements with the Principal Electoral Officer under and within the meaning of “The Elections Acts, 1915 to 1959,” for the conduct of the election by the said Principal Electoral Officer or by a Returning Officer under and within the meaning of “The Elections Acts, 1915 to 1959.”

(6) Notwithstanding anything contained in the rules of the industrial union or branch, the person conducting the election 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 election or to remedy any procedural defects in those rules which appear to him to exist.

(7) Any person who—

(a) refuses or fails to comply with a direction given under subsection six of this section; 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
       under subsection six of this section; or
   (ii) any other person in the carrying out of a direction under
       subsection six of this section,

shall be guilty of an offence and liable to a penalty not exceeding two
hundred dollars.

(8) The provisions of this Part relating to inquiries do not apply
in relation to an election conducted under this section.

(9) An election conducted under 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
industrial union or branch involved in an act done, or in compliance
with a direction given, under this section.

(10) In any proceedings in connection with anything done or
proposed to be done by reason of a request made or purporting to be
made under this section in relation to an industrial union or a branch
of an industrial union—

   (a) in the case of an industrial union or of a branch of an
       industrial union whereto the provisions of subsections three
       and four of section fifty-six of this Act apply, the copy of
       the register of members, as at the thirty-first day of December
       next preceding the date upon which the request was made,
       of that industrial union or branch as varied before the date
       upon which the request was made in accordance with any
       quarterly returns referred to in the said subsection four; or
   
   (b) in the case of an industrial union or branch of an industrial
       union in relation wherto a certificate of exemption issued by
       the registrar under subsection nine of the said section fifty­
       six is in force, the register of members maintained by that
       industrial union or branch showing the members thereof
       as at the date when the request was made,

is primà facie evidence that the persons shown in that copy register,
that union or branch showing the members thereof
as at the date when the request was made,

Act referred to:
   Decimal currency reference substituted pursuant to section 7 of Decimal

87. Expenses in connection with elections under this Part. Qd. s. 41N.
(1) Where—

   (a) the Commission orders—
       (i) a new election to be held;
       (ii) any step in or in connection with an election to be taken
           again; or
       (iii) any safeguards, not provided for in the rules of the
           industrial union or branch, to be taken in or in con­
           nection with any uncompleted steps in an election; or
(b) an election is conducted under section eighty-six of this Act,

the expenses involved in compliance with the order of the Commission or of the election conducted under section eighty-six of this Act shall, to the extent prescribed by this section, be paid by the State.

(2) The State shall pay—

(a) the salary or other remuneration of an officer or employee of the State performing any duty in relation to the order of the Commission or the election (including a person employed by the State solely for the purposes of the order of the Commission or election); and

(b) expenses in connection with the provision or use of premises provided by the State for the purposes of the order of the Commission or election (including premises obtained by the State solely for the purposes of the order of the Commission or election).

(3) Where the membership of the industrial union which, or a branch of which, is concerned is not more than one thousand five hundred members the State shall pay the whole of the expenses in connection with the provision of ballot-papers, envelopes, lists and other documents required for the purposes of the order of the Commission or election and the despatch and return by post of any of those things.

(4) Where the membership of the industrial union which, or a branch of which, is concerned is more than one thousand five hundred members the State shall pay one-half of the expenses specified in subsection three of this section.

(5) Subject to appropriation by Parliament, all expenses prescribed by this section to be paid by the State shall be paid out of Consolidated Revenue.

88. Offences in connection with elections. Qd. s. 410. (1) A person shall not, without lawful authority or excuse, in or in connection with an election for an office—

(a) personate another person to secure a ballot-paper to which the personater is not entitled, or personate another person for the purpose of voting;

(b) destroy, deface, alter, take or otherwise interfere with a nomination paper, ballot-paper or envelope;

(c) put or deliver 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) record a vote which he is not entitled to record;

(e) record more than one vote;

(f) forge or utter, knowing the same to be forged, a nomination paper, ballot-paper or envelope;

(g) supply a ballot-paper;
(h) obtain, or have in his possession, a ballot-paper; or
(i) destroy, take, open or otherwise interfere with a ballot-box.

(2) A person shall not, in or in connection with an election for an office—
(a) threaten, offer or suggest any violence, injury, punishment, damage, loss or disadvantage for or on account of, or to induce—
(i) any candidature or withdrawal of candidature;
(ii) any vote or omission to vote;
(iii) any support or opposition to any candidate; or
(iv) any promise of any vote, omission, support or opposition; or
(b) use, cause, inflict or procure any violence, injury, punishment, damage, loss or disadvantage for or on account of any such candidature, withdrawal, vote, omission, support or opposition.

(3) A person shall not threaten, offer, suggest, use, cause, inflict or procure any violence, injury, punishment, damage, loss or disadvantage for or on account of, or for the purpose of preventing, anything lawfully done or proposed to be lawfully done by a person for the purpose of causing or enabling a request to be made by an industrial union or branch of an industrial union under section eighty-six of this Act, including the signing of an instrument of request or the seeking or obtaining of signatures to such an instrument.

(4) Any person who contravenes the provisions of this section shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

PART VI—INDUSTRIAL AGREEMENTS

89. (1) Industrial agreements may be made. Qd. s. 42. Any industrial union of employees may make an agreement in writing with an industrial union or association of employers or some specified employer or employers for the prevention or settlement of an industrial dispute or relating to any industrial matter:

Provided that on the application of any person bound by an award, and where it considers it advisable in the public interest so to do, the Commission may prohibit any industrial union of employees or any employer or industrial union or association of employers from making or enforcing an industrial agreement inconsistent with such award.

(2) Term and form of agreement. Every industrial agreement shall be for a term to be specified therein, not exceeding three years from the date of the making thereof, and shall commence as follows: “This Agreement, made in pursuance of “The Industrial Conciliation and Arbitration Act of 1961,” this day of , 19 , between , ,” and then the matters agreed upon shall be set out.

(3) An agreement shall be limited in its effect to the particular locality therein specified.
(4) **Date of agreement.** The date of the making of the agreement shall be the date on which it is first executed by any party thereto; and such date, and the names of all the original parties thereto, shall be truly stated therein.

(5) **Agreement to continue in force for parties not retired.** Notwithstanding the expiry of the term of an industrial agreement, it shall, subject to any award under this Act, continue in force in respect of all parties thereto, except those who retire therefrom.

(6) **Mode of retirement.** At any time after, or not more than thirty days before the expiry of an industrial agreement, any party thereto may file in the office of the registrar a notice in the prescribed form signifying his intention to retire therefrom at the expiration of thirty days from the date of such filing, and such party shall on the expiration of that period cease to be a party to the agreement.

The expressions “industrial dispute” and “industrial matter” are defined by s. 5.

Employers of Government employees may enter into industrial agreements under s. 96 (1).

As to continuance of awards, see s. 29.

With respect to retirement from an industrial agreement, see also Rules of Court: Order 7, rule 2, p. 579, post. As to retirement from an agreement which has been made a common rule, see cases cited under s. 94.

 Provision for agreements determining proceedings with respect to an industrial cause is made by s. 40.

No stamp duty is payable on an industrial agreement, s. 137.

As to whether an agreement made by a branch of an industrial union falls within this section, see *Montgomery v. Australian Master Hairdressers' and Wigmakers' Federation* (1913), 15 C.L.R. 721.

As to the effect of an agreement not being dated with the true date, see *Inspector of Awards v. Wellington Slaughtermen's Industrial Union* (1907), 9 N.Z.G.L.R. 412.

An industrial agreement may in a proper case provide for a local tribunal consisting of employees' and employers' representatives with power to deal with any dispute in relation to the meaning of the award or arising out of its operation, *Re Coal Mining Awards*, [1919] Q.W.N. 8. But such a provision does not oust the jurisdiction of the Industrial Commission or of an industrial magistrate in the event of a breach of the agreement, *Re Coal Mining Awards*, supra; *Federated Engine Drivers v. Metropolitan Water Board*, [1919] Q.W.N. 22; 13 Q.J.P.R. 83.


An industrial agreement between two parties ceases to have any existence when one of such parties, being an industrial union, is deregistered, *McPhail v. Peake* (1933), 35 W.A.L.R. 64.

As to industrial agreements in which there is gross inadequacy of consideration such as may amount to evidence of fraud, mistake or undue influence, cf., *Re Local Authorities in South-eastern Division*, [1916] Q.W.N. 12.

**90. (1) Duplicate to be filed.** Qd. s. 43. A duplicate original of every industrial agreement shall, within thirty days after the making thereof, be filed in the office of the registrar.

(2) Every document purporting to be a copy of an industrial agreement shall (notwithstanding that no notice to produce the original has been given) be admissible in evidence in proof of the contents of the original, provided such copy is certified as a correct copy under the seal of the Commission and the hand of the registrar.
A copy of the Gazette or Queensland Government Industrial Gazette containing the agreement shall be received in all courts and tribunals and before all persons as evidence of such agreement without further proof.

The production of such copy shall be prima facie evidence that the original agreement was duly executed in accordance with this Act in manner indicated in the copy, and that a duplicate has been duly filed.

See also Rules of Court, Order 7, rule 1, p. 578, post.

An agreement not filed in compliance with this section has no binding effect under s. 92. See Inspector of Awards v. Wellington Slaughtermen's Industrial Union (1907), 9 N.Z.G.L.R. 412.

91. Parties to agreement may be added. Qd. s. 44. Whilst the industrial agreement is in force, any industrial union or employer may (with the consent of the Commission and of the original parties to the agreement or their respective representatives) become party thereto by filing in the registrar's office a notice in the prescribed form, signifying concurrence with such agreement.

See also Rules of Court, Order 7, rule 4, p. 579, post.

92. (1) On whom agreement binding. Qd. s. 45. Every industrial agreement duly filed shall extend to and be binding on—

(a) the parties who execute the same or concur therein; and

(b) every member for the time being of any industrial union which is party thereto; and

(c) every worker who is, at any time whilst it is in force, employed by any employer on whom the agreement is binding;

(d) every member for the time being of any association of employers which is a party thereto.

(2) Enforcement. An industrial agreement shall be enforceable in the same manner as if it were an award.

Compare s. 31 and see notes thereto.

Enforcement of awards is provided for by ss. 97, 102, 113, 116.

93. Agreements may be varied, renewed, or cancelled. Qd. s. 46. An industrial agreement may be varied, renewed, or cancelled by any subsequent industrial agreement made by and between all the parties thereto, but so that no party shall be deprived of the benefit thereof by any subsequent industrial agreement to which he is not a party:

Provided that no industrial agreement with respect to which any powers conferred by the next succeeding section have been exercised shall be varied or cancelled without the leave of the Commission.

94. Industrial agreement may be declared a common rule. Qd. s. 47. The Commission may declare that any industrial agreement shall have the effect of an award and be a common rule of any calling or callings to which it relates, and the agreement shall thereupon, subject as hereinafter provided, become binding on all employers and employees, whether members of an industrial union or not, engaged at any time during its currency in any such calling within the locality specified in
the agreement, but before acting under this section the Commission shall give all parties, likely in its opinion to be affected, notice by advertisement or otherwise of its intention to extend the operation of such agreement, and shall hear any parties desiring to be heard in opposition thereto.

For practice on applications under this section, see Rules of Court, Order 7, rules 5-7, p. 579, post.

As to whether an industrial agreement which according to its terms can only come into operation between the parties upon its being made a common rule, can be made a common rule, see Master Retailers' Assoc. v. Shop Assistants Union (1904), 2 C.L.R. 94.

As to "any calling or callings to which it relates," see Parker & Son v. Amalgamated Society of Engineers (1926), 29 W.A.L.R. 90.

An industrial agreement which has been made a common rule is binding only for so long as it would continue had it not been made a common rule, McPhee v. Peake (1933), 35 W.A.L.R. 64, apparently overruling Spierge v. Hotel Employees' Industrial Union (1929), 32 W.A.L.R. 17. As to the right to retire therefrom, see those cases.

PART VII—GOVERNMENT EMPLOYEES

95. Government employees. Qd. s. 48. If any persons employed by the Government are members of any industrial union composed of employees engaged in the same calling as such persons, the permanent head of the department in which such persons are employed, or the corporation of "The Treasurer" in the case of sugar-works controlled by or vested in such corporation, or the Commissioner for Railways in the case of the Railway Department, or the Commissioner of Police in the case of members of the Police Force, or the General Manager in the case of the State Government Insurance Office (Queensland), shall, in relation to all such persons who are for the time being members of such union, and for the purposes of this Part, be deemed an employer, and such persons shall be deemed employees.

In this section "permanent head" means a "permanent head" as defined by "The Public Service Acts, 1922 to 1960," and includes any officer for the time being discharging the duties of permanent head.

Act referred to:
Public Service Acts, 1922 to 1965, title PUBLIC SERVICE.

An industrial association of Government employees may be registered, s. 46 (7).

Compare Public Service Acts, 1922 to 1965, s. 17, title PUBLIC SERVICE, with respect to members of the Public Service of Queensland.

As to Commonwealth public servants, see the Arbitration (Public Service) Act 1920-1929.

The operation of this section is not confined to employees subject to the Minister of a department or one of the other authorities mentioned but applies to all ordinary Government employees, Re Queensland Government Professional Officers Assoc. Union, [1920] Qd. Indus. Gaz. 284.

96. Unions of Government employees. Qd. s. 49. In reference to any such industrial union as is mentioned in the last preceding section, the following provisions apply:—

(1) The employer may with the approval of the Minister administering the Department or Crown instrumentality concerned enter into industrial agreements with any such union.
(2) If an industrial dispute arises between the employer and any such union, proceedings with respect thereto may be initiated before the Commission, as the case may be, in manner provided by this Act, and the Commission shall have jurisdiction to hear and determine the cause accordingly.

(3) In any proceedings before the Court or the Commission or an industrial magistrate the Public Service Commissioner or such officer as he may depute may without further authority than this Act represent the employer:

Provided that the Minister administering the Department or Crown instrumentality concerned may, upon giving written notice to the registrar, appoint any officer to represent the employer in any such proceedings in the place of the Public Service Commissioner or his deputy aforesaid.

(4) Subject to this Act, any award made with respect to persons who are employees by virtue of this Part shall be binding on the like persons and be enforceable in the same manner as other industrial awards, and a breach thereof shall entail the like penalties, and the provisions of this Act applicable to other industrial awards shall be applicable to awards made hereunder.

(5) Notwithstanding anything herein contained, the employer shall not be personally liable under any such agreement or award, or be subject to any personal penalty in respect thereof or in connection therewith.

(6) Protection of Crown property. No execution or attachment or process in the nature thereof shall be issued against the property or revenues of the Crown or of any department or agency of Her Majesty’s Government to enforce any award or order made under this Act.

