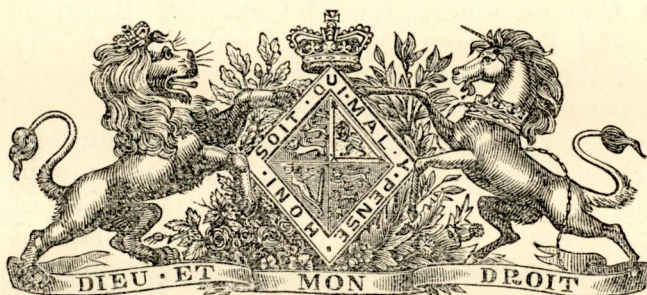


This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Legislative Assembly Chamber,
Sydney, 7 September, 1900, A.M. }

F. W. WEBB,
Clerk of the Legislative Assembly.

New South Wales.



ANNO SEXAGESIMO QUARTO

VICTORIÆ REGINÆ.

Act No. , 1900.

An Act to provide for the registration and incorporation of industrial unions and the making and enforcing of industrial agreements ; to constitute a court of arbitration for the hearing and determination of industrial disputes, and matters referred to it by conciliators ; to define the jurisdiction, powers, and procedure of such court ; to provide for the enforcement of its awards and orders, and for purposes consequent on or incidental to those objects.

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

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Preliminary.

1. This Act may be cited as the "Industrial Arbitration Act, Short title. 1900."

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2.

Industrial Arbitration.

2. In this Act, unless the context otherwise shows—

Definitions.

“Branch” means branch of a trade-union.

5 “Common rule” means practice, regulation, rule, terms of employment, or dealing whatsoever in relation to any industrial matter or in the conduct of any industry.

“Court” means court of arbitration constituted by this Act.

10 “Employer” means person, firm, company, or corporation employing persons working in any industry, and includes the Railway Commissioners of New South Wales, the Sydney Harbour Trust Commissioners, the Metropolitan Board of Water Supply and Sewerage, and the Hunter River and District Board of Water Supply and Sewerage.

“Employee” means person employed in any industry.

15 “Industrial dispute” means dispute in relation to industrial matters arising between an employer or industrial union of employers on the one part, and an industrial union of employees or trade-union or branch on the other part, and includes any dispute arising out of an industrial agreement.

20 “Industrial matters” means matters or things affecting or relating to work done or to be done, or the privileges, rights, or duties of employers or employees in any industry, and not involving questions which are or may be the subject of proceedings for an indictable offence; and, without limiting the general nature of the above definition, includes all or
25 any matters relating to—

(a) the wages, allowances, or remuneration of any persons employed in any industry, or the prices paid or to be paid therein in respect of such employment;

30 (b) the hours of employment, sex, age, qualification, or status of employees, and the mode, terms, and conditions of employment;

35 (c) the employment of children or young persons, or of any person or persons or class of persons in any industry, or the dismissal of or refusal to employ any particular person or persons or class of persons therein;

(d) any established custom or usage of any industry, either generally or in any particular locality;

(e) any claim arising under an industrial agreement.

40 “Industrial union” means industrial union registered and incorporated under this Act.

45 “Industry” means business, trade, manufacture, undertaking, calling, or employment in which men or women are employed, directly or indirectly, in the production, transportation, or distribution of commodities, and includes the management and working of the Government Railways, the Sydney Harbour

Industrial Arbitration.

Harbour Trust, the Metropolitan Board of Water Supply and Sewerage, and the Hunter River and District Board of Water Supply and Sewerage.

5 "Prescribed" means prescribed by this Act or any regulations made thereunder.

"Registrar" means registrar appointed under this Act.

"Trade union" means trade union registered under the Trade Union Act, 1881.

The registrar.

10 3. The Governor shall appoint a registrar who shall have the powers and perform the duties prescribed. Appointment of officers.

Industrial unions.

15 4. Where the registrar, or in case of appeal, the court is satisfied that the provisions of this Act have been complied with, the registrar shall, in the prescribed manner and form, register as an industrial union— Registration of industrial unions.

(a) any incorporated company or any association of persons, being not less than five, which or who has or have in the aggregate throughout the six months next preceding the date of the application for registration employed on an average, taken per month, not less than one hundred employees ;

(b) any trade union or association of trade unions ;

(c) any branch of a trade union ;

20 and shall issue a certificate of incorporation, which shall be conclusive evidence, until cancelled, that the requirements of this Act in respect of incorporation have been complied with.

