

HUMAN RIGHTS COMMISSION

REPORT NO. 14

Queensland Electricity Supply and
Related Industrial Legislation

May 1985

Australian Government Publishing Service
Canberra 1985

Commonwealth of Australia 1985

ISSN 0813-3506

ISBN 0 644 04156 0

- Report No.1 The Australian Citizenship Act 1948
(August 1982)
- Report No.2 Proposed ACT Mental Health Ordinance 1981
(October 1982)
- Report No.3 Testamentary Guardianship in the Australian
Capital Territory (April 1983)
- Report No.4 Human Rights and the Deportation of Convicted
Aliens and Immigrants (June 1983)
- Report No.5 Review of Crimes Act 1914 and Other Crimes
Legislation of the Commonwealth
(August 1983)
- Report No.6 The Observance of Human Rights at the Villawood
Immigration Detention Centre
(August 1983)
- Report No.7 Proposal for Amendments to the Racial
Discrimination Act to Cover Incitement to Racial
Hatred and Racial Defamation
(November 1983)
- Report No.8 Deportation and the Family: A Report on the
Complaints of Mrs M Roth and Mr C J Booker
(September 1984)
- Report No.9 Community Services (Aborigines) Act 1984
(January 1985)
- Report No.10 The Human Rights of Australian Born Children: A
Report on the Complaint of Mr and Mrs R C Au Yeung
(January 1985)
- Report No.11 Human Rights of the Terminally Ill: The Right of
Terminally Ill Patients to have Access to Heroin
for Painkilling Purposes
(March 1985)
- Report No.12 The Queensland Electricity (Continuity of Supply)
Act 1985
(March 1985)
- Report No.13 Human Rights and the Migration Act 1958
(April 1985)

HUMAN RIGHTS COMMISSION

6th Floor, AM.P. Building, Hobart Place, Canberra City

P.O. Box 629,
CANBERRA CITY, A.C.T. 2601
Telephone: 434122
Telegrams: Rightscom Canberra
Telex: AA 62090

Our Ref:

15 May 1985

The Hon. Lionel Bowen, M.P.,
Deputy Prime Minister and Attorney-General,
Parliament House,
CANBERRA, A.C.T. 2600

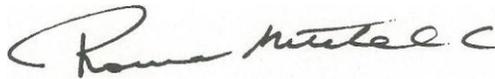
Dear Attorney-General,

Pursuant to section 9(1)(c) of the Human Rights Commission Act 1981, we present this report to you following the Human Rights Commission's examination of recent Queensland industrial legislation as listed below -

Electricity Authorities Industrial Causes Act 1985
Electricity (Continuity of Supply) Act Amendment Act 1985
Industrial (Commercial Practices) Act 1984
Industrial (Commercial Practices) Act Amendment Act 1985
Industrial Conciliation and Arbitration Act Amendment Act 1985

This examination arose out of a request from Senator Margaret Reynolds that the Commission investigate the Queensland Government's new industrial legislation to determine the extent to which human rights have been ignored.

Yours sincerely,



Chairman,
for and on behalf of the
Human Rights Commission

Members of the Human Rights Commission

Chairman

The Hon. Dame Roma Mitchell, D.B.E.

Deputy Chairman

Mr P. H. Bailey, O.B.E.

Members

Associate Professor M. J. Aroney, O.B.E.
Professor P. J. Boyce
Mrs N. C. Ford
Mrs E. Geia
Ms E. Hastings

CONTENTS

	Page
The Functions of the Commission	(vi)
I. Introduction	1
II. An Overview of the New Queensland Industrial Legislation	3
III. Breaches of Human Rights Guaranteed Under the ICCPR	7
(a) Right to Freedom of Expression	7
(b) Right to Presumption of Innocence	10
(c) Right to Freedom of Association	12
IV. Registration under the Commonwealth Conciliation and Arbitration Act	15
V. Findings	16
VI. Action by Australia	18
VII. Recommendations	20
 <u>Appendixes</u>	
I. Text of Telex from Senator Margaret Reynolds	21
II. Text of Relevant Legislation	22
Electricity Authorities Industrial Causes Act 1985	22
Electricity (Continuity of Supply) Act Amendment Act 1985	37
Industrial (Commercial Practices) Act 1984	41
Industrial (Commercial Practices) Act Amendment Act 1985	54
Industrial Conciliation and Arbitration Act Amendment Act 1985	58

(vi)

FUNCTIONS OF THE COMMISSION

Section 9 of the Human Rights Commission Act 1981 reads:

9.(1) The functions of the Commission are-

- (a) to examine enactments, and (when requested to do so by the Minister) proposed enactments, for the purpose of ascertaining whether the enactments or proposed enactments are, or would be, inconsistent with or contrary to any human rights, and to report to the Minister the results of any such examination;
- (b) to inquire into any act or practice that may be inconsistent with or contrary to any human right, and -
 - (i) where the Commission considers it appropriate to do so endeavour to effect a settlement of the matters that gave rise to **the** inquiry; and
 - (ii) where the Commission is of the opinion that the act or practice is inconsistent with or contrary to any human right, and the Commission has not considered it appropriate to endeavour to effect a settlement of the matters that gave rise to the inquiry or has endeavoured without success to effect a settlement of those matters to report to the Minister the results of its inquiry and of any endeavours it has made to effect such a settlement;
- (c) on its own initiative or when requested by the Minister, to report to the Minister as to the laws that should be made by the Parliament, or action that should be taken by the Commonwealth, on matters relating to human rights;
- (d) when requested by the Minister, to report to the Minister as to the action (if any) that, in the opinion of the Commission, needs to be taken by Australia in order to comply with the provisions of the Covenant, of the Declarations or of any relevant international instrument;
- (e) on its own initiative or when requested by the Minister, to examine any relevant international instrument for the purpose of ascertaining whether there are any inconsistencies between that instrument and the Covenant, the Declarations or any other relevant international instrument, and to report to the Minister the results of any such examination;

- (f) to promote an understanding and acceptance, and the public discussion, of human rights in Australia and the external Territories;
- (g) to undertake research and educational programs, and other programs, on behalf of the Commonwealth for the purpose of promoting human rights and to co-ordinate any such programs undertaken by any other persons or authorities on behalf of the Commonwealth;
- (h) to perform
 - (i) any functions conferred on the Commission by any other enactment;
 - (ii) any functions conferred on the Commission pursuant to any arrangement in force under section 11; and
 - (iii) any functions conferred on the Commission by any State Act or Northern Territory enactment, being functions that are declared by the Minister, by notice published in the Gazette, to be complementary to other functions of the Commission; and
- (j) to do anything incidental or conducive to the performance of any of the preceding functions.

(2) The Commission shall not

- (a) regard an enactment or proposed enactment as being inconsistent with or contrary to any human right for the purposes of paragraph (1) (a) or (b) by reason of a provision of the enactment or proposed enactment that is included solely for the purpose of securing adequate advancement of particular persons or groups of persons in order to enable them to enjoy or exercise human rights equally with other persons; or
- (b) regard an act or practice as being inconsistent with or contrary to any human right for the purposes of paragraph (1) (a) or (b) where the act or practice is done or engaged in solely for the purpose referred to in paragraph (a).

(3) For the purpose of the performance of its functions, the Commission may work with and consult appropriate non-governmental organizations.

I. INTRODUCTION

As the Commission was completing its earlier report on the Queensland Electricity (Continuity of Supply) Act 1985,¹ the Queensland Parliament enacted further legislation and on 2 April 1985, the Commission received a message from Senator Margaret Reynolds requesting it to investigate the new industrial legislation. The Commission, under the power conferred on it by section 9(1) (c) of the Human Rights Commission Act 1981, decided to investigate the extent to which human rights were ignored in the new legislation. It also considered the point made by Senator Reynolds concerning a possible breach of section 117 of the Australian Constitution. A copy of her telex is at Appendix I.

2. The new industrial legislation package which is the subject of this Report comprises the following Acts :

Electricity Authorities Industrial Causes Act 1985
Electricity (Continuity of Supply) Act Amendment Act 1985
Industrial (Commercial Practices) Act 1984
Industrial (Commercial Practices) Act Amendment Act 1985
Industrial Conciliation and Arbitration Act Amendment Act 1985

Copies of these Acts are at Appendix 2.

3. On the request of the Attorney-General, under section 9(1) (d) of the Human Rights Commission Act, a Report on the Electricity (Continuity of Supply) Act 1985 has been made to him by the Commission pointing out that the provisions of the latter Act contravene Article 8 of the International Covenant on Civil and Political Rights (ICCPR) which prohibits forced or compulsory labour, and Article 22 of the ICCPR which guarantees freedom of association, including the right to form and join trade unions for the protection of a worker's interests.²

¹ Human Rights Commission Report No. 12 : The Queensland Electricity (Continuity of Supply) Act 1985 : March 1985

² *ibid.*

4. This Report deals with those provisions of the Acts mentioned in paragraph 2 which the Commission considers breach certain human rights guaranteed under the ICCPR.

5. The Report does not address the constitutional issue raised by Senator Reynolds in relation to section 117 of the Constitution, which states :

A subject of the Queen, resident in any State, shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State.

The intention of the section appears to be to protect the rights of a resident of a State who alleges discrimination arising from the laws of another State. It would not appear to have application to a resident of the State whose laws are complained of.' This, however, is a matter of constitutional interpretation and as such does not come within the jurisdiction of the Commission.

6. Under the Human Rights Commission Act 1981, the focus of the Commission is on Commonwealth legislation. Nevertheless, it has the power to report on its own initiative to the Minister as to the laws that should be made by the Parliament, or action that should be taken by the Commonwealth, on matters relating to human rights (paragraph 9(1) (c) of the Human Rights Commission Act 1981). In view of the special implications for the observance of human rights of the legislation which is the subject of this report, and of its earlier report on the Electricity (Continuity of Supply) Act, the Commission felt it should exercise its power and complete a review of the legislation as a whole.

¹ W.A. Wynes : Legislative Executive and Judicial Powers in Australia : 5th Ed. p. 109

II. AN OVERVIEW OF THE NEW QUEENSLAND
INDUSTRIAL LEGISLATION

7. The overall effect of the industrial legislation package is to remove electricity supply workers from the jurisdiction of the State Industrial Commission, prohibit strikes and picketing in that industry and set up a separate industrial tribunal for that industry. In addition, the legislation makes it more difficult for unions in Queensland to resort to certain forms of industrial action, e.g. certain types of strikes, which are generally accepted in other States as legitimate union activities; reverses the onus of proof in cases of offences under these Acts; and removes discrimination against non-unionists. The consequence of these changes is that the Queensland unions would come under a less favourable system of industrial relations than obtains in other States or under the Commonwealth industrial relations system.

8. A summary of the objects of each of these Acts and of their major provisions is given below.

Electricity Authorities Industrial Causes Act 1985

9. This Act removes the electricity supply industry from the jurisdiction of the State Industrial Commission, and creates a separate tribunal to deal with industrial disputes in the electricity supply industry. It also makes strikes illegal in the industry, is claimed to abolish compulsory unionism for electricity supply workers and, in cases where employees disobey the no-strike provisions, provides for automatic loss of pay and gives employers a discretion to dismiss such employees without notice, or to suspend them without pay for any length of time.¹

10. The more significant provisions are :

Part II (ss. 5-9), which establishes the Electricity Authorities Industrial Causes Tribunal, and sets out terms of appointment of members of the Tribunal.

¹ See Second Reading Speech, Hansard (Queensland), 21 March 1985.

4.

Sections 12 & 19, which provide that the Tribunal is to exercise powers the Industrial Commission would have had if the legislation had not been passed, but when exercising these is required to have regard to the effect of its decisions on the economy, electricity consumers generally and other sectors of industry in Queensland.

Sections 18 & 21, which remove the right of appeal to the Industrial Court on points of law.

Section 22, which negates preference to union members.

Section 23, which makes participating in, inciting, counselling or abetting a strike illegal.

Section 24, which makes it clear that an employee who engages in any strike has committed a fundamental breach of his contract of employment.

Sections 28 and 29, which give an employee who claims that he has not taken part in a strike the right to have his case reviewed and provide for the reviewing authority to put matters right if the employee established his case. The review will be undertaken by the Minister if the employee works for the Queensland Electricity Commission or by the Electricity Commissioner if he works for an electricity board. The decision made is final.

Electricity (Continuity of Supply) Act Amendment Act 1985

11. The Principal Act provides, in section 5, that it is an offence for a person to do an act calculated to obstruct, interfere with, or harass a person carrying out work in connection with a supply of electricity.

12. The Amendment Act introduces two new sections - 5A and 5B - to the Principal Act. They provide that a police officer may :

- (a) arrest without warrant any person committing, or whom he believes on reasonable grounds to have committed, an offence against section 5;
- (b) in certain circumstances require a person - including one found in the company of a person referred to in (a) above - to supply his name, address, date of birth, and to provide evidence, if so required, of the correctness of such particulars; and
- (c) arrest without warrant a person who refuses to supply the particulars required or produces evidence that in the opinion of the police officer is false.'

¹ See Second Reading Speech, Hansard (Queensland), 26 March 1985.

Industrial (Commercial Practices) Act 1984

Industrial (Commercial Practices) Act Amendment Act 1985

13. The 1984 Act was introduced to entrench in Queensland the provisions against secondary boycotts contained in sections 45D and 45E of the Trade Practices Act (Commonwealth), in anticipation of their repeal by the Commonwealth Parliament. This repeal has not been effected.

14. The Amendment Act, in addition to narrowing the scope of secondary boycotts not prohibited by the Principal Act, introduces a new concept by prohibiting three types of primary boycott, namely :

- (a) demarcation disputes;
- (b) strikes called without reasonable notice; and
- (c) strikes called to enforce preference to members of a union.¹

Industrial Conciliation and Arbitration Act Amendment Act 1985

15. The Amendment Act amends the Principal Act - the Industrial Conciliation and Arbitration Act 1961-1983 - in such matters as the definition of "strike", provisions relating to secret ballots and discrimination against non-unionists; and reverses the onus of proof related to proceedings under the various offence provisions of the Principal Act.

