

No. 13 of 1904.

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Relating to Conciliation and Arbitration for the Prevention and Settlement of Industrial Disputes extending beyond the Limits of any one State.

Assented to [15th December, 1904.]

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BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

PART I.—INTRODUCTORY

1. This Act may be cited as the *Commonwealth Conciliation and Arbitration Act 1904*.

Short title.

2. The chief objects of this Act are—

Objects of Act.

- I. To prevent lock-outs and strikes in relation to industrial disputes;
- II. To constitute a Commonwealth Court of Conciliation and Arbitration having jurisdiction for the prevention and settlement of industrial disputes;
- III. To provide for the exercise of the jurisdiction of the Court by conciliation with a view to amicable agreement between the parties;
- IV. In default of amicable agreement between the parties, to provide for the exercise of the jurisdiction of the Court by equitable award;
- V. To enable States to refer industrial disputes to the Court, and to permit the working of the Court and of State Industrial Authorities in aid of each other;

VI. To

- VI. To facilitate and encourage the organization of representative bodies of employers and of employees and the submission of industrial disputes to the Court by organizations, and to permit representative bodies of employers and of employees to be declared organizations for the purposes of this Act;
- VII. To provide for the making and enforcement of industrial agreements between employers and employees in relation to industrial disputes.

Parts.

3. This Act is divided into Parts as follows :—

- Part I. —Introductory.
- Part II. —Prohibition of Lock-outs and Strikes in relation to Industrial Disputes.
- Part III. —The Commonwealth Court of Conciliation and Arbitration.
 - Division 1.—The Constitution of the Court.
 - Division 2.—The Jurisdiction of the President and of the Court.
 - Division 3. —Cognizance of Disputes and Ordinary Procedure.
 - Division 4.—Special Powers of the Court and the President.
- Part IV. —The Enforcement of Orders and Awards.
- Part V. —Organizations.
- Part VI. —Industrial Agreements.
- Part VII. —Miscellaneous.

Interpretation.

4. In this Act, except where otherwise clearly intended—

“Association” means any trade or other union, or branch of any union, or any association or body composed of or representative of employers or employees, or for furthering or protecting the interests of employers or employees;

“Employer” means any employers in any industry;

“Employee” means any employee in any industry;

“Industrial Agreement” means an industrial agreement made pursuant to this Act;

“Industrial dispute” means a dispute in relation to industrial matters—

(a) arising between an employer or an organization of employers on the one part and an organization of employees on the other part, or

(b) certified by the Registrar as proper in the public interest to be dealt with by the Court—

and extending beyond the limits of any one State, including disputes in relation to employment upon State railways, or to employment in industries carried on by or under the control of the Commonwealth or a State or any public authority constituted under the Commonwealth or a

State ;

N.S.W. 1901,
No. 59, s. 2.
N.Z. 1900, No.
51, s. 2.
W.A., 64 Vict.,
No. 20, s. 2.
S.A. 1894,
No. 598, s. 3.

State ; but it does not include a dispute relating to employment in any agricultural, viticultural, horticultural, or dairying pursuit;

- “Industrial matters” includes all matters relating to work, pay, wages, reward, hours, privileges, rights, or duties of employers or employees, or the mode, terms, and conditions of employment or non-employment ; and in particular, but without limiting the general scope of this definition, includes all matters pertaining to the relations of employers and employees, and the employment, preferential employment, dismissal, or non-employment of any particular persons, or of persons of any particular sex or age, or being or not being members of any organization, association, or body, and any claim arising under an industrial agreement; N.S.W. 2.
N.Z. 2.
W.A. 2.
- “Industry” means business, trade, manufacture, undertaking, calling, service, or employment, on land or water, in which persons are employed for pay, hire, advantage, or reward, excepting only persons engaged in domestic service, and persons engaged in agricultural, viticultural, horticultural, or dairying pursuits; N.S.W. 2.
N.Z. 2.
W.A. 2.
- “Lock-out” includes the closing of a place or part of a place of employment, or the total or partial suspension of work by an employer, with a view to compel his employees, or to aid another employer in compelling his employees, to accept any term or condition of employment ; N.S.W. 2.
- “Organization” means any organization registered pursuant to this Act, and so far as applicable it also includes any proclaimed organization to which the Governor-General declares this Act to apply;
- “Registrar” means the Industrial Registrar or a Deputy Industrial Registrar appointed under this Act;
- “Registry” includes District Registry;
- “Special Magistrate” means a magistrate appointed by that name under the law of a State;
- “State Industrial Authority” means any Board or Court of Conciliation or Arbitration, or tribunal body or persons, having authority under any State Act to exercise any power of Conciliation or Arbitration with reference to industrial disputes within the limits of the State; or any Special Board constituted under any State Act relating to factories or such other State Board or Court as is prescribed;
- “Strike” includes the total or partial cessation of work by employees, acting in combination, as a means of enforcing compliance with demands made by them or other employees on employers; N.S.W. 2.
- “The Court” means the Commonwealth Court of Conciliation and Arbitration constituted pursuant to this Act;
- “The President” means the President of the Court.

5. When

Penalty in case
offence repeated or
continued.

5. When any person is convicted of an offence against any provision of this Act for which a pecuniary penalty is provided, the Court before which he is convicted may direct that the defendant shall not continue or repeat the offence under pain of imprisonment, and if thereafter the defendant continues or repeats the offence, he shall be liable, in addition to the pecuniary penalty for the offence, to imprisonment for any period not exceeding three months.

**PART II.—PROHIBITION OF LOCK-OUTS AND STRIKES IN
RELATION TO INDUSTRIAL DISPUTES.**

Penalty for lock-out
or strike.
N.S.W. 34.
N.Z. 100.
S.A. 63.
W.A. 30.

6. (1) No person or organization shall, on account of any industrial dispute, do anything in the nature of a lock-out or strike, or continue any lock-out or strike.

Penalty : One thousand pounds.

(2) No proceeding for any contravention of this section shall be instituted without the leave of the President.

Onus of proof.

(3) This section shall not apply to anything proved to have been done for good cause independent of the industrial dispute, but on a prosecution for any contravention of this section the onus of such proof shall lie on the defendant, and in default of such proof, and on proof of the lock-out strike or continuation and of the industrial dispute, the lockout strike or continuation shall be deemed to have been on account of the industrial dispute.