An appeal shall lie to the court at the instance of any person aggrieved against a refusal of the registrar to register an industrial union.

30 5. An application to register an industrial union shall be made in writing in the prescribed form, and shall— Applications for registration.

(a) if made by an incorporated company, be signed by a majority of the directors or managers thereof resident in the Colony ; and

35 (b) if made by an association of persons, be signed by every such person ; and

(c) if made by a trade union or branch, be signed by a majority of the general committee of management thereof.

40 And the registrar may require such proof as he thinks necessary of the authority of the said persons to make the said application.

But no industrial union shall be registered unless the registrar or, in case of appeal, the court is satisfied that the rules or articles of the

Industrial Arbitration.

the company, association of persons, trade union or branch applying to be registered include provisions as to the matters set out in the Schedule hereto. And no branch shall be registered unless the registrar or, in case of appeal, the court is satisfied that it is a bona fide branch of a trade union and that it is of sufficient importance to be registered separately.

The Governor may from time to time, by regulations made under this Act, alter, repeal, or amend the said Schedule.

6. Any company, association of persons, trade union, or branch applying to be registered as an industrial union may, on application to the Governor, obtain his leave to adopt, and may thereupon adopt, any rules dealing with the matters mentioned in the Schedule hereto, or in any regulations made under the last preceding section, as part of the rules of the company, association, union, or branch; and upon such leave being obtained, the said rules, when adopted in pursuance of this section, shall, notwithstanding any memorandum or articles of association or any rules of such company, association, union, or branch, become binding on all members of the same.

7. (1) Upon the issue of a certificate of incorporation, the members for the time being of the company, association, trade union, or branch incorporated in the industrial union shall, until the registration and incorporation of the union is cancelled in pursuance of this Act be a body corporate by the name mentioned in such certificate, and shall have for the purposes of this Act perpetual succession and a common seal.

(2) An industrial union—

(a) may purchase, take on lease, hold, sell, lease, mortgage, exchange, and otherwise own, possess, and deal with any real or personal property: Provided that nothing in this Act shall render the property of an industrial union, or of any member thereof, liable to be taken in execution by any process in law other than in pursuance of this Act or in respect of obligations incurred in the exercise of rights and powers conferred by this Act;

(b) shall forward to the registrar, subject to the prescribed penalties, at the prescribed dates, and verified in the prescribed manner, lists of its members and copies of its rules, and copies of industrial agreements to which it is a party.

8. In the manner and subject to the conditions prescribed, the registration and incorporation of an industrial union and the certificate of incorporation issued in respect of such union may be cancelled.

Nothing in this Act shall prevent any member of a company, association of persons, trade union, or branch from resigning or being discharged from his membership of the same:

Provided

Industrial Arbitration.

Provided that while any conciliation under the Conciliation and Arbitration Act of 1899, or any arbitration under this Act, affecting any industrial union, company, association, trade union, or branch, or any member of the same, is pending, no application for cancellation of
 5 the registration of such industrial union shall be made or received, and no resignation or discharge of the membership of such company, association, trade union, or branch shall have effect.

9. Industrial unions shall be classified by the registrar as
 industrial unions of employers and industrial unions of employees,
 10 and the certificate of incorporation shall state the class of the industrial union mentioned therein.

10. Every dispute between a member of an industrial or trade
 union or branch and such union or branch shall be decided in the
 manner directed by the rules of such union or branch ; and the president,
 15 on the application of the trustees or other officers authorised to sue on behalf of such union or branch, may order the payment by any member of any fine, penalty, or subscription payable in pursuance of the rules aforesaid, or any contribution to a penalty incurred or money payable by the union or branch under an award or order of the court :

20 Provided that no such contribution shall exceed the sum of ten pounds.

Industrial agreements.

11. Any industrial union may make an agreement in writing
 relating to any industrial matter—

- 25 (a) with another industrial union ; or
 (b) with an employer ;

which, if it is made for a specified term not exceeding three years from the making of the agreement, and if a copy thereof is filed with the registrar, shall be or become an industrial agreement within the
 30 meaning of this Act.