16. The more significant provisions are :

Section 5, which repeals the existing section 48 of the Principal Act and substitutes a new section 48 which allows a member to resign immediately from his union on so notifying the union in writing.

¹ See Second Reading Speech, Hansard (Queensland), 28 March 1985.

Section 6, which introduces an amended section 60C in the Principal Act by creating an additional offence applying to persons, as well as unions, who incite participation, or threaten an employee who has failed to participate, in a strike.

Section 11, which introduces a new section 101A to the Principal Act prohibiting discrimination against non-unionists.

Section 14, which amends section 135 of the Principal Act by placing the burden of evidentiary proof of innocence on the accused person in the case of certain offences and in particular provides that, in the absence of evidence to the contrary, proof of publication in a newspaper or TV or radio broadcast of a statement by any union official or attributed to any person who claims to speak on behalf of a union, is conclusive evidence that that statement was in fact made by that official or on behalf of the union.

Section 16, which increases most penalties by 150 per cent .I

I See Second Reading Speech, Hansard (Queensland), 5 March 1985.

III. BREACHES OF HUMAN RIGHTS GUARANTEED UNDER
THE ICCPR

(a) Right to Freedom of Expression (Article 19 of the ICCPR)

17. Article 19 states :

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

18. Section 14 of the Industrial Conciliation and Arbitration Act Amendment Act 1985 amends section 135 of the Principal Act to provide for reversal of the normal rule relating to the establishment of a case by making public reports conclusive evidence unless the contrary can be proved. Having in mind the overall nature of the legislation, and its essentially punitive character, this provision amounts to a reversal of the onus of proof (see also paragraphs 19-21 and 24-26 below). The amended sub-sections 135(i) and (j) provide as follows :

(i) proof of publication in -

a newspaper printed in accordance with the Printing and Newspapers Act 1981; or

a magazine, document or writing that is or purports to be published by or on behalf of an industrial union; or

a broadcast made by any national broadcasting station or national television station or any commercial broadcasting station or commercial television station, in any case within the meaning of the Broadcasting and Television Act 1942 of the Commonwealth as amended or of any Act passed in substitution for that Act

of any speech or extract therefrom or of any statement or of the substance of any speech or statement, being a speech, extract or statement that is, in such publication, attributed to any person on behalf of an industrial union or to any person holding a position of authority in relation to the affairs of an industrial union, shall be admissible as evidence and, in the absence of evidence to the contrary, conclusive evidence -

- (i) that the speech or statement so published was in fact made by the person to whom it is so attributed;
 - (ii) where the speech or statement is so attributed to a person on behalf of an industrial union, that the industrial union procured that person to make the speech or statement;
 - (iii) where an extract only of the speech or statement is so published, that the speech or statement of which it purports to be an extract was in fact made by the person to whom it is so attributed;
 - (iv) where the substance only of the speech or statement is so published, that the matter published truly expresses the substance of the speech or statement in fact made by the person to whom it is so attributed;
- (j) judicial notice shall be taken of every national broadcasting station or national television station and of every commercial broadcasting station or commercial television station within the meaning of the Broadcasting and Television Act 1942 of the Commonwealth as amended and of any Act passed in substitution for that Act.

19. The intention, and almost certainly the consequence of this reversal of the onus of proof is to inhibit the making of statements by union officials to the media on industrial matters for fear of being misquoted and charged on the basis of that misquoted statement. It also makes it difficult for them to refrain from giving evidence (because then the "conclusive

evidence" provision operates), a right available in normal criminal proceedings. Statements made to the media by the Government or managements on the same issues do not appear to be subject to this new evidentiary rule. As a result, a union official's freedom of expression is effectively curtailed, and his rights compared with those of other potential parties to any dispute are substantially reduced.

20. It is true that paragraph (3) of Article 19.2 provides for exceptions to be made to the right to freedom of expression, e.g. for protection of public order. Although it would not be necessary, to comply with Article 19, to include a requirement in the amended section 135 of the Principal Act that the new evidentiary rule be used only in situations where public order or any other of the specified grounds for limitation are at stake, the failure to indicate limits on use of the provision appears to the Commission to be a cause for concern. It is not difficult to imagine circumstances far removed from the Article 19 exceptions in which the right to freedom of expression could be seriously infringed.

21. The Commission draws attention to the fact that the new evidentiary rule applies to all unions registered in Queensland and their leaders, not only to those involved in the electricity supply industry. This is the effect of incorporating the rule in the Industrial Conciliation and Arbitration Act. It is bad enough to have law of this kind apply only to an essential industry. The generality of its application aggravates the extent to which the amendment breaches the right to freedom of expression.

22. Section 4 of the Electricity (Continuity of Supply) Act Amendment Act 1985 has introduced a new section 5A to the Principal Act to allow a police officer to arrest without warrant persons who he has reason to believe are involved in "picketing" (prohibited under section 5 of the Principal Act). It was recently reported that a television cameraman was so arrested as were five clergymen who were peacefully picketing in

front of a SEQEB depot. The availability of a power of arrest in circumstances such as this would impede media coverage of industrial action, and would certainly lead to an infringement of the right to freedom of expression, as well as threatening the right to freedom of assembly.

(b) Right to Presumption of Innocence (Article 14(2) of the ICCPR)

23. Article 14(2) of the ICCPR states :

Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

24. The Industrial Conciliation and Arbitration Act details a number of offences which may be committed by unions or their officials. The Commission notes that it may be possible to argue, on a strictly technical basis, that offences under the industrial legislation discussed in this Report do not come within the strict meaning of "criminal offences", although carrying generally monetary penalties, because the penalties are to be recovered in civil proceedings and are not to result in imprisonment. On the other hand, Brett and Waller, in discussing the definition of "crime" have stated :

The notion of harm to **the** public in general or of moral wrongness, although not necessarily of the two in conjunction, is to be found in the reasons which are advanced to justify the acceptance of attaching the label "crime" to almost every transaction which is so labelled in our community. And we would add the further feature that crimes, unlike wrongs which are dealt with purely by civil proceedings, attract punishment. That in its turn is difficult to define precisely, but the notion is understood well enough by anyone familiar with the English language. It consists in the infliction upon the offender of some form of suffering - whether by way of imprisonment or some other bodily suffering or by the imposition of a fine or the loss of certain rights - not by way of recompense to the injured party but for some other purpose or purposes. One other such purpose is to deter other members of the community from acting in a similar manner.¹

¹ Brett & Waller : Criminal Law : Text and Cases : 4th Ed. p. 4

The Commission is of the opinion that the statutory offences under the industrial legislation considered in this Report could be considered as "criminal offences" for the purposes of Article 14 of the ICCPR. The fact that many of the penalties have been increased by 150% adds weight to the view that they are intended to be punitive and deterrent.

25. As mentioned in paragraph 18 above, section 14 of the Industrial Conciliation and Arbitration Act Amendment Act 1985, has reversed the onus of proof in the case of certain offences and a person is presumed to have said something, or to have wilfully neglected to obey a direction of the Industrial Court of Commission, unless he/she can establish evidence to the contrary. This goes against the established principle that the onus of proof should be on the prosecution and not the defendant. This reversal of the onus is a matter of concern because the guilt or innocence of a union official in relation to offences under the Principal Act is dependent on the goodwill and reliability of a reporter. Although in theory this evidential burden could be discharged by contrary evidence, it is not hard to imagine the difficulties which would be faced by a union official who either wished not to give evidence or who had to attempt to bring contrary evidence. The matter is made more serious by virtue of the heavy increase in penalties.

26. The European Commission of Human Rights, in considering the parallel to Article 14(2) in the European Convention on Human Rights (Article 6(2)) noted, when dealing with the presumption of innocence, that although it is possible that some presumptions are rebuttable and may not necessarily be equated with a presumption of guilt, such provisions "could, if widely or unreasonably worded, have the same effect of a presumption of guilt. It is not, therefore, sufficient to examine only the form in which the presumption is drafted. It is necessary to examine its substance and its effect."¹

¹ X against the United Kingdom (Appn. No. 124/71) CD 42, 135. (In this case, the European Commission found that a particular statutory provision under review, because it was restrictively worded, did not amount to a presumption of guilt. The European Commission however went on to enunciate the broad principle quoted above.)

27. It is the Commission's view that the amended sub-section 135(i) of the Principal Act is so widely and unreasonably worded as to amount to such a presumption of guilt.

28. The Commission accordingly wishes to draw the attention of the Attorney-General to the right to the presumption of innocence under Article 14(2) of the ICCPR and to express its concern that the displacement of the usual onus of proof by section 14 of the Industrial Conciliation and Arbitration Act Amendment Act 1985 would, on a purposive interpretation of "criminal offence", mean that the section of the Act is in breach of that Article.

(c) Right to Freedom of Association (Article 22)

29. Article 22 of the ICCPR states :

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

30. Section 23 of the Electricity Authorities Industrial Causes Act 1985 makes strikes in the electricity supply industry illegal. The Freedom of Association Committee of the I.L.O. has recognised that the right to strike is a legitimate means of

organising the activities of employees' organisations and of furthering and defending their interests. However it has also recognised that the right to strike can properly be restricted or prohibited in the essential services of a State because of the resultant hardships to the community. But it has stated that where the right to strike is limited, "adequate, impartial and speedy conciliation and arbitration procedures" should be available.'

31. Sections 12 and 19 of the Act provide that the Electricity Authorities Industrial Causes Tribunal is to exercise all the powers of the State Industrial Commission (although it is required to take certain specified matters, e.g. economy of the State, consumers' interests, into account in making its decisions).

32. In the light of the above comments by the Freedom of Association Committee it may be that the prohibition of strikes within the electricity supply industry does not, in itself, constitute a breach of Article 22, if it can be shown that the separate arbitration system to be created under this Act provides an adequate, impartial and speedy arbitration system for resolution of industrial conflicts within that industry.

33. Section 5 of the Industrial Conciliation and Arbitration Act Amendment Act 1985 raises a further issue. It repeals the existing section 48 of the Principal Act and substitutes a new section 48 which allows for resignation from a union by a union member to be immediately effective on the member so notifying the union in writing. This provision overrides any union rule which provides to the contrary. The Commission considers that such a provision could lead to an erosion of the financial position of unions, damage union solidarity and make unions less able to work for and protect the interests of workers generally. It is understood that most union rules provide a minimum period of notice of resignation partly to ensure the financial stability of the union, and partly to prevent members

¹ See also discussion of this point at p.8 of Human Rights Commission Report No. 12

resigning in a huff over a particular decision made at a particular time by a union with which they may not for the moment agree.

34. The Commission therefore views this Provision as one that will tend to weaken unions. It draws attention to the right defined in Article 22 of an individual to form and join trade unions for the protection of his or her interests. The provision represents a significant attack on the relevant unions' capacity to protect the interests of their members and as such is, in the view of the Commission, inconsistent with Article 22.

**IV. REGISTRATION UNDER THE COMMONWEALTH
CONCILIATION AND ARBITRATION ACT**

35. The Commission notes that a number of Queensland unions have taken steps, pursuant to the provisions of the Conciliation and Arbitration Act 1904 (Cwlth) to remove themselves from the jurisdiction of the State Industrial Commission (and the proposed Electricity Authorities Industrial Causes Tribunal), and to place themselves under Commonwealth jurisdiction. It seems that the Arbitration Commission has now determined that a dispute they are involved in extends beyond the limits of any one State.

36. Under the Conciliation and Arbitration Act as it now stands, there is a number of procedural matters that need to be complied with before registration can be effected, and thus the arbitral procedures invoked. In view of the urgency, in human rights if no other terms, of the situation under the legislation examined in this Report, it would seem desirable to remove any unnecessary impediments to early registration and hearing of disputes.

V. FINDINGS

37. For the reasons outlined above, the Commission is of the view that the Queensland industrial legislation considered in this Report infringes a number of human rights guaranteed under the ICCPR.

38. There is a breach of Article 19 which guarantees the right to freedom of expression, as the combined effect of section 14 of the Industrial Conciliation and Arbitration Act Amendment Act and of section 4 of the Electricity (Continuity of Supply) Act Amendment Act 1985 is that union officials will be inhibited from making statements relating to industrial disputes to the media and the media may be discouraged from reporting industrial disputes. The effect of these provisions is to discriminate against unionists. (Paragraphs 17-22.)

39. The Commission is of the view that the statutory offences in the industrial legislation package have many features appertaining to criminal offences and that on a purposive rather than technical interpretation of "criminal offence", the reversal of the onus of proof effected by section 14 of the Industrial Conciliation and Arbitration Act Amendment Act 1985, breaches the presumption of innocence guaranteed by Article 14(2). (Paragraphs 23-28.)

40. Section 5 of the Industrial Conciliation and Arbitration Act Amendment Act 1985 could, in the view of the Commission, erode a union's financial stability in the long term. Accordingly, it is inconsistent with the provisions of Article 22, which guarantees everyone the right to freedom of association, including the right to form and join trade unions for the protection of a worker's interests. (Paragraphs 29-34.)

41. As a consequence of these breaches of human rights, the Commission also finds that unions in Queensland do not enjoy the same benefits as other unions registered in other States or under the Commonwealth Conciliation and Arbitration Act. It notes that a number of unions in Queensland are taking steps, under the Commonwealth Act, to have themselves removed from the jurisdiction of the State Industrial Commission and **the** new Electricity Authorities Industrial Causes Tribunal, and placed under the Commonwealth jurisdiction. It also notes that procedural amendments could be made to the Commonwealth Act to expedite this process. However, even if these steps are taken, the main problem - the infringement of human rights through the operation of the new Queensland industrial legislation - would remain and, if not remedied, may require further investigation in the light of experience with **the** operation of the legislation.