(7) Notwithstanding the provisions of paragraph (c) of subsection one of section fourteen of this Act the working of overtime by a person employed by the Government at a salary in excess of the rate of three thousand six hundred dollars per annum, or such greater sum as the Governor in Council shall from time to time determine, and remuneration in respect of such overtime shall be in the discretion of the employer.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

For what constitutes an industrial dispute, see s. 4; Re Public Service (General Officers) Assoc., [1918] Q.W.N. 25.

A provision in a Railway Servants Act relating to dismissal of employees was held not to be subject to the provisions of an industrial agreement on the same matter, Anderson v. Commissioner of Railways (1903), 6 W.A.L.R. 44. It was held that the Commissioner of Railways could not make an industrial agreement inconsistent with such an Act, ibid.

**PART VIIA—TRADING HOURS IN SHOPS AND EXHIBITIONS OF NON-EXEMPTED GOODS**

96A. Interpretation. For the purposes of this Part—

(a) the terms “exempted shop” and “non-exempted shop” refer respectively to an exempted shop and a non-exempted shop under and within the meaning of “The Factories and Shops Acts, 1960 to 1964”; and
(b) the term "non-exempted goods" means all goods other than goods which are prescribed by regulation under "The Factories and Shops Acts, 1960 to 1964," to be exempted goods.

Inserted by Act of 1964, No. 67, s. 7.
Act referred to:

96B. Trading hours in shops.  (1) (a) Save as prescribed by paragraph (b) of this subsection, this section applies to any and every shop under and within the meaning of "The Factories and Shops Acts, 1960 to 1964."

(b) To the extent to which the provisions of Part VIII of "The Factories and Shops Acts, 1960 to 1964," do not apply to any shop specified in subsection (1) of section sixty of those Acts, and referred to in that subsection as an exempted shop, the provisions of this section do not apply to such shop.

(2) (a) The Full Bench of the Commission may by order fix the trading hours in shops, whether or not employees are employed therein.

(b) The jurisdiction of the Full Bench of the Commission to fix by order the trading hours in shops includes jurisdiction—

(i) to fix the hour at which shops may open and the hour at which shops shall close on any day of the week;

(ii) to fix such hours differently in respect of trading by wholesale and by retail respectively;

(iii) to fix such hours differently in respect of shops included in different classes of shops (including different classes of non-exempted shops or of small shops), or in respect of shops situated in different localities;

(iv) to make such one or more orders as the Full Bench of the Commission deems fit and either at one and the same time or from time to time;

(v) to revoke, amend, vary or otherwise modify any order by another order.

(c) Paragraph (b) of this subsection applies so as not to prejudice section forty-three of this Act or the application by virtue of that section of the provisions of the First Schedule to this Act in any matter with respect to which the Full Bench of the Commission has jurisdiction under this section.

(3) On or before the last day of the period of six months next following the date (in this subsection referred to as the "said date") of the passing of "The Industrial Conciliation and Arbitration Acts Amendment Act of 1964," the Full Bench of the Commission shall proceed to fix by order the trading hours in all shops the trading hours wherein were at the said date fixed by an award or industrial agreement.

In the case of every such award or industrial agreement—

(a) any and every provision thereof whereby the trading hours in any shop are fixed, including any provision thereof whereby the hour at which any shop may open or the hour at which any shop shall close on any day of the week is fixed, shall continue in force until the Full Bench of the Commission first fixes trading hours in relation to such shop by an order under this Part;
(b) the provisions whereof provide or fix the trading hours in any shop or the hour at which the shop may open or the hour at which the shop shall close by reference to the prescriptions of such award or industrial agreement relating to the ordinary working time of employees in such shop or to the hour at which the ordinary working time of employees in such shop commences or ceases on any day of the week or to any period of time or hour or hours related to any other purpose of the award or industrial agreement such provisions shall be deemed to have provided or fixed the period of time or hour or hours referred to as the trading time in such shop, or the hour at which such shop may open, or the hour at which such shop shall close, as the case may be, and, until the Full Bench of the Commission first fixes trading hours in relation to such shop by an order under this Part, those provisions of the award or industrial agreement shall continue in force accordingly notwithstanding that any such prescription shall have sooner ceased to operate.

Subject to commencing any proceeding to which this subsection applies on or before the said date the Full Bench of the Commission may continue and complete such proceeding after the said date.

Inserted by Act of 1964, No. 67, s. 7.

Acts referred to:

96c. Special Displays, etc., of goods. (1) The Full Bench of the Commission may by order declare general rulings relating to the conditions to be observed in the holding of special displays or special exhibitions, whether permanent or temporary, of non-exempted goods or in connection with non-exempted goods, whether held in non-exempted shops or elsewhere, including the hour at which such special displays or special exhibitions may open and the hour at which they shall close on any day of the week, or prohibiting or permitting the sale thereat or the taking thereat of orders for the sale of goods.

(2) The jurisdiction conferred upon the Full Bench of the Commission by subsection (1) of this section includes jurisdiction—

(a) to fix conditions, including the hours of opening and of closing and conditions pertaining to the sale and the taking of orders for the sale of goods differently in respect of different special displays or special exhibitions or in respect of special displays or special exhibitions included in different classes thereof or held in different localities;

(b) to make such one or more orders as the Full Bench of the Commission deems fit and either at one and the same time or from time to time;

(c) to revoke, amend, vary or otherwise modify any order by another order;

(d) in and for the purpose of any order which provides that special displays or special exhibitions to which the order relates shall not be held without the authority of a permit,
in the complete discretion of the Full Bench of the Com-
mmission to delegate to the Chief Industrial Inspector authority
to grant, or to refuse to grant or to cancel such permits.

(3) Subsection (2) of this section applies so as not to prejudice
section forty-three of this Act or the application by virtue of that section
of the provisions of the First Schedule to this Act in any matter with
respect to which the Full Bench of the Commission has jurisdiction under
this section.

Inserted by Act of 1964, No. 67, s. 8.

96D. Powers and procedure in relation to orders under Part VIIA. (1) The Full Bench of the Commission may make an order—

(a) under section 96B of this Part—
   (i) of its own motion; or
   (ii) upon the application of an industrial union or other
        organisation; or

(b) under section 96C of this Part, upon the application of an
    industrial union, other organisation or person.

The Full Bench of the Commission, in its complete discretion, may
in an order made under section 96B or 96C of this Act, or in a separate
order, delegate to the Chief Industrial Inspector the working out of the
order made under section 96B or, as the case may be, 96C of this Act,
including by the making of requisitions, the giving of directions, the
preparation of rosters and schedules, as the said Full Bench shall think
fit consequent on the making by it of the order in question.

(2) The Full Bench of the Commission shall fix a time and place
when and where it will proceed to make an order under this Part, whether
upon its own motion or upon the application of an interested industrial
union, other organisation or person.

A notice of such proceeding and of the time and place thereof shall
be published in the Queensland Government Industrial Gazette.

The said Full Bench may give such directions with respect to the
giving of notice of such proceeding and of the time and place thereof by
notice served upon specified industrial unions, other organisations and
persons and by advertisement in specified newspapers or periodicals as
the said Full Bench deems necessary to ensure that all industrial unions,
other organisations and persons which or who are interested in the matter
are notified of the proceeding and of the time and place so fixed.

Every such notice or advertisement shall state a time (as fixed by
the said Full Bench) before which any industrial union, other organisation
or person which or who claims to be interested in the proceeding may
apply to the Registrar for leave to appear and be heard therein.

(3) An application by an industrial union, other organisation or
person that an order be made under this Part or for leave to appear and
be heard in the proceedings in respect of the making of an order under
this Part shall be made to the Registrar before the time fixed in that
behalf.

If the applicant satisfies the Registrar that it or he is interested in
the making of the order, the Registrar shall grant the application but,
unless he is so satisfied, the Registrar shall refuse the application.
Where an application is refused the applicant may, within seven days after the Registrar notifies him of the refusal, require the Registrar to refer the application to the Full Bench of the Commission, and upon such reference the said Full Bench may grant or refuse to grant the application.

(4) In respect of the making of any order under section 96B of this Act the Full Bench of the Commission may have regard to—

(a) the locality concerned or part thereof and the needs of the tourist industry and any other industry in that locality or any part thereof;

(b) the consumer and public interest;

(c) the needs of an expanding population;

(d) the needs of an expanding tourist industry generally including an expanding tourist industry from interstate and overseas;

(e) the alleviation of traffic congestion.

Inserted by Act of 1964, No. 67, s. 9.

96E. Breaches of orders. (1) Whoever commits a breach of an order made under this Part, whether by contravention or non-observance of the order or of any provision, requirement or condition of the order, shall be guilty of an offence and liable to a penalty for a first offence of not less than ten dollars or more than one hundred dollars; and for a second or subsequent offence against the same provision, requirement or condition of such order to a penalty of not less than twenty dollars or more than two hundred dollars:

Provided that a person shall not be liable to be punished as prescribed by this subsection for a second or subsequent offence where that second or subsequent offence was committed more than twelve months after the date of the commission of the last previous offence wherefor he was convicted.

(2) This section applies so as not to prejudice or affect in any way the provisions of section one hundred and fourteen of this Act.

Inserted by Act of 1964, No. 67, s. 10.

Decimal currency references substituted pursuant to section 7 of Decimal Currency Act of 1965.

PART VIII—BREACHES OF AWARDS AND OTHER OFFENCES

97. (1) Wages to be paid in full in money. Qd. s. 50. Where an employer employs any person to do any work for which the price or rate is fixed by an award or industrial agreement, or by a permit or license under this Act, he shall pay in full in money to such person and without any deduction, whether on account of the loan or hire of tools or the supply of material or otherwise, except as may be authorized by such award, agreement, permit or license, the price or rate so fixed. In every such award, agreement, permit or license, the deductions permitted by “The Wages Acts, 1918 to 1954,” shall be deemed to be authorized, although not expressly mentioned or referred to therein. But this provision shall not be construed to prohibit a deduction agreed upon between an employer and any of his employees by way of contribution to any medical benefit, hospital or benevolent or provident fund.

(2) Recovery of moneys due under awards. Upon application made to an industrial magistrate by—

(a) a person; or
(b) an industrial union whereof a person is a member on his behalf,
within six months (or such extended period longer than six months but not longer than twelve months as the industrial magistrate may allow) after any money payable under an industrial award or agreement shall have become payable to that person, including money payable, in respect of—

(i) work done by him; or
(ii) any holiday, leave by way of annual holidays or sick leave,

the industrial magistrate shall order the person liable under the award or industrial agreement for payment of that money to pay to the person thereunto entitled any unpaid amount thereof earned (or, if payable in respect of any holiday or leave as aforesaid, which became due) within the aforesaid six months or, if an extension of that period shall be allowed as aforesaid, that extended period.

(3) Such order may be so made notwithstanding any smaller payment or any express or implied agreement to the contrary.

(4) Such industrial magistrate shall order such payment to be made on any terms he thinks just, and may award costs to either party and assess the amount of such costs.

(5) Upon a prosecution of an employer for an offence which involves the non-payment to any employee or employees of any money earned by him or them, or payable to him or them, in respect of work done by him or them, or any holiday or leave by way of annual holidays, sick leave or long service leave, the industrial magistrate shall, in addition to any penalty imposed upon the defendant, order the payment by him of all moneys earned by the employee or employees during any period of employment or, if payable in respect of any holiday or leave as aforesaid, which have become due within the six months (or such extended period longer than six months but not longer than twelve months as an industrial magistrate may allow) next preceding the date upon which the prosecution was instituted, and such order for payment shall be in addition to any penalty imposed.

(6) In every case where an employee has left the employment of an employer without being paid the full amount due to him in respect of such employment, and the employer has been unable during a period of thirty days after the termination of employment to make such payment because the whereabouts of such employee are unknown to him and cannot with reasonable diligence be found, such employer shall forthwith after the expiration of such period pay the full amount as aforesaid to the nearest clerk of petty sessions to the credit of such employee.

The receipt of a clerk of petty sessions to any employer for money so paid by him shall be a good discharge to the employer to the amount mentioned in such receipt.

(7) Upon demand made by an industrial inspector, an employer shall pay to such industrial inspector to the credit of the employee concerned any amount due and unpaid to any employee of any money earned by such employees (or, if due and unpaid in respect of any leave by way of annual holidays, sick leave or long service leave, which became due) within the period of six months next preceding the date of such demand.
An industrial inspector shall, forthwith upon the payment to him of any moneys under this subsection give to the person making the payment a receipt therefor.

The receipt of an industrial inspector for money paid to him under this subsection shall be a good discharge to the employer to the amount mentioned in the receipt.

An industrial inspector may, pursuant to this subsection, demand payment from an employer of any amount due and unpaid to an employee, whether or not the employee has left the employment of the employer concerned, but in the case of an employee who has left the employment of the employer, the provisions of subsection (6) of this section do not apply with respect to any amount paid to an industrial inspector under this subsection.

Any amount of money paid to an industrial inspector under this subsection may be paid by him to the employee to whose credit the payment was made and, if not paid to such employee within thirty days after payment thereof to the industrial inspector, shall be paid by him to the Department of Labour and Industry to the credit of such employee.

(8) Upon a prosecution of an employer for an offence against subsections (6) or (7) of this section, the industrial magistrate shall, in addition to any penalty he may impose upon the defendant, order the defendant to pay all moneys the subject of the offence.

(9) An order made by an industrial magistrate under this section, whether upon application or in the event of a prosecution, shall be enforceable as if it were an order made by such industrial magistrate sitting as a court of petty sessions, and the provisions of “The Justices Acts, 1886 to 1963,” shall apply and extend accordingly.

(10) Any amount of money paid to a clerk of petty sessions under this section (including an amount so paid under an order made pursuant to this section) may be paid by him to the employee to whose credit the payment was made and, if not paid to such employee within thirty days after payment thereof to the clerk of petty sessions, shall be paid by him to the Department of Labour and Industry to the credit of such employee.

(11) Saving of provisions of “The Wages Acts, 1918 to 1954.” Nothing in this Act shall in any wise limit or affect the operation and provisions of “The Wages Acts, 1918 to 1954,” in respect of any proceedings for the recovery of wages, and any proceedings for the recovery of wages under such lastmentioned Act may be had and taken accordingly:

Provided that any claim for unpaid wages under such lastmentioned Acts shall not extend to a claim for wages beyond a period of six months (or such extended period longer than six months but not longer than twelve months as an industrial magistrate may allow) after those wages have become due.

As amended by Act of 1963, No. 43, s. 3.

Acts referred to:


Compare Wages Acts, 1918 to 1954, ss. 19-27, p. 718, post. For permitted deductions, see ibid., s. 28.

Deductions in respect of liability under Workers’ Compensation Acts, 1916 to 1964, p. 757, post, or to pay damages independently of that Act are forbidden by s. 17 thereof, see p. 804, post.

Court of petty sessions, clerk of petty sessions—Now Magistrates Court, clerk of the court, respectively. See Justices Acts Amendment Act of 1964, s. 2 (4), p. 250, ante.
For practice upon such proceedings, see Rules of Court, Order 4, rules 8 et seq., p. 569, post. As to who may take proceedings, see s. 116.