Employers or
employees refusing
to offer or accept
employment upon
the terms of an
award or agreement.

7. Where persons, with a view to being associated as employers and employees respectively in any industry, or representatives of such persons, have entered into an industrial agreement with respect to employment in that industry, any of such persons who, without reasonable cause or excuse, refuses or neglects to offer or accept employment upon the terms of the agreement, shall be deemed to be guilty of a lock-out or strike as the case may be.

Organization
ordering its
members to refuse
to offer or accept
employment.

8. Any organization of employers or employees which, for the purpose of enforcing compliance with the demands of any employers or employees, orders its members to refuse to offer or accept employment, shall be deemed to be guilty of a lock-out or strike, as the case may be.

Employers not to
dismiss employees
on account of
award.
N.S.W. 35.

9. (1) No employer shall dismiss any employee from his employment by reason merely of the fact that the employee is an officer or member of an organization or is entitled to the benefit of an industrial agreement or award.

Penalty : Twenty pounds.

(2) No proceeding for any contravention of this section shall be instituted without the leave of the President or the Registrar.

Onus on employer.

(3) In any proceeding for any contravention of this section, it shall lie upon the employer to show that any employee, proved to have been dismissed whilst an officer or member of an organization or entitled as aforesaid, was dismissed for some reason other than those mentioned in this section.

10. (1) No

10. (1) No employee shall cease to work in the service of an employer by reason merely of the fact that the employer is an officer or member of an organization or is entitled to the benefit of an industrial agreement or award.

Employee not to cease work on account of award.

Penalty : Twenty pounds.

(2) No proceeding for any contravention of this section shall be instituted without the leave of the President or the Registrar.

(3) In any proceeding for any contravention of this section, it shall lie upon the employee proved to have ceased to work in the service of an employer whilst the employer was an officer or member of an organization or entitled as aforesaid to show that he ceased so to work for some reason other than those mentioned in this section.

Onus on employee.

PART III.—THE COMMONWEALTH COURT OF CONCILIATION AND ARBITRATION.

DIVISION 1.—THE CONSTITUTION OF THE COURT.

11. There shall be a Commonwealth Court of Conciliation and Arbitration, which shall be a Court of Record, and shall consist of a President.

Constitution of Court.
N.S.W. 16.
N.Z. 59, 60, 61.
W.A. 53, 54.

12. (1) The President shall be appointed by the Governor-General from among the Justices of the High Court. He shall be entitled to hold office during good behaviour for seven years, and shall be eligible for re-appointment, and shall not be liable to removal except on addresses to the Governor-General from both Houses of the Parliament during one session thereof praying for his removal on the ground of proved misbehaviour or incapacity.

Appointment and term of office of President.

(2) In the event of the period of office of the President expiring during the continuance of any investigation on which the Court has entered, the Governor-General may continue him in office for such time as may be necessary in order to enable him to take part in the completion of the matter.

Power to continue President in office.
S.A. 48.

13. The President shall be paid no other salary in respect of his services under this Act than his salary as Justice of the High Court, and shall be paid such travelling expenses as are prescribed.

Travelling expenses of President.
N.S.W. 21.

14. The President may, by instrument under his hand, appoint any Justice of the High Court or Judge of the Supreme Court of a State, to be his deputy in any part of the Commonwealth, and in that capacity to exercise, during the pleasure of the President, such powers and functions of the President as he thinks fit to assign to such deputy; but the appointment of a deputy shall not affect the exercise by the President himself of any power or function.

Appointment of Deputy President.

15. The President or Deputy President shall, before proceeding to discharge the duties of his office, take before a Justice of the High Court or a Judge of the Supreme Court of a State an oath or affirmation in the form in Schedule A.

Oath to be taken by President or Deputy.
N.S.W. 27.
N.Z. 69.
W.A. 56.

DIVISION 2.

DIVISION 2.—THE JURISDICTION OF THE PRESIDENT AND OF THE COURT.

Duty of
President.
S.A. 39, 49.

16. The President shall be charged with the duty of endeavouring at all times by all lawful ways and means to reconcile the parties to industrial disputes, and to prevent and settle industrial disputes, whether or not the Court has cognizance of them, in all cases in which it appears to him that his mediation is desirable in the public interest.

President may
review decision of
Registrar.
N.S.W. 40.
S.A. 76.
Jurisdiction of
Court.
N.Z. 71.
W.A. 56.

17. The President may review annul rescind or vary any act or decision of the Registrar in any manner which he thinks fit.

18. The Court shall have jurisdiction to prevent and settle, pursuant to this Act, all industrial disputes.

DIVISION 3.—COGNIZANCE OF DISPUTES AND ORDINARY PROCEDURE.

Disputes of which
the Court has
cognizance.
N.S.W. 28 (b)
(2).

19. The Court shall have cognizance of the following industrial disputes:—

(a) All industrial disputes which are certified to the Court by the Registrar as proper to be dealt with by it in the public interest;

(b) All industrial disputes which are submitted to the Court by an organization, by plaint, in the prescribed manner ; and

(c) All industrial disputes with which any State Industrial Authority, or the Governor in Council of a State in which there is no State Industrial Authority, requests the Court to deal.

N.S.W. 28, 29.
N.Z. 58.
W.A. 51, 52.

20. If it appears to the Court that any State Industrial Authority is dealing or about to deal with an industrial dispute the Court may in the prescribed manner direct that Authority not to deal with the dispute ; and thereupon the Authority shall cease to proceed in the matter of the dispute, which shall be dealt with the Court.

State Court to cease
dealing with dispute
on request of the
Court.

21. A certificate by the Registrar that any dispute relating to industrial matters is an industrial dispute extending beyond the limits of any one State shall be *prima facie* evidence that the fact is as stated.

Certificate of
Registrar.

22. No industrial dispute shall without the approval of the President be submitted to the Court by an organization unless the Registrar certifies—

Reference by
organization.
N.S.W. 28.
N.Z. 98.

(a) that he is satisfied that the consent of the organization to the submission has been given in manner prescribed by the rules of the organization; or

(b) that the consent of the organization to the submission has been given by resolution of a general meeting of members convened in manner prescribed for the consideration of the question, or as the result of a poll of members of the organization on the question taken in manner prescribed; or

(c) that consent to the submission has been given in writing under the hands of a majority of the Committee of Management of the organization.

