

## ARBITRATION (PUBLIC SERVICE).

### No. 28 of 1920.

An Act relating to the settlement of matters arising out of employment in the Public Service.

[ Assented to 7th October, 1920.]

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

1. This Act may be cited as the *Arbitration (Public Service) Act* 1920. Short title.
2. This Act shall commence on a date to be fixed by proclamation. Commencement.
3. In this Act unless the contrary intention appears— Definitions.
  - “Organization” means an organization within the meaning of the *Commonwealth Conciliation and Arbitration Act* 1904–1918 ;
  - “The Arbitrator” means the Public Service Arbitrator appointed in pursuance of this Act ;
  - “The Commissioner” means the Public Service Commissioner, and includes, in the case of any service not under the *Commonwealth Public Service Act* 1902–1918, the permanent or executive head of that service ;
  - “The Court” means the Commonwealth Court of Conciliation and Arbitration ;
  - “The Public Service” includes the Public Service of the Northern Territory and of the Territory for the Seat of Government, and the service of any public institution or authority of the Commonwealth, and includes all persons employed in any such service in any capacity, whether permanently or temporarily, and whether under the *Commonwealth Public Service Act* 1902–1918 or not, but does not include persons employed in the Naval or Military Forces only.
4. Employees in the Public Service, or in any division, class, grade or branch thereof, or in any calling, service, handicraft, occupation, or avocation in the Public Service, or in any division, class, grade, or branch thereof, shall be deemed to be employees in an industry within the meaning of the *Commonwealth Conciliation and Arbitration Act* 1904–1918. Employees in Public Service deemed employees in industry.
5. An association of less than one hundred employees in an industry in the Public Service may be registered under the *Commonwealth Conciliation and Arbitration Act* 1904–1918 as an organization, Organizations of less than 100 employees.

if its membership comprises at least three-fifths of all the persons who are employees in that industry in the Public Service.

Appointment of  
Arbitrator.

6.—(1.) For the purposes of this Act, there shall be a Public Service Arbitrator, who shall be appointed by the Governor-General.

(2.) The Arbitrator shall be appointed for a term of seven years, and shall be eligible for re-appointment.

(3.) If any officer of the Commonwealth is appointed Arbitrator, his services as Arbitrator shall, for the purpose of determining all his existing and accruing rights, be counted as public service in the Commonwealth.

(4.) If any officer in the Public Service of a State is appointed Arbitrator, he shall have the same rights as if he had been an officer of a Department transferred to the Commonwealth and were retained in the service of the Commonwealth.

(5.) In case of the illness, suspension or absence of the Arbitrator, the Governor-General may appoint a person to act as Deputy Arbitrator during such illness, suspension or absence, and the Deputy Arbitrator shall, while so acting, have all the powers and perform all the duties of the Arbitrator.

Salary and  
expenses of  
Arbitrator.

7.—(1.) The salary of the Arbitrator shall be Two thousand pounds a year and the Consolidated Revenue Fund is, to the necessary extent, hereby appropriated accordingly.

(2.) There shall be paid to the Arbitrator, on account of his expense in travelling to discharge the duties of his office, such sums as are considered reasonable by the Governor-General.

Removal or  
suspension of  
Arbitrator.

8.—(1.) The Governor-General may remove the Arbitrator from office on an address praying for his removal on the ground of proved misbehaviour or incapacity being presented to the Governor-General by the Senate and the House of Representatives respectively in the same session of the Parliament.

(2.) The Governor-General may suspend the Arbitrator from office for misbehaviour or incapacity.

(3.) A full statement of the grounds of suspension shall be laid before both Houses of the Parliament within seven days after the suspension, if the Parliament is then sitting, or, if the Parliament is not then sitting, within seven days after the next meeting of the Parliament.

(4.) The Arbitrator shall be restored to office unless each House of the Parliament within forty days after the statement has been laid before it, and in the same session, passes an address praying for his removal on the grounds of proved misbehaviour or incapacity.

Office of  
Arbitrator—  
how vacated.

9. The Arbitrator shall be deemed to have vacated his office if—

- (a) he engages, during his term of office, in any paid employment outside the duties of his office ;
- (b) he becomes bankrupt or insolvent, or applies to take the benefit of any Act or State Act for the relief of bankrupt or insolvent debtors, or compounds with his creditors, or makes an assignment of his salary for their benefit ;

- (c) except on leave granted by the Governor-General, he absents himself from duty for fourteen consecutive days or for twenty-eight days in any twelve months ; or
- (d) he becomes permanently incapable of performing his duties.

10. The Arbitrator shall before proceeding to discharge the duties of his office take an oath or affirmation of allegiance in the form in the Schedule to the Constitution, and also an oath or affirmation in the form following:—

Oath or affirmation of allegiance and of office.