As to whether a payment made to a third party at the request of an employee out of his wages absolves the employer from payment to the employee, see Gregory v. Scott Ltd., [1916] N.S.W.A.R. 181; Duffin v. Main Roads Board, [1929] N.S.W.A.R. 301. See also cases cited under Wages Acts, 1918 to 1954, s. 19, p. 719, post.

For the right of appeal to the Industrial Court, see s. 27.

The method in this section of enforcing the obligation to pay wages under an award is exclusive, Josephson v. Walker (1914), 18 C.L.R. 691; Bustin v. Bustin (1927), 22 Q.J.P.R. 71; McRiss v. Menegos (1930), 24 Q.J.P. 141 (Mag. Cas.).

Proceedings may be taken under Wages Acts, 1918 to 1954, p. 713, post, under a contract to pay wages less in amount than those due under an award, Smith v. Huggins (1932), 26 Q.J.P.R. 98. An action on a special contract not affected by an award cannot be brought before an industrial magistrate, McDonald v. Rocklands Station Pty. Ltd. (1926), 20 Q.J.P. 178 (Mag. Cas.); Bustin v. Bustin, supra; Smith v. Huggins, supra. But a claim which includes both wages due under an award and those due under special contract may be severable; see Bustin v. Bustin, supra. In order to oust the jurisdiction of a Magistrates Court to hear a claim under a contract to do the whole of a piece of work at a specified rate it is necessary to show that the remuneration under the contract was not more than that under the award and that the award gave the employee the right to do the whole work, Coakley v. Groth, [1935] St. R. Qd. 220; 29 Q.J.P.R. 138.

An employee was refused an order for wages under an award in respect of a period during which he was absent on compulsory military service, in Tarvitt v. Tritton, [1917] Qd. Indus. Gaz. 144.

Where an award provides that either a week's notice of dismissal shall be given or a week's wages paid, such wages may be recovered under this section, Fitzpatrick v. Schweppes Ltd., [1913] N.S.W.A.R. 11. Quære whether proceedings can be brought under this Act for damages for non-engagement or for wages in lieu of notice where the award makes no provision therefor. See Bow v. Whitty (1921), 15 Q.J.P.R. 99.

Proceedings for award wages against the mortgagee of the property with respect to which the employment took place, within Wages Acts, 1918 to 1954, s. 36, p. 726, post, must be taken under this section, Giarutto v. Shepherds Anvil Stores Pty. Ltd. (1933), 27 Q.J.P. 81 (Mag. Cas.).

An industrial union is entitled to take proceedings on behalf of a member for money due under an award without stating in the complaint that it is acting on behalf of the member, Australian Workers' Union v. Fogarty, [1931] Q.W.N. 35; 25 Q.J.P.R. 97. But see Bow v. Whitty, supra.

An application for extension of the period of six months may be made ex parte (McDougall v. Vardy (1917), 11 Q.J.P.R. 135). An extension of time was made ex parte pro tunc after the expiration of the period in Tarvitt v. Tritton, supra. There was held to be no extension of the period in Muir v. Fairymead Sugar Co. Ltd., [1917] Q.W.N. 16; 11 Q.J.P.R. 43.

As to whether the Court can hear evidence as to the amount due, irrespective of whether this is disclosed in the information, for the purpose of making an order under subsection (5), see Ingamells v. Petroff (1934), 50 C.L.R. 451.

The proviso to subsection (11) impliedly repeals the proviso to s. 36 (1) of Wages Acts, 1918 to 1954, p. 726, post, Giarutto v. Shepherds Anvil Stores Pty. Ltd. (1933), 27 Q.J.P. 81 (Mag. Cas.). The court which may grant an extension of time under subsection (11) is the court in which the proceedings are brought, Smith v. Huggins (1932), 26 Q.J.P.R. 98. Such an extension may be granted by such court of its own motion, ibid.

98. Prohibition of strikes or lock-outs. Qd. s. 51. (1) No person shall take part in, or do or be concerned in or instigate or aid in doing, any matter or thing in the nature of a strike or lock-out unless or until a strike or lock-out has been authorized by the members of the industrial union of employees or the employers in the calling concerned.
A strike shall be deemed not to have been authorized until all the members of the industrial union in the calling concerned in the district affected shall have had an opportunity of participating in a secret ballot taken at a meeting of such members and—

(a) a majority of all such members; and

(b) a majority of such members who are engaged in the project, establishment or undertaking in which such strike is to take place,

have voted in favour of such strike:

Provided that, where it is inconvenient for such members of the union to attend at a meeting, the decision of the members may be taken by means of a secret poll of the whole of those affected; the poll may be taken by postal ballot or otherwise; or a series of meetings may be held and ballots taken thereat, and in that case the result of the aggregate vote shall be taken to be the decision:

Provided further that, in any calling where no industrial union exists, no strike shall be authorized and in no case shall any lock-out be authorized unless and until the registrar has, in manner prescribed by Rules of Court, taken a secret ballot amongst the employees or employers, as the case requires, in the calling concerned, and such ballot has resulted in favour of such strike or lock-out:

Provided further, that no strike or lock-out shall be deemed to have been authorized unless or until the result of the secret ballot or voting thereon of the persons concerned, together with the details of the voting have been communicated to the registrar.

The Commission may from time to time divide the State or any part of the State into districts for the purpose of this section or declare any locality to be a district for the purposes of this section.

Any such division or declaration may be made by the Commission of its own motion either with or without reference to any industrial dispute.

Any such declaration shall be made by the Commission with reference to an industrial dispute upon application by an industrial union or branch thereof and any such division or declaration may be made by the Commission without reference to an industrial dispute upon application by an industrial union or branch thereof.

Subject to any such division or declaration an industrial magistrate may of his own motion and shall upon application of an industrial union or branch thereof declare the locality of the State which is the district for the purposes of this section with reference to any industrial dispute.

Any person who contravenes any provision of this section shall be guilty of an offence and liable to a penalty, in the case of an employer or industrial union, not exceeding five hundred dollars, and in any other case not exceeding forty dollars.

(2) Nothing in this section shall prohibit the suspension or discontinuance (not being in the nature of a strike or lock-out) of any calling or of the working of any persons therein for good cause independent of an industrial dispute; but on a prosecution for an offence against this section the onus of proof that any such suspension or discontinuance is not in the nature of a strike or lock-out, and that such independent good cause exists, shall lie on the defendant.
(3) If the members of an industrial union or a branch thereof engaged in any particular calling in any project, establishment or undertaking, or a substantial number of such members, take part in or do or are concerned in any matter or thing in the nature of a strike or lock-out which has not been authorised as aforesaid, the union or branch, as the case may be, and every officer thereof, shall be guilty of an offence and liable to the penalty hereinbefore provided unless it shall be proved that it or he took all reasonable steps to prevent the occurrence of such matter or thing.

(4) A certificate of the registrar that the result of a secret ballot or voting thereon of the persons concerned together with the details of the voting have or have not been communicated to him shall be evidence of the facts therein set forth until the contrary shall be proved.

Decimal currency references substituted pursuant to section 7 of Decimal Currency Act of 1965.

The terms "strike" and "lock-out" are defined by s. 5. See notes thereto.

The holding of a ballot by the Registrar under this section is governed by the Rules of Court, Order 6, p. 517, post.


See Queensland Colliery Employees' Union of Employees v. Bade and Idem v. Stephan, [1941] St. R. Qd. 117 (unauthorized strike; levy to redeem credit docket issued by union in lieu of strike pay; claims held invalid and unenforceable).

99. (1) When Commission may cause ballot to be taken. Qd. s. 51A. Notwithstanding anything contained in this Act, if any ballot required to be taken under or for the purposes of section ninety-eight of this Act—

(a) shall not have been taken within such time as the Commission shall, in the circumstances, consider reasonable; or

(b) shall have been taken and the Commission considers the manner of its taking, or any circumstance of or associated with its taking, was improper or irregular,

the Commission may, at any time, order that the registrar, or some person other than the registrar, shall take such ballot and, where a ballot theretofore has been taken, declare such ballot of none effect.

(2) Subject to section ninety-eight of this Act, the copy filed with the registrar of the register of members of the union concerned as rectified by the quarterly returns, if any, filed by such union with him in relation to such register and by any order of the Commission shall be the roll of voters entitled to vote:

Provided that the Commission may at any time, by general rule or special order, give all such directions as it shall think necessary to compile a roll of voters entitled to vote upon any ballot.

(3) The registrar or other person charged with taking the ballot shall send or cause to be sent to every member who is entitled to vote—

(i) a prepaid post envelope addressed to the registrar or to such person; and

(ii) a ballot-paper,

and shall keep a record of the sending thereof.

Such envelope and ballot-paper shall be sent by post and shall be enclosed in a sealed prepaid post envelope addressed to the member at the address which in the opinion of the registrar or other person charged with taking the ballot is such member's then residential address according to the roll of voters entitled to vote.
(4) Every member shall upon the receipt by him of a ballot-paper record his vote by marking such ballot-paper (having regard to the instructions, if any, of the registrar or person taking the ballot with respect to such marking) and shall place such ballot-paper in the prepaid post envelope received by him with it, fasten up such envelope, and post it so as to reach the registrar or the person charged with taking the ballot not later than four o'clock in the afternoon of the day specified on the ballot-paper for the return thereof.

(5) The registrar or other person charged with taking the ballot shall examine and count all ballot-papers which have been returned to him not later than four o'clock on the afternoon of the day specified on the ballot-paper for the return thereof or thereafter received by him by post and on which the post mark clearly indicates that the envelope containing the ballot-paper was posted before such time.

The registrar or such person shall file in the registry a certificate of the result of the ballot.

(6) All officers of the Public Service and all members of the Police Force shall assist the registrar or other person charged with taking a ballot in the execution as respects the taking of a ballot of the powers or duties conferred or imposed upon him by this section as he may from time to time direct or require.

(7) No person shall resist or obstruct or attempt to resist or obstruct the registrar or other person charged with taking a ballot or any officer of the Public Service or member of the Police Force or any other person authorized or directed by the registrar or such firstmentioned person in the exercise or performance of any duty imposed or any act required or authorized to be done by or in pursuance of this section.

(8) No person shall obstruct or attempt to obstruct the secretary or any other officer or any member of any industrial union or any employer or any person acting for or on behalf of an employer in the performance of any act by this section required or authorized to be done in relation to a ballot or by threats or intimidation prevent or attempt to prevent any such person from doing any such act or influence or attempt to influence any such person in the doing of any such act.

(9) No person shall vote or attempt to vote at a ballot, whether by marking any ballot-paper, or otherwise howsoever, unless he is enrolled in the register of members of the union concerned, and has received a ballot-paper from the registrar or other person charged with taking the ballot, and no person entitled to vote shall mark any ballot-paper except the ballot-paper received by him from the registrar or the other person charged with taking the ballot.

(10) Any person who contravenes or fails to comply with any provision of this section shall be guilty of an offence and liable to a penalty of not more than two hundred dollars.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

See Rules of Court, Order 6, p. 577, post.

100. Disobedience of orders to exonerate union. Qd. s. 52. No industrial union or industrial association shall be liable to any suit or action, nor shall the funds of such union or association be in any way chargeable in respect of any act or word done, spoken, or written during or in
connection with any strike or lock-out, by any agent, if it shall be proved that such agent acted contrary to instructions bona fide given by or without the knowledge of the governing body of such union or association.

As to liability of trade unions for acts of members, see Criminal Code, s. 543A, title CRIMINAL LAW, Vol. 3, p. 495.

101. (1) Employer not to dismiss worker on account of application. C'wlth. s. 5; Cf. Qd. s. 53. An employer shall not refuse employment to any person or dismiss an employee, or injure him in his employment, or alter his position to his prejudice, by reason of the circumstance that the employee—

(a) is an officer or member of an industrial union, or of an association that has applied to be registered as an industrial union; or

(b) is entitled to or has claimed the benefit of an industrial agreement or an award; or

(c) has appeared as a witness, or has given any evidence, in a proceeding under this Act; or

(d) being a member of an industrial union which is seeking better industrial conditions, is dissatisfied with his conditions; or

(e) has absented himself from work without leave if—

(i) his absence was for the purpose of carrying out his duties or exercising his rights as an officer of an industrial union; and

(ii) he applied for leave before he absented himself and leave was unreasonably refused or withheld.

(2) An employer shall not threaten to dismiss an employee, or to injure him in his employment, or to alter his position to his prejudice—

(a) by reason of the circumstance that the employee is, or proposes to become, an officer or member of an industrial union, or of an association that has applied to be registered as an industrial union, or that the employee proposes to appear as a witness or to give evidence in a proceeding under this Act; or

(b) with the intent to dissuade or prevent the employee from becoming such officer or member or from so appearing or giving evidence.

(3) A person who contravenes the provisions of this section shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars for each person so refused employment or for each employee so dismissed or injured in his employment or whose position is so altered to his prejudice or in respect of whom such threat shall be made.

(4) In any proceeding for an offence against this section, if all the facts and circumstances constituting the offence, other than the reason for the defendant's action, are proved it shall lie upon the defendant to prove that he was not actuated by the reason alleged in the charge.
(5) Where an employer has been convicted of an offence against this section the Court or an industrial magistrate, as the case may be, may order that the employee be reimbursed any wages lost by him and may also direct that the employee be reinstated in his old position or in a similar position.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.


As to dismissal by reason of a claim to the benefit of an award, see Hunt v. Railway Commissioners, [1928] N.S.W.A.R. 151.

As to amount of compensation where the employee procures other employment see Australian Workers' Union v. Ambrose (1938), 32 Q.J.P. 6.

As to whether the onus thrown on the employer by subsection (4) is merely to give some evidence of a cause other than that under subsection (1) or is to convince the mind of the Court that such alleged cause was the real cause, see London v. Diserens Ltd., [1924] N.S.W.A.R. 143. As to subsection (4), see also Pearce v W. D. Peacock & Co. Ltd. (1917), 23 C.L.R. 199.

102. Power to make orders for observance of awards and agreements or to restrain breaches of Act. Qd. s. 55. (1) The Commission may, on the application of any party to an industrial agreement or award or of the registrar or any industrial inspector, make any such order as it deems just and necessary in the nature of a mandatory or restrictive injunction or otherwise to compel compliance with an industrial agreement or award or to restrain a breach thereof or the continuance of any breach:

Provided that any application by an industrial union for an order under this section shall be under the seal of the union and signed by the secretary and chairman.

(2) The Commission may, on the application of any such party or the registrar or any industrial inspector, make any order of the nature aforesaid which it deems just and necessary to restrain any breach of this Act or the continuance of any breach.

(3) The Commission may in its absolute discretion direct such order to such of the officers or members of an industrial union or branch thereof as it shall think fit, or to the officers or members of such union or branch thereof generally and without further description, or to a particular employer or employers.