23. (1) The Court shall, in such manner as it thinks fit, carefully and expeditiously hear inquire into and investigate every industrial dispute of which it has cognizance and all matters affecting the merits of the dispute and the right settlement thereof.

Inquiry by Court.
N.Z. 53 (1).
S.A. 42.
W.A. 47.

(2) In the course of such hearing inquiry and investigation the Court shall make all such suggestions and do all such things as appear to it to be right and proper for reconciling the parties and for inducing the settlement of the dispute by amicable agreement.

Settlement of dispute.
N.Z. 53 (3).
S.A. 43.
W.A. 47.

24. (1) If an agreement between the parties is arrived at, a memorandum of its terms shall be made in writing and certified by the President, and the memorandum when so certified shall be filed in the office of the Registrar, and unless otherwise ordered and subject as may be directed by the Court shall, as between the parties to the dispute, have the same effect as, and be deemed to be, an award.

Agreement to have effect of award.
N.Z. 53 (5).
W.A. 51.

(2) If no agreement between the parties is arrived at within a reasonable time, and the President so certifies, the Court shall, by an award, determine the dispute.

Award in default of agreement.
S.A. 43.

25. In the hearing and determination of every industrial dispute the Court shall act according to equity, good conscience, and the substantial merits of the case, without regard to technicalities or legal forms, and shall not be bound by any rules of evidence, but may inform its mind on any matter in such manner as it thinks just.

Court to decide according to equity and good conscience.
N.Z. 76, 77 (10).
W.A. 49, 60.

26. Any organization represented before the Court on the hearing and determination of an industrial dispute shall be deemed a party to the dispute.

Organization represented to be deemed party to dispute.

27. On the hearing or determination of any industrial dispute an organization may be represented by a member or officer of any organization, and any party not being an organization may be represented by an employee of that party ; but no party shall (except by consent of all the parties or by leave of the President) be represented by counsel or solicitor.

Representation of parties at hearing.

28. (1) The award shall be framed in such a manner as to best express the decision of the Court and to avoid unnecessary technicality, and shall subject to any variation ordered by the Court continue in force for a period to be specified in the award, not exceeding five years from the date of the award.

Form and continuance of award.
N.Z. 86.
S.A. 43.
W.A. 70.

(2) After the expiration of the period so specified, the award shall, unless the Court otherwise orders, continue in force until a new award has been made.

29. The award of the Court shall be binding on—

On whom award is to be binding.
S.A. 53.

(a) all parties to the industrial dispute who appear or are represented before the Court ;

(b) all parties who have been summoned to appear before the Court as parties to the dispute, whether they have appeared in answer to the summons or not, unless the Court is of opinion that they were improperly summoned before it as parties ;

(c) all

(c) all organizations and persons on whom the award is at any time declared by the Court to be binding as a common rule ; and

(d) all members of organizations bound by the award.

Awards and orders to prevail over State awards and orders.

30. When a State law or an award order or determination of a State Industrial Authority is inconsistent with an award or order lawfully made by the Court, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

Award not to be challenged or questioned.
N.S.W. 32.
N.Z. 90.
S.A. 79.
W.A. 82.
Cf., 36 and 37.
Vic., c. 48, s. 25.

31. (1) No award of the Court shall be challenged, appealed against, reviewed, quashed, or called in question in any other Court on any account whatever.

(2) The President may, if he thinks fit, in any proceeding before the Court, at any stage and upon such terms as he thinks fit, state a case in writing for the opinion of the High Court upon any question arising in the proceeding which in his opinion is a question of law.

(3) The High Court shall hear and determine the question, and remit the case with its opinion to the President, and may make such order as to costs as it thinks fit.

DIVISION 4.—SPECIAL POWERS OF THE COURT AND THE PRESIDENT.

Powers of President as to interlocutory matters.

32. The President, on the application of any party to an industrial dispute of which the Court has cognizance, may, on summons returnable before the President sitting in Chambers, make in relation to the dispute any order which he thinks just as to—

W.A. 59.

(a) any interlocutory proceeding to be taken before the hearing, the costs thereof, the issues to be submitted to the Court, the persons and organizations 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 is empowered to hear when sitting in Chambers.

Security on reference.
W.A. 4.

33. (1) The President may at any time require, from any organization submitting any industrial dispute to the Court, security to his satisfaction or to the satisfaction of the Registrar for the performance of the award, and in default of such security may stay the proceedings.

Amount of security.
W.A. 4.

(2) No such security shall exceed Two hundred pounds.

Reference to conciliation committee.
S.A. 44.
W.A. 50 (1)

34. The Court may temporarily refer any matters before it to a conciliation committee consisting of an equal number of representatives of employers and employees, who shall endeavour to reconcile the parties.

Power to appoint assessors.
N.S.W. 23.
N.Z. 101.
W.A. 92.

35. (1) The Court shall on the application of any original party to an industrial dispute, and may without such application, at any stage of the dispute appoint two assessors for the purpose of advising it in relation to the dispute, and the assessors shall discharge such duties as are directed by the Court or as are prescribed.

(2) One

(2) One of the assessors shall be a person nominated by such of the parties to the dispute as, in the opinion of the Court, have interests in common with the employers, and the other shall be a person nominated by such of the parties to the dispute as, in the opinion of the Court, have interests in common with the employees.

Nomination of assessors.

(3) If default is made in nominating either or both of the assessors as required by the Court, or if the parties consent, the Court may appoint an assessor or assessors without any nomination.

Default in nomination.

33. (1) The Court may refer any industrial dispute of which it has cognizance, or any matter arising out of the dispute, to a Local Industrial Board for investigation and report, and may delegate to that Board such of its powers, including all powers of the Court in relation to conciliation and the settlement of the dispute by amicable agreement, as it deems desirable. A Local Industrial Board may be—

Court may refer dispute to a Local Board for report.
N.Z. 81.

- (a) any State Industrial Authority willing to act; or
- (b) any Local Board constituted as prescribed or as directed by the Court, and consisting of equal numbers of representatives of employers and of employees and a Chairman who shall be a Justice of the High Court or a Judge of the Supreme Court of a State.