VI. ACTION BY AUSTRALIA

42. Australia, as a signatory of the ICCPR, is bound internationally to ensure that the provisions of the Covenant are fully implemented within Australia. Article 50 is also relevant to Australia as a federal State. Articles 2 and 50 of the ICCPR provide -

ARTICLE 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of that State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

ARTICLE 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

43. When Australia notified the United Nations in October 1984 of its decision to remove most of the reservations and declarations made by Australia when it ratified the ICCPR in 1980, it also made the following statement -

Australia has a federal constitutional system in which legislative, executive and judicial powers are shared or distributed between the Commonwealth and the constituent States. The implementation of the treaty throughout Australia will be effected by the Commonwealth, State and Territory authorities having regard to their respective constitutional powers and arrangements concerning their exercise.

44. The primary obligation imposed by Articles 2 and 50 is on Australia as the ratifying State Party to the Covenant. However, the consequence of the statement of responsibility for implementation of the Covenant quoted in the previous paragraph leads the Commission to the view that it is incumbent on Queensland to give effective implementation to the rights guaranteed under the ICCPR.

VII. RECOMMENDATIONS

45. The Human Rights Commission having found that a number of provisions in the package of Queensland industrial legislation examined in this Report are inconsistent with Articles 14(2), 19 and 22 of the ICCPR accordingly recommends -

- (a) that the inconsistencies be brought to the attention of the Queensland Government with the object of persuading that Government to repeal the offending provisions or at least amend them to limit their operation in a manner consistent with the observance of human rights; and
- (b) that if the Queensland Government does not repeal these provisions or bring them into line with Australia's obligations under the ICCPR, the Commonwealth Government should take whatever action is necessary to ensure that any application the relevant unions may decide to make for registration under the Commonwealth Conciliation and Arbitration Act is able to be heard without delay by the Conciliation and Arbitration Commission.

46. Unless the provisions in the industrial legislation identified in this Report and the Commission's Report No. 12 are repealed or suitably amended, Queensland's industrial relations system will continue to be subject to restrictions which infringe human rights. The Commission therefore further recommends -

- (c) that if at the end of 1985 the situation remains unsatisfactory in human rights terms, the Government consider referring appropriate issues to the Commission for further inquiry and report.

•
RICOM 4462090
PUBTLX AA47384

TOWNSVILLE QLD PUBLIC TELEX 4-10P 2ND

URGENT TELEX
DAME ROMA MITCHELL
HUMAN RIGHTS COMMISSIONER

DEAR COMMISSIONER,

I WRITE REQUESTING THE HUMAN RIGHTS COMMISSION TO
INVESTIGATE THE QUEENSLAND GOVERNMENT'S NEW INDUSTRIAL
LEGISLATION TO DETERMINE THE EXTENT TO WHICH HUMAN
RIGHTS HAVE BEEN IGNORED.

THERE IS GRAVE CONCERN WITHIN QUEENSLAND THAT THE INDUSTRIAL
LEGISLATION HAS BREACHED INTERNATIONAL LABOUR ORGANISATION
CONVENTIONS AND THE INTERNATIONAL COVENANT ON CIVIL AND
POLITICAL RIGHTS.

I WOULD ALSO DRAW TO YOUR ATTENTION ARTICLE 117 OF THE
AUSTRALIAN CONSTITUTION WHICH STATES :

"A SUBJECT OF THE QUEEN, RESIDENT IN ANY STATE, SHALL NOT BE
SUBJECT IN ANY OTHER STATE TO ANY TO ANY DISABILITY OR
DISCRIMINATION WHICH WOULD NOT BE EQUALLY APPLICABLE TO HIM
IF HE WERE A SUBJECT OF THE QUEEN RESIDENT IN SUCH OTHER STATE ".

I WOULD ASK FOR COMMENT ON THE ABOVE AS IT RELATES TO QUEENSLANDERS
WHO ARE IN FACT BEING SUBJECTED TO ARCHAIC LAWS NOT APPLICABLE
ELSEWHERE IN AUSTRALIA.

I BELIEVE THE QUEENSLAND PREMIER HAS SET A DANGEROUS PRECEDENT
IN ISOLATING HIS GOVERNMENT FROM THE STANDARD INDUSTRIAL
RELATIONS PRACTICES ESTABLISHED OVER MANY YEARS IN THIS COUNTRY.

FURTHERMORE, MY UNDERSTANDING OF THE LEGISLATION IS THAT
JOURNALISTS AND OTHER MEDIA PROFESSIONALS COULD TECHNICALLY
BE IN BREACH FOR REPORTING ANY ASPECT OF THE ELECTRICITY INDUSTRY
WHICH DOES NOT UPHOLD THE GOVERNMENT POSITION.
THIS WOULD BE A BLATANT ATTEMPT TO STIFLE THE FREEDOM OF THE PRESS.

FINALLY, I WOULD ASK THAT THE INQUIRY INTO QUEENSLAND'S INDUSTRIAL
LEGISLATION BE INVESTIGATED AS EXPEDITIOUSLY AS POSSIBLE
TO ENSURE THAT FINDINGS COULD BE FULLY REPORTED AT THE
INTERNATIONAL LABOUR CONFERENCE IN JUNE OF THIS YEAR

WITH BEST WISHES
SENATOR MARGARET REYNOLDS 42 STURT ST TOWNSVILLE .

CORRECTION SECOND LINE OF TEXT SHOULD READ
INVESTIGATE THE QUEENSLAND ETC

ELECTRICITY AUTHORITIES INDUSTRIAL CAUSES ACT

No. 10 of 1985

ANALYSIS OF CONTENTS

1. Short title
2. Commencement
3. Arrangement
4. Interpretation
5. Constitution of tribunal
6. Term of appointment
7. Conditions of appointment
8. Constitution of tribunal in special cases
9. Registrar
10. Curtailment of Industrial Commission's jurisdiction
11. Tribunal's jurisdiction
12. Powers of tribunal and its members
13. Notice to tribunal or registrar of dispute etc.
14. Practice and procedure of tribunal
15. Intervention by Crown
16. Representation of parties
17. Use of advisory panel
18. Curtailment of Industrial Court's jurisdiction
19. Principles for guidance of tribunal
20. Access to Industrial Commission's records
21. Effect of decision of tribunal
22. Negation of preference in electricity calling
23. Illegality of strike in electricity calling
24. Strike in electricity calling a fundamental breach of contract
25. Effect of strike on industrial agreements
26. Automatic penalty for strikes in electricity callings
27. Disciplinary action against striker in electricity calling
28. Procedure upon detriment or penalty suffered; Review
29. Institution and disposal of s. 28 applications
30. Avoidance of penalties prohibited
31. Provisions to be brought to employees' notice
32. Preservation of certain powers and duties
33. Regulations

Queensland



ANNO TRICESIMO QUARTO
ELIZABETHAE SECUNDAE REGINAE

No. 10 of 1985

**An Act to provide in respect of industrial causes affecting
the electricity supply industry and for related purposes**

[ASSENTED TO 25TH MARCH, 1985]

2 *Electricity Authorities Industrial Causes Act 1985, No. 10*

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. Short Title. This Act may be cited as the *Electricity Authorities Industrial Causes Act 1985*.

2. Commencement. (1) Section 1 and this section shall commence on the day this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1) this Act or the provisions thereof specified in the Proclamation shall commence on the date or dates to be appointed by Proclamation.

3. Arrangement. This Act is arranged in Parts as follows:—

PART I—PRELIMINARY (ss. 1-4);

PART II—THE TRIBUNAL (ss. 5-9);

PART III—JURISDICTION POWERS AND PRACTICE OF TRIBUNAL (ss. 10-21);

PART IV—CONDITIONS OF EMPLOYMENT IN ELECTRICITY CALLINGS (ss. 22-31);

PART V—MISCELLANEOUS PROVISIONS (ss. 32-33).

4. Interpretation. (1) In this Act, except where a contrary intention appears—

"award" means—

(a) an award within the meaning of the *Industrial Conciliation and Arbitration Act 1961-1985*;

and

(b) an award, or variation of an award, made by the tribunal;

"calling" means any trade, craft, vocation or other occupation and includes any section of a calling;

"decision" means any award, order, determination, direction or declaration;

"Electricity Authority" means—

(a) Queensland Electricity Commission;

and

(b) each Electricity Board constituted under the *Electricity Act 1976* or that Act as amended;

"electricity calling" means a calling within the employment of any Electricity Authority;

"Industrial Commission" means The Industrial Conciliation and Arbitration Commission under the *Industrial Conciliation and Arbitration Act 1961-1985*;

"Industrial Court" means the Industrial Court constituted under the *Industrial Conciliation and Arbitration Act 1961-1985*;

"Industrial Gazette" means the Queensland Government Industrial Gazette;

"Minister" means the Minister for Mines and Energy or other Minister of the Crown charged with the administration of this Act and includes a Minister of the Crown for the time being performing the duties of the Minister;

"prescribed authority" means—

(a) in relation to an application made or to be made under section 28 by an employee of the Queensland Electricity Commission, the Minister;

and

(b) in relation to an application made or to be made under section 28 by an employee of any other Electricity Authority, the Electricity Commissioner under the *Electricity Act 1976-1984*;

"strike" means a strike within the meaning of the *Industrial Conciliation and Arbitration Act 1961-1985* and includes conduct of an employee that, if indulged in by two or more employees, would constitute a strike within the meaning of that Act;

"tribunal" means the Electricity Authorities Industrial Causes Tribunal established by this Act.

(2) In or for the purposes of this Act each of the expressions—
industrial agreement;

industrial cause;

industrial dispute;

industrial matter; and

industrial union,

has the meaning assigned to it by the *Industrial Conciliation and Arbitration Act 1961-1985*.

(3) Where there is any inconsistency between a provision of this Act and a provision of any other Act or of an award, the provision of this Act shall prevail and to the extent of the inconsistency the provision of the other Act or the award shall be inoperative.

(4) A reference in any Act or award to the Industrial Commission or to a member of the Industrial Commission (however expressed) or

4 *Electricity Authorities Industrial Causes Act 1985, No. 10*

to an award shall, in the application of the Act or award to industrial causes committed by this Act to the jurisdiction of the tribunal, be read and construed as a reference to the tribunal or to a member of the tribunal or, as the case may be, an award of the tribunal.

PART II—THE TRIBUNAL

5. Constitution of tribunal. (1) There is hereby established a tribunal called the "Electricity Authorities Industrial Causes Tribunal".

(2) The Governor in Council may appoint by commission in Her Majesty's name such number of persons as he from time to time considers necessary to be members of the tribunal.

(3) For the purpose of exercising its jurisdiction the tribunal shall consist of one of its members.

(4) The tribunal shall be a court of record and shall have an official seal, which shall be judicially noticed.

6. Term of appointment. (1) A person appointed as a member of the tribunal shall be appointed for a term not exceeding seven years and, unless he has become ineligible under this Act, is eligible for re-appointment from time to time for a further term not exceeding seven years.

(2) A person shall be taken to have vacated his office as a member of the tribunal upon his attaining the age of 70 years notwithstanding that he has not then completed the current term of his appointment.

(3) If the term of appointment of a member of the tribunal expires or he attains the age of 70 years during the continuance of a proceeding concerning an industrial cause on which he has entered the Governor in Council may, from time to time if necessary, without re-appointment continue him in office for such time as is necessary to enable him to complete the proceeding.

(4) A person who has attained the age of 70 years is not eligible for appointment as a member of the tribunal.

7. Conditions of appointment. (1) A member of the tribunal, if he is not a Judge of the Supreme Court or of District Courts shall be entitled to a salary at the rate per annum applicable from time to time to a Judge of District Courts.

(2) A member of the tribunal shall hold office during good behaviour and shall not be removed from office unless an address praying for his removal is presented to the Governor by the Legislative Assembly.

(3) A member of the tribunal shall not be capable of being a member of the Executive Council or the Legislative Assembly and shall not act as director or auditor or take part in any other capacity in management of any trade, business or body corporate.

(4) Entitlements to leave and pension benefits of a member of the tribunal and entitlements to pension benefits of his widow and any child of his shall be those provided for by the *Industrial Conciliation and Arbitration Act 1961-1985* in respect of those matters as if that member were a Commissioner within the meaning of that Act.

In the application of section 10A of that Act to a member of the tribunal the definition "Fund" shall be deemed to be extended to include the fund maintained for the purposes of the Queensland Electricity Supply Industry Employees' Superannuation Scheme referred to in the *Electricity Act 1976-1984*.

8. Constitution of tribunal in special cases. (1) In the case of illness or absence of a member of the tribunal or of his being unavailable in a particular case or where the Governor in Council is satisfied that assistance is needed to dispose of the number of pending industrial causes within the jurisdiction of the tribunal, the Governor in Council may, by notification published in the Industrial Gazette, appoint one or more persons, who are eligible for appointment as a member of the tribunal, to constitute the tribunal during the illness, absence or unavailability of the member or, as the case may be, for the purpose of disposing of such pending industrial causes.

(2) While any person appointed under subsection (1) constitutes the tribunal he may exercise the same jurisdiction and has and may exercise the same powers and authorities and shall discharge the same duties and responsibilities and is subject to the same disabilities and this Act in all respects applies to him as if he had been appointed under section 5 as a member of the tribunal.

9. Registrar. (1) There shall be a registrar of the tribunal and his office shall be the tribunal's registry.

The registrar, if he is at any time appointed under this Act, shall be appointed by the Governor in Council, on the recommendation of the Minister, by notification published in the Industrial Gazette.

(2) Until a registrar is appointed under subsection (1), the industrial registrar for the purposes of the *Industrial Conciliation and Arbitration Act 1961-1985* shall be the registrar of the tribunal and his office shall be its registry.