(4) Any of the powers of the Commission under this section may be exercised in chambers, but any order made by a Commissioner hereunder may be discharged by the full bench of the Commission on the application of any party or person affected.

(5) No person to whom any such order as aforesaid applies shall, after he has received notice of the same, contravene such order in any way by act or omission.

The form of such notice and the mode of service thereof shall be in the discretion of the Commission which shall have full power to order substituted service by advertisement or otherwise as it shall think fit.
(6) If the members of an industrial union or branch thereof to whom such order is directed, or a substantial number of such members, fail to comply with any such order the union or branch, as the case may be, and every officer thereof shall be liable to be dealt with as for a contravention of such order unless it shall be proved that it or he took all reasonable steps to ensure that the members aforesaid complied with such order.

(7) Any person who contravenes any such order shall be guilty of an offence and be liable to a penalty in the case of an industrial union or body corporate not exceeding one thousand dollars and in any other case not exceeding one hundred dollars.

Decimal currency references substituted pursuant to section 7 of Decimal Currency Act of 1965.

Applications under this section are made by motion on notice, Rules of Court, Order 4, rule 24, p. 573, post.

An injunction may be granted in certain cases under s. 113 (6).

An applicant for an order under this section on the ground that a breach of an award has been committed must satisfy the Commission that the facts are inconsistent with any other rational conclusion than guilt, Metropolitan Gas Co. v. Federated Gas Employees' Union (1925), 35 C.L.R. 449, at p. 461.

The power to make an order under this section is discretionary and should be exercised according to the general principles governing the remedies of mandamus and prohibition respectively, and only where special circumstances exist, Whittaker Bros. v. Lewis & Reid Ltd. (1922), 31 C.L.R. 564. Thus an order in the nature of a mandamus will only be made where there is no other sufficient remedy, Re Metropolitan and Ipswich Water Supply and Sewerage Board and Australian Workers Union, [1920] Q.W.N. 21; 14 Q.J.P.R. 124; Whittaker Bros. v. Lewis & Reid, supra; Australian Workers Union v. Ambrose Lime Works Pty. Ltd. (1938), 32 Q.J.P. 4. As to cases where the breach is not likely to be repeated, see Graziers' Assoc. of N.S.W. v. Labour Daily Ltd. (1930), 44 C.L.R. 1.

An order in the nature of a mandamus was made to compel a party to an award to take steps under it to have employees classified for the purpose of wage rates, Re Metropolitan and Ipswich Water Supply and Sewerage Board and Australian Workers Union, supra.

An order may be made on a person who is not a party to the award or agreement, Graziers Assoc. of N.S.W. v. Labour Daily Ltd., supra.

The only remedy for contravention of an order is that prescribed by subsection (7), Graziers Assoc. of N.S.W. v. Durkin (1930), 44 C.L.R. 29. Cf. Ex parte Brennan (1915), 15 S.R.(N.S.W.) 173.

103. Contempt of Court. Qd. Sch. cl. 9. (1) The Court, in order to punish contempt of such Court, shall have all the protection, powers, jurisdiction and authority which are possessed by the Supreme Court in respect of contempt of that Court; and for that purpose the provisions of the Rules of the Supreme Court made under "The Judicature Act" applicable to contempt of Court shall, mutatis mutandis, apply and be observed in the exercise, by the Court, of such protection, powers, jurisdiction and authority with respect to contempt.

(2) A motion for an order that any person be committed to prison for his contempt may be made by the registrar or any other officer of the Court.

(3) The jurisdiction of the Court to punish a contempt of the Court committed in the face or hearing of the Court, may be exercised by the President alone; in other cases the jurisdiction of the Court to punish a contempt of the Court shall be exercised by the Full Industrial Court.
(4) The Court shall have power to punish as for a contempt of the Court an act or omission although a penalty is provided in respect of that act or omission under some provision of this Act.

Act referred to:
Judicature Act, 40 Vic., No. 6, title PRACTICE.
See R.S.C. (1900), Order 84, title SUPREME COURT.

As to contempt of court by publication in a newspaper of matter reflecting on the Court, see Bell v. Stewart (1920), 28 C.L.R. 419; R. v. Bolger (1937), 31 Q.J.P. 152.

104. Offences in relation to Commission. C’wth. s. 182. (1) Any person who—
(a) wilfully insults or disturbs a Commissioner when exercising powers or functions under this Act;
(b) interrupts the proceedings of the Commission;
(c) uses insulting language towards a Commissioner; or
(d) by writing or speech uses words calculated—
   (i) to influence improperly a Commissioner or a witness before the Commission; or
   (ii) to bring a Commissioner or the Commission into disrepute,
shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars or imprisonment for twelve months, or both.

(2) A reference in subsection one of this section to the Commission or to a Commissioner shall be read as including a reference to an industrial magistrate and to the registrar.

(3) A person committing an offence against subsection one of this section in the face of the Commission or an industrial magistrate or the registrar may by order of the Commission or such industrial magistrate or the registrar be excluded from the place where it or he is sitting.

Any member of the Police Force or other person acting under the authority of the Commission or of the industrial magistrate or the registrar may enforce such order and may use force if necessary.

An order under this subsection shall not affect the liability of the offender to be punished for the offence in question.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

105. Creating disturbance near Court or Commission. C’wth. s. 183. Any person creating a disturbance or taking any part in creating or continuing a disturbance in or near any place in which the Court or the Commission or an industrial magistrate or the registrar is sitting shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars or imprisonment for six months, or both.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

106. Contempt by witness. C’wth. s. 184; Cf. Qd. Sch. cl. 8. (1) Any person who has been summoned to appear or who has appeared before the Court or the Commission as a witness and who shall (without just cause proof whereof shall lie upon him)—
(a) disobey the summons to so appear; or
(b) refuse to be sworn or to make affirmation or declaration as a witness; or
(c) refuse to answer any question which he is required by the Court or the Commission to answer; or
(d) refuse to produce any books or documents which he is required by the Court or the Commission to produce,
shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

(2) A reference in subsection one of this section to the Commission shall be read as including a reference to an industrial magistrate and to the registrar.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

107. Obstructing officers and similar offences. Qd. s. 57. Any person who—

(a) resists or obstructs any officer of the Court or the Commission in the performance of any duties or the exercise of any powers under this Act;
(b) being lawfully required, fails to produce or exhibit any document or allow any document to be examined in accordance with such requirement;
(c) wilfully misleads any officer in any particular likely to affect the discharged of his duty; or
(d) being lawfully asked any question by an officer pursuant to this Act, fails to answer the same truthfully to the best of his knowledge, information, and belief,
shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

108. Details of payments to employee to be furnished. Qd. s. 57A. On the payment, by the employer, of any wages to the employee, such employer shall indicate either by noting on the pay envelope of the employee or by way of a statement in writing handed to the employee at the time of paying his wages how the payment is made up by including in such noting or statement such particulars as regards the date of payment, the period covered thereby, the rate of wages, the number of hours worked, overtime payments and details of any deductions and other matters as may be prescribed by regulations made from time to time in that behalf.

Any employer refusing or failing to comply with the provisions of this section shall be guilty of an offence, and shall be liable, on conviction, to a penalty of not less than ten dollars or more than two hundred dollars.

Decimal currency references substituted pursuant to section 7 of Decimal Currency Act of 1965.

109. Publication of statements in regard to working at less than award rates. Qd. s. 57B. (1) Any person who publishes or causes to be published any statement which is intended or apparently intended by such person—
(a) to indicate, on the part of an employer, that such employer is ready and willing to employ any person at a rate of wages which is less than the prescribed rate in the award concerned for the time being in force; or

(b) to indicate, on the part of an employee, that such employee is ready and willing to be employed by any person at a rate of wages which is less than the prescribed rate in the award concerned for the time being in force,

and where, in either case, such lesser rate of wages is not permitted under this Act or in any relevant award, shall be guilty of an offence and liable to a penalty of not less than ten dollars or more than two hundred dollars.

(2) A statement shall be deemed to be published within the meaning of this section if it is—

(a) inserted in any newspaper or any other publication printed and published in Queensland; or

(b) publicly exhibited—

(i) in, on, over or under any building, vehicle, or place (whether or not a public place and whether on land or water); or

(ii) in the air in view of persons being or passing in or on any street or public place; or

(c) contained in any document gratuitously sent or delivered to any person or thrown or left upon premises in the occupation of any person; or

(d) broadcast by wireless transmission or television.

(3) In any proceedings under this section against any person for publishing any statement aforesaid or causing the same to be published, the person who published the statement as aforesaid or caused the same to be published shall be deemed to have published the same or to have caused the same to be published with knowledge of its illegality, unless he proves that having taken all reasonable precautions against committing an offence under this section he had reasonable grounds to believe and did believe that the statement was not illegal and had no reason to suspect that the statement was illegal.

(4) No prosecution shall be instituted against, or against any person acting under the authority of, the printer, publisher or proprietor of any newspaper printed and published in Queensland, or against any other person whomsoever for publishing any statement in contravention of this section unless—

(a) such printer, publisher or proprietor or other person, as the case may be, has been warned by an industrial inspector that the publication of such statement, or of a substantially similar statement, is an offence; and

(b) such printer, publisher or proprietor or other person, as the case may be, publishes or authorizes or permits to be published such statement after receiving such warning; and

(c) the consent of the Minister to the prosecution is first obtained.
(5) No prosecution shall be instituted against the seller or distributor of any newspaper for the publication in such newspaper of any statement in contravention of this section unless the consent of the Minister to the prosecution is first obtained:

Provided that paragraphs (a) and (b) of subsection four of this section shall mutatis mutandis, apply to such seller or distributor.

Decimal currency references substituted pursuant to section 7 of Decimal Currency Act of 1965.

110. False statements, etc., to employers. Qd. s. 58. When under any award the amount of wages payable by an employer to an employee depends wholly or in part upon the age or experience or duration of previous employment of the employee, any person who, when seeking employment or while an employee, gives or makes to an employer any information or statement relating to any such matters which is false to the knowledge of such person or employee, shall be guilty of an offence and liable to a penalty not exceeding forty dollars.

Compare Wages Acts, 1918 to 1954, s. 31 (a), p. 723, post.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

111. (1) Counselling or procuring offences. Every person who, or industrial association or other body which is, directly or indirectly, concerned in the commission of any offence against this Act, or counsels, takes part in, or encourages the commission of any such offence, shall be deemed to have committed that offence, and shall be punishable accordingly.

(2) Attempts. Any attempt to commit an offence against this Act shall be an offence against this Act punishable as if the offence had been committed.


As to what constitutes evidence of encouraging an unlawful strike, see Collaton v. Correll, supra; McKernan v. Fraser, [1930] S.A.S.R. 364.

As to distribution of food and money to maintain employees during a strike, see Millars' Karri & Jarrah Co. Ltd. v. Holman (1907), 9 W.A.L.R. 125.

For a case of inciting commission of an offence, see Australasian United Steam Navigation Co. Ltd. v. Sandham, [1934] St. R. Qd. 90; 28 Q.J.P.R. 36.

See also the cases cited under ss. 4, 7 of Criminal Code, title CRIMINAL LAW, Vol. 3, pp. 221, 223.

112. General penalty. Qd. s. 60. Any person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence and liable, if no specific penalty or punishment is provided, to a penalty not exceeding in the case of an industrial union or body corporate two hundred dollars, or in any other case twenty dollars.

All penalties recovered under this Act shall be paid into the Consolidated Revenue.

Decimal currency references substituted pursuant to section 7 of Decimal Currency Act of 1965.

A union secretary has no right as such to prosecute for an offence, Bow v. Whitty (1921), 15 Q.J.P.R. 99. See also Australian Workers' Union v. Fogarty, [1931] Q.W.N. 35; 25 Q.J.P.R. 97.

113. Breaches of awards and contraventions of Act generally. Qd. s. 61. (1) Whoever commits a breach of an award or industrial agreement whether by contravention or non-observance of the same shall be guilty
of an offence and liable to a penalty for a first offence in the case of an employer or industrial union of not less than ten dollars or more than one hundred dollars, and in the case of an employee of not less than two dollars or more than twenty dollars; and for a second or subsequent offence against the same provision of such award or industrial agreement to a penalty in the case of an employer or industrial union of not less than twenty dollars or more than two hundred dollars, and in the case of an employee of not less than ten dollars or more than forty dollars:

Provided that an employer convicted of an offence against this subsection in respect of any provision of an award or industrial agreement relating to the baking, sale, issue, carting or delivery of bread shall, in lieu of being liable to a penalty as hereinbefore provided, be liable for a first offence to a penalty of not less than twenty dollars or more than two hundred dollars, and for a second or subsequent offence against the same provision to a penalty of not less than forty dollars or more than five hundred dollars:

Provided further that the provision relating to an increased penalty for a second or subsequent offence shall not apply in any case where a period of more than twelve months has elapsed between the commission of such second or subsequent offence and the commission of the last previous offence for which the defendant has been convicted.

An employee who receives from an employer, or from anyone on his behalf, and an employer who, and any person on his behalf who, pays to an employee a remuneration less than that to which such employee is entitled under an award or industrial agreement, shall be deemed to commit a breach of such award or industrial agreement.

(2) Any person who disobeys an order of the Court or of the Commission which imposes a penalty for disobedience thereto, shall be guilty of an offence and shall be liable to a penalty not exceeding the penalty so imposed.

(3) Whenever bread is sold, issued or delivered by any person to another person who sells bread in the ordinary course of his business, and such sale, issue or delivery by such firstmentioned person constitutes a breach, and whether by contravention or non-observance, of any provision of an award or industrial agreement relating to the sale, issue or delivery of bread then, and in every such case, such other person shall, in addition to such firstmentioned person, be deemed to have committed such breach of the award or industrial agreement concerned, and shall be liable for a first offence to a penalty of not less than twenty dollars or more than one hundred dollars, and for a second or subsequent offence against the same provision to a penalty of not less than forty dollars or more than two hundred dollars:

Provided that the provisions relating to an increased penalty for a second or subsequent conviction shall not apply in any case where a period of more than twelve months has elapsed between the commission of such second or subsequent offence and the commission of the last previous offence for which the defendant has been convicted.

(4) Any employee who, in pursuance of an express or implied agreement with an employer or with any person on behalf of an employer, receives or agrees to receive or authorizes another person to receive on his behalf a less remuneration than that to which he is entitled under
an award, industrial agreement, permit, or license, and such person so authorized as aforesaid and such employer or person acting on his behalf, shall each of them be guilty of an offence against this Act:

Provided that no prosecution shall be initiated under this subsection without the leave of the Court, nor at the instance of any person who is not entitled to initiate proceedings under this Act.

(5) Any employee who returns or agrees to return any portion of the remuneration paid to him in accordance with the terms of an award, industrial agreement, permit, or license shall be deemed for the purposes of this section to have received less remuneration than was due to him under such award, agreement, permit or license.