(2) On the report of the Local Industrial Board the Court may, with or without hearing further evidence or argument or both, decide the dispute and make its award.

Court may act on report of Local Board.

37. The Court may issue an order to any person to take evidence on its behalf in relation to any industrial dispute of which it has cognizance, and that person shall have all the powers of the Court in relation to the summoning of witnesses, the production of books and documents, and the taking of evidence on oath or affirmation.

Power to issue orders to take evidence.
N.Z. 77 (7).
W.A. 69.

38. The Court shall, as regards every industrial dispute of which it has cognizance, have power—

Powers of Court.

- (a) to hear and determine the dispute in manner prescribed ;
- (b) to make any order or award or give any direction in pursuance of the hearing or determination ;
- (c) to fix maximum penalties for any breach or non-observance of any term of an order or award, not exceeding One thousand pounds in the case of an organization or an employer, not being a member of an organization bound by the order or award, or Ten pounds in the case of any individual member of an organization :

N.S.W. 37(7).
N.Z. 91.
S.A. 57.
W.A. 83.

Provided that in the case of members of an organization of employers consisting of less than one hundred members, the maximum penalty may be fixed at any sum not exceeding such sum as would, when multiplied by the number of members, amount to One thousand pounds ;

- (d) to impose penalties, not exceeding the maximum penalties fixed (or, if maximum penalties have not been fixed, not exceeding the maximum penalties which could have been

N.S.W. 37.

fixed)

Fixed) under the last preceding paragraph, for any breach or non-observance of any term of an order or award proved to the satisfaction of the Court to have been committed ;

(e) to enjoin any organization or person from committing or continuing any contravention of this Act ;

(f) to declare, by any award or order, that any practice, regulation, rule, custom, term of agreement, condition of employment or dealing whatsoever determined by an award in relation to any industrial matter shall be a common rule of any industry in connexion with which the dispute arises ;

Provided that the Court, before declaring a common rule, shall pay due regard to the extent to which the industries or the persons affected enter or are likely to enter into competition with one another.

Provided also that before any common rule is so declared, the President shall by notification published in the *Gazette* and in such other publications, if any, as the Court directs specifying the industry and the industrial matter in relation to which it is proposed to declare a common rule, make known that all persons and organizations interested and desirous of being heard may, on or before a day named, appear or be represented before the Court ; and the Court shall in manner prescribed hear all such persons and organizations so appearing or represented.

N.S.W. 37.

(g) to direct with due regard to local circumstances within what limits of area, if any, and subject to what conditions and exceptions, the common rule so declared shall be binding upon the persons engaged in the industry whether as employers or employees, and whether members of an organization or not ;

N.S.W. 26 (a).
N.Z. 82.
W.A. 75.

(h) to dismiss any matter or refrain from further hearing or from determining the dispute if it appears that the dispute is trivial, or that the dispute has been dealt with, or is being dealt with, or is proper to be dealt with, by a State Industrial Authority, or that further proceedings by the Court are not necessary or desirable in the public interest ;

N.S.W. 26 (f).
N.Z. 83.
W.A. 77.

(i) to order any party to the dispute to pay to any other party such costs and expenses, including expenses of witnesses, as are specified in the order, but so that no costs shall be allowed for the services of any counsel solicitor or agent ;

N.S.W. 26 (h).
N.Z. 105.
W.A. 73.

(j) to proceed to hear and determine the dispute in the absence of any party thereto who has been summoned or served with notice to appear therein ;

N.S.W. 26 (i).

(k) to sit in any place for the hearing and determination of the dispute ;

(l) to

- (l) to conduct its proceedings or any part thereof in private ; (N.S.W. 26 (j).
(N.Z. 107.
((proviso).
(W.A. 96.
(n) to refer any technical matters or matters of account to an expert, and to accept his report as evidence ; N.S.W. 26 (k).
N.S.W. 26 (l).
W.A. 68.
(o) to vary its orders and awards and to re-open any question ;
(p) to direct parties to be joined or struck out ; N.S.W. 26 (o).
(q) to correct amend or waive any error defect or irregularity N.Z. 87 (1).
W.A. 79.
whether in substance or in form ; N.S.W. 26 (g)
(1).
(r) to extend any prescribed time ; N.Z. 102.
W.A. 90.
(s) to summon before it the parties to the dispute, and witnesses, and to compel the production before it of books, documents, and things for the purpose of reference to such entries or matters only as relate to the dispute ; N.S.W. 26 (m).
(t) to take evidence on oath or affirmation ; and N.Z. 77 (8).
N.S.W. 26 (g)
(iv).
(u) generally to give all such directions and do all such things as it deems necessary or expedient in the premises. N.Z. 102 (d).
W.A. 90 (4).

39. The Court may exercise any of its powers on its own motion or on the application of any party to the industrial dispute, or of any organization or person bound by the award of the Court; but no order or award shall be varied and no submission shall be re-opened except on the application of an organization or person affected or aggrieved by the order or award.

Powers may be exercised by Court on its own motion.

N.S.W. 26 (j).

40. The Court, by its award, or by order made on the application of any party to the proceedings before it, at any time in the period during which the award is binding, may—

Minimum wage and preference for members of organizations.

- (a) prescribe a minimum rate of wages or remuneration, and in that case shall on the application of any party to the industrial dispute, or of any organization or person bound by the award make provision for enabling some tribunal specified in the award or order to fix, in such manner and subject to such conditions as are specified in the award or order, a lower rate in the case of employees who are unable to earn the minimum wage so prescribed ; and
(b) direct that as between members of organizations of employers or employees and other persons offering or desiring service or employment at the same time, preference shall be given to such members, other things being equal ; and
(c) appoint a tribunal to finally decide in what cases an employer or employee to whom any such direction applies may employ or be employed by a person who is not a member of any such organization.

N.S.W. 36.
N.Z. 92.
W.A. 85.

Provided always that before any preference to members of organizations is directed as aforesaid the President shall by notification published in the *Gazette* and in such other publications, if any, as the Court directs, specifying the industry and the industrial matter in relation to which it is proposed to direct such preference,

make

make known that all persons and organizations interested and desirous of being heard may on or before a day named appear or be represented before the Court ; and the Court shall in manner prescribed hear all such persons and organizations so appearing or represented.