PART III—JURISDICTION POWERS AND PRACTICE OF TRIBUNAL

10. Curtailment of Industrial Commission's jurisdiction. It is not legally competent to the Industrial Commission to exercise the jurisdiction had by it under the *Industrial Conciliation and Arbitration Act 1961-1985* in respect of industrial causes to the extent that those industrial causes consist of industrial disputes or industrial matters in which Electricity Authorities (or any of them) or their employees (or any of them) or both such authorities and employees are concerned as employers or, as the case may be, employees except such jurisdiction in respect

of industrial causes that relate exclusively to both apprentices who are engaged in electricity callings and apprentices who are engaged in other callings, and any decision or recommendation made or other indication given by the Industrial Commission purporting to exercise the first-mentioned jurisdiction shall, to the extent referred to in this subsection, be of no force or effect.

11. Tribunal's jurisdiction. (1) The Electricity Authorities Industrial Causes Tribunal is hereby invested with the jurisdiction which is denied to the Industrial Commission by section 10.

(2) The jurisdiction of the tribunal does not include jurisdiction to make any decision or recommendation or give any other indication in respect of any matter or thing that is not an industrial matter.

12. Powers of tribunal and its members. (1) Subject to this Act, in respect of industrial causes within the tribunal's jurisdiction—

(a) the tribunal shall have and may exercise the same powers and authorities and shall discharge the same functions and duties as if it were the Industrial Commission exercising its jurisdiction in respect of the industrial causes and this Act had not been passed;

and

(b) a member of the tribunal shall have and may exercise the same powers and authorities and shall discharge the same functions and duties as if he were a Commissioner appointed as a member of the Industrial Commission exercising his jurisdiction in respect of the industrial causes and this Act had not been passed.

(2) The provisions of subsection (1)—

(a) extend to both conciliation procedures and arbitration procedures;

(b) do not authorize the remittal or referral of the matter of any proceeding to a Full Bench of the Industrial Commission.

(3) Where the tribunal is seised of an industrial cause in respect of which it is carrying out conciliation procedures and one of the parties to that cause requests that the cause be disposed of by arbitration, the tribunal shall proceed to arbitration as soon as is practicable.

13. Notice to tribunal or registrar of dispute etc. (1) Where an industrial dispute or an industrial situation that is likely to give rise to an industrial dispute exists between—

(a) an employer in whose employment are persons engaged in an electricity calling of the one part and one or more of those persons of the other part;

or

(b) persons engaged as employees in an electricity calling or an industrial union of employees who are such persons of the

one part and any other persons or any other industrial union of employees of the other part,

the employer of the persons so engaged shall forthwith upon his becoming aware of the dispute or situation, and any person concerned in the dispute or situation may at any time, notify a member of the tribunal or the registrar of the tribunal of the dispute or situation.

(2) A notification under subsection (1) shall specify the parties (so far as they are known to the informant) to the dispute or situation to which it relates, the place or places where the dispute or situation exists and the subject-matter of the dispute or situation.

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

(4) Upon being notified of the existence of a dispute or situation a member of the tribunal may exercise the authorities and discretions conferred on a member of the Industrial Commission by section 36 of the *Industrial Conciliation and Arbitration Act 1961-1985* and may take steps to prevent or settle the dispute or situation by arbitration notwithstanding that the matter has not been submitted to the processes of conciliation.

14. Practice and procedure of tribunal. (1) Unless the regulations otherwise prescribe, the provisions of the *Industrial Conciliation and Arbitration Act 1961-1985* and of the rules made thereunder, being provisions that—

(a) govern the practice and procedure of the Industrial Commission;

Or

(b) provide for the enforcement of any decision of the Industrial Commission,

shall govern the practice and procedure of the tribunal or, as the case may be, shall regulate the enforcement of any decision of the tribunal.

15. Intervention by Crown. The Crown in right of the State—

(a) may intervene at any stage in a proceeding before the tribunal;

or

(b) may intervene at any stage in a proceeding before any court touching or involving the jurisdiction of the tribunal or any matter within the jurisdiction of the tribunal or the interpretation of this Act.

Upon such intervention the Crown shall be deemed to be a party to the proceeding. ,

16. Representation of parties. (1) A party to a proceeding before the tribunal—

- (a) being a party other than an industrial union, may be represented by an agent appointed in writing in that behalf; and
- (b) being an industrial union, may be represented by an agent appointed in writing in that behalf or by any officer or member thereof.

(2) Unless all parties consent thereto no party shall be represented by counsel or solicitor in a proceeding before the tribunal.

17. Use of advisory panel. (1) If a member of the tribunal considers that it would conduce to the proper disposal of a proceeding before the tribunal, he may request the parties to the proceeding to nominate a panel of four persons to assist in the disposal of the proceeding.

(2) A panel nominated under subsection (1) shall consist of—

- (a) two persons nominated by the party or parties who represents or represent the employers' interest in the proceeding; and
- (b) two persons nominated by the party or parties who represents or represent the employees' interest in the proceeding.

(3) Where the employees' interest in a proceeding before the tribunal for which a panel is to be nominated consists partly of the interest of any employee or employees who is not a member or are not members of an industrial union of employees that last-mentioned interest shall be represented on the panel by one person nominated by that employee or those employees.

(4) A member of the tribunal is not obliged—

- (a) to persevere with a request made by him under subsection (1); or
- (b) to sit with the same panel or with any panel throughout the whole of the proceeding.

(5) Notwithstanding that a panel may have been used to assist in disposing of a proceeding before the tribunal the decision of the tribunal shall in every case be that of the member of the tribunal.

18. Curtailment of Industrial Court's jurisdiction. (1) It is not legally competent to the Industrial Court to exercise the jurisdiction had by it under the *Industrial Conciliation and Arbitration Act 1961-1985* in respect of—

- (a) industrial causes to the extent that those causes affect Electricity Authorities (or any of them) or their employees (or any of them) or both such authorities and employees;

or

- (b) proceedings that are before or have been disposed of by the tribunal,

and any order made or act or thing done by the Industrial Court purporting to act in exercise of that jurisdiction shall, to the extent referred to in this subsection, be of no force or effect.

(2) The provisions of the *Industrial Conciliation and Arbitration Act 1961-1985* that purport to deprive the Supreme Court of jurisdiction in respect of matters thereby committed to the jurisdiction of the Industrial Court have no application in respect of industrial causes committed by this Act to the jurisdiction of the tribunal or in respect of proceedings that are before or have been disposed of by the tribunal and it is declared that the Supreme Court has, in respect of those industrial causes and proceedings such first-mentioned jurisdiction as if a reference therein to the Industrial Commission were a reference to the tribunal established under this Act and a reference therein to a Commissioner were a reference to a person who is a member of or who constitutes the tribunal established under this Act.

19. Principles for guidance of tribunal. In the exercise of jurisdiction by the tribunal and in the exercise and discharge of powers, authorities, functions and duties by a member of the tribunal regard shall be had to the following matters:—

- (a) the prosperity of the economy of Queensland;
 - (b) the economics of the operation of Electricity Authorities in Queensland in general and, in particular, the Electricity Authority concerned in the proceeding in question, and the consumers' interests therein;
 - (c) the likely results on other sectors of industry within Queensland of the decision to be made or of compliance with the recommendation or indication to be given;
- and
- (d) the role and responsibilities of management of Electricity Authorities.

20. Access to Industrial Commission's records. For the purpose of the exercise of jurisdiction by the tribunal or the exercise or discharge of the powers, authorities or duties of the registrar of the tribunal, full and free access shall be had by the tribunal and any member thereof or, as the case may be, the registrar to the records of the Industrial Commission or the industrial registrar acquired for the purposes of the *Industrial Conciliation and Arbitration Act 1961* or that Act as amended from time to time.

21. Effect of decision of tribunal. Every decision of the tribunal shall be final and conclusive and shall not be impeachable for informality or want of form.

10 *Electricity Authorities Industrial Causes Act 1985, No. 10*

PART IV—CONDITIONS OF EMPLOYMENT IN ELECTRICITY CALLINGS

22. Negation of preference in electricity calling. A provision of any Award or Act, whether made, or agreed to, inserted or enacted before or after the passing of this Act, to the extent that it provides in its terms for preference to members of an industrial union of employees in an electricity calling, does not have any force or effect.

23. Illegality of strike in electricity calling. Participating in or inciting, counselling or abetting a strike by persons engaged in an electricity calling is an illegal act.

24. Strike in electricity calling a fundamental breach of contract. Participating in a strike by an employee engaged in an electricity calling constitutes a breach of his contract of employment that goes to the foundation of that contract and entitles the employer to treat that contract as thereby discharged.

25. Effect of strike on industrial agreements. (1) Where there exists in relation to an electricity calling an industrial agreement or an agreement made under s. 40 (2) of the *Industrial Conciliation and Arbitration Act 1961-1985* and an employee engaged in that calling who is taking the benefit of the agreement participates in a strike, the agreement shall be taken to have been thereby discharged in respect of that employee.

(2) Subsection (1) shall operate and shall be given effect whether or not the employee in question or any industrial union of employees of which he is a member is a party to the agreement in question.

26. Automatic penalty for strikes in electricity callings. (1) It is the duty of every employee engaged in an electricity calling to refrain from participating in a strike that affects the performance of work or production within that calling.

(2) An employee who, being subject to the duty defined in subsection (1), fails to perform that duty incurs, by reason of that failure and without other proceeding—

(a) the loss of the whole of the remuneration that but for the provisions of this subsection he would have received in respect of the day or days on which or, in the case of a shift-worker, in respect of the shift or shifts in which he has failed to perform that duty;

and

(b) any other detriment incurred by him apart from this Act by reason of his participating in the strike in question.

(3) Incurring a penalty under this section is in addition to and does not prejudice the imposition of a penalty under section 27.

27. Disciplinary action against striker in electricity calling. (1) Where a strike by any employee or employees engaged in an electricity calling

has occurred the employer may at his discretion impose on the employee or each employee who participates in the strike one of the following penalties:—

- (a) dismissal without notice from his employment;
- (b) suspension without pay from his employment for such period as the employer thinks fit.

(2) An exercise of authority under subsection (1) shall be effectual in law notwithstanding the provisions of any Act or award.

(3) Where an employer has imposed a penalty on an employee under subsection (1) he may—

- (a) rescind the imposition;
- (b) vary the penalty imposed;
- or
- (c) substitute the other penalty prescribed by that subsection for the penalty imposed,

whereupon—

in the case of a rescission, it shall be deemed that the penalty was never imposed on the employee in relation to whom the imposition has been rescinded;

in the case of a variation, it shall be deemed that the penalty imposed was the penalty as so varied;

in the case of a substitution, it shall be deemed that the penalty imposed was the substituted penalty.

28. Procedure upon detriment or penalty suffered; Review. (1) Within 7 days after—

- (a) an employer has exercised his entitlement under section 24 in relation to an employee;
- (b) an employer has decided that section 25 is operative in relation to an employee;
- (c) an employer has established the penalty incurred by an employee under section 26;
- or
- (d) a penalty has been imposed, varied or substituted in respect of an employee under section 27,

the employer shall give to the employee notification, in the form prescribed, of the detriment suffered by the employee or the penalty incurred by or imposed on the employee.

(2) An employee to whom notification referred to in subsection (1) is given may within 21 days after his receipt of the notification, and at

12 *Electricity Authorities Industrial Causes Act 1985, No. 10*

no time thereafter, apply in the form prescribed to the prescribed authority that the authority shall review—

- the invoking of section 24 in the case referred to in paragraph (a) of subsection (1);
- the occasion for the operation of section 25 in the case referred to in paragraph (b) of subsection (1);
- the exaction of the penalty or a part thereof in the case referred to in paragraph (c) of subsection (1);
- or
- the penalty in the case referred to in paragraph (d) of subsection (1).

(3) An employee to whom notification referred to in subsection (1) should have been but has not been given may within 21 days after he becomes aware of the detriment suffered by him or the penalty imposed on or to be exacted against him, and at no time thereafter, apply in the form prescribed to the prescribed authority that the authority shall review—

- the invoking of section 24;
- the occasion for the operation of section 25;
- the exaction of the penalty or a part thereof;
- or
- the penalty,

whichever is appropriate, as prescribed by subsection (2).

(4) Except as is provided by section 29—

- the invoking of section 24; the operation of section 25; the incurring of a penalty under section 26;
- or
- the imposition variation or substitution of a penalty under section 27,

shall not be questioned in any proceeding whatever, before any court or elsewhere.

29. Institution and disposal of s. 28 applications. (1) An application under section 28 16 the prescribed authority may be instituted only upon the ground that the employee has not participated in a strike or, in the case of an application to review the exaction of part of a penalty incurred under section 26, that the employee has not incurred that part under that section.

(2) The making of an application to the prescribed authority does not stay the detriment, the penalty or the exaction of the penalty in respect of which a review is sought.

(3) The prescribed authority to which application is made under section 28 shall cause to be made such investigation into the matter of

the application as it thinks fit and shall determine whether the ground of the application has been established.

If the prescribed authority is satisfied that the ground of the application has been established it may order all necessary re-instatements, rectifications and payments to be made to give effect to its determination.

(4) The determination of the prescribed authority upon a review shall not be questioned in any proceeding whatever, before a court or elsewhere, and its orders shall be given effect by the employer.

30. Avoidance of penalties prohibited. (1) It is not legally competent to a member of the tribunal to make any decision or recommendation or give any other indication that would relieve or is directed to relieving an employee of a penalty incurred by him under section 25 or 26 or imposed on him pursuant to section 27 and, to the extent that any such decision, recommendation or indication does so it shall be of no force or effect.

(2) To the extent that an agreement or arrangement made between an employer and an employee or an industrial union of employees is directed to—

- (a) negating or avoiding the operation of section 25, 26 or 27;
or
- (b) indemnifying or protecting an employee against the effect of the operation of section 25 or 26 or of anything done under section 27,

the agreement or arrangement is of no force and effect.