(6) Where an order to pay a penalty is made against any person and the Full Industrial Court is of opinion or is informed by an industrial magistrate that the breach was committed by the wilful act or default of such person, the Court may, in addition to any other order, grant an injunction to restrain such person from continuing the said breach, or from committing further or other breaches of the award or industrial agreement, under a penalty not exceeding two thousand dollars.

As amended by Act of 1963, No. 43, s. 4.

Decimal currency references substituted pursuant to section 7 of Decimal Currency Act of 1965.

For power to order payment of wages on a prosecution under this section, see s. 97 (2).

As to enforcement of orders, see s. 115, and clause 12 of the First Schedule, post. An industrial union may be deregistered for wilful refusal to obey an order of the Industrial Court. See s. 73 (1) (f).

As to whether proceedings under this section are civil or criminal, see Railway Commissioners v. Hunt, [1931] N.S.W.A.R. 155.

Matters under subsection (1) are dealt with by an Industrial Magistrate, s. 24 (b).

The breach or non-observance of an award need not be wilful to fall within subsection (1), Hall v. Sweetman, [1918] Q.W.N. 37; 12 Q.J.P.R. 126.

The offence of failing to pay award wages is a continuing offence, Jones v. Lorne Saw Mills Pty. Ltd., [1923] V.L.R. 58.

An employee who receives compensation under Workers' Compensation Acts, 1916 to 1965, p. 757, post, during incapacity is not entitled to wages in respect of that period under the terms of an award applicable to him and there is no offence by not paying him such wages, Hall v. Carr, [1921] Q.W.N. 6; 15 Q.J.P.R. 85.

Where an award fixes minimum rates of wages binding on employers, but imposes no obligation on employees to accept employment, there is no breach by workers who refuse to accept employment at award rates, Waterside Workers Federation v. Commonwealth Steamship Owners' Assoc. (1916), 21 C.L.R. 643.

As to liability of a union for acts of its members done in breach of an award, see s. 100, ante, Commonwealth Steamship Owners' Assoc. v. Federated Seamen's Union of Australasia (1923), 33 C.L.R. 297; Australian Commonwealth Shipping Board v. Federated Seamen's Union (1925), 35 C.L.R. 462.

Where the question whether a breach was wilful is material, the mind of the magistrate or Court must be applied to that question. Cf. Waterside Workers' Federation of Australia v. Birt & Co. Ltd., [1918] St. R. Qd. 10; [1918] Q.W.N. 8; 12 Q.J.P.R. 1.

114. Garages and service stations. (1) The occupier of a garage and service station, or garage or service station, situated within the Area of the City of Brisbane under and within the meaning of "The City of Brisbane Acts, 1924 to 1960," shall render inoperative every petrol, motor spirit or motor fuel pump at that garage and service station, or garage or service station, as the case may be, at all times during the
hours when such garage and service station, or garage or service station, as the case may be, is required by law to be closed by securely locking the delivery hose to the body of the pump and removing the key from the lock.

(2) The occupier of a garage and service station, or garage or service station, situated within the said Area, shall not sell, issue or deliver, or cause or permit or suffer to be sold, issued or delivered at that garage and service station, or garage or service station, as the case may be, petrol, motor spirit, motor fuel or substitutes therefor or motor oils at any time during the hours when such garage and service station, or garage or service station, as the case may be, is required by law to be closed.

(3) Any person who contravenes or fails to comply with any provision of this section shall be guilty of an offence against this Act and liable—

(a) for a first offence to a penalty of not less than twenty or more than one hundred dollars;
(b) for a second offence to a penalty of not less than fifty or more than two hundred dollars; and
(c) for a third or subsequent offence to a penalty of not less than one hundred or more than five hundred dollars.

(4) The provisions of this section shall not apply to—

(a) the sale, issue or delivery of petrol, motor spirit, motor fuel or substitutes therefor, or motor oils from pumps located on or adjacent to the foreshores of the Brisbane River, Breakfast Creek and Moreton Bay for use in or in connection with motor boats;
(b) the supply by the Royal Automobile Club of Queensland, as a roadside service, of petrol or motor oils to motorists for the purpose of enabling them to proceed to their destinations;
(c) The sale, issue or delivery—
   (i) by persons who are owners or proprietors of licensed taxi-meter cabs of petrol or motor oils for use in those taxi-meter cabs;
   (ii) by a limited company, an association or partnership comprised of shareholders, members or partners who are owners or proprietors of licensed taxi-meter cabs of petrol or motor oils for use in those taxi-meter cabs.
(d) an automatic coin operated pump, or the sale, issue or delivery of petrol, motor spirit, motor fuel or substitutes therefrom from an automatic coin operated pump, which is an exempted shop under and within the meaning of “The Factories and Shops Acts, 1960 to 1964,” by virtue of paragraph (xiv) of subsection (1) of section sixty of those Acts.

(5) In this section the term “licensed taxi-meter cab” means a taxi-meter cab licensed as such under the laws relating to the licensing of vehicles for hire.

As amended by Act of 1964, No. 67, s. 11.
Decimal currency references substituted pursuant to section 7 of Decimal Currency Act of 1965.
Acts referred to:
Proceedings for offences under this section are dealt with by an Industrial Magistrate, s. 24 (b).

114A. Soliciting of business to be transacted outside of lawful trading hours prohibited. (1) When there is published any statement which is intended or apparently intended to promote the business carried on in a factory or shop and which states, implies or suggests that at a time during the hours when that factory or shop is required by law to be closed—
(a) the factory or shop will be open to the admission of the public for any purpose of trade or the inspection of goods; or
(b) any goods will be sold or offered for sale in the factory or shop; or
(c) any person will be in attendance at the factory or shop or at any other place for the receipt, by any means, of—
   (i) orders for goods; or
   (ii) requests for the demonstration of goods, or the delivery of goods on approval,
the following persons shall be guilty of an offence against this Act:—
A. the person who publishes or causes to be published such statement; and
B. the occupier of the factory or shop the business of which is intended, or apparently intended, to be promoted by the publication of such statement.

(2) The occupier of a factory shall not be liable under the provisions of subsection (1) of this section by reason only of the fact that goods manufactured wholly or in part at his factory are mentioned by a trade name or any other name in such statement.

(3) A statement shall be deemed to have been published within the meaning of subsection (1) of this section if it is communicated to any person by way of the spoken or written word or by way of pictorial or other visual representation.

(4) In this section the terms "factory" and "shop" have respectively the meanings respectively assigned to those terms by "The Factories and Shops Acts, 1960 to 1963."

(5) In respect of the publication of any statement in contravention of this section the provisions of subsections (4) and (5) of section one hundred and nine of this Act shall, with and subject to all necessary adaptations, apply in relation to every person other than the occupier of the factory or shop the business of which is intended or apparently intended to be promoted by such publication.

Inserted by Act of 1963, No. 43, s. 5.

Act referred to:

115. Recovery of penalty imposed on union. Qd. s. 62. Where a penalty is imposed under this Act on an industrial union, or an industrial union is under this Act ordered to pay any sum, then, for the recovery
of such penalty or sum, process may be issued and executed against the property of such union, or any property in which such union has a beneficial interest, to the extent of such interest, whether vested in trustees or howsoever otherwise held, in the same manner as if the union were a body corporate and the absolute owner of the property or interest:

Provided that nothing herein shall extend to the printing presses or types or other assets in connection with a duly registered newspaper.

116. Proceedings for offences generally. Qd. s. 63. (1) Proceedings in respect of an offence against this Act shall be heard and determined in a summary manner by the Court or an industrial magistrate within the limits of their several jurisdictions.

(2) Consent to place of hearing. Where in any proceedings under this Act within the jurisdiction of an industrial magistrate the parties to the proceedings agree that such proceedings shall be heard and determined at any place so agreed upon other than the place which but for the provisions of this paragraph would have been the place of hearing, then notwithstanding anything contained in this Act or “The Justices Acts, 1886 to 1960,” or any other Act or law or rule or process of law, such proceedings shall be heard and determined at the place agreed upon and the industrial magistrate at such place shall have full power and jurisdiction to so hear and determine accordingly.

Moreover if any such proceedings have been instituted at the place which but for the provisions of this paragraph would have been the place of hearing and the parties to the hearing agree that such proceedings should be heard and determined at another place as so agreed upon, the industrial magistrate shall thereupon order that such proceedings shall be heard and determined at such other place agreed upon and grant the necessary adjournment accordingly and cause any necessary documents to be transmitted to the industrial magistrate at the agreed place of hearing, and such industrial magistrate shall have full power and jurisdiction to hear and determine the proceedings accordingly.

Any such agreement as aforesaid shall be in writing signed by each party to the proceedings or his representative.

(3) Without limiting the power of the Crown or of any person aggrieved, or any industrial inspector, proceedings for breaches of awards or for offences against this Act, and proceedings for the recovery of moneys due to an employee, may be initiated or undertaken by an industrial union in its registered name.

(4) Subject to subsection one of this section, any offence under this Act within the jurisdiction of an industrial magistrate may be prosecuted in a summary manner under “The Justices Acts, 1886 to 1960,” and all of the provisions of such Act shall apply and extend accordingly save that the court of summary jurisdiction shall be constituted by the industrial magistrate sitting alone.

Act referred to:


Proceedings for certain penalties are remitted to industrial magistrates. See s. 24. For power to order payment of wages in proceedings for penalties, see s. 97 (8). Right of appeal from an industrial magistrate to the Industrial Court is given by s. 27.

Semble, it is not necessary for an infant taking proceedings under this Act to be represented by a next friend, Kersley v. Fairymead Sugar Co. Ltd., [1915] Q.W.N. 9; 9 Q.J.P.R. 71.
117. Minimum penalty. Qd. s. 63A. Notwithstanding anything in any Act to the contrary, where any person is convicted of an offence against this Act the penalty to be imposed in respect of such offence shall not be reduced below any prescribed minimum amount of penalty:

Provided that, and notwithstanding anything to the contrary contained in this Act or in any other Act or law or rule or process of law, where two or more persons who are members of a partnership, firm, or other unincorporate association commit as such members an offence against this Act then the Court or industrial magistrate may, upon convicting more than one of such persons for such offence impose upon the persons so convicted the following penalties, that is to say:—

(a) impose upon one of such convicted persons as to the Court or magistrate shall seem just a penalty, which penalty shall not be less than the prescribed minimum penalty or more than the prescribed maximum penalty; and

(b) impose upon the other convicted person or each of the other convicted persons such penalty as the Court or magistrate shall think just, which penalty may be less than the prescribed minimum penalty but shall not be more than the prescribed maximum penalty.

PART IX—MISCELLANEOUS

118. Powers of unions to recover fines, etc. Qd. s. 65. All fines, fees, levies, and dues payable under its rules to an industrial union by any member thereof may be sued for and recovered before an industrial magistrate.

It appears that the only method of recovering the moneys mentioned is that provided by this section. See Davidson v. Australian Society of Progressive Carpenters and Joiners (1917), 23 C.L.R. 143.

119. Working in factory during prohibited hours. Qd. s. 66. When an award has fixed the lowest price or rate which may be paid to any person working in a factory, and also the periods of time within which the ordinary working hours shall be worked, it shall not be lawful for more than three members of a partnership to work personally inside a factory of the class to which the award relates at any time beyond such periods of time.

For penalty for breach of this section, see s. 112.
As to partners, see also the definition of "employee" in s. 5.

120. Commission to be guided by equity and good conscience. Qd. s. 67. Notwithstanding anything in this Act or in any other law or any practice to the contrary—

(a) the Commission and an industrial magistrate in the exercise of any jurisdiction, duty, power, or function conferred or imposed upon it or him, shall be governed in its or his procedure, awards and decisions by equity, good conscience, and the substantial merits of the case, without regard to technicalities or legal forms or the practice of other courts; and
(b) the Commission or an industrial magistrate in the exercise of any such jurisdiction, duty, power, or function, shall not be bound by any rules or practice as to evidence, but may inform its or his mind on any matter in such manner as is deemed just.

This section does not apply to proceedings for the recovery of moneys, or in respect of offences against this Act.

As to evidence which may be used, see also clause 6 (e) of the First Schedule, post.

This section only applies where the Commission is acting in exercise of its jurisdiction, and not for the purpose of determining the question whether such jurisdiction exists in a particular case, Re Wool Store Employees, [1917] Q.W.N. 41. Cf. Federated Engine-drivers & Firemen's Assoc. v. Broken Hill Pty. Co. Ltd. (1911), 12 C.L.R. 398.


This section does not allow the Commission to depart from the ordinary judicial methods for construction of statutes and in particular does not enable it, in construing this Act, to consult the journals of the Legislative Assembly or the debates therein on its consideration or a draft of the bill, Re Wool Store Employees, supra. Nor does it allow the Commission to interpret an award otherwise than according to its true meaning, Amalgamated Engineering Union v. W. Adams & Co. Pty. Ltd. (1926), 24 C.A.R. 63.

Under this section the Commission is entitled to accept statements not on oath from agents of parties. See Re Reference by Life Assurance Canvassers, [1917] Q.W.N. 26.


121. Trade secrets, etc., tendered in evidence. Qd. Sch. cl. 7; C'wlth. s. 186. (1) Books, papers, and documents relating to the trade secrets of any person or the profits or financial position of any witness or party shall not, without his consent, be inspected by any person except the President or a Commissioner or an expert appointed by the Commission to examine the same and report thereon to the Commission, unless such witness or party contends that the profits of an industry are not sufficient to permit of the payment of the wages or the granting of the conditions claimed or proposed to be paid or granted by any award, order, or industrial agreement.

(2) Where the Court or the Commission directs that information relating to a trade secret or to the profits or financial position of any witness or party shall be given in evidence that evidence shall, if the witness or party so requests, be taken in private.

(3) The Court or the Commission may direct that any evidence given in proceedings before it or the contents of any book, paper or document produced for inspection shall not be published.

(4) Any person who gives as evidence, or publishes, any information in contravention of this section or of any direction or order given or made thereunder shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.
122. Members of Public Service to furnish information to Court and Commission. Qd. s. 7 (6). Any person in the employment of the Crown shall, upon being thereunto required by the Court or the Commission, furnish to the Court or the Commission any information whereof that person has knowledge in his official capacity:

Provided that this subsection applies so that a person shall not be required hereunder to furnish any information which (irrespective of the relevancy thereof) some other Act or law would authorize, justify or excuse his refusing to give in evidence in any proceeding.

In this subsection the term “employment of the Crown” shall have the meaning assigned thereto by “The Public Service Acts, 1922 to 1960.”

Act referred to:
Public Service Acts, 1922 to 1965, title PUBLIC SERVICE.