And provided further that no such preference shall be directed to be given unless the application for such preference is in the opinion of the Court approved by a majority of those affected by the award who have interests in common with the applicants.

In any case in which the Court directs that preference shall be given it may subsequently suspend or qualify the direction for such time or subject to such conditions as it thinks fit if, in the opinion of the Court, the rules of the organization are burdensome or oppressive or do not provide reasonable conditions for admission to or continuance in membership or that the organization has acted unfairly or unjustly to any of its members in the matter of preference.

Power of
inspection.
N.S.W. 31.
N.Z. 108.
W.A. 47, 67.

41. The President and every person authorized in writing by the President or Registrar may at any time during working hours enter any building, mine, mine working, ship, vessel, place, or premises of any kind wherein or in respect of which any industry 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 is pending, or any award has been made, or any offence against this Act is suspected, and may, to the extent and for the purposes named in the authority, inspect and view any work, material, machinery, appliances, or article therein.

Obstructing Court.
N.S.W. 31.
N.Z. 108.
W.A. 48, 67.

42. No person shall hinder or obstruct the President or any person authorized as aforesaid, in the exercise of any power conferred by the last preceding section.

Penalty : Ten pounds.

Rules of Court.
N.S.W. 26 (c).

43. (1) The Court may, subject to the approval of the Governor-General, make rules regulating the practice and procedure of the Court, and subject to such rules the practice and procedure of the Court shall be as directed by the Court or when the Court is not sitting by the President.

(2) All such rules shall be laid before both Houses of the Parliament within thirty days after the making thereof, or, if the Parliament is not then sitting, within thirty days after the next meeting of the Parliament.

(3) If either House of the Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such rules have been laid before such House disallowing any rule, such rule shall thereupon cease to have effect.

PART IV.

PART IV.—THE ENFORCEMENT OF ORDERS AND AWARDS.

44. (1) Where any organization or person bound by an order or award has committed any breach or non-observance of any term of the order or award any penalties which the Court has power to impose may be imposed by any Court of summary jurisdiction constituted by a Police Stipendiary or Special Magistrate.

Imposition and recovery of penalties.

(2) Any such penalty may be sued for and recovered by—

- (a) the Registrar; or
- (b) any organization which is affected, or whose members or any of them are affected, by the breach or non-observance; or
- (c) any member of any organization who is affected by the breach or non-observance.

45. Where the Court, or any Court of summary jurisdiction, imposes any penalty for any breach or non-observance of any term of an order or award, it may order that the penalty, or any part thereof, be paid into the Consolidated Revenue Fund, or to such organization or person as is specified in the order.

Application of penalties.

46. Where the Court has imposed a penalty for a breach or non-observance of any term of an order or award, or has ordered the payment of any costs or expenses, a certificate under the hand of the Registrar, specifying the amount payable and the organizations and persons by and to whom respectively it is payable, may be filed in any Federal or State Court having civil jurisdiction to the extent of that amount, and shall thereupon be enforceable in all respects as a final judgment of that court.

Enforcement of penalties imposed by the Court.
N.Z. 94 (5).

Provided that where there are two or more creditors under any such certificate, process may be issued separately by each creditor for the enforcement of the certificate as if there were separate and distinct judgments.

N.Z. 94 (6).

47. (1) For the purpose of enforcing compliance with any order or award, process may be issued and executed against the property of any organization or in which any organization has a beneficial interest, whether vested in trustees or howsoever otherwise held, in the same manner as if the organization were an incorporated company and the absolute owner of the property or interest.

Process against property of organization.
N.S.W. 40.
N.Z. 94 (6).
S.A. 58.
W.A. 88 (6).

(2) The property of an organization shall be deemed to include the property of any association forming, or forming part of, the organization, or in which any such association has a beneficial interest, whether vested in trustees or howsoever otherwise held.

(3) Where the property of an organization on execution is insufficient to satisfy fully any process for enforcing any order or award, the members of the organization shall, to the extent of the maximum penalties defined in paragraph (c) of section thirty-eight, be liable for the deficiency.

48. The

Power to make orders to observe award.
N.S.W. 37 (4).
W.A. 80.

48. The Court may, on the application of any party to an award, make an order in the nature of a mandamus or injunction to compel compliance with the award or to restrain its breach under pain of fine or imprisonment, and no person to whom such order applies shall, after written notice of the order, be guilty of any contravention of the award by act or omission. In this section the term "award" includes "order."

Penalty : One hundred pounds or Three months' imprisonment.

Enforcement of award.
S.A. 61.

49. No person shall wilfully make default in compliance with any order or award.

Penalty : Twenty pounds.

Disability upon contravention of Part II. or wilful non-compliance with award.

50. Any person adjudged to be guilty of any contravention of Part II. of this Act or of wilful default in compliance with any award shall, if the Court in its discretion so orders, in addition to any penalty imposed for the offence, be and continue subject to any or all of the following disabilities :—

(a) He shall not be entitled to any rights privileges benefits or advantages under this Act, and this Act shall, so far as any such rights privileges benefits or advantages are concerned, cease to apply to him :

(b) He shall cease to be a member or officer of any organization, or of any association which is, or is part of, any organization, and shall not be qualified to become a member or officer of any organization or of any such association :

(c) He shall lose all existing or accruing rights to any payment out of the funds of any organization, or of any association which is, or is part of, any organization, and the receipt by him of any such payment, or the making of any such payment to him by any person or organization, or by any such association, shall be an offence under this Act.

Penalty : Twenty pounds.

Provided that the Court may at any time in its discretion, if it appears that the contravention or wilful default has been sufficiently punished, and that the effective administration of this Act will not be prejudiced by the removal of the disabilities, order that the disabilities or any of them be removed.

PART V.—ORGANIZATIONS.

Registries and Registrars.

Power to establish Registries and appoint Registrars.

51. The Governor-General may—

(a) establish a Principal Registry for the registration of organizations ;

(b) establish District Registries for the registration of organizations;

(c) appoint an Industrial Registrar and Deputy Industrial Registrars.

52. (1) The

52. (1) The Principal Registry shall, when the seat of Government is established within Federal territory, be situated at the seat of Government, but until that time the Principal Registry shall be situated at such place as the Minister directs.