31. Provisions to be brought to employees' notice. Each employer in an electricity calling shall take such steps as appear to him to be necessary and reasonable to bring to the knowledge of his employees the provisions of this Part or the substance thereof.

PART V—MISCELLANEOUS PROVISIONS

32. Preservation of certain powers and duties. (1) No provision of this Act shall be construed to deprive or relieve—

- (a) the industrial registrar for the purposes of the *Industrial Conciliation and Arbitration Act 1961-1985*, while he continues to be registrar of the tribunal;
or
- (b) any other person, other than a member of the Industrial Court or Industrial Commission,

of any power, authority or duty had by him under the *Industrial Conciliation and Arbitration Act 1961-1985* by reason that the matters in respect of which that Act empowers or requires him to act are matters that arise in or are connected with industrial causes committed by this Act to the jurisdiction of the tribunal or proceedings that are before or have been disposed of by the tribunal.

14 *Electricity Authorities Industrial Causes Act 1985, No. 10*

(2) In the application in respect of industrial causes committed by this Act to the jurisdiction of the tribunal of any provision of the *Industrial Conciliation and Arbitration Act 1961-1985* that provides for the jurisdiction, powers and duties of the Industrial Commission or any person a reference therein to the Minister within the meaning of that Act shall be construed as a reference to the Minister within the meaning of this Act.

- (3) In the application in respect of—
 industrial causes committed by this Act to the jurisdiction of the tribunal;
 acts done by the tribunal in exercise of its jurisdiction;
 or
 any award, agreement, act or thing made or done in connexion with such industrial causes,

of any provision of the *Industrial Conciliation and Arbitration Act 1961-1985* that confers a power or authority or imposes a duty on any person, other than a member of the Industrial Court or Industrial Commission,

- (a) a reference to the Industrial Commission or to a member thereof shall be construed as a reference to the tribunal or to a member thereof respectively;

and

- (b) a reference to any award, agreement, act or thing made or done under the *Industrial Conciliation and Arbitration Act 1961-1985* shall be construed as a reference to any award, agreement, act or thing made or done under this Act.

33. Regulations. The Governor in Council may make regulations providing for—

- (a) the jurisdiction, powers and duties of the registrar of the tribunal, if appointed under this Act;
 and
 (b) all matters required or permitted by this Act to be prescribed.

ELECTRICITY (CONTINUITY OF SUPPLY) ACT AMENDMENT ACT

ANALYSIS OF CONTENTS

1. Short title
2. Principal Act and citation as amended
3. Amendment of s. 5. Obstruction or harassment prohibited
4. New ss. 5A and 5B
 - Power of arrest with respect to s. 5
 - Power to require name, address, etc.
5. New s. 9A
 - Evidentiary provisions

Queensland



ANNO TRICESIMO QUARTO

ELIZABETHAE SECUNDAE REGINAE

No. 13 of 1985

An Act to amend the Electricity (Continuity of Supply) Act
1985 in certain particulars

[ASSENTED TO 28TH MARCH, 1985]

*Electricity (Continuity of Supply) Act
Amendment Act 1985, No. 13*

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title. This Act may be cited as the *Electricity (Continuity of Supply) Act Amendment Act 1985*.

2. Principal Act and citation as amended. (1) In this Act the *Electricity (Continuity of Supply) Act 1985* is referred to as the Principal Act.

(2) The Principal Act as amended by this Act may be cited as the *Electricity (Continuity of Supply) Act 1985*.

3. Amendment of s. 5. Obstruction or harassment prohibited. Section 5 of the Principal Act is amended by, in subsection (1).-.-

(a) inserting in paragraph (b), after the words "person or persons or", the words "who is":

(b) inserting in paragraph (c) (ii), after the words "person or persons or", the words "his or her".

4. New ss. 5A and 5B. The Principal Act is amended by inserting after section 5 the following sections:—

"5A. Power of arrest with respect to s. 5. A member of the police force may arrest without warrant any person—

- (a) found by him committing an offence against section 5;
- (b) whom he believes on reasonable grounds has committed an offence against section 5.

5B. Power to require name, address, etc. (1) A member of the police force who—

- (a) finds a person committing or believes on reasonable grounds that a person has committed an offence against section 5;
- (b) is making inquiries or investigations with a view to establishing whether or not an offence has been committed against section 5 by any person;
- (c) finds a person in the company of a person referred to in paragraph (a);
- (d) is of the opinion that the particulars of a person's-
 - (i) name;
 - (ii) address; and
 - (iii) date of birth
 or any of those particulars are required for the proper enforcement of the provisions of section 5;
- (e) arrests a person in the exercise of a power conferred by this Act

*Electricity (Continuity of Supply) Act
Amendment Act 1985, No. 13*

may require that person to state particulars of his name or her name, address and date of birth or any of those particulars and, where he suspects on reasonable grounds that any of the particulars stated are false, may require evidence of the correctness thereof.

(2) A person required under this section to state his or her name, address and date of birth or any of those particulars who—

(a) refuses or fails to state forthwith any such particulars;
or

(h) states any false particulars

is guilty of an offence and is liable to a penalty not exceeding \$500.

(3) A person required under this section to produce evidence of the correctness of any particulars who—

(a) refuses or fails to produce that evidence; or

(b) produces false evidence with respect to those particulars

is guilty of an offence and is liable to a penalty not exceeding \$500.

(4) A member of the police force may arrest without warrant any person who, when required under this section to state his or her name, address and date of birth or any of those particulars or to produce evidence of the correctness of any such particulars, refuses or fails to do so or states a name, address or date of birth or produces evidence that in the opinion of the member of the police force is false."

5. New s. 9A. The Principal Act is amended by inserting after section 9 the following section:—

"9A. Evidentiary provisions. In any proceedings under or for the purposes of this Act—

(a) it shall not be necessary to prove the appointment of the Electricity Commissioner or of the General Manager of an Electricity Board;

(b) a signature purporting to be that of a person in a capacity referred to in paragraph (a) shall be taken to be the signature it purports to be until the contrary is proved;

(c) a certificate purporting to be signed by the Electricity Commissioner or, as the case may be, the General Manager of an Electricity Board certifying that on a specified date or during a specified period a person named therein was employed by the Queensland Electricity Commission or, as the case may be, the Electricity Board in question to perform duties specified therein shall be evidence and, in the absence

*Electricity (Continuity of Supply) Act
Amendment Act 1985, No. 13*

of evidence to the contrary, conclusive evidence of the matters contained in the certificate;

- (d) a certificate purporting to be signed by the Electricity Commissioner certifying that on a specified date he gave a direction pursuant to this Act to a person named in the certificate and identifying the direction so given shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in the certificate."

INDUSTRIAL (COMMERCIAL PRACTICES) ACT

No. 115 of 1984

ANALYSIS OF CONTENTS

1. Short title
2. Commencement
3. Arrangement
4. Interpretation
5. Act subject to legislative power of State
6. Interference with supply of goods or services prohibited
7. Interference with opportunity to trade prohibited
8. Cases not within ss. 6 and 7
9. Operation of s. 8
10. Associations deemed involved in conduct
11. Provisions concerning associations' liability
12. Establishment of purpose
13. Prohibition of certain arrangements
14. Certain persons deemed to be accustomed suppliers
15. Certain persons deemed not to be accustomed suppliers
16. Certain persons deemed to be accustomed acquirers
17. Certain persons deemed not to be accustomed acquirers
18. Certain arrangements not to be executed
19. Establishment of purpose
20. Interpretation
21. Jurisdiction to grant injunction
22. Restrictive injunction
23. Mandatory injunction
24. Provision concerning Ministerial undertakings as to damages
25. Stay of injunctions
26. Declaration of prescribed law
27. Effect of conciliation of dispute on costs
28. Pecuniary penalties
29. Civil action for recovery of pecuniary penalties
30. Criminal proceedings not available
31. Recovery of damages
32. Evidentiary value of previous findings

Queensland



owe

ANNO TRICESIMO TERTIO
ELIZABETHAE SECUNDAE REGINAE

No. 115 of 1984

**An Act to make provision with respect to conduct injurious
to trade or business and protection of the supply or
acquisition of goods or services and for related
purposes**

[ASSENTED TO 18TH DECEMBER, 1984]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. Short title. This Act may be cited as the *Industrial (Commercial Practices) Act 1984*.

2. Commencement. (1) Section 1 and this section shall commence on the date this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), the provisions of this Act shall commence on a date appointed by Proclamation.

In this Act the date so appointed is referred to as the commencement of this Act.

3. Arrangement. This Act is arranged in Parts as follows:—

PART I—PRELIMINARY (ss. 1-5);

PART II—INTERFERENCE WITH TRADE AND
COMMERCE (ss. 6-12);

PART III—INTERFERENCE WITH SUPPLY OR
ACQUISITION OF GOODS OR SERVICES (ss. 13-19);

PART IV—ENFORCEMENT AND REMEDIES (ss. 20-32).

4. Interpretation. In this Act, unless the contrary intention appears—
"acquire" includes—

- (a) in relation to goods—acquire by way of purchase, exchange or taking on lease, on hire or on hire-purchase; and
- (b) in relation to services—accept;

"authority of the State" means

- (a) a body corporate established for a purpose of the State by or under an Act; or
- (b) an incorporated company in which the Crown in right of the State or a body corporate referred to in paragraph (a) has a controlling interest;

"business" includes a business not carried on for profit;

"conduct" includes a refusal to do any act or thing or refraining (otherwise than inadvertently) from doing any act or thing;

"Court" means the Supreme Court of Queensland and a Judge thereof;

"Minister" means the Minister for Employment and Industrial Affairs or other Minister of the Crown charged with the administration of this Act and includes a Minister of the

Crown for the time being performing the duties of the Minister;

"person" includes the Crown in right of Queensland and any authority of the State;

"trade or commerce" means trade or commerce within Queensland or between places in Queensland and places outside Queensland.

5. Act subject to legislative power of State. This Act shall be read and construed so as not to exceed the legislative power of the State, to the intent that where any provision thereof would, but for this provision, be construed as being in excess of that power or as being invalid by reason of inconsistency with a law of the Commonwealth it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power or to which it can operate without inconsistency with a law of the Commonwealth.

PART II—INTERFERENCE WITH TRADE AND COMMERCE

6. Interference with supply of goods or services prohibited. Subject to this Part, a person shall not, either alone or in concert with another, engage in conduct that hinders or prevents the supply of goods or services to another person (not being an employer of the first-mentioned person) or the acquisition of goods or services by another person (not being an employer of the first-mentioned person) where the conduct is engaged in for the purpose, and would have or be likely to have the effect, of causing—

- (a) substantial loss or damage to the business of that other person or any other person; or
- (b) a substantial lessening of competition in any market in which that other person acquires goods or services.

7. Interference with opportunity to trade prohibited. Subject to this Part, a person shall not, either alone or in concert with another, engage in conduct for the purpose, and having or likely to have the effect, of hindering or preventing another person (not being an employer of the first-mentioned person) in or from engaging in trade or commerce.

8. Cases not within ss. 6 and 7. (1) A person shall not be taken to contravene or to be involved in a contravention of section 6 or 7 by engaging in conduct where—

- (a) the dominant purpose for which the conduct is engaged in is substantially related to-
 - (i) the remuneration, conditions of employment, hours of work or working conditions of that person or of another person employed by an employer of that person; or
 - (ii) an employer of that person having terminated or taken action to terminate the employment of that person or of another person employed by that employer; or

4 *Industrial (Commercial Practices) Act 1984, No. 115*

- (b) in the case of conduct engaged in by the following persons in concert with each other (and not in concert with any other person), that is to say-
- (i) an association or associations of employees or any officer or officers of such an association or both such an association or associations and such an officer or officers; and
 - (ii) an employee or two or more employees who are employed by the one employer,
the dominant purpose for which the conduct is engaged in is substantially related to—
 - (iii) the remuneration, conditions of employment, hours of work or working conditions of the employee or of any of the employees referred to in sub-paragraph (ii); or
 - (iv) the employer of the employee or of the employees referred to in sub-paragraph (ii) having terminated or taken action to terminate the employment of any of his employees.

(2) For the purposes of subsection (1), where the purpose of conduct is to induce an employer to adopt or contribute to a superannuation scheme for the benefit of employees that is under one management in preference to another comparable superannuation scheme that is under a wholly or substantially different management, that conduct shall be taken not to be substantially related to the remuneration, conditions of employment or working conditions of any person.

(3) For the purposes of subsection (1), where the purpose of conduct is to induce—

- any person or persons to become a member or members of an association of employees;
- any person or persons to become a member or members of one association of employees rather than another such association; or
- preference in employment to be given to members of an association of employees

that conduct shall be taken not to be substantially related to the conditions of employment or working conditions of any person, except where membership of an association of employees or a particular association of employees is a condition of a contract of employment between the employer and employee in question.

9. Operation of s. 8. The application of section 6 or 7 in relation to a person in respect of his engaging in conduct in concert with another person is not affected by reason that section 8 operates to preclude the other person from being taken to contravene or to be involved in a contravention of section 6 or 7 in respect of that conduct.

10. Associations deemed involved in conduct. If two or more persons (in this section referred to as the participants) each of whom is a member or officer of the same association of employees (being an association

that exists or is carried on for the purpose or for purposes that include the purpose of furthering the interests of its members in relation to their employment) engage in conduct in concert with one another, whether or not the conduct is also engaged in in concert with other persons, the association shall be deemed for the purposes of this Act to engage in that conduct in concert with the participants and so to engage in that conduct for the purpose or purposes for which that conduct is engaged in by the participants unless it is shown that the association took all reasonable steps to prevent the participants from engaging in that conduct.