123. Awards to prevail over contracts in cases of conflict. Qd. s. 68. Every award shall prevail over any contract of service in force on the coming into operation of the award, so far as there is an inconsistency between the award and the contract; and the contract shall thereafter be construed and have effect as if it had been modified, so far as necessary, in order to conform to the award:

Provided that no such contract shall be deemed to be inconsistent with an award for the reason only that such contract provides for more favourable conditions of employment than those provided by the award.

By virtue of s. 97 (11), proceedings may be taken under the Wages Acts, 1918 to 1954, p. 713, post, under a contract to pay wages less in amount than those due under an award, Smith v. Huggins (1932), 26 Q.J.P.R. 98.

Where indentures of apprenticeship are entered into under the terms of an award which is subsequently superseded by a new award purporting to apply only to apprenticeships entered into after it is made, this section does not have the effect of applying the new award to such indentures, Browett v. Wright (1911). 13 N.Z.G.L.G. 286.

It was held that an agreement to give employment and to take employment was not inconsistent with the award regulating work in the calling in Finch v. Sampson, [1915] Q.W.N. 21; 9 Q.J.P.R. 132. For other cases of provisions in agreements not inconsistent with awards applicable to the employee, see Marment v. Young, [1937] St. R. Qd. 212; 31 Q.J.P.R. 94; Kilminster v. Sun Newspapers Ltd. (1931), 46 C.L.R. 284 (right to notice of dismissal); Mriss v. Menegos (1930), 24 Q.J.P. 141 (Mag. Cas.) (lower rate of wages in contract); Coakley v. Groth, [1935] St. R. Qd. 220; 29 Q.J.P.R. 138, cited under s. 97, ante.

See Tardiani and Others v. Steele, [1943] St. R. Qd. 268; 38 Q.J.P.R. 15.

124. Intervention by the Crown. Qd. s. 69. (1) The Crown may intervene at any stage in any proceedings in the Court or the Commission or before an industrial magistrate.

(2) The Crown may intervene in any proceedings in any Court or judicial tribunal touching or involving the jurisdiction of the Court or of the Commission or any matter within the jurisdiction of the Court or of the Commission or the interpretation of this Act.

(3) Upon such intervention the Crown shall be deemed to be a party.

As to Crown employees, see ss. 46 (7), 95, 96.

125. Representation of parties at hearing. Qd. s. 70. (1) On the hearing or determination of any proceedings under this Act whether before the Court or the Commission or an industrial magistrate, a party being an industrial union may be represented by a member or officer, and any party may be represented by his agent duly appointed in writing in that behalf.

(2) A party may be represented by counsel or solicitor in proceedings before the Court with the consent of all parties thereto, or by leave of the Court.

(3) Unless all parties consent thereto no party shall be represented by counsel or solicitor in any proceedings before the Commission or before an industrial magistrate.

As to withdrawal of consent to representation by a solicitor or counsel, see Rules of Court, Order 4, rule 28, p. 575, post.

As to costs of solicitors, counsel and agents, see First Schedule, clause 3, p. 530, post.


An industrial union, as well as any other party, may be represented by counsel or solicitor, where the parties consent, Australian Workers' Union v. Fogarty, [1931] Q.W.N. 35; 25 Q.J.P.R. 97.

Counsel or a solicitor cannot appear in the capacity of agent appointed by writing, where the parties do not consent, Ranson v. Kingston, supra. For a decision to the contrary, see Ex parte Nicholson, supra.

As to whether the restriction on representation by counsel or solicitor applies to the Crown as a party, see Re Brisbane Printing Board Award, [1914] Q.W.N. 19.

This section does not prevent a party from obtaining legal assistance in the preparation of his case or from having a legal adviser at his side to prompt him during the hearing. See Colborne v. Hall-Gibbs Mercantile Agency Ltd., [1914] Q.W.N. 16; 8 Q.J.P.R. 3. As to whether costs of such assistance can be allowed, see ibid., and First Schedule, clause 3, p. 530, post.

126. Record to be kept by employer. Qd. s. 71. (1) Each employer shall keep and have available for inspection during business operations or working hours by an industrial inspector, or by an officer of any industrial union holding an authority under section one hundred and thirty-six of this Act, a time and wages book or other similar record of all employees who are for the time being or who were, at any time during the period of twelve months immediately preceding the date of any inspection, in his employment showing particulars of their designation, rate of wages, times of starting and ceasing work, and the award under which they are or were working respectively.

(2) Where in any award or industrial agreement it is prescribed that a time and wages book or other similar record shall be kept by an employer, such time and wages book or other record shall contain in addition to the particulars prescribed by subsection one of this section the particulars prescribed by such award or agreement in respect of all persons who are for the time being or who were at any time during the period of twelve months immediately preceding the date of any inspection in the employment of the employer.
(3) Where an award or industrial agreement does not prescribe a limitation of the daily or weekly working hours of any employee working thereunder, the provisions of subsection one of this section relating to times of starting and ceasing work do not apply in respect of such employee:

Provided that where such award or industrial agreement prescribes that a time and wages book or other similar record shall be kept by the employer nothing in this subsection shall exempt the employer from complying with the requirements of subsection two of this section with respect to any particulars relating to times of starting and ceasing work prescribed by such award or industrial agreement to be contained in such time and wages book or other similar record.

(4) Any person who makes or who causes or permits to be made in a time and wages book or other record required to be kept by this section, or by an award or industrial agreement, an entry which is false in any material particular shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

See also s. 132 (1) (e); Factories and Shops Acts, 1960 to 1964, Part IV, p. 355, ante.


127. Award as to minimum wage to be posted up. Qd. s. 72. There shall be kept printed, painted, or affixed, in legible roman characters, in some conspicuous place at or near the entrance of every factory, workroom, shop, or premises to which an award applies, in such a position as to be easily read by the employees therein, a true copy of the award.

See also s. 12 (1) (i).

128. (1) Evidence. Qd. s. 73. An office copy of or copy of the Gazette or of the Queensland Government Industrial Gazette containing a decision or other act of the Court or of the Commission purporting to be sealed with the seal of the Court or of the Commission respectively, shall be received in all courts and tribunals and before all persons as evidence of such decision or other act without further proof; and it shall not be necessary to prove any condition precedent entitling the Court or the Commission to make the decision or do the act.

(2) Registrar's certificate. A certificate of the registrar that any specified person was at any specified time the chairman or a specified officer or a member of any specified industrial union shall be evidence of the facts therein set forth until the contrary shall be proved.

As to validity of awards, see s. 32 (3).

129. Special mode of service may be directed. Qd. s. 74. (1) When it is made to appear to the Court or a Commissioner or the registrar that personal or other service of any order or of any summons, notice, or other document in connection with or for the purposes of any proceeding in or intended to be brought in the Court or in the Commission cannot promptly be effected in manner prescribed, the President or the registrar (in the case of a proceeding in or intended to be brought in the Court) and such Commissioner or the registrar (in the case of a proceeding in or
intended to be brought in the Commission) may in his discretion make any order for substituted or other service or the substitution for service of notice by letter, telegram, public advertisement or otherwise which he deems necessary or convenient; and in such case compliance with such order shall be sufficient service.

(2) Subject always to any order of the Court or of the Commission, service of any such order, summons, notice or other document upon a registered industrial union of employers shall be deemed to be service upon all employers in the same calling or industry or in the same related callings or industries in respect of which such industrial union is registered.

As to service of process, see also Rules of Court, Order 5, p. 575, post.

130. Powers of entry to Commission for examination of factories, etc. Qd. s. 75. (1) A Commissioner and (upon being authorized in writing by a Commissioner) any officer of the Commission or any other person, without any other warrant than this Act, may at any time during working hours—

(a) enter any place or premises or any ship, vessel or aircraft of any kind whatsoever wherein or in respect of which any calling is carried on or any work is being or has been done or commenced, or any matter or thing is taking or has taken place in relation to which any industrial dispute exists or is threatened or impending or will probably arise, or any industrial matter exists, or any award has been made, or any offence against this Act is suspected;

(b) Inspection of work and interrogation of persons. inspect and view any work, material, machinery, appliances, article, matter, or thing whatsoever being in such place, premises, ship, vessel or aircraft;

(c) interrogate any person or persons who may be in or upon such place, premises, ship, vessel or aircraft in respect of or in relation to any matter or thing hereinbefore mentioned in this subsection.

(2) Every person who hinders or obstructs a Commissioner or any officer of the Commission or other person in the exercise of any power conferred by this section or who refuses or unduly delays to a Commissioner, or any officer of the Commission or other person authorized as aforesaid, entrance during any such time as aforesaid to any such place, premises, ship, or vessel, or refuses without reasonable excuse to answer any question put to him as aforesaid, or gives or makes any information or statement which is to his knowledge false, shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars or to imprisonment for not longer than twelve months, or both.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

The expressions “industrial dispute” and “industrial matter” are defined by s. 5, ante.

The words “or any other person” have a wide general meaning, Bushell v. Jolly, [1934] S.A.S.R. 229. As to whether they include a union secretary, see ibid. and s. 136.

There is no power to inspect books under this section. See Australian Theatrical Employees Assoc. v. J. C. Williamson Ltd. (1917), 11 C.A.R. 824.
131. Administration. (1) (a) The Governor in Council may from time to time appoint under and for the purposes of this Act a Chief Industrial Inspector and so many other industrial inspectors, and other officers as he deems necessary for the effectual execution of this Act.

(b) Any appointment as industrial inspector may, if the Governor in Council deems it so desirable, be made by the appointment to be such inspector of the holder for the time being of an office under the Crown in right of this State, specifying the office but without naming the holder; and in every such case each successive holder of the office in question and each person who for the time being occupies or performs the duties of that office shall without further appointment or other authority and while he holds or occupies or performs the duties of that office, be an industrial inspector in terms of such appointment, and may hold both his office and such appointment in conjunction.

(c) Notification of all or any such appointments may be published in the Gazette or in the Queensland Government Industrial Gazette.

(d) The person appointed to and holding immediately prior to the commencement of this Act the office of Chief Inspector of Factories and Shops shall, without further or other appointment, be deemed to be appointed the Chief Industrial Inspector under and for the purposes of this Act, and shall, subject to this Act, continue to hold that office in terms of his appointment under and for the purposes of this Act.

(2) Without prejudicing the power of the Governor in Council to appoint, under subsection one of this section, acting industrial inspectors, the Minister or the Chief Industrial Inspector may from time to time by writing or by telegram appoint any person who holds for the time being any office under the Crown in right of this State to act as an industrial inspector and while so acting such officer shall have and may exercise all of the powers, functions and authorities of an industrial inspector, and for this purpose every reference in this Act to an industrial inspector shall be deemed to include a reference to such an acting industrial inspector.

(3) Judicial notice shall be taken of every notification published in the Gazette or in the Queensland Government Industrial Gazette under this section.

(4) Nothing in this section shall prejudice or in any way affect the application of the provisions of “The Public Service Acts, 1922 to 1960,” to any officer appointed or deemed to be appointed under and for the purposes of this Act.

(5) Every industrial inspector shall as far as practicable be furnished with a certificate of appointment signed by either the Minister or the Chief Industrial Inspector and upon entering any place shall, if required, produce that certificate (unless his appointment has been made by telegram when he shall, if required, produce that telegram) to the occupier of the place.

(6) Any industrial inspector may exercise and perform his powers, functions, authorities and duties under this Act in any part of the State.

(7) (a) Every industrial inspector shall perform the duties imposed upon him by this Act under the general supervision and direction of the Chief Industrial Inspector.
(b) Any breach by an industrial inspector of the administrative arrangements provided by this section shall be a matter for disciplinary action by any person by whom such action may be taken and shall not affect or prejudice the validity of anything done or omitted to be done by the industrial inspector concerned.

Act referred to:
Public Service Acts, 1922 to 1965, title PUBLIC SERVICE.

132. Powers and duties of industrial inspectors. Qd. s. 76. (1) In addition to any other powers and duties conferred or imposed upon him under this Act, an industrial inspector may—

(a) at any time enter, inspect and examine any premises (including any place or any ship, vessel or aircraft whatsoever) whereon or wherein any calling the subject of any award or industrial agreement or order is carried on or whereon or wherein he has reason to believe that any such calling is carried on;

(b) at any time stop, inspect and examine any vehicle in or on which he has reason to believe that any bread is being carried for sale or for delivery for or on sale, or stop and question any person whom he has reason to suspect is delivering any bread for or on sale;

(c) call to his aid any member of the Police Force where he has reasonable cause to apprehend any obstruction in the exercise of his powers or in the execution of his duties;

(d) make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act, including the provisions of any relevant award or industrial agreement or order, are being complied with in respect of any calling, any employer in that calling, and his employees therein;

(e) at any time during business operations or working hours require any employer in a calling which is subject to any award or industrial agreement or order to produce for his inspection and examination all or any time-sheets, pay-sheets and other records relating to persons employed by that employer in that calling, and make copies of or extracts from such time-sheets, pay-sheets and other records or any of them;

(f) at any time during business operations or working hours question, with respect to matters under this Act, including matters under any award or industrial agreement or order, any employer in any calling the subject of an award or industrial agreement, any person whom he finds in or upon such premises as aforesaid wherein or whereon such a calling is carried on or is suspected by him to be carried on to ascertain whether this Act and any relevant award or industrial agreement is being complied with, and require any such person to answer the questions put and to sign a declaration of the truth of his answers.

The power hereunder to question any employee shall include power to question that employee, out of the hearing of his employer or of any foreman, deputy, manager or other
superior officer, with respect to any matters including the
prices for piecework and the rates of wages paid to that
employee, and his hours of work;

(g) institute proceedings under this Act and apply to the Com-
misson for interpretations of award or orders;

(h) exercise all such other powers and authorities as may be
prescribed.

(2) It shall be the duty of industrial inspectors to see that the pro-
visions of awards and orders of the Commission are duly observed.

An industrial inspector shall report to the Chief Industrial Inspector
all breaches of this Act, or of an award or industrial agreement or order,
which have come to his knowledge.

(3) No industrial inspector shall have any authority under this Act
to enter a private dwelling-house, or the land used in connection therewith,
unless some manufacture or trade in which labour is employed is carried
on therein.

(4) An industrial inspector or other officer who, except for the
purposes of this Act and in the exercise of his functions under this Act
or except with the prior permission of the Minister or except where so
ordered by a court for the purpose of the hearing or determination or
trial of any proceeding or action before that court, discloses to any person
any information which in the exercise of his functions he acquires with
respect to any factory or shop or other place shall be guilty of an offence
and liable to a penalty not exceeding two hundred dollars.

As amended by Act of 1964, No. 67, s. 12.

Decimal currency reference substituted pursuant to section 7 of Decimal

With sub-paragraph (e) of subsection (1), cf. s. 126.

An industrial inspector can only disclose information where such disclosure
is for the purposes of this Act, in the exercise of his functions under this Act
and in the cases provided by subsection (4), Auckland Hotel Employees' Union v.