12. Every industrial agreement shall be binding during its
 currency—

- (a) on the parties thereto ;
 35 (b) where the agreement is made by an industrial union on the persons who, during the term of the agreement, are members of such union ;

but may by such parties be rescinded by agreement in writing made and filed with the registrar, or varied by another industrial agreement, to have effect for the residue of the term for which the former
 40 agreement was made.

13. An industrial agreement as between the parties bound by
 the same shall have the same effect and may be enforced in the same
 way as an award of the court of arbitration, and the court shall have
 full and exclusive jurisdiction in respect thereof.

Constitution

*Industrial Arbitration.**Constitution of the court of arbitration.*

14. There shall be a court of arbitration for the determination of industrial disputes. The said court shall be a court of record, and shall have a seal, which shall be judicially noticed. Constitution of court.

5 The court shall consist of a president, who shall be a Judge of the Supreme Court, and such members, not being more than six nor less than two, as may be appointed under the provisions of this Act.

10 15. The members of the court shall be appointed by the Governor for hearing and determining an industrial dispute or any matter then referred to the court, and making all orders and decrees necessary to give effect to such determination. Appointment of members of court.

15 One half of the members, other than the president, shall be so appointed from among persons recommended, in the manner and subject to the conditions prescribed, by one party to the dispute, and the other half from among persons recommended as aforesaid by the other party thereto.

20 Where any industrial union is interested in the subject-matter of the dispute, the registrar if satisfied that the dispute in question can be more satisfactorily dealt with by giving to such union a voice in the nomination of members of the court, may allow such union to join in making the above-mentioned recommendations.

25 In case of any omission or undue delay to recommend a member of the court, or during the absence from illness or otherwise of any member of the court, the Governor may nominate a member or a temporary member without any recommendation as aforesaid, but so that there shall always be a number of members representing and having interests in common with employers equal to the number representing and having interests in common with employees, and so that the members so appointed shall have, if possible, technical knowledge of the subject-matter of the dispute.

30 35 16. The members of the court shall meet for the hearing and determining of the dispute in relation to which they were appointed when and at such places as they are summoned by the president, and the president may summon such members after any final determination or award has been pronounced, either on his own motion or on the motion of any person interested in the interpretation of, or working out of, or subject to, or affected by such determination or award. Meetings of court.

40 17. The members of the court shall be paid one guinea each for each court sitting day of five hours, and such remuneration for expenses and loss of time while travelling and while holding views and inspections as may be prescribed. Payment of members of court.

18. Subject to this Act the members of the court when appointed under this Act, and when sitting as such members shall, with Jurisdiction of court.

Industrial Arbitration.

with the president, exercise the jurisdiction and powers conferred by this Act upon the court in respect of the dispute for the hearing and determination of which the said members were appointed.

Jurisdiction and procedure of the court.

- 5 **19.** The court shall have jurisdiction and power—
- (a) on reference in pursuance of this Act to hear and determine, according to equity and good conscience—
- 10 (i) any industrial dispute ; or
- (ii) any matter referred to it by the conciliators or a board of conciliation appointed in pursuance of the Conciliation and Arbitration Act of 1899 ;
- (b) subject to the approval of the Governor to make rules respecting—
- 15 (i) the times and places of sitting ;
- (ii) the summoning of parties and witnesses ;
- (iii) the persons by whom and conditions upon which parties may be represented ;
- (iv) the enforcement of its orders ;
- 20 (v) allowances to witnesses, costs, court fees ;
- (vi) generally regulating the procedure of the court ;
- (vii) appeals under this Act ;
- (viii) the reference of any matter by conciliators or a board of conciliation appointed in pursuance of the Conciliation and Arbitration Act of 1899.
- 25 (c) to dismiss any matter at any stage of the proceedings where it thinks the dispute trivial ;
- (d) to dismiss any proceeding without giving a decision, where, in the opinion of the court, an amicable settlement can and should be brought about ;
- 30 (e) to order any party to pay to any other party such costs and expenses (including expenses of witnesses) as may be specified in the order, and at any time to vary such order ; but no costs shall be allowed for the attendance before the court of any counsel, solicitor, or agent for any party ;
- 35 (f) at any stage of the proceedings of its own motion, or on the application of any of the parties, and upon such terms as it thinks fit—
- (i) to direct parties to be joined or struck out ;
- 40 (ii) to amend or waive any error or defect in the proceedings ;
- (iii) to extend the time within which anything is to be done by any party, whether within or after the prescribed time ; and
- (iv) generally to give such directions as are deemed necessary or expedient in the premises ;

Jurisdiction and powers of court.