11. Provisions concerning associations' liability. Where an association of employees engages or is deemed pursuant to section 10 to engage in conduct in concert with members or officers of the association in contravention of section 6 or 7—

- (a) any loss or damage suffered by a person as a result of the conduct shall be deemed to have been caused by the conduct of the association;
- (b) if the association is a body corporate, action to recover the amount of loss or damage thereby suffered by any person shall not be brought against any of the members or officers of the association;
- (c) if the association is not a body corporate—
 - (i) a proceeding such as is referred to in section 28 or an action to recover damages in respect of the conduct may be instituted against any officer or officers of the association as a representative or representatives of the members of the association and a proceeding so instituted shall be deemed to be a proceeding against all the persons who were members of the association at the time when the conduct was engaged in;
 - (ii) the maximum pecuniary penalty that may be imposed in a proceeding mentioned in sub-paragraph (i) that is instituted under section 28 is the penalty prescribed by that section in relation to a body corporate;
 - (iii) except as provided by sub-paragraph (i), a proceeding such as is referred to in section 28 or an action to recover damages in respect of the conduct shall not be instituted against any of the members or officers of the association; and
 - (iv) for the purpose of enforcing a judgment or order given or made in a proceeding mentioned in sub-paragraph (i) that is instituted, process may be issued and executed against any property of the association or of any branch or part of the association or any property in which the association or any branch or part of the association has or any member of the association or of a branch or part of the association has in his capacity as such a member a beneficial interest, whether vested in trustees or otherwise

held, as if the association were a body corporate and the absolute owner of the property or interest, but no process shall be issued or executed against any other property of members or against any property of officers of the association or of a branch or part of the association.

12. Establishment of purpose. For the purposes of this Part, a person shall be deemed to have engaged or to engage in conduct for a particular purpose if—

- (a) the person engaged or engages in the conduct for purposes that included or includes that purpose; and
- (b) that purpose was or is a substantial purpose.

PART III—INTERFERENCE WITH SUPPLY OR ACQUISITION OF GOODS OR SERVICES

13. Prohibition of certain arrangements. (1) Subject to this Part, a person who has been accustomed or is under an obligation to supply goods or services to or to acquire goods or services from a second person shall not make a contract or arrangement, or arrive at an understanding, with a third person (being an association of employees, an officer of such an association or another person acting for and on behalf of such an association or officer) if the proposed contract, arrangement or understanding contains a provision that—

- (a) has the purpose of preventing or hindering the first-mentioned person from supplying or continuing to supply any such goods or services to the second person or, as the case may be, from acquiring or continuing to acquire any such goods or services from the second person;
- (b) has the purpose of preventing or hindering the first-mentioned person from supplying or continuing to supply any such goods or services to the second person except subject to a condition (not being a condition to which the supply of such goods or services by the first-mentioned person to the second person has previously been subject by reason of a provision of a contract existing between those persons) as to the persons to whom, the manner in which or the terms on which the second person may supply any goods or services; or
- (c) has the purpose of preventing or hindering the first-mentioned person from acquiring or continuing to acquire any such goods or services from the second person except subject to a condition (not being a condition to which the acquisition of such goods or services by the first-mentioned person from the second person has previously been subject by reason of a provision of a contract existing between those persons) as to the persons to whom, the manner in which or the terms on which the second person may supply any goods or services.

(2) Subsection (1) does not apply in relation to a contract, arrangement or understanding that is in writing if the second person is a party to the contract, arrangement or understanding or has consented in writing to its being made or arrived at.

14. Certain persons deemed to be accustomed suppliers. Subject to section 15, a reference in section 13 to a person who has been accustomed to supply goods or services to a second person shall be construed as including a reference to—

- a regular supplier of any such goods or services to the second person;
- the latest supplier of any such goods or services to the second person; and
- a person who at any time during the immediately preceding period of three months supplied any such goods or services to the second person.

15. Certain persons deemed not to be accustomed suppliers. Where—

- (a) goods or services have been supplied by a person to a second person pursuant to a contract between those persons under which the first-mentioned person was required over a particular period to supply such goods or services;
- (b) that period has expired; and
- (c) after the expiration of that period the second person has been supplied with such goods or services by another person or other persons and has not been supplied with such goods or services by the first-mentioned person,

then, for the purposes of the application of section 13 or 14 in relation to anything done after the second person has been supplied with goods or services as mentioned in paragraph (c), the first-mentioned person shall be deemed not to be a person who has been accustomed to supply such goods or services to the second person.

16. Certain persons deemed to be accustomed acquirers. Subject to section 17, a reference in section 13 to a person who has been accustomed to acquire goods or services from a second person shall be construed as including a reference to—

- a regular acquirer of any such goods or services from the second person;
- a person who, when he last acquired such goods or services, acquired them from the second person; and
- a person who at any time during the immediately preceding period of three months acquired any such goods or services from the second person.

17. Certain persons deemed not to be accustomed acquirers. Where—

- (a) goods or services have been acquired by a person from a second person pursuant to a contract between those persons

8 *Industrial (Commercial Practices) Act 1984, No. 115*

under which the first-mentioned person was required over a particular period to acquire such goods or services;

- (b) that period has expired; and
- (c) after the expiration of that period the second person has refused to supply such goods or services to the first-mentioned person,

then, for the purposes of the application of section 13 or 16 in relation to anything done after the second person has refused to supply goods or services as mentioned in paragraph (c) the first-mentioned person shall be deemed not to be a person who has been accustomed to acquire such goods or services from the second person.

18. Certain arrangements not to be executed. (1) If—

- (a) a person has, whether before or after the commencement of this Act, made a contract or arrangement or arrived at an understanding with another person; and
- (b) by reason of a provision of the contract, arrangement or understanding the making of the contract or arrangement or the arriving at the understanding by the first-mentioned person contravened section 13 or would have contravened that section if that section had been in force at the time when the contract or arrangement was made or the understanding was arrived at,

a person shall not give effect to that provision of the contract, arrangement or understanding.

(2) In determining for the purposes of subsection (1) whether the making of a contract or arrangement or the arriving at an understanding before the commencement of this Act would have contravened section 13 if that section had been in force at the time when the contract or arrangement was made or the understanding arrived at section 13 (2) shall be read as if the words "that is in writing" and the words "in writing" were omitted.

19. Establishment of purpose. For the purposes of this Part, a provision of a contract, arrangement or understanding or of a proposed contract, arrangement or understanding shall be deemed to have had or to have a particular purpose if the provision was included in the contract, arrangement or understanding or is to be included in the proposed contract, arrangement or understanding for that purpose or for purposes that include that purpose.

PART IV—ENFORCEMENT AND REMEDIES

20. Interpretation. For the purposes of this Part, a person shall be taken to be involved in a contravention of a provision of Part II or Part III if—

- (a) he has done or attempted to do the act or thing that constitutes the contravention;
- (b) he has aided, abetted, counselled or procured the contravention;
- (c) he has induced or attempted to induce, whether by threats, promises or otherwise, the contravention;
- (d) he has been in any way, directly or indirectly, knowingly concerned in or party to the contravention; or

-
- (e) he has conspired with another or others to effect the contravention.

21. Jurisdiction to grant injunction. (1) Where upon the application of any person the Court is satisfied that a person has engaged or is proposing to engage in conduct by which he is or would be taken to be involved in a contravention of any provision of Part II or part III, the Court may grant an injunction in such terms as the Court determines to be appropriate.

(2) Where in the Court's opinion it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

(3) The Court may rescind or vary an injunction granted under subsection (1) or (2) upon the application of any party to the proceeding in which the injunction was granted or of any person duly substituted for such a party.

22. Restrictive injunction. The power of the Court to grant, pursuant to this Part an injunction restraining a person from engaging in conduct may be exercised—

- (a) whether or not it appears to the Court that the person intends to engage again or to continue to engage in conduct of that kind;
- (b) whether or not the person has previously engaged in conduct of that kind; and
- (c) whether or not there is imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

23. Mandatory injunction. The power of the Court to grant, pursuant to this part an injunction requiring a person to do any act or thing may be exercised—

- (a) whether or not it appears to the Court that the person intends to refuse or fail again or to continue to refuse or fail to do that act or thing;
- (b) whether or not the person has previously refused or failed to do that act or thing; and
- (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

24. Provision concerning Ministerial undertakings as to damages. (1) Where the Minister makes an application to the Court for the grant of an injunction pursuant to this Part the Court shall not require the applicant or any other person, as a condition of granting an interim injunction, to give an undertaking as to payment of damages and any interlocutory order made therein shall not contain an undertaking of that kind.

(2) Where in a case to which subsection (1) does not apply—

(a) the Court would, but for this subsection, require a person to give an undertaking as to payment of damages or costs; and

(b) the Minister gives the undertaking,

the Court shall accept the undertaking by the Minister and shall not require a further undertaking from any other person and it shall not be necessary for any interlocutory order for an injunction made therein to contain an undertaking by the party at whose instance the injunction is granted.

25. Stay of injunctions. (1) Where—

(a) the Court has, pursuant to this Part, granted an injunction (including an interim injunction) in respect of conduct in which a person has engaged or proposes to engage whereby he is or would be taken to be involved in a contravention of any provision of Part II or Part III;

(b) there is a proceeding pending before any court, commission, tribunal or authority (whether within or outside Queensland) exercising jurisdiction under a prescribed law in respect of a dispute relating to the conduct referred to in paragraph (a); and

(c) the conduct relates to the supply of goods or services to or the acquisition of goods or services from a person who is or becomes a party to the proceeding referred to in paragraph (b),

the Court may, upon the application of the Minister or of any party to the proceeding in which the injunction was granted or of any person substituted for such a party, if it considers that to do so would be likely to facilitate settlement of the dispute by conciliation and that in all the circumstances it would be just to do so, by its order stay the operation of the injunction.

(2) An order for a stay under subsection (1) may be of unlimited duration or for a period specified in the order and may be rescinded or varied by the Court upon the application of any party to the proceeding in which the injunction was granted or of any person duly substituted for such a party.

26. Declaration of prescribed law. (1) The Governor in Council may by Order in council declare any Act or law to be a prescribed law for the purposes of section 25.

A reference in that section to a prescribed law shall be construed as a reference to an Act or law so declared under this section.

(2) A law, other than an Act of Queensland, shall not be declared under subsection (1) unless, in the opinion of the Governor in Council, it corresponds in its purposes to the *Industrial Conciliation and Arbitration Act 1961-1983*.

27. Effect of conciliation of dispute on costs. Where a proceeding such as is referred to in paragraph (b) of section 25 (1) has terminated by reason that the dispute that related to conduct in respect of which an injunction (including an interim injunction) was granted under section 21 has been settled by conciliation, the Court, if it has not already made an order as to costs in the proceeding in which the injunction was granted or in which a rescission, Variation or stay of operation of the injunction was sought, shall not make such an order in such last-mentioned proceeding.

28. Pecuniary penalties. (1) If the Court is satisfied that—
 a contravention of any provision of Part II or Part III has occurred; and
 a person is, pursuant to this Part, to be taken to be involved in that contravention

then, subject to subsection (2), the Court may order the person to pay to the Minister, for the Consolidated Revenue Fund of Queensland, such pecuniary penalty not exceeding—

\$50 000 in the case of an individual; or
 \$250 000 in the case of an association of persons,

in respect of each act or omission constituting the conduct in question as the Court determines to be appropriate having regard to all relevant matters including—

the nature and extent of the act or omission and of any loss or damage suffered as a result of the act or omission;
 the circumstances in which the act or omission took place; and
 whether the person has previously been found by the Court in proceedings under this Part to have engaged in similar conduct.

(2) If the conduct by engaging in which a person is to be taken to be involved in a contravention of any provision of Part II or Part III constitutes a contravention of two or more provisions of this Act a proceeding may be instituted under this section against the person in respect of a contravention of any one or more of the provisions but the person is not liable to more than one pecuniary penalty in respect of the same conduct.

29. Civil action for recovery of pecuniary penalties. (1) Recovery on behalf of the State of a pecuniary penalty referred to in section 28 shall be by way of a civil proceeding instituted in the Court by the Minister.

(2) A proceeding to recover a pecuniary penalty referred to in section 28 shall be commenced—

(a) in the case of a contravention that consists of continuing conduct, within six years after the contravention has terminated; or

- (b) in any other case, within six years after the contravention has occurred.

30. Criminal proceedings not available. Proceedings as for an offence against this Act do not lie against a person in respect of a contravention of any provision of Part II or Part III.

31. Recovery of damages. The right of a person to recover damages on account of loss or damage caused to him by the unlawful conduct of another includes the right to recover an amount for loss or damage caused to him by conduct of another person who is, by reason of such conduct, to be taken to be involved in a contravention of Part II or Part III, subject however to the provisions of section 11.

32. Evidentiary value of previous findings. In an action against a person to recover damages a finding of fact by the Court made in a proceeding under section 21 or 28 in which that person has been found to be involved in a contravention of Part II or Part III is evidence of that fact and the finding may be proved by production of a document under the seal of the Court from which the finding appears.

INDUSTRIAL (COMMERCIAL PRACTICES) ACT AMENDMENT ACT

ANALYSIS OF CONTENTS

1. Short title and citation
7. Amendment of s. 4. Interpretation
3. New s. 5A Application of Act to Crown, etc.
4. Amendment of s. 8. Cases not within ss. 6 and 7
5. New s. 8A Application of ss. 6 and 7 in certain cases
6. Amendment of s. 12. Establishment of purpose
7. Repeal of and new s. 31 Recovery of damages

Continued

«

. t l E I

ANNO TRICESIMO QUARTO

ELIZABETHAE SECUNDAE REGINAE

No. 14 of 1985

**An Act to amend the Industrial (Commercial Practices) Act
1984 in certain particulars**

[ASSENTED TO 29TH MARCH, 1985]

*Industrial (Commercial Practices) Act
Amendment Act 1985, No. 14*

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title and citation. (1) This Act may be cited as the *Industrial (Commercial Practices) Act Amendment Act 1985*.

(2) In this Act the *Industrial (Commercial Practices) Act 1984* is referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Industrial (Commercial Practices) Act 1984-1985*.