133. Employers to allow entry and inspection. Qd. s. 76 (5). Every
owner of, or person entitled to the immediate possession of, such premises
as aforesaid, including any ship, vessel or aircraft, whereon or wherein
any calling the subject of an award or industrial agreement or order
is carried on and every employer carrying on on or in any such premises
such a calling shall furnish to any industrial inspector all reasonable
assistance and all such information which he is capable of furnishing as is
required by that inspector with respect to the exercise of his powers and
the discharge of his duties under this Act in relation to those premises.

As amended by Act of 1964, No. 67, s. 13.

134. Obstructing an inspector, etc. Qd. s. 76 (5). (1) A person shall not——

(a) assault, resist, or obstruct an industrial inspector in the
exercise of his powers or in the discharge of his duties under
this Act, or attempt so to do; or

(b) fail to answer any question put to him in pursuance of this
Act by an industrial inspector or give any false or misleading
answer to any such question; or
(c) fail to comply with the lawful requisition or any part of
the lawful requisition of an industrial inspector; or

(d) when required by or under this Act to furnish any assistance
or to furnish any information to an industrial inspector, fail
to furnish that assistance or information, as the case may be,
or, in the latter case, furnish false or misleading information;
or

(e) directly or indirectly prevent any person from appearing
before or being questioned by an industrial inspector, or
attempt so to do; or

(f) use any threat or any abusive or insulting language to any
industrial inspector or to an employee with respect to any
inspection or examination or questioning:

Provided that no person shall be required under any provision of
this section to answer any question or give any information tending to
incriminate himself.

(2) A person who contravenes any provision of this section shall be
guilty of an offence and liable to a penalty of not more than two hundred
dollars:

Provided that where a person is convicted for the offence under
this section of assaulting, obstructing or resisting an industrial inspector
or of attempting so to do committed in respect of the attempted exercise
by that inspector of any of his powers or duties under this Act in relation
to a breach suspected by that inspector of any award or industrial agree­
ment applicable to the baking, sale, issue, carting or delivery of bread
then that person shall be punished for the first such offence by a penalty
of not less than twenty or more than two hundred dollars, and for a
second or subsequent such offence committed not later than twelve months
after the commission of the next preceding such offence, by a penalty of
not less than forty or more than five hundred dollars.

Decimal currency references substituted pursuant to section 7 of Decimal
 Proceedings for offences under this section are dealt with by an Industrial
Magistrate, s. 24 (b).

135. Evidence. In any proceedings under or for the purposes of this
Act—

(a) it shall not be necessary to prove the appointment of the
Chief Industrial Inspector or of an industrial inspector or
the authority of the Chief Industrial Inspector or of an
industrial inspector to do any act or give any notice thereof;

(b) a signature purporting to be that of the Chief Industrial
Inspector or of an industrial inspector shall be taken to be
the signature it purports to be until the contrary is proved;

(c) a document purporting to be a duplicate or copy of a notice,
order, or permit given, made or issued under this Act by
the Chief Industrial Inspector or by an industrial inspector
shall upon its production in evidence, be evidence of that
notice, order or, as the case may be, permit and in the
absence of evidence in rebuttal thereof shall be conclusive
evidence thereof;
(d) it shall not be necessary to prove the limits of any district or other prescribed place or any road or place within any district or other prescribed place or that any place alleged to be a road or public place or any particular part of a road or public place is a road or public place or part thereof or the authority of the Chief Industrial Inspector or of an industrial inspector to do any act or take any proceedings, but this shall not prejudice the right of any defendant to prove the facts.

136. Power of inspection by union officials. Qd. s. 77; Cf. N.S.W. s. 129A.

(1) Any officer of an industrial union upon being authorized in writing either generally or in respect of a specific occasion by a Commissioner or the registrar or an industrial magistrate shall have the right to enter any place or premises or any ship, vessel, or aircraft of any kind whatsoever wherein or by means of which any person carries on a calling in respect of which such union is registered.

Such officer may enter such places, premises, ships, vessels or aircraft at any time during which the calling is being carried on therein, and may interview the employer or any of his employees or converse with him or them during any lunch hour or non-working time, but no such officer shall willfully hamper or hinder the employer or his employees during his or their working time.

(2) Every person who hinders or obstructs any such officer in the exercise of any power conferred by this section, or who refuses entrance to such officer or unduly delays such officer in entrance during any such time as aforesaid to any such place, premises, ship, vessel, or aircraft, shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

Every such officer as aforesaid who contravenes the provisions of this section shall be guilty of an offence and shall be liable to a penalty not exceeding two hundred dollars.

(3) Where on application by an employer it is proved that the officer concerned has exercised his power of entry as aforesaid in an unreasonable or vexatious manner or has made vexatious, unreasonable or improper use of information obtained from inspection of any record made available to him pursuant to this Act the Commission or an industrial magistrate may—

(a) revoke such authority; or
(b) suspend such authority for such period as it or he shall think fit; or
(c) attach such conditions thereto as it or he shall think proper in the circumstances.

(4) In this section and in section one hundred and twenty-six of this Act, the term "officer" means any person who, in relation to an industrial union or a branch of an industrial union, is—

(a) an officer as defined in section five of this Act; or
(b) a bona fide employee who requires to make in the course and for the due performance of his employment any entry mentioned in this section or inspection mentioned in section one hundred and twenty-six of this Act:
Provided that the term does not include any employee of a person other than the industrial union concerned—

(a) who, in the course of his employment is required at any time or from time to time to be in or on or to enter the place, or premises, or ship, or vessel or aircraft in question (or in the case of any ship, vessel or aircraft, the place or premises whereat or wherein the same is); or

(b) who, in respect of any place, or premises, or ship, or vessel or aircraft other than that in question (or, in the case of any ship, vessel or aircraft other than that in question, the place whereat or wherein it is) which in the course of his employment he is required at any time or from time to time to be in or on or to enter, is the representative or delegate of such union or of employees engaged in any calling in respect of which such union is registered.

As amended by Act of 1963, No. 43, s. 6.

Decimal currency references substituted pursuant to section 7 of Decimal Currency Act of 1965.

As to the right of a union official to move about on the premises for the purpose of interviewing the employees, see Murdoch Manufactories Ltd. v. Gibb, [1925] N.S.W.A.R. 82.


There is a refusal of entrance where an employer, knowing the purpose for which a union official has come, declines to discuss any matter with him, Watt v. Kirk, [1929] N.S.W.A.R. 1.

As to whether an award can give officials of industrial unions a right to enter premises where members are employed, see Australian Sugar Producers' Assoc. v. Australian Workers' Union, [1917] St. R. Qd. 50; [1917] Q.W.N. 12; 23 C.L.R. 58.

137. No stamp duty payable. Qd. s. 78. Notwithstanding any Act to the contrary, no stamp duty shall be payable on or in respect of any certificate, agreement, order, statutory declaration, power of attorney, or instrument executed in pursuance of or to give effect to this Act.

The Act imposing stamp duties generally is the Stamp Acts, 1894 to 1965, title STAMP DUTIES.

138. Nomination. T.U. s. 18. A member of a trade union may, by writing under his hand, delivered at or sent to the registered office of the union, nominate any person not being an officer or servant of the union (unless such officer or servant of the union is the husband, wife, father, mother, child, brother, sister, nephew or niece of the nominator), to whom any moneys payable on the death of such member not exceeding two hundred dollars shall be paid at his decease, and may from time to time revoke or vary such nomination by a writing under his hand similarly delivered or sent.

On receiving satisfactory proof of the death of a nominator the union shall pay to the nominee the amount due to the deceased member, not exceeding the sum aforesaid.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

139. Regulations. Qd. s. 79. (1) The Governor in Council may from time to time make regulations, not inconsistent with this Act, prescribing all matters or things which by this Act are required or permitted to be prescribed (except any matter or thing required by this Act to be
prescribed otherwise than by regulation) or which are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.

(2) A regulation may impose a penalty for any breach thereof and may also impose different penalties in case of successive breaches, but no such penalty shall exceed one hundred dollars.

(3) The power to make regulations under this Act shall include power to repeal, amend or otherwise modify any regulation in force at the commencement of this Act and continued in force by virtue of any provision of this Act.

For Regulations, see p. 537, post.

Decimal currency reference substituted pursuant to section 7 of Decimal Currency Act of 1965.

The principles for determining the validity of statutory regulations are stated in the Preliminary Note to the title ACTS OF PARLIAMENT, Vol. 1, p. 72.

140. Publication of Orders in Council, etc. (1) Every Proclamation, Order in Council or regulation made under this Act shall—

(a) be published in the Gazette or in the Queensland Government Industrial Gazette;

(b) upon its publication in the Gazette or in the Queensland Government Industrial Gazette be judicially noticed and such publication shall be conclusive evidence of the matters contained therein;

(c) take effect from the date of such publication unless, in the case of any regulation, a later date is specified in that or any other regulation for its commencement when in such event it shall take effect from that later date; and

(d) be laid before Parliament within fourteen sitting days after such publication, if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

(2) If Parliament passes a resolution of which notice has been given at any time within fourteen sitting days after any such Proclamation, Order in Council, or regulation has been laid before Parliament disallowing the same or part thereof, that Proclamation, Order in Council, regulation or part shall thereupon cease to have effect, but without prejudice to the validity of anything done in the meantime or to the making of a further Proclamation, Order in Council, or regulation.

141. Inaccurate descriptions, etc. No misnomer, inaccurate description, or omission in or from any Proclamation, Order in Council, regulation, rule, award, industrial agreement, license, permit, order, notice or other act of authority under this Act shall in any wise prevent or abridge the operation of this Act with respect to the subject matter of that misnomer, inaccurate description, or omission provided the same is designated so as to be understood.
FIRST SCHEDULE

POWERS AND PROCEDURE OF THE COURT AND COMMISSION

1. Initiation of proceedings. (1) Proceedings before the Court or the Commission may be initiated as prescribed by the Rules of Court by an industrial union, a member or officer thereof, an industrial inspector, an employer, the Minister or any other person interested in the cause or matter.

(2) The Commission of its own motion may initiate any proceedings and summon before it such persons as it deems necessary.

(3) No proceedings in the Court or the Commission shall abate by reason of the death of any party, and such proceedings shall by order of the Court or the Commission continue upon such terms and conditions as the Court or the Commission thinks fit.

2. Powers of Court or Commission. Subject to this Act, the Court or the Commission may, as regards every cause—

(a) at or before the hearing, take steps to ascertain whether all persons who ought, in its opinion, to be bound by its decision have had notice of or have been summoned to attend the proceedings;

(b) direct that persons shall be parties to the proceedings, and by whom such parties shall be represented; direct that persons not summoned to attend the proceedings shall be so summoned, if the Court or the Commission is of opinion, whether from the suggestion of parties or otherwise, that such persons should be so summoned; direct parties to be joined or struck out;

(c) hear and determine the cause in such manner in all respects as the Court or the Commission in its discretion, thinks best suited for that purpose;

(d) allow any amendment of the proceedings on such terms as the Court or the Commission thinks fit, correct, amend, or waive any error, defect, or irregularity, whether in substance or in form;

(e) make any decision, and, without being restricted to the specific relief claimed by the parties, include in any decision any matter or thing which the Court or the Commission thinks necessary or expedient for preventing or settling the industrial dispute or dealing with the matter;

(f) give any directions in pursuance of the decision;

(g) dismiss any cause, or refrain from further hearing or from determining the cause, if it appears that the cause is trivial, or that, in the public interest, further proceedings by the Court or the Commission are not necessary or desirable;

(h) order any party to the proceedings to pay to any other party such expenses, including expenses of witnesses, as are specified in the order;

(i) proceed to hear and determine the cause in the absence of any party thereto or other person who has been summoned or served with notice to appear therein;

(j) sit in any place for the hearing and determination of the cause; adjourn its sittings to any time and place;

(k) refer any technical matters or matters of account to an expert, and accept his report as evidence:
For obtaining any special or expert information based on facts or figures which the Commission may desire, the Commission may call in the services of an expert or experts approved by it, and authorize such expert or experts to prepare schedules compiled from returns obtained from employers or employees or both of them (which returns they shall be compelled to furnish under penalty of an offence against this Act). Such expert or experts shall not without leave of the Commission divulge the name or private business of any individual employer; but, without limiting the scope of the inquiry, such schedules may show details of the minimum or maximum and average costs of production, sale, or distribution in the calling concerned, the average net return on capital invested therein, estimates of allowances for depreciation or reserves to equalise profits, and other like general information; and as far as practicable such schedules shall not be confined to one year's operations;

(1) extend any prescribed time whether within or after the prescribed time;

(m) waive compliance with any Rule of Court;

(n) review, annul, rescind, or vary any act or decision of the registrar in any manner which it thinks fit; and

(o) generally to give all such directions and do all such things as it deems necessary or expedient in the premises.

Subject to this Act and the Rules of Court, p. 559, post, the Court or the Commission may give directions as to its own practice and procedure (clause 16 (3), post).

The Commission has power to enter premises and examine matters and interrogate persons therein, under s. 130.

Paragraph (a)—For persons bound by awards, see s. 31.

Paragraph (b)—See Coastal Boiler-Makers Industrial Union v. Millars Karri & Jarrah Co. Ltd. (1905), 7 W.A.L.R. 288 and Re Canterbury Agricultural and Pastoral Labourers (1907), 9 N.Z.G.L.R. 653, where it was held that an industrial union of employees not a party to the dispute had been properly joined.

Paragraph (e)—With respect to the claim for specific relief, cf. s. 11 (3), ante. And see Australian Sugar Producers' Assoc. v. Australian Workers' Union, [1917] St. R. Qd. 50; [1917] Q.W.N. 12; 23 C.L.R. 58.

Paragraph (g)—The power to dismiss a case under paragraph (g) should be carefully exercised and only in cases beyond all reasonable doubt falling within that paragraph, Australian Railways Union v. Victorian Railways Comrs. (1925), 21 C.A.R. 800, at p. 805. Where a party claiming an award has declared its intention not to abide by the award if made, it is in the public interest that no award should be made, Federated Gas Employees Union v. Metropolitan Gas Co. (1913), 7 C.A.R. 58.

Where a union which was the applicant in proceedings was carrying on an illegal strike in a necessary industry it was held to be in the public interest that no award should be made, Federated Ironworkers' Assoc. v. Johns and Waygood (1917), 11 C.A.R. 580.

Paragraph (k)—See also clause 9 of this Schedule.

Paragraph (m)—The time for an appeal to the Industrial Court was extended where failure to service notice of appeal was due to inadvertence on the part of a solicitor, Ramsbothom v. Johnson, [1920] Qd. Indus. Gaz. 760.