(g)

Industrial Arbitration.

- (g) to proceed and act in any proceedings in the absence of any party who has been duly served with notice to appear therein as fully as if such party had duly attended ;
- 5 (h) to sit in any place for the hearing and determining of any matter lawfully before it; provided that, as far as practicable, the court shall sit in the locality within which the subject-matter of the proceeding before it arose ;
- 10 (i) on its own motion, or at the request of any of the parties to the dispute, to direct that the proceedings of the court be conducted in private, and that all persons other than the parties, their representatives, and any witnesses under examination shall withdraw from the court ;
- (j) to adjourn any proceeding to any time and place ;
- 15 (k) to refer to an expert the taking of accounts, estimates of quantities, calculations of strains, and other technical matters, and to accept the report of such experts as evidence ;
- (l) to exercise in respect of the summoning, sending for, and examination of witnesses and documents, and in respect of persons summoned or giving evidence before it, or on affidavit, the same powers as are by section one hundred and forty of the Parliamentary Electorates and Elections Act of 1893 conferred on the committee of elections and qualifications constituted by that Act ;
- 20 (m) to deal with all offences and enforce all orders under this Act ;
- 25 (n) at any time to vary its own orders.
20. The president and each member of the court shall be Disc'osure of profits. sworn, before entering upon the hearing of any dispute, not to disclose to any person whatsoever, any matters or evidence relating to the profits or financial position of any witness or party, and shall be liable
- 30 to a penalty not exceeding five hundred pounds for a violation of such oath, and shall at the request of any party or witness hear such evidence in camera.
21. An industrial dispute may be referred to the court by Reference of dispute to court. an employer whose industry is affected by the dispute, or by an
- 35 industrial union any member of which is affected in his industry or employment by the dispute.
- But no industrial dispute shall be referred to the court for determination, and no application shall be made to the court for the enforcement of any award of the court by an industrial union, except
- 40 in pursuance of a resolution passed by the majority of the members present at a meeting of such union specially summoned by notice sent by post to each member or given in the manner prescribed by rules of the court, and stating the nature of the proposal to be submitted to the meeting.
- 45 22. Any person desiring to refer an industrial dispute, or any Method of reference to court. matter, to the court, may make application to the registrar in the prescribed

Industrial Arbitration.

prescribed form; and the registrar shall thereupon forthwith take steps according to the prescribed forms to procure the nomination of the members of the court in relation to the said dispute or matter.

23. (1) Any party to an industrial dispute may at any time Summons for directions.
5 take out a summons, in the form prescribed by the rules of the court, returnable before the president of the court sitting in chambers.

At the hearing of the summons the president may make such order as may be just with respect to all the interlocutory proceedings to be taken before the hearing by the court of the dispute, and as to
10 the costs thereof, and with respect to the issues to be submitted to the court, the persons to be served with notice of the proceedings of the court, particulars of the claims of the parties, admissions, discovery, interrogatories, inspection of documents, inspection of real or personal property, commissions, examination of witnesses, and the
15 place and mode of hearing. The court may at the hearing of any dispute revoke or amend any such order of the president, and may make any order which the president may make under this section.

(2) In addition to the powers conferred by this section, Additional powers.
the president of the court sitting in chambers for the purpose of
20 administering this Act shall have all the powers of a Judge of the Supreme Court sitting in chambers for the purpose of any matter before that Court.

24. The court and, on being authorised in writing by the court, View by, or by direction of court.
any member or officer of the court or any other person may at any
25 time—

(a) enter any building, mine, mine-workings, ship, vessel, place, or premises of any kind whatsoever, wherein or in respect of which any industry is carried on or any work is being or has been done or commenced, or any matter or thing is taking
30 or has taken place, which has been made the subject of a reference to the court, and inspect and view any work, material, machinery, appliances, or article therein; and

(b) examine on oath any person in any such building, mine, mine-workings, ship, vessel, place, or premises as aforesaid,
35 in respect of or in relation to any such matter or thing.