2. Amendment of s. 4. Interpretation. Section 4 of the Principal Act is amended by inserting after the definition "person" the following definition:—

" "strike" means a strike within the meaning of the *Industrial Conciliation and Arbitration Act 1961-1985*;"

3. New s. 5A. The Principal Act is amended by inserting after section 5 the following section:—

"5A. Application of Act to Crown. etc. The provisions of this Act apply in relation to the Crown in right of Queensland or an authority of the State as if the Crown or the authority were conducting a business and were engaged in trade or commerce when discharging functions or exercising powers required of it or permitted to it by law or lawfully assumed by it and a reference in this Act to the business of any person or to engaging in trade or commerce includes a reference to the discharge or exercise by the Crown or the authority of those functions or powers."

4. Amendment of s. 8. Cases not within ss. 6 and 7. Section 8 of the Principal Act is amended by—

(a) in subsection (1),

(i) omitting from subparagraph (i) of paragraph (a) the words "or of another person employed by an employer of that person";

(ii) omitting from subparagraph (ii) of paragraph (a) the words "or of another person employed by that employer";

(b) adding at the end of the section the following subsection:—

"(4) For the purposes of subsection (1), where the purpose of conduct is to induce an employer to vary, ignore or fail to comply with the conditions prescribed by or under an Act as conditions of any contract of employment that conduct shall be taken not to be substantially related to the conditions of employment or working conditions of any person."

5. New **s. 8A**. The Principal Act is amended by inserting after section 8 the following section:—

"8A. Application of ss. 6 and 7 in certain cases. (1) Where conduct engaged in is of a description of conduct referred to in section 6 or 7 and—

(a) is in connexion with a dispute concerning the right of any employee or class of employee to perform work to the exclusion, total or partial, of any other person or class of person;

or

(b) consists in a strike that has commenced without adequate notice, given by the employees participating therein or an association of employees, to the employer of the day and time when the strike would commence;

or

(c) consists in an attempt by employees or an association of employees to induce an employer to give preference in employment to a person who is a member of an association of employees or to a person who has undertaken to become a member of an association of employees

section 6 or 7, as the case may require, shall be construed and applied as if—

(d) in the case of section 6, the words "(not being an employer of the first-mentioned person)", where they twice occur, did not occur therein;

(e) in the case of section 7, the words "(not being an employer of the first-mentioned person)" did not occur therein;

and

(f) in either case, section 8 (1) had not been enacted.

(2) For the purposes of subsection (1), notice of the day and time when a strike is to commence shall not be taken to be adequate notice unless it has been given for a period of 7 clear days before the day on which the strike commences."

6. Amendment of s. 12. Establishment of purpose. Section 12 of the Principal Act is amended by—

(a) numbering the existing provisions as subsection (1);

(b) adding at the end of the section the following subsection:—

"(2) Subject to section 8, the purpose for which a person engages in conduct of a description of conduct referred to in this Part shall be taken to be the probable consequence or consequences of the conduct engaged in by him unless he establishes the contrary."

7. Repeal of and new s. 31. The Principal Act is amended by repealing section 31 and substituting the following section:—

"31. Recovery of damages. Subject to section 11, a person who suffers loss or damage by reason of conduct in contravention of Part **II** or Part **III** may recover the amount of the loss or damage by action against—

the person or persons who engaged in that conduct;
and

any person or persons who is or are to be taken to be involved by reason of that conduct in a contravention of Part **II** or Part **III**,
or any of them.

INDUSTRIAL CONCILIATION AND ARBITRATION ACT AMENDMENT ACT

No. 5 of 1985

ANALYSIS OF CONTENTS

1. Short title and citation
2. Amendment of s. 5. Interpretation
3. Amendment of s. 8. Jurisdiction of the Industrial Court
4. Amendment of s. 24. Industrial Magistrates
5. Repeal of and new s. 48. Resignation from membership of an industrial union. C'w1th. s. 145
Termination of membership of industrial union by member. C'w1th. s. 145
6. Repeal of and new s. 60C. Offences by industrial unions in relation to a strike or lock-out
Incitement etc. of punishment for non-participation in strike or lock-out
7. Amendment of s. 73. Cancellation of registration of union
8. New s. 73A. Suspension or cancellation of registration of union for failure to comply with order or direction of Commission
9. Amendment of s. 98. Power to direct secret ballots
10. Amendment of s. 101. Employer not to dismiss worker on account of application
11. New s. 101A
Prejudice of employee by reason of non-membership of union
12. New s. 101B
An offence to contravene s. 101 or 101A
13. Repeal of and new s. 118. Powers of unions to recover fines, etc. Qd. s. 65
Powers of unions to recover fines etc. Qd. s. 65
14. Amendment of s. 135. Evidence
15. Amendment of s. 135A. Averments in certain cases
16. Amendment of penalties

Queensland



ON O^P

ANNO TRICESIMO QUARTO
ELIZABETHAE SECUNDAE REGINAE

No. 5 of 1985

**An Act to amend the Industrial Conciliation and Arbitration
Act 1961-1983 in certain particulars**

[ASSENTED TO 20TH MARCH, 1985]

2 *Industrial Conciliation and Arbitration Act
Amendment Act 1985, No. 5*

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. **Short title and citation.** This Act may be cited as the *Industrial Conciliation and Arbitration Act Amendment Act 1985*.

(2) In this Act the *Industrial Conciliation and Arbitration Act 1961-1983* is referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Industrial Conciliation and Arbitration Act 1961-1985*.

2. **Amendment of s. 5. Interpretation.** Section 5 of the Principal Act is amended by omitting the definition "Strike" and substituting the following definition:—

"Strike"—The act of two or more employees who are or have been in the employment either of the same employer or different employers consisting in—

- (a) a discontinuance of their employment, wholly or partially;
 - (b) a cessation of work or refusal or wilful failure to continue to work in their employment;
 - (c) a breaking of their contracts of service;
 - (d) a refusal or wilful failure, after any such discontinuance of employment or cessation of work, to return to their employment or to resume work;
 - (e) a wilful delay or obstruction of the progress of work by what is known as the "go-slow" method of strike;
 - (f) a refusal or wilful failure to perform work required of them in accordance with their contracts of employment;
 - (g) a performance of work in a manner other than that in which it is customarily performed;
 - (h) the adoption of a practice or stratagem the result of which is a restriction, limitation or delay in the performance of work or a restriction or limitation of the product of work;
 - (i) a ban, restriction or limitation on the performance of work or on acceptance or offering for work;
 - (j) a refusal or wilful failure that is not authorized by the employer or employers of the employees to attend for work;
- or
- (k) a refusal or wilful failure that is not authorized by the employer or employers of the employees to perform any work at all by employees who attend for work,

*Industrial Conciliation and Arbitration Act
Amendment Act 1985, No. 5*

3

being an act due to or in pursuance of a combination, agreement or understanding, expressed or implied, entered into by the employees or any of them with intent—

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 person or to comply with any demands made by the employees or any of them or by any other employees;

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

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

or

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 person or to comply with any demands made by any employees,

and includes conduct capable of constituting a strike notwithstanding that the conduct relates to part only of the duties that the employees are required to perform in the course of their employment;".

3. Amendment of s. 8. Jurisdiction of the Industrial Court. Section 8 of the Principal Act is amended by, in subsection (1) (b)—

(a) omitting from paragraph (iv) the expression "\$800" and substituting the expression "\$2 000";

(b) inserting in paragraph (v) after the words "eighty-six," the expression "96F,".

4. Amendment of s. 24. Industrial magistrates. Section 24 of the Principal Act is amended by omitting from paragraph (a) the expression "\$800" and substituting the expression "\$2 000".

5. Repeal of and new s. 48. Resignation from membership of an industrial union. C'wIth. s. 145. The Principal Act is amended by repealing section 48 and substituting the following section:—

"48. Termination of membership of industrial union by member. C'wIth. s. 145. (1) Subject to subsection (2), a person's membership of an industrial union shall be taken to be terminated if he duly gives notification in writing of his resignation from the industrial union.

The provisions of this subsection are in addition to the rules of an industrial union relating to termination of membership of the industrial union.

(2) Where a person, in a notification in writing of his resignation from an industrial union, specifies a date or indicates a time on or at which his resignation so notified is to be effective,

*Industrial Conciliation and Arbitration Act
Amendment Act 1985, No. 5*

being a date or time subsequent to his duly giving the notification, his membership of the industrial union shall be taken to be terminated on that date or, as the case may be, at that time notwithstanding the provisions of subsection (1).

(3) Notification of resignation from an industrial union shall be taken to have been duly given if—

- (a) it is left at the registered office of the industrial union; or
- (b) it is addressed to the industrial union or any officer thereof and sent by post to the registered office of the industrial union.

(4) The liability of a person to pay any contribution, fee or dues under the rules of an industrial union, being a person whose membership of the industrial union has been terminated, shall not be affected by the termination of his membership except that it shall not extend to making any payment on account thereof in respect of any period beyond the expiration of the period for which the contribution, fee or dues last became payable according to the rules of the industrial union before the date of the termination of his membership.

(5) The rules of every industrial union shall be so construed that where any provision thereof is inconsistent with this section or any provision of this section, this section or, as the case may be, that provision shall prevail and shall be given effect."

6. Repeal of and new s. 60C. Offences by industrial unions in relation to a strike or lock-out. The Principal Act is amended by repealing section 60C and substituting the following section:—

"60C. Incitement etc. of punishment for non-participation in strike or lock-out. (1) An industrial union of employees or any other person (whether or not an officer, an employee or a member of an industrial union) shall not—

- (a) incite, advise or encourage any person to act to the prejudice of an employee who has refused or failed to participate in a strike;
- (b) impose or threaten to impose a penalty, forfeiture or disability of any kind upon an employee or upon a member of an industrial union of employees by reason that he has refused or failed to participate in a strike.

(2) An industrial union of employers or any other person (whether or not an officer, an employee or a member of an industrial union) shall not—

- (a) incite, advise or encourage any person to act to the prejudice of an employer who has refused or failed to participate in a lock-out; or
- (b) impose or threaten to impose a penalty, forfeiture or disability of any kind upon an employer or a

member of an industrial union of employers by reason that he has refused or failed to participate in a lock-out.

(3) If in proceedings with respect to an offence consisting in a contravention of paragraph (b) of subsection (1) or (2) it is proved that the imposition or threat charged has occurred in relation to a person who has refused or failed to participate in a strike or a lock-out, as the case may be, the court shall presume that the reason for the imposition or threat was that the person has so refused or failed unless the contrary is proved."

7. Amendment of s. 73. Cancellation of registration of union. Section 73 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

"(1) If, on the application of any industrial union, person interested, the Chief Industrial Inspector or the registrar—

(a) a Full Industrial Court considers that for any reason, 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 carried on; or

(b) it appears to a Full Industrial Court that-

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

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

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

(iv) the principal objects for which an industrial union is actually carried on are not statutory objects;

(v) an industrial union or a branch thereof or a substantial number of the members of the industrial union or branch wilfully neglected to obey an order of the Court or of the Commission; or

(vi) a majority in number of the members of an industrial union, by ballot taken as prescribed, require the cancellation of its registration,

the Court may order the registration of the union—

(c) 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,

*Industrial Conciliation and Arbitration Act
Amendment Act 1985, No. 5*

and as to all or one or more of the areas or establishments in which such callings are carried on; or

- (d) 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 the areas or establishments in which such callings are carried on,

and thereupon it shall be suspended or cancelled accordingly."

8. New s. 73A. The Principal Act is amended by inserting after section 73 the following section:—

"73A. Suspension or cancellation of registration of union for failure to comply with order or direction of Commission. (1) **Declaration as to failure by Full Bench.** Where, on application by the Minister, the Chief Industrial Inspector or person interested, a Full Bench of the Commission is satisfied that an industrial union has failed to comply with a direction or order of the Commission the Full Bench of the Commission shall make a declaration that it is so satisfied and cause the declaration to be recorded in writing.

(2) **Power of Governor in Council.** Where a declaration is made under subsection (1) by a Full Bench of the Commission in relation to an industrial union the Governor in Council may at any time within the period of six months after the making of the declaration, by Order in Council, order the registration of the industrial union—

- (a) to be suspended for such period, not exceeding six months, or upon such conditions as is specified in the Order in Council either wholly or as to one or more of the callings it represents, and as to all or one or more of the areas or establishments in which such callings are carried on; or
- (b) 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 the areas or establishments in which such callings are carried on,

and thereupon it shall be suspended or cancelled accordingly.

Upon the suspension or cancellation of the registration of an industrial union pursuant to this section, the provisions of subsections (2), (3) and (4) of section 73 apply as if that registration had been suspended or cancelled pursuant to section 73.

(3) **Conditions for re-registration.** Where the registration of an industrial union has been suspended or cancelled by an Order in Council in accordance with subsection (2), the Governor in Council, may by that Order in Council or by a later Order in Council, specify a condition or conditions with which a body or association of persons that is or was, as the case may be, registered as an industrial union is required to comply before it may be registered again under section 44 or, as the case may be, 45.

(4) **Declaration of compliance.** Notwithstanding the provisions of sections 44 and 45, where the registration of an industrial union has been cancelled in accordance with an Order in Council under subsection (2) (b) the body or association of persons that was registered as an industrial union is not entitled to be registered under section 44 or, as the case may be, 45 unless—

- (a) where the Governor in Council has in accordance with subsection (3) specified a condition or conditions in relation to the body or association of persons—the Governor in Council declares by Order in Council that that condition has, or those conditions have, been complied with; or
- (b) in a case to which paragraph (a) does not apply—the Governor in Council declares by Order in Council that the body or association of persons may apply to be registered under section 44 or section 45.