Paragraph (n)—As to appeals from orders of the registrar varying awards to bring them into conformity with general rulings, see s. 13 (7), ante.
An application to review a decision of the registrar is a re-hearing and evidence not before the registrar may be produced, Federated Carters and Drivers Union v. Motor Transport and Chauffers' Assoc. (1912), 6 C.A.R. 122; Amalgamated Society of Carpenters and Joiners v. Commonwealth Public Service Artisans' Assoc. (1918), 12 C.A.R. 107. And the Court is not confined to objections raised before the registrar, Federal Palace Hotel Ltd. v. Federated Liquor Employees' Union (1918), 12 C.A.R. 652.

As to the circumstances in which the Industrial Court will set aside a decision of the registrar, see Crocker v. Trained Nurses Guild (1922), 16 C.A.R. 221.

3. Costs. The Court and the Commission shall have jurisdiction to award costs in all matters brought before it, including matters dismissed for want of jurisdiction; but no costs shall be allowed of any counsel, solicitor, or agent in proceedings before the Commission unless the Commission shall certify it is or was in the interests of justice that counsel, solicitor, or agent should be or should have been heard.

See also s. 27 (3) proviso, ante, and Rules of Court, Order 4, rule 27, p. 574, post.

The word "matter" is "the widest term to denote controversies which might come before a court of justice" (per Griffith, C.J., in South Australia v. Victoria (1911), 12 C.L.R. 667, at p. 675; Ex parte Hanley, [1922] Q.W.N. 6: 16 Q.J.P.R. 49).

Where intricate points of law were involved it was held to be in the interests of justice that counsel should be heard, Ex parte Hanley, supra. As to costs of legal assistance in preparation of a case, see Colborne v. Hall-Gibbs Mercantile Agency Ltd., [1914] Q.W.N. 16; 8 Q.J.P.R. 3.

4. Judgment and execution. The Court in the exercise of its jurisdiction under this Act may enforce its own decisions, and may make and pronounce all such decisions as may be necessary for doing complete justice in any proceeding before it, and for the execution of any such decision, and may direct the issue of any writ or process or impose and enforce any penalty authorized or prescribed by this Act in the same manner as a judgment of the Supreme Court is enforced, and the Registrar of the Supreme Court and the Sheriff and all bailiffs and other officers of the Supreme Court, Magistrates Courts and Courts of Petty Sessions shall be deemed to be officers of the Court and shall exercise the powers and perform the duties prescribed by the Rules of Court.

Amended by Order in Council published Qld. Gov. Industrial Gazette, 10 November 1962, p. 139.

Courts of petty sessions—Now Magistrates Courts; see Justices Acts Amendment Act of 1964, s. 2 (4), title JUSTICES, p. 249, ante.

See also paragraph (f) of the definition of "industrial matter" in s. 5 clause 12 of this Schedule; and Rules of Court, Order 4, rule 26, p. 574, post.

5. Further powers of President, etc. In any cause the President or a Commissioner or the registrar or assistant registrar may make any order which he thinks just as to—

(a) any interlocutory proceedings to be taken before the hearing, the costs thereof, the issues to be submitted to the Court or the Commission, the naming and joinder of parties, the persons to be served with notice of proceedings, particulars of the claims of the parties, admissions, discovery, interrogatories, inspection of documents or of real or personal property, examination of witnesses, and the place, time, and mode of hearing; and
(b) any matter which, by Rule of Court, the President, a Commissioner, or the registrar or assistant registrar, as the case may be, is empowered to hear or deal with when sitting in chambers.

For the jurisdiction which may be exercised in chambers, see s. 102 (4), and Rules of Court, Order 3, rule 7, p. 565, post.

6. Evidence. With respect to evidence in proceedings before the Court or the Commission, the following provisions apply:—

(a) on the application of any of the parties, and on payment of the prescribed fee, or, by direction of the President or a Commissioner, without any such application or fee, the registrar shall issue a summons to any party or parties, or other person or persons, to appear and give evidence before the Court or the Commission, and any number of witnesses’ names may be inserted in one summons;

(b) the summons shall be in the prescribed form, and may require any person therein named to produce before the Court or the Commission any books, papers, and other documents in his possession or under his control in any way relating to the cause;

(c) all books, papers, and other documents produced before the Court or the Commission, whether produced voluntarily or pursuant to summons, may be inspected by the Court and the Commission, and also by such of the parties as the Court or the Commission allows; but the information obtained therefrom shall not be made public without the permission of the Court:

Provided that any parts of the books, papers, and documents which in the opinion of the President or a Commissioner do not relate to any matter in issue may be sealed up;

(d) every person who is summoned and duly attends as a witness shall be entitled to the prescribed allowance for his attendance and expenses: Provided that, until otherwise prescribed or except as otherwise prescribed, the allowance shall be according to the scale for the time being in force with respect to witnesses in civil actions in the Supreme Court;

(e) the Commission may accept, admit, and call for such evidence as in equity and good conscience it thinks fit, whether strictly legal evidence or not;

(f) any party to the proceedings shall be competent and may be compelled to give evidence as a witness to the same extent as in cases in the Supreme Court;

(g) the Commission may, if it thinks fit, dispense with evidence on any matter on which all parties have agreed in writing, or on any matter as to which the Commission deems evidence to be unnecessary;
(h) the Court or the Commission may take evidence on oath or affirmation or declaration.

Paragraph (a)—See also Rules of Court, Order 2, rule 8, p. 560, post.

Paragraph (c)—Publication of reports of proceedings may be prohibited under Rules of Court, Order 3, rule 8, p. 565, post.

Paragraph (d)—For the scale of witnesses’ allowances and expenses in the Supreme Court, see R.S.C. (1900), Second Schedule, title SUPREME COURT.

Paragraph (e)—See also s. 120, ante.

7. How powers may be exercised by Commission. The Commission may exercise any of its powers on its own motion or on the application of any party, to the proceedings, or of any industrial union connected with the calling in question, or of any person bound by the award in question.

As to who may initiate proceedings, see also s. 11 (1), ante; clause 1 of this Schedule, ante; and Rules of Court, Order 2, rule 11; Order 4, rule 1, pp. 561, 567, post.

8. Power to issue orders to take evidence. The Commission may issue an order to any person to take evidence on its behalf in relation to any industrial cause; and that person shall have all the powers of the Commission in relation to the summoning of witnesses, the production of books and documents, and the taking of evidence on oath or affirmation or declaration.

For the powers referred to, see clause 6, ante, and Rules of Court, Order 2, rule 8, p. 560, post.

9. Registrar’s powers and duties. A Commissioner may direct the registrar to inquire into any matter as to which he requires information for the purpose of the exercise of the jurisdiction of the Commission, and the registrar shall inquire accordingly and report to the Commission.

For the purpose of such inquiry and for the purpose of any matter which by this Act is referred to him, the registrar may summon any persons, administer oaths and take affidavits, and examine parties and witnesses.

As to the second paragraph, see also Rules of Court, Order 3, rule 12, p. 566, post.

10. Reserved decision. (1) The Court or the Commission may reserve its decision in any proceeding.

(2) Where a decision has been so reserved, the same may be given at any continuation or adjournment of the Court or of the Commission or at any subsequent holding thereof, or the President or a Commissioner may draw up such decision in writing, and, having signed the same, forward it to the registrar; whereupon the registrar shall cause the same to be filed and delivered to the parties, and upon such filing such decision shall be of the same force and effect as if it had been pronounced by the President or a Commissioner.

11. Adjournments of Court and Commission. When the President or a Commissioner is unable to attend at the time appointed for the hearing of any cause or for any proceeding, the registrar may adjourn the Court or the Commission as the case may be and also adjourn any business set down for the day to such day and time as he deems convenient.
12. Recovery of penalties and other sums ordered by the Court. When any penalty is imposed in any proceedings in the Court, or any sum is by the Court ordered to be paid, a certificate in the prescribed form, under the hand of the registrar and the seal of the Court specifying the amount payable and the respective parties or persons by and to whom the same is payable, may be filed in any Court having civil jurisdiction to the extent of such amount, and shall thereupon, according to its tenor, be enforceable in all respects as if it were a judgment of such Court.

See also s. 115, ante; clause 4 of this Schedule, ante; and Rules of Court, Order 4, rule 26, p. 574, post.

13. License to improvers over 21 years of age. (1) The registrar or, on appeal from him, the Commission, may grant to any person over twenty-one years of age, who has given satisfactory proof that such person has not had the full experience prescribed for improvers by any award, a license to work as an improver for the period named in such license at such wage as the registrar or Commission thinks fit, being not less than the wage fixed by such award for an improver of the like experience.

(2) Upon receipt of an application for a license the registrar shall forthwith give written notice thereof to the secretary of the industrial union of the calling in which the applicant desires to be employed, and shall in such notice appoint a time at which he will hear any objections to the granting of such license.

(3) The industrial union of the calling concerned may at any time after the granting of such license apply to the registrar, or, on appeal from him to the Commission, in the manner prescribed for the revocation or cancellation thereof.

See also Apprenticeship Act of 1964, s. 62, p. 322, ante.

14. University or institute of technology students. The registrar or, on appeal from him, the Commission may, notwithstanding the provisions of any award or industrial agreement now subsisting or hereafter to be made, grant to any student of a university or institute of technology, producing satisfactory evidence that a period of technical training in a calling is required to enable him to complete his student's course at such university or institute of technology, a license to work at such calling for such period and for such wages and subject to such conditions as the registrar or the Commission may think fit; thereupon such student shall not be deemed to be an improver within the meaning of this Act or of any award or industrial agreement now subsisting or hereafter to be made.

The registrar shall forthwith notify the secretary of the industrial union of the calling in which such licensee is permitted to be employed of the grant of such license and of the conditions contained therein.

As amended by Order in Council, Industrial Gazette, 5 February 1966, p. 596.

15. Aged or infirm workers. (1) Any aged or infirm worker who deems himself or herself unable to earn the minimum wage prescribed by any award may apply to an industrial magistrate, and any industrial inspector may apply to an industrial magistrate on his or her behalf, for a permit in writing to work for less than the wage so prescribed.

(2) Subject to this Act the industrial magistrate shall determine whether and on what conditions such permit shall be granted, and shall have power to revoke or cancel any permit.
(3) The industrial magistrate shall forthwith give written notice of such application to the secretary of the industrial union of the calling in which such applicant desires to be employed, and shall in such notice appoint a time, not being more than seven or less than three days from the date of such notice, at which he will hear objections to the grant of a permit. He shall, at the time so appointed, and before determining whether such permit should be granted, hear objections from any authorized representative of such industrial union.

(4) Such industrial union may, at any time after the granting of such permit, apply to an industrial magistrate in the manner prescribed for the revocation or cancellation thereof.

(5) An appeal against any such determination shall not lie from the industrial magistrate to the Commission except on the ground that the calling concerned is one in which no such permit should be granted.

(6) Any person paying or receiving a less sum than that authorized by such permit shall be liable to a penalty as for a breach of an award.

See also s. 12 (1) (a) of the Act, ante; Rules of Court, Order 8, p. 579, post.

The calling of a cemetery employee is not one in which no permit under this section should be allowed, Re Slow Worker's Permit, [1927] N.S.W.A.R. 50.

16. Rules of Court. (1) The President, with the concurrence of any two Commissioners may make rules——

(a) regulating the practice and procedure and forms to be followed and used in or in connection with or for the purposes of proceedings before the Court and the Commission, and in or in connection with or for the purposes of drawing up, settling, and enforcing awards, judgments, convictions, decisions, and other acts given, made, and done by the Court or the Commission and for regulating proceedings in chambers;

(b) as to the publication of decisions and other acts of the Court or of the Commission and the effect of such publication;

(c) for recovering fines and penalties imposed, and enforcing orders for attachment or imprisonment and orders for the payment of any moneys made under this Act;

(d) prescribing the fees and expenses to be paid to witnesses;

(e) prescribing what (if any) fees shall be paid in respect of any proceedings in the Court or in the Commission, and the party by whom such fees shall be paid;

(f) prescribing the mode of service of process, notices, orders, or other proceedings upon parties and other persons;

(g) prescribing the powers, duties, and rights of any officer of the Court or of the Commission;

(h) the making and enforcement of industrial agreements;

(i) delegating the jurisdiction of the Commission as permitted by this Act;
(j) prescribing the furnishing to the registrar of returns, lists of officers and other statistical information by industrial associations;

(k) as to all things which this Act contemplates shall or may be prescribed by Rules of Court; and

(l) as may be necessary or convenient for the full and effective exercise of the jurisdiction, duties, powers, and functions of the Court and of the Commission, or for giving effect to the convictions, decisions, and other acts given, made, or done by the Court or the Commission or the registrar or other officer of the Court or of industrial magistrates.

(2) Where a party desires to take any step in a cause or matter, and the manner or form of procedure is not prescribed by this Act or by Rules of Court, the party may apply in chambers for directions to the President (in the case of a cause or matter in or intended to be commenced in the Court) or to a Commissioner (in the case of a cause or matter in or intended to be commenced in the Commission) and any step taken in accordance with the directions given by the President or the Commissioner, as the case may be, shall be deemed regular and sufficient.

(3) Subject to such rules and this Act, the practice and procedure of the Court or of the Commission shall be as directed by the President or the Commissioner making the particular direction.

(4) All such rules shall be published in the Gazette or in the Queensland Government Industrial Gazette; and thereupon shall have the force of law and shall be judicially noticed.

Such rules shall be laid before Parliament within fourteen sitting days after such publication if Parliament is in session, and, if not, then within fourteen sitting days after the commencement of the next session.

If Parliament passes a resolution disallowing any such rule, of which resolution notice has been given at any time within fourteen sitting days of such House after such rule has been laid before it, such rule shall thereupon cease to have effect, but without prejudice to the validity of anything done in the meantime.

(5) For the purpose of this Schedule, the term “sitting days” shall mean days on which the House actually sits for the despatch of business:

Provided always that if such rules are not duly laid before Parliament as hereinbefore prescribed they shall thereupon cease to have any force, effect, or operation whatsoever.

Under this clause, the Rules of Court, p. 559, post, have been made.

The Court may, under clause 2 (m), ante, waive compliance with any Rule of Court.
SECOND SCHEDULE

[T.U. First Sch.] [s. 46 (1) (e).]

MATTERS TO BE PROVIDED FOR BY THE RULES OF REGISTERED INDUSTRIAL UNIONS

1. The name of the industrial union and place of meeting for the business of the industrial union.

2. The whole of the objects for which the industrial union is to be established, the purposes for which the funds thereof are to be applicable, and the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member of such industrial union.

   The keeping separate accounts of all moneys received or paid on account of every particular fund, and the keeping separate accounts of the expenses of management and of all contributions on account thereof.

3. The manner of making, altering, amending and rescinding rules.

4. A provision for the appointment and removal of a general committee of management, of a trustee or trustees, a secretary and other officers.

5. A provision for the investment of the funds, and for an annual or periodical audit of accounts.

6. The inspection of the books and names of members of the industrial union by every person having an interest in the funds of the industrial union.

7. The appropriation or division of the funds and property upon the dissolution of the industrial union.