And any person who hinders or obstructs the court, or any such member, officer, or person as aforesaid, in the exercise of any power conferred by this section, shall for every such offence be liable to a penalty not exceeding five pounds.

40 25. Proceedings in the court of arbitration shall not be removable No certiorari. to any other court by certiorari or otherwise; and no award, order, or proceeding of the court of arbitration shall be vitiated by reason only of any informality or want of form or be liable to be challenged, appealed against, reviewed, quashed, or called in question by any
45 court of judicature on any account whatsoever.

Industrial Arbitration.

26. No proceedings in the court shall abate by reason of the death of any party, but such proceedings may, by order of the court, be continued on such terms as the court thinks fit by or against the legal representative of such party.

No abatement on death of party.

27. (1) During the pendency of any proceedings in the court in relation to any industrial dispute no member of an industrial union who is a party and no party to the proceedings shall, on account of such dispute, do any act or thing in the nature of a lock-out or strike, or suspend or discontinue employment or work in any industry affected by such proceedings.

No lock-out or strike during proceedings.

But nothing herein prohibits the suspension or discontinuance of any industry, or the working of any persons therein, for any other good cause.

(2) If any such member or party contravenes any of the provisions of this section the court, on the application of any other party to the proceedings, may in a summary way impose on the first-mentioned member or party a penalty not exceeding in the case of an industrial union five hundred pounds, and in the case of any other person ten pounds, and shall specify the person to whom such penalty shall be paid.

Penalty.

28. If an employer dismisses from his employment any employee by reason merely of the fact that the employee is a member of an industrial union, trade union, or branch, or is entitled to the benefit of an award, order, or agreement, such employer shall be liable to a penalty not exceeding twenty pounds for each employee so dismissed.

In what cases dismissal of employee is breach of an award, order, or industrial agreement.

In every case it shall lie on the employer to satisfy the court that such employee was so dismissed by reason of some facts other than those abovementioned in this section.

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

Minimum wage and employment of members of unions.

(a) prescribe a minimum rate of wages or other remuneration, with provision for the fixing in such manner and subject to such conditions as may be specified in the award or order, by some tribunal specified in the award or order, of a lower rate in the case of employees who are unable to earn the prescribed minimum; and

(b) direct that as between members of an industrial union of employees, or trade union or branch and other persons, such members shall be employed in preference to such other persons, other things being equal, and appoint a tribunal to finally decide in what cases an employer to whom any such direction applies may employ a person who is not a member of any such union or branch.

Enforcement

*Industrial Arbitration.**Enforcement of award, order, and direction of court.*

30. Where in the course of any proceedings before it the court determines the meaning of any agreement between two or more industrial unions or the application of any such agreement to the matter
 5 in dispute before the said court, the court may declare that such agreement or any term thereof shall, with such exceptions and subject to such conditions and with such limitations as the court may prescribe, be a common rule in the employment in respect of which the said dispute has occurred, and may fix penalties for the breach thereof;
 10 and such penalties may be sued for and recovered in a Court of Petty Sessions by the same persons and in the same way as penalties for breaches of regulations under the Factories and Shops Act, 1896, or any Act amending the same, are sued for and recovered: Provided that nothing in this section shall deprive the court of jurisdiction to
 15 enforce the observance of such common rule, and to enforce the payment of penalties for breaches thereof; and that any appeal from an order of a Court of Petty Sessions under this section shall lie to the court of arbitration on the terms and in the manner prescribed by rules of the said court.
- 20 31. The prothonotary, master in equity, sheriff, bailiffs, and other officers of the Supreme Court and the bailiffs of the District Courts and Courts of Petty Sessions shall be deemed to be also officers of the court of arbitration, and shall exercise the powers and perform the duties prescribed by any rules of court made under this
 25 Act; and for the purpose of carrying out the provisions of this Act, and in relation to any proceedings before the court of arbitration or the president of that court and in relation to the making, carrying out, and enforcing of any award, order, or direction of the said court or president, shall, except where provided in any rules made as aforesaid,
 30 exercise the same powers and perform the same duties as they may exercise and perform in relation to any judgment, order, direction, or conviction of the Supreme Court or any District Court or Court of Petty Sessions.
32. Where the award or order of the court, or an industrial
 35 agreement, binds specifically a corporation, person, industrial union, trade union, or branch, any property held by such corporation, person, union, or branch, or by any trustee on his or its behalf, shall be available to answer such award, order, or agreement, and any process for enforcing the same; and in the case of any such union or branch,
 40 if the property so held is insufficient to fully satisfy the said award, order, agreement, or process, the members of such union or branch shall be liable for such deficiency: Provided that no member shall be so liable for more than ten pounds.