I A.B. do swear that I will well and truly serve Our Sovereign Lord the King in the office of Public Service Arbitrator and I will do right to all manner of people according to law without fear or favour affection or ill-will: So help me GOD.

or

I A.B. do solemnly and sincerely promise and declare that (*ſ'c.* as above, except the words " So help me GOD ").

11.—(1.) Notwithstanding anything contained in the *Arbitration (Public Service) Act 1911*, an organization of employees in the Public Service shall not be entitled to submit to the Court under that Act any claim relating to the salaries, wages, rates of pay, or terms or conditions of service or employment of members of the organization.

Transfer of cases from Court to Arbitrator.

(2.) All claims relating to the salaries, wages, rates of pay, or terms or conditions of service or employment of members of any organization, which are pending in the Court at the commencement of this Act, other than claims the hearing of which has been commenced by the Court, shall be by force of this Act transferred to the Arbitrator, and shall be deemed to have been submitted to the Arbitrator in pursuance of this Act.

(3.) The Court shall not be empowered to make any award or order under the *Arbitration (Public Service) Act 1911* as regards any such claim unless the hearing of the claim was commenced by the Court prior to the commencement of this Act.

(4.) For the purposes of this Act all awards and orders made by the Court under the *Arbitration (Public Service) Act 1911*, whether before or after the commencement of this Act, shall be deemed to be determinations made by the Arbitrator under this Act.

(5.) Any reference in any Act to the *Arbitration (Public Service) Act 1911* shall be read as a reference to this Act.

12.—(1.) The Arbitrator shall, subject to the provisions of this section, determine all matters submitted to him relating to salaries, wages, rates of pay, or terms or conditions of service or employment of officers and employees of the Public Service.

Power of Arbitrator to determine claims as to salaries, &c.

(2.) Any organization shall be entitled to submit to the Arbitrator by memorial any claim relating to the salaries, wages, rates of pay, or terms or conditions of service or employment of members of the organization.

(3.) The Arbitrator shall forward a copy of the claim to the Commissioner, and to the Minister of any Department of State affected by the claim.

(4.) The Commissioner and the Minister of any Department of State affected by the claim may within the prescribed time lodge, either jointly or separately, any objections they see fit to make to the granting of the claim.

(5.) If any objection is lodged, the Arbitrator shall call a conference, to be presided over by himself, of representatives of the organization and of the Commissioner and of any Minister who has lodged objections to the granting of the claim, and following upon such conference shall, after hearing such evidence (if any) in respect of such matters as have not been agreed to at the conference, as the Arbitrator thinks necessary, determine the claim.

(6.) If no objection is lodged, the Arbitrator shall determine the claim in favour of the claimant organization.

(7.) The Commissioner, or the Minister of any Department of State or any organization affected by any determination of the Arbitrator, may submit to the Arbitrator an application to vary the determination wholly or in part. The Arbitrator shall forward a copy of the application to the organization affected by the application, and to the Minister of the Department of State affected if the application to vary has been made by the Commissioner, or to the Commissioner if the application to vary has been made by the Minister of the Department affected, or to the Commissioner and the Minister of the Department affected by the application, if the application to vary has been made by an organization.

(8.) Any organization or person to which or to whom the Arbitrator has, in pursuance of the last preceding sub-section, forwarded a copy of the application to vary may within the prescribed time lodge any objections it or he sees fit to make to the granting of the application.

(9.) If any objection is lodged, the Arbitrator shall call a conference as provided in sub-section (5.) of this section, and thereupon the provisions of that sub-section shall apply in like manner as if the application to vary the determination were a claim within the meaning of that sub-section.

(10.) If no objection is lodged, the Arbitrator shall determine the application in favour of the organization or the Commissioner or the Minister, as the case may be.

Arbitrator to act according to equity and good conscience.

**13.—(1.)** In relation to every claim or application made to him in pursuance of this Act, the Arbitrator shall act according to equity, good conscience and the substantial merits of the case, without regard to technicalities or legal forms, and shall not be bound by any rules of evidence, but may inform his mind on any matter in such manner as he thinks fit.

(2.) The Arbitrator shall, at the request of the organization which has submitted a claim or application, or of the Commissioner, or of the Minister of any Department of State who has submitted an application or who is affected by the claim or application of the organization, and may, without such request, appoint two assessors to advise him in relation to the claim or application, and the assessors shall discharge such duties as are directed by the Arbitrator or as are prescribed.

(3.) One of the assessors shall be a person nominated by the organization, and the other a person nominated jointly by the Commissioner and the Minister of each Department of State affected by the claim or application, or, in default of such nomination, appointed by the Governor-General.

14.—(1.) For the purposes of this Act, the Arbitrator shall have power as regards any claim or application submitted to him under this Act—

Powers of Arbitrator.