Situation of Registries.

(2) Each District Registry shall be situated in the capital city of the State in which it is established.

53. The Principal Registry shall be under the charge of the Industrial Registrar, and each District Registry shall be under the charge of a Deputy Registrar.

Charge of Registries.

54. (1) The Industrial Registrar shall keep, at the Principal Registry, a register of all organizations registered under this Act and a list of all proclaimed organizations.

Duty of Industrial Registrar.

(2) Each Deputy Registrar shall keep, at the Registry under his charge, a register of all organizations registered under this Act at that Registry and a list of all proclaimed organizations existing in the State.

Duties of Deputy Industrial Registrars.

Registered Organizations.

55. (1) Any of the following associations may, on compliance with the prescribed conditions, be registered in the manner prescribed as an organization :—

Registration of organizations.

- (a) Any association of employers in or in connexion with any industry, who have in the aggregate, throughout the six months next preceding the application for registration, employed on an average taken per month not less than one hundred employees in that industry ; and
- (b) Any association of not less than one hundred employees in or in connexion with any industry.

Provided that no such organization shall be entitled to any declaration of preference by the Court when and so long as its rules or other binding decisions permit the application of its funds to political purposes, or require its members to do anything of a political character.

And further provided that no organization shall be entitled to appear before the Court to oppose an application for preference by any organization so long as its rules or other binding decisions permit the application of its funds to political purposes, or require its members to do anything of a political character.

“Political purposes” in this section does not include obtaining or maintaining provisions applying to all persons in any particular industry, without discrimination as between those who are and those who are not members of an organization, with respect to the regulation of the following matters :—

- (i.) Preservation of life and limb.
- (ii.) Compensation for injuries or death.
- (iii.) Sanitation.
- (iv.) The sex and age of employees.
- (v.) The hours of labour.
- (vi.) The remuneration of labour.
- (vii.) Protection of salaries and wages.
- (viii.) Other conditions similarly affecting employment.

(2) The

Prescribed conditions of registration.

(2) The conditions to be complied with by associations so applying for registration shall, until otherwise prescribed, be as set out in Schedule B.

(3) Upon registration, the association shall become and be an organization.

Adoption of rules to comply with prescribed conditions.

56. Any association applying to be registered as an organization may on application to the President obtain power to adopt and may thereupon adopt any rules to enable it to comply with the prescribed conditions as part of its rules, and any rules adopted in pursuance of this section shall not withstanding anything in the constitution or rules of the association be binding on the members of the association.

Certificate of registration.
N.S.W. 4.
N.Z. 6 (1).
W.A. 5

57. The Registrar shall issue to each organization registered under this Act a certificate of registration in the prescribed form, which certificate shall until proof of cancellation be conclusive evidence of the registration of the organization therein mentioned and that it has complied with the prescribed conditions to entitle it to be registered.

Incorporation of organization.
N.S.W. 7.
N.Z. 7.
W.A. 6 and 7.

58. Every organization registered under this Act shall for the purposes of this Act have perpetual succession and a common seal, and may purchase take on lease hold sell lease mortgage exchange and otherwise own possess and deal with any real or personal property.

Power to refuse registration of certain organizations.
N.Z. 11 (1).

59. The Registrar may refuse to register any association as an organization if an organization, to which the members of the association might conveniently belong, has already been registered in the State in which the application is made.

Application for cancellation of registration.
N.S.W. 8.

- 60.** (1) If it appears to the Registrar—
- (a) that for any reasons the registration of an organization ought to be cancelled ; or
 - (b) that an organization has been registered erroneously or by mistake ; or
 - (c) that the rules of a registered organization have been altered so as to no longer comply with the prescribed conditions or have not *bona fide* been observed ; or
 - (d) that the rules of a registered organization 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
 - (e) that the proper authority of a registered organization wilfully neglects to provide for the levying and collection of subscriptions, fees, or penalties, from members of the organization ; or
 - (f) that the accounts of a registered organization have not been audited in pursuance of the rules, or that the accounts of the organization or of the auditor do not disclose the true financial position of the organization ; or
 - (g) that a registered organization has wilfully neglected to obey

(h) that the number of the members of the organization, or of their employees, as the case may be, would not entitle them to registration under section fifty-five, he shall make application to the Court for the cancellation of the registration of the organization, giving notice thereof to the organization at its registered office.

(2) The Court shall hear the application, and if it is of opinion that the registration should be cancelled, it shall so order, and thereupon the registration of the organization under this Act shall be cancelled.

Court to decide application for cancellation. N.S.W. 8.

(3) Where the Registrar has, on application made to him, refused to make an application for the cancellation of the registration of an organization, the Court may, if it thinks fit, on the application of any organization or person interested, order that the registration of the first-mentioned organization under this Act be cancelled, and thereupon the registration of the organization shall be cancelled.

(4) The cancellation shall not relieve the organization or any member thereof from the obligation to comply with any award, or from any penalty or liability incurred prior to the cancellation.

61. During the pendency of any dispute or matter before the Court no resignation of or discharge from the membership of any such organization shall have effect.

No resignations & c. of members while dispute pending. N.S.W. 9. N.Z. 20 (1).

Proclaimed Organizations.

62. The Governor-General may, on the recommendation of the President, by proclamation declare this Act to apply to any association, and thereupon the association shall be deemed to be and shall become an organization for such of the purposes of this Act as are directed by the proclamation or as are prescribed.

Application of Act to proclaimed organizations.

63. (1) The power of adopting rules conferred by section fifty-six shall apply to any proclaimed organization.

Adoption of rules by proclaimed organization.

(2) In default of the adoption of rules by a proclaimed organization within a prescribed time, any rules prescribed or directed by the Court shall be applied to the organization.

Default in adoption of rules.

64. The Governor-General on the recommendation of the President may, by proclamation, revoke any proclamation issued pursuant to section sixty-two, and thereupon this Act shall, subject to such conditions, if any, as are fixed by the proclamation cease to apply to the association specified in the revoked proclamation.

Revocation of proclamation.

Organizations Generally.

65. Every organization shall be entitled—

Privileges of organizations.

(a) to submit to the Court any industrial dispute in which it is interested ;

(b) to be represented before the Court in the hearing and

determination of any industrial dispute in which it is interested.