(5) **Power of Full Bench.** Where on the application of the Minister, the Chief Industrial Inspector or person interested, a Full Bench of the Commission is satisfied that, after a body or association of persons in relation to which a declaration has been made by the Governor in Council under subsection (4) (a) has become registered again as an industrial union under section 44 or 45, the industrial union has ceased to comply with the condition or any one or more of the conditions specified by the Governor in Council in accordance with subsection (3), the Full Bench of the Commission shall make a declaration that it is so satisfied.

(6) **Effect of declaration.** Where a declaration is made under subsection (5) by a Full Bench of the Commission in relation to an industrial union, subsection (2) has effect in like manner as it has effect in relation to a declaration made under subsection (1) by a Full Bench of the Commission in relation to an industrial union.

(7) **Prima facie evidence.** A document signed by the registrar stating that a Full Bench of the Commission made a declaration under subsection (1) or (5) on a date specified in the document and purporting to set out the terms of the declaration is prima facie evidence of the matters in the document.

(8) **Evidence of failure to comply.** On a hearing of an application made pursuant to subsection (1), where an order or direction of the Commission includes an order or direction to officers or members of an industrial union and includes an order or direction to that industrial union, then, evidence of the failure of any officer or member of the industrial union to comply with that part of the order or direction directed to him shall be evidence and, in the absence of evidence to the contrary, conclusive evidence, that the industrial union failed to comply with that part of the order or direction directed to it.

*Industrial Conciliation and Arbitration Act
Amendment Act 1985, No. 5*

(9) Revocation of Order in Council. An Order in Council made by the Governor in Council in pursuance of a power conferred by subsection (2) may be revoked by the Governor in Council at any time by a further Order in Council.

(10) Cessation of force of Order in Council. An Order in Council made by the Governor in Council in pursuance of a power conferred by subsection (2) (a) shall, unless sooner revoked, cease to be in force at the expiration of six months from the date on which it came into force but may, at any time while it remains in force (including a time when it remains in force by virtue of a previous extension or previous extensions under this subsection), be extended in duration by a further Order in Council made by the Governor in Council:

Provided that each such extension shall not exceed six months in duration from the date on which the extension came into force."

9. Amendment of s. 98. Power to direct secret ballots. Section 98 of the Principal Act is amended by—

(a) omitting subsection (1) and substituting the following subsection:—

"(1) Where a strike occurs or it appears to the Commission or to any person or to persons entitled under this subsection to make an application for the purposes of this section that a strike is likely to occur—

(a) the Commission may—

of its own motion; or

upon application made to it by an employer or an industrial union of employers; or

upon application made to it by or on behalf of five per centum of the number of employees engaged in the project, establishment, undertaking or calling concerned or 250 of such employees, whichever is the less (being a number not less than four in any case),

or

(b) the Commission shall—

upon application made to it by an industrial union of employees; or

if so directed by the Minister,

direct the registrar or an industrial magistrate to conduct in the manner, on a date and at a place specified in the direction a secret ballot of such employees or members of an industrial union of employees as the Commission thinks fit and specifies in the direction with a view to ascertaining the number of such employees or members who are in favour of the strike.

*Industrial Conciliation and Arbitration Act
Amendment Act 1985, No. 5*

The registrar or industrial magistrate shall, if the direction so specifies, conduct separate secret ballots of members of different industrial unions of employees.

All matters and things with respect to the conduct of secret ballots pursuant to this subsection shall be as prescribed.";

(b) omitting subsection (4) and substituting the following subsection:—

"(4) If a secret ballot taken under this section indicates that a majority of employees or members of whom the ballot has been directed to be taken is not in favour of the strike then—

if the strike has occurred at the time the ballot was taken;

or

if the strike appeared likely to occur at the time the ballot was taken and occurs in relation to the same issue within one month after the result of the secret ballot was published pursuant to subsection (3),

the registrar or industrial magistrate who conducted the secret ballot shall, either in the advertisement published pursuant to subsection (3) or in a separate direction published by advertisement in a newspaper or newspapers circulating in the locality concerned, specify a date not less than seven days after the publication of the advertisement on or before which the employees or members who are on strike are required to discontinue the strike and every such employee or member shall comply with that requirement."

10. Amendment of s. 101. Employer not to dismiss worker on account of application. Section 101 of the Principal Act is amended by—

(a) inserting in and at the beginning of the section, before subsection (1), the words "**Prejudice of employee by reason of membership of union etc. C'wIth. s. 5; cf. Qd. s. 53**";

(b) in subsection (1), omitting the words appearing in and at the beginning of the subsection, before the words "An employer";

(c) omitting subsections (3), (4) and (5) and substituting the following subsection:—

"(3) A person shall not engage or threaten to engage in conduct that would be likely to have the effect, directly or indirectly, of prejudicing in his employment an employee by reason that the employee is a member of an industrial union of employees."

11. New s. 101A. The Principal Act is amended by inserting after section 101 the following section:—

"101A. Prejudice of employee by reason of non-membership of union. (1) Except where membership of an industrial union

*Industrial Conciliation and Arbitration Act
Amendment Act 1985, No. 5*

of employees is a condition of a contract of employment, an employer shall not—

- (a) dismiss or threaten to dismiss an employee;
- (b) injure or threaten to injure an employee in his employment; or
- (c) alter or threaten to alter an employee's position to his prejudice,

by reason that the employee is not a member of an industrial union of employees or intends to terminate his membership of an industrial union of employees.

(2) A person shall not—

- (a) engage or threaten to engage in conduct that would be likely to have the effect, directly or indirectly, of prejudicing in his employment an employee by reason that the employee is not a member of an industrial union of employees; or
- (b) demand from a person who is not a member of an industrial union of employees (in this paragraph called the non-member), with threats of injury or detriment of any kind to be caused to the non-member if the demand is not met, that any act or thing be done or procured to be done or any omission made, being any act, thing or omission that is for the benefit, direct or indirect, of an industrial union of employees or of a person acting on behalf of an industrial union of employees.

(3) Subsection (2) does not apply in relation to an employer's conduct to which subsection (1) applies.

(4) Subsection (2) shall not be construed to make liable to punishment a person by reason of his engagement in conduct that apart from that subsection is lawful and is engaged in for the purpose of remedying a breach of a provision of an award that requires an employee to be a member of an industrial union of employees."

12. New s. **101B**. The Principal Act is amended by inserting after section 101A the following section:—

"101B. An offence to contravene s. 101 or 101A. (1) A person who contravenes any provision of section 101 or 101A shall be guilty of an offence and liable to a penalty of \$2 000.

(2) In a proceeding for an offence consisting in a contravention of any provision of section **101** or 101A to which the reason for which or the intent with which the act charged was done is material the industrial magistrate shall presume that the reason or intent was that specified in the charge unless the contrary is proved.

(3) Where an employer has been convicted of an offence referred to in subsection (1) the industrial magistrate by whom

*Industrial Conciliation and Arbitration Act
Amendment Act 1985, No. 5*

11

he is convicted may order that the employer reimburse the employee the amount of any wages lost by the employee or former employee by reason of the offence and may also direct that the employer reinstate the employee or former employee in the position from which he was dismissed or in a similar position."

13. Repeal of and new s. 118. Powers of unions to recover fines, etc. Qd. s. 65. The Principal Act is amended by repealing section 118 and substituting the following section:—

"118. Powers of unions to recover fines etc. Qd. s. 65. (1) Subject to this section all fines, fees, levies and dues payable to an industrial union under its rules by any member or former member thereof may be sued for and recovered before an industrial magistrate and not otherwise.

(2) A plaint that commences proceedings for the recovery of any fine, fee, levy or dues referred to in subsection (1) shall be filed as required by the Rules of Court within 12 months of the date when the liability to pay the fine, fee, levy or dues arose.

(3) An industrial magistrate has no jurisdiction to grant relief in respect of a plaint for the recovery of a fine, fee, levy or dues referred to in subsection (1), whether filed in accordance with the Rules of Court before or after the commencement of section 13 of the *Industrial Conciliation and Arbitration Act Amendment Act 1985*, if the liability to pay the fine, fee, levy or dues arose more than 12 months before the plaint was so filed."

14. Amendment of s. 135. Evidence. Section 135 of the Principal Act is amended by—

(a) omitting the expression "." where it occurs at the end of paragraph (d) and substituting the expression ";;";

(b) adding at the end of the section the following paragraphs:—

"(e) judicial notice of the existence of a strike or lockout at any material time may be taken by the tribunal before which the proceedings are taken if in its opinion the existence of the strike or lock-out is so well known as to require no further proof by evidence directed to that fact;

(f) it shall be presumed that a failure of any person to comply with any order or direction of the Commission that he (either alone or with others) or a class of person to which he belongs should remain at work or return to work is due to his engaging or continuing to engage in a strike unless he shows to the satisfaction of the tribunal before which the proceedings are taken that his failure to comply is due to some other cause;

(g) it shall be presumed that a failure of any person to obey an order or direction of the Court or of the

*Industrial Conciliation and Arbitration Act
Amendment Act 1985, No. 5*

Commission is due to the wilful neglect of that person unless he shows to the satisfaction of the tribunal before which the proceedings are taken that his failure to obey is due to some other cause;

- (h) if it is sought to prove incitement or counselling, by means of a speech or statement, of any act or omission material to the proceedings it shall be sufficient to prove the substance of the speech or statement claimed to constitute the incitement or counsel and if the tribunal before which the proceedings are taken is satisfied that the matter proved is the substance of such speech or statement it may determine the proceedings in accordance with law notwithstanding that it is not satisfied or informed of the actual words used in such incitement or counsel;
- (i) proof of publication in—
 - a newspaper printed in accordance with the *Printing and Newspapers Act 1981*; or
 - a magazine, document or writing that is or purports to be published by or on behalf of an industrial union; or
 - a broadcast made by any national broadcasting station or national television station or any commercial broadcasting station or commercial television station, in any case within the meaning of the Broadcasting and Television Act 1942 of the Commonwealth as amended or of any Act passed in substitution for that Act,

of any speech or extract therefrom or of any statement or of the substance of any speech or statement, being a speech, extract or statement that is, in such publication, attributed to any person on behalf of an industrial union or to any person holding a position of authority in relation to the affairs of an industrial union, shall be admissible as evidence and, in the absence of evidence to the contrary, conclusive evidence-

 - (i) that the speech or statement so published was in fact made by the person to whom it is so attributed;
 - (ii) where the speech or statement is so attributed to a person on behalf of an industrial union, that the industrial union procured that person to make the speech or statement;
 - (iii) where an extract only of the speech or statement is so published, that the speech or statement of which it purports to be an extract was in fact made by the person to whom it is so attributed;
 - (iv) where the substance only of the speech or statement is so published, that the matter published truly

*Industrial Conciliation and Arbitration Act
Amendment Act 1985, No. 5*

13

expresses the substance of the speech or statement in fact made by the person to whom it is so attributed;

- (j) judicial notice shall be taken of every national broadcasting station or national television station and of every commercial broadcasting station or commercial television station within the meaning of the Broadcasting and Television Act 1942 of the Commonwealth as amended and of any Act passed in substitution for that Act."

15. Amendment of s. 135A. Averments in certain cases. Section 135A of the Principal Act is amended in subsection (1) by omitting the words "that any person is or is not" and substituting the words "or section 73A that any person is or is not, or was or was not at the time set forth,".

16. Amendment of penalties. The Principal Act is amended as set forth in the following Table:—

TABLE

Provision amended	Amendment
s. 36A	Omit "\$4 000" and substitute "\$10 000"; Omit "\$400" and substitute "\$1 000".
s. 39 (3)	Omit "\$800" and substitute "\$2 000".
s. 47 (3)	Omit "\$2 000" and substitute "\$5 000"; Omit "\$40" and substitute "\$100".
s. 47A (13)	Omit "\$400" wherever it occurs and substitute in each case "\$1 000".
s. 50 (2)	
s. 56 (13)	Omit "\$800" and substitute "\$2 000".
s. 57 (7)	Omit "\$800" and substitute "\$2 000".
s. 58	Omit "1800" wherever it occurs and substitute in each case "\$2 000".
s. 60	Omit "\$800" wherever it occurs and substitute in each case "\$2 000".
s. 60A (1)	Omit "\$800" wherever it occurs and substitute in each case "\$2 000".
s. 60B	Omit "\$800" and substitute "\$2 000". Omit "\$800" and substitute "\$2 000".

*Industrial Conciliation and Arbitration Act
Amendment Act 1985, No. 5*

TABLE—continued

Provision amended	Amendment
s. 61(2)	Omit "\$40" and substitute "\$100".
s. 74 (3)	Omit "\$800" and substitute "\$2 000".
s. 77 (5)	Omit "\$800" and substitute "\$2 000".
s. 82 (2)	Omit "\$800" and substitute "\$2 000".
s. 85	Omit "\$800" and substitute "\$2 000".
s. 86	Omit "\$800" and substitute "\$2 000".
s. 88 (4)	Omit "\$800" and substitute "\$2 000".
s. 99 (1)	Omit "\$800" and substitute "\$2 000".
s. 102 (7)	Omit "\$4 000" and substitute "\$10 000"; Omit "\$400" and substitute "\$1 000".
s. 104 (1)	Omit the words "of \$800" and substitute the words "in the case of an industrial union or body corporate of \$10 000 and in any other case of \$2 000".
s. 105	Omit "\$800" and substitute "\$2 000".
s. 106 (1)	Omit "\$800" and substitute "\$2 000".
s. 107	Omit "\$800" and substitute "\$2 000".
s. 112	Omit "\$800" and substitute "\$2 000"; Omit "\$80" and substitute "\$200".
S. 113 (1)	Omit "\$400" and substitute "\$1 000"; Omit "\$80" and substitute "\$200"; Omit "\$800" and substitute "\$2 000"; Omit "\$160" and substitute "\$400".
S. 113 (6)	Omit "\$8 000" and substitute "\$10 000".
s. 130 (2)	Omit "\$800" and substitute "\$2 000".
s. 139 (2)	Omit "\$400" and substitute "\$1 000".