- (a) to vary any determination, and to re-open any question and to give an interpretation of any determination ;
- (b) to summon any witness before him, and to compel the production before him of books, documents and things for the purpose of reference to such matters only as relate to the matter of the claim or application ;
- (c) to take evidence on oath or affirmation, such evidence unless otherwise ordered by the Arbitrator for reasons affecting the public interest to be taken in public ;
- (d) to allow the amendment of the claim or application ;
- (e) to declare by any order that any term of a determination shall, subject to such conditions, exceptions, and limitations as are declared in the order, be a common rule of the Public Service or of any branch or part of the Public Service :

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

- (f) generally to give all such directions and do all such things as the Arbitrator deems necessary or expedient in the premises.

(2.) Any person who, on being summoned as a witness, *refuses* or fails, without lawful excuse, and after tender of *reasonable* expenses, to appear in obedience to the summons, or *refuses* or fails without lawful excuse to be sworn or to *make* an affirmation or to produce books documents and things which he is lawfully required to produce, or to answer questions which he is lawfully required to answer, shall be guilty of an offence.

Penalty: Fifty pounds.

15. The Arbitrator may refer any claim or application submitted to him under this Act, or any matter arising out of the claim or application, to a person authorized by the Governor-General in that behalf, for investigation and report, and may delegate to that person such of his powers (other than the power to determine the claim or application) as he deems desirable ; and the Arbitrator

Reference of claim or matter for report.

may, on the report, with or without hearing further evidence or argument, or both, determine the claim or application.

Officers to  
comply with  
determinations.

16. The Commissioner, and the Permanent Heads and Chief Officers of the several Departments of State, and all persons in the Public Service, shall comply with the provisions of any determination of the Arbitrator made under this Act.

Determination  
not limited to  
claim.

17. In making any determination under this Act, the Arbitrator shall not be restricted to the specific claims made or to the subject matter of the claim, but may include in the determination any matter or thing which the Arbitrator thinks necessary in the interests of the public or of the Public Service.

No costs to  
be allowed.

18. No costs shall be allowed in respect of any proceedings under this Act.

No counsel or  
solicitor to be  
employed.

19. No person or organization shall in any proceeding under this Act be represented by counsel or solicitor.

Determinations  
not to be  
appealed  
against.

20. No determination of the Arbitrator made under this Act shall be challenged, appealed against, reviewed, quashed, or called in question, or be subject to prohibition or mandamus, in any Court on any account whatever.

Determination  
to be laid before  
Parliament.

21.—(1.) Any determination of the Arbitrator shall be expressed to come into operation as from a date fixed by the Arbitrator, not earlier than after the expiration of thirty days after the determination has been laid before both Houses of the Parliament.

(2.) When a determination has been made under this Act, the Arbitrator shall forthwith send to the Prime Minister and to the Attorney-General a certified copy of the determination.

(3.) The Prime Minister shall, within fourteen days after its receipt, if the Parliament is then sitting, or, if not, then within fourteen days after the next meeting of the Parliament, cause the determination to be laid before both Houses of the Parliament.

Determination  
inconsistent  
with  
Commonwealth  
law or  
regulations.

22.—(1.) The Arbitrator may make a determination which is not in accord with an award or order of the Court, but, except as provided in this section, is not empowered to make any determination which is not in accord with the laws of the Commonwealth and the regulations made thereunder.

(2.) The Arbitrator may, where he thinks it proper to do so, make a determination which, in his opinion, is not, or may not be, in accord with a law or regulation of the Commonwealth relating to the salaries, wages, rates of pay, or terms or conditions of service or employment of employees; but in that case he shall send to the Prime Minister, and to the Attorney-General, with the certified copy of the determination, a statement of the laws or regulations of the Commonwealth with which, in his opinion, it is not, or may not be, in accord.

(3.) The Prime Minister shall, within fourteen days after its receipt, if the Parliament is then sitting, or if not then within fourteen days after the next meeting of the Parliament, cause the determination, and the statement (if any) of the Arbitrator, to be laid before both Houses of the Parliament.

(4.) If, before the determination is laid before the Parliament, the Attorney-General advises the Prime Minister that in his opinion the determination is not in accord with any law or regulation of the Commonwealth referred to in the opinion, the Prime Minister shall cause the opinion to be laid, together with the determination, before both Houses of the Parliament.

(5.) If, in the case of a determination accompanied by such a statement of the Arbitrator, or opinion of the Attorney-General, as is above referred to, either House of the Parliament, within thirty days after the determination with the statement or opinion has been laid before both Houses, passes a resolution disapproving the determination, the determination shall not come into operation.

(6.) Except as provided in the last preceding sub-section, but subject to the Constitution, the determination shall, from the expiration of those thirty days or such later period as is specified in the determination, have full force and effect notwithstanding the provisions of any law or regulation of the Commonwealth.

23. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act. Regulations.

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