66. Any

Organisations may
sue and be sued.
N.Z. 18.
S.A. 82.

66. Any organization may sue or be sued for the purpose of this Act in its registered or other name, and service of any notice or process on the president, chairman, or secretary, or at the registered office of the organization shall be sufficient for all purposes.

Protection to
organizations.
N.S.W. 7 (3) (a).

67. Unless the contrary intention appears in this Act, no organization or member of an organization shall be liable to be sued, or to be proceeded against for a pecuniary penalty, except in the Court, for any act or omission in respect of which the Court has jurisdiction.

Powers of
organizations to
recover fines, &c.
W. A. 19.

68. All fines fees levies or dues payable to an organization by any member thereof under its rules may, in so far as they are owing for any period of membership subsequent to the registration or proclamation of the organization, be sued for and recovered in the name of the organization in any Court of summary jurisdiction constituted by a Police, Stipendiary, or Special Magistrate.

Disputes between
organization and its
members.
N.S.W. 12.

69. Every dispute between an organization and any of its members shall be decided in the manner directed by the rules of the organization ; and the Court on the application of the trustee or other officers authorized to sue on behalf of or in the name of the organization may order the payment by any member of any fine, penalty, or subscription payable in pursuance of the rules aforesaid, or any contribution to a penalty incurred or money payable by the organization under an award or order of the Court ; but no such contribution shall exceed the sum of Ten pounds.

Court may order
that persons shall
cease to be
members of
organizations.

70. The Court may, on the application of any organization, made in the manner prescribed by rules of Court, order that any member of an organization shall cease to be a member thereof from a date and for a period to be named in the order.

Act not to prevent
transfer of shares.
N.S.W. 10.

71. Nothing in this Act shall prevent a transfer of shares in any registered company, or in any association which is, or is part of, an organization, but no such transfer shall relieve the transferrer from any liability incurred by him under this Act up to the date of such transfer.

Returns to
Registrar.
N.S.W. 7 (2) (a).
N.Z. 17 (4).
S.A. 73.
W.A. 16.

72. Each organization shall as prescribed forward to the Registrar such returns of its members, accounts, and alterations of its rules as are prescribed.
Penalty : Two pounds per week for each week in default.

PART VI.—INDUSTRIAL AGREEMENTS.

Industrial
agreements.
N.S.W. 13.

73. Any organization may make an industrial agreement with any other organization or with any person for the prevention and settlement of industrial disputes by conciliation and arbitration.

Agreement only
affects persons
bound by it.

74. No proceedings under any industrial agreement shall extend to affect any organizations or persons who are not bound by the agreement.

75. Every

75. Every industrial agreement shall be in writing and for a term to be specified therein not exceeding three years from the date of the making thereof, and shall be in a form commencing as follows :—

“This Industrial Agreement made pursuant to the *Commonwealth Conciliation and Arbitration Act 1904*, this day of
Between l’”; and the date of the making of the agreement shall be the date when the agreement is first executed by any party thereto, and that date and the names of all organizations and persons parties to the agreement shall be truly stated therein.

Term and form.
N.Z. 24 (2).
S.A. 29.
W.A. 22.

76. A duplicate of every industrial agreement shall be filed in the office of the Industrial Registrar, and of every organization affected thereby, within thirty days of the making thereof, and shall be open to inspection as prescribed, and the Registrar, if thereunto required by any person interested therein, shall investigate the matter, in such manner as he thinks fit, and if satisfied that the agreement has been duly made and executed pursuant to this Act, by or on behalf of the parties thereto, shall give a certificate to that effect, which certificate shall be conclusive evidence that the fact is as stated.

Duplicate to be filed.
N.Z. 25.
S.A. 25.
W.A. 23.

77. Every industrial agreement shall during its continuance be binding on—

- (a) all parties thereto ; and
- (b) all members, at any time during such continuance, of any organization which is a party thereto.

Effect of industrial agreement.
N.Z. 27.
S.A. 31.

78. (1) Any organization or person bound by an industrial agreement shall for any breach or non-observance of any term of the agreement be liable to a penalty not exceeding such amount as is fixed by the industrial agreement ; and if no amount is so fixed, then to a penalty not exceeding in the case of an organization Five hundred pounds, in the case of an employer Two hundred and fifty pounds, and in the case of an employee Ten pounds.

(2) Such penalties may be proceeded for and recovered in the same manner as penalties for breach or non-observance of an order or award of the Court.

Enforcement of agreement.

79. An industrial agreement may be rescinded or varied by any other industrial agreement made between the same parties or their representatives.

Rescinding or varying of agreement.
N.Z. 28.
S.A. 32.

80. On the application of an organization in manner prescribed the Court may order that any industrial agreement be varied so far as is necessary to bring it into conformity with any common rule declared by the Court.

Variation of agreement by Court to conform with common rule.

81. In

Continuance of agreement unless terminated by notice.
N.Z. 24 (4).

81. In default of any express agreement to the contrary therein contained, an industrial agreement shall, unless rescinded, and subject to any variation, continue in force after the expiration of the term specified therein, until the expiration of one month after some party thereto has given written notice to the Registrar and to the other parties of his desire to determine it.

PART VII.—MISCELLANEOUS.

Judge not bound to accept appointment under Act.

82. Nothing in this Act shall require any Judge of the Supreme Court of a State to accept any appointment under this Act, and no such appointment shall be made without the previous approval of the Governor of the State.

Contempt of Court.
N.Z. 103.
W.A. 72.

83. No person shall wilfully insult or disturb the Court, or interrupt the proceedings of the Court, or use any insulting language towards the Court or by writing or speech use words calculated to improperly influence the Court or any assessor or any witness before the Court or to bring the Court into disrepute, or be guilty in any manner of any wilful contempt of the Court.

Penalty : One hundred pounds.

Contempt by witness.
N.Z. 77 (6).

84. No person who has been summoned to appear or who has appeared before the Court as a witness shall (without just cause proof whereof shall lie upon him)—

- (a) disobey the summons to so appear ; or
- (b) refuse to be sworn as a witness ; or
- (c) refuse to answer any question which he is required by the Court to answer ; or
- (d) refuse to produce any books or documents which he is required by the Court to produce.