Where award interprets an agreement.

Officers of supreme court, district courts, and courts of petty sessions to be deemed officers of the court of arbitration.

Property to answer award or order of court.

Industrial Arbitration.

33. If any person commits a breach of an award or order of the court or of the terms of an industrial agreement, the court, on the application of any party to the proceedings before the court or any party to the agreement, may impose such penalty for the said breach as it thinks just not exceeding five hundred pounds in the case of a corporation, industrial union, trade union, or branch bound by the award, or any person specifically so bound, and not exceeding five pounds in the case of any other person bound only as a member of such union or branch, and shall specify the persons by and to whom any such penalty shall be paid.

Penalty imposed by court.

34. Any person, union, or branch aggrieved by a decision of the registrar may appeal therefrom in the prescribed manner to the president of the court.

Appeal.

35. The property of an industrial union available under this Act to answer any award or order of the Court or an industrial agreement shall include in the case of an industrial union of employees the property of any trade union being or forming part of such industrial union, and in the case of an industrial union of employers the property of the members being or forming part of such industrial union.

Property of trade unions and members constituting certain industrial unions to answer award or order.

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Supplemental.

36. The Governor may, subject to the provisions of this Act, make regulations—

Regulations.

- (a) prescribing the powers and duties of the registrar, the district registrars, and the clerk of the court and of persons acting in the execution of this Act ;
- (b) prescribing the persons by whom and the manner in which applications for the registration of industrial unions may be made ;
- (c) regulating the conditions on which branches may be registered ;
- (d) prescribing the matters to be contained in the rules of any industrial unions, and regulating the names under which industrial unions may be registered ;
- (e) regulating the keeping of the register, and the granting of certificates of incorporation of industrial unions ;
- (f) prescribing the persons by whom and the manner in which applications for the cancellation of the registration and incorporation of industrial unions may be made, and the evidence to be furnished and the conditions to be performed prior to such cancellation, and prescribing the manner of such cancellation ;
- (g) prescribing the sending to the registrar of copies of rules and lists of members of industrial unions ;
- (h) prescribing the conditions under which and the manner in which persons may be recommended by industrial unions for appointment to the court of arbitration ;
- (i)

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Industrial Arbitration.

(i) regulating the nomination of assessors to the court of arbitration;

(j) for any purpose for which by this Act regulations may be made;

5 and may in those regulations fix any penalty not exceeding pounds for any breach of the same, to be recovered in a summary way in a court of petty sessions.

37. All rules and regulations made in pursuance of this Act shall be published in the Gazette, and shall be laid before both Houses of Parliament within fourteen days after such publication, if Parliament is then sitting; but if not, then within fourteen days after the next meeting of Parliament. Publication of rules and regulations.

SCHEDULE.

15 *Matters to be contained in the rules, articles, and regulations of a company, association, trade union, or branch applying to be registered as an industrial union.*

1. The appointment and removal of a committee of management, a chairman or president, a secretary, and, except in the case of an incorporated company, a trustee or trustees, and the filling of any vacancies in such offices.

20 2. The powers and duties of such committee and officers, and the control to be exercised by special or general meetings over the committee.

3. The manner of calling such meetings, the quorum, and the manner of voting thereat.

4. The mode in which industrial agreements and other instruments shall be made by or on behalf of the company, association, trade union, or branch.

25 5. The manner in which the company, association, trade union, or branch, may be represented in any proceeding before the court.

6. The custody and use of the seal.

7. The control of the property and the investment of the funds, and the periodical audit of the accounts of the company association, trade union, or branch.

30 8. Provision for keeping a register of members.

9. The terms on which persons may become or cease to be members of the company, association, trade union, or branch, including provision for the payment and recovery of subscriptions by members, and in the case of a trade union or branch, provision that a person shall not cease to be a member unless he has given at least three months' written notice to the secretary, and has paid all fees and dues owing by him to the trade union or branch, and provision that reasonable facilities shall be given to become members of the union.

10. The description of the registered officer of the company, association, trade union, or branch.

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