Penalty : One hundred pounds.

Disclosure of trade secrets.
N.S.W. 27.
N.Z. 69, 74.
W.A. 56.

85. (1) No evidence relating to any trade secret, or to the profits or financial position, of any witness or party, shall be disclosed except to the Court or published without the consent of the person entitled to the trade secret or non-disclosure.

Penalty : Five hundred pounds or Three months' imprisonment.

(2) All such evidence shall, if the witness or party so requests, be taken in private.

Contents of books not to be disclosed.
N.S.W. 26
(proviso).
N.Z. 77 (4).
W.A. 63, 64.

86. All books papers and other documents produced in evidence before the Court may be inspected by the Court and also by such of the parties as the Court allows, but the information obtained therefrom shall not be made public without the permission of the Court.

Provided that such books papers and documents relating to any trade secret, or to the profits or financial position, of any witness or party, shall not without his consent be inspected by any party.

Penalty : Five hundred pounds or Three months' imprisonment.

87. Every

- 87.** Every person who, or organization 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. Counselling or procuring offences. S.A. 82.
- 88.** Any attempt to commit an offence against this Act shall be an offence against this Act punishable as if the offence had been committed. Attempts to commit offences.
- 89.** For the purposes of this Act, a State Court or Magistrate, whose jurisdiction is limited, as to area, subject matter, or parties, to any part of a State, shall be deemed to have jurisdiction throughout the State. Jurisdiction of State Courts.
- Provided that on the hearing of any proceeding in a Court of summary jurisdiction for the recovery of any penalty, fine, fee, levy, or due, the Court, if in the interests of justice it thinks fit, may adjourn the hearing to a Court of summary jurisdiction to be held at some other place in the same State. Cf. Vict. No. 1105, sec. 75.
- 90.** An office copy of every award shall be filed in the Principal Registry and in the District Registry in each State within the limits of which the award has effect, and may be inspected by any person on payment of a fee of Sixpence. Office copy of award to be filed at Registries. S.A. 54.
- 91.** An office copy of an award, purporting to be sealed with the seal of the Court or certified to be true under the hand of the Registrar, shall be received in all Courts as evidence of the award without proof of the seal of the Court or of the signature of the Registrar. Evidence of award.
- 92.** The Governor-General may make Regulations, not inconsistent with this Act, prescribing all matters and things which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for giving effect to this Act. Power to make Regulations. S.A. 80.

SCHEDULES.

SCHEDULES.

SCHEDULE A.

Oath to be taken
by President or
Deputy.

I, A.B., do swear that I will well and truly serve our Sovereign Lord the King in the office of (President *or* Deputy President *as the case may be*) of the Commonwealth Court of Conciliation and Arbitration, and that I will faithfully and impartially perform the duties of that office, and that I will not, contrary to my duty, disclose to any person any evidence or other matter brought before the Court : SO HELP ME GOD.

Or, I, A.B., do solemnly and sincerely promise and declare that (&c., as above, omitting words, "So help me God.")

SCHEDULE B.

CONDITIONS TO BE COMPLIED WITH BY ASSOCIATIONS APPLYING FOR REGISTRATION AS ORGANIZATIONS.

N.S.W.
Schedule I.
N.Z. 5 (3).
S.A. 10.
W.A. 4 (3).

The affairs of the association must be regulated by rules specifying the purposes for which it is formed, and providing for the following matters :—

- (a) The appointment and continuance of a Committee of Management, a Chairman or President, and a Secretary ;
- (b) The powers, duties, and removal of the Committee and of the Chairman or President and the Secretary ;
- (c) The control of the Committee by General or Special Meetings ;
- (d) The mode in which industrial agreements and other instruments may be made by or on behalf of the association ;
- (e) The manner in which industrial disputes may be submitted by the association to the Court ;
- (f) The manner in which consent of the association shall be given to any submission to the Court ;
- (g) The manner in which the association may be represented before the Court ;
- (h) The times when, terms of which, persons may become, or cease to be members of the association, but so that no member shall discontinue his membership without giving at least three months' previous written notice to the Secretary of his intention so to do, nor without paying all membership subscriptions and dues owing by him to the association ;
- (i) The control of the property and the investment of the funds of the association and the periodical audit of the accounts of the association, such audit to be made at least once a year ;
- (j) The conditions, as to notice and other matters, to be complied with before the funds of an association may be disbursed except for its ordinary expenses as defined in the rules ;
- (k) The keeping of a register of the members of the association ; and
- (l) The conduct of the business of the association at some convenient address to be specified, and to be called the registered office of the association.

S.A. 12.

The rules of an association may also provide for any other matters not contrary to law, and for the repeal or alteration of the rules, but so that the above condition shall always be complied with.

SCHEDULE B.

SCHEDULE B—*continued*

The name of every registered organization shall contain the name of the industry in connexion with which it is established. N.S.W. 11.
N.Z. 7 (2).

No two organizations shall be registered in the same State as organizations under the same name. S.A. 13.
W.A. 5 (1).

An application, in the prescribed form, for registration of an association as an organization must be made to the Registrar in charge of the Registry in the State where the office of the association is situated, and shall be signed by two or more officers of the association. N.Z. 10.
W.A. 9.
N.S.W. 5.

Every application for registration shall be accompanied by—

- (a) Two copies of a list of the members and officers of the association ; N.Z. 5 (1) (2).
W.A. 4 (1) (2).
- (b) Three copies of the rules of the association ; and
- (c) Two copies of a resolution passed by a majority of the members present at a general meeting of the association specially called in accordance with the rules for that purpose only, and desiring registration of the association as an organization ; or
- (d) Two copies of a resolution by the Committee of Management passed by an absolute majority of the Committee, desiring registration of the association as an organization.

I HEREBY CERTIFY that the above is a fair print of the Bill intituled “An Act relating to Conciliation and Arbitration for the Prevention and Settlement of Industrial Disputes extending beyond the Limits of any one State,” which has been passed by the Senate and the House of Representatives, and that the said Bill originated in the House of Representatives.

In the name and on behalf of
His Majesty, I assent to this Act.

[Northcote]

Governor-General.

[Government House]

15th December 1904.

[C.Gavan Duffy]

Clerk of the House of Representatives.