

# KEMIRA TUNNEL (ARBITRATION).

No. 55 of 1948.

An Act to provide Means for the Determination of Questions which have arisen relating to the Employment of Persons in the Construction of the Kemira Tunnel in the County of Camden in the State of New South Wales and for other purposes.

[Assented to 30th November, 1948.]

Preamble.

**W**HEREAS questions have arisen relating to the employment of persons in the construction of the Kemira Tunnel in the County of Camden in the State of New South Wales :

AND WHEREAS it has been agreed between the Governments of the Commonwealth of Australia and of the State of New South Wales that they shall take measures for securing the determination of the said questions :

AND WHEREAS it has been further agreed between the two Governments that they shall jointly establish an authority vested with power to determine the said questions :

AND WHEREAS it has been further agreed that the two Governments shall take all practicable steps to secure the passage by the Parliament of the Commonwealth and the Parliament of the State of New South Wales of legislation within the constitutional powers of the respective Parliaments providing for the establishment of such authority :

AND WHEREAS each of the two Governments has undertaken not to take action, without the prior concurrence of the other, to repeal or amend any of the legislation covered by the agreement :

BE it therefore 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 *Kemira Tunnel (Arbitration) Act* Short title.  
1948.
2. This Act shall come into operation on a date to be fixed by Commencement.  
Proclamation.
3. In this Act, unless the contrary intention appears— Definitions.
  - “ Conciliation Commissioner ” means a Conciliation Commissioner appointed under the *Commonwealth Conciliation and Arbitration Act* 1904–1947 ;
  - “ industrial authority ” means any court, commission, tribunal or person constituted by or under any law of the Commonwealth or of the State having power to determine industrial disputes or industrial matters and make awards, orders or determinations in settlement thereof ;
  - “ industrial union ” means an organization of employees registered under the *Commonwealth Conciliation and Arbitration Act* 1904–1947 and includes an industrial union of employees registered as such under the Industrial Arbitration Act 1940–1948 of the State ;
  - “ the Arbitrator ” means the Arbitrator appointed under this Act ;
  - “ the Court ” means the Commonwealth Court of Conciliation and Arbitration ;
  - “ the State ” means the State of New South Wales ;
  - “ the State Act ” means the *Kemira Tunnel (Arbitration) Act* 1948 of the State and includes that Act as amended from time to time ;
  - “ the work ” means the work of constructing the tunnel known as the Kemira Tunnel the portal of which is located on Portion 138 in the Parish of Kembla in the County of Camden in the State.
- 4.—(1.) The Governor-General may enter into an arrangement Appointment of Arbitrator.  
with the Governor of the State for the appointment of an Arbitrator.
  - (2.) The Arbitrator may be appointed by the arrangement.
  - (3.) The arrangement may include provisions as to—
    - (a) the period during which the Arbitrator shall hold his office ;  
and
    - (b) the remuneration and allowances which shall be payable to the Arbitrator.
  - (4.) The person appointed as Arbitrator shall be a Judge of the High Court of Australia or of the Commonwealth Court of Conciliation and Arbitration or of the Supreme Court of a State or a member of

the Industrial Commission of New South Wales, or a person who is or has been a barrister or solicitor of the High Court of Australia, or of the Supreme Court of a State, of not less than five years' standing.

Power  
Arbitrator.

5.—(1.) In pursuance of agreement between the Governments of the Commonwealth and of the State it is declared that the Arbitrator appointed under this Act and any industrial authority to which a reference is made under this Act are to have all the powers and functions specified in this Act in relation to the Arbitrator and to that authority respectively.

(2.) Subject to the Constitution, those powers and functions are by this sub-section, but not otherwise, vested in the Arbitrator and in that authority to the extent to which they are not in excess of the legislative power of the Commonwealth.

Arbitrator to  
determine  
certain  
questions.

6.—(1.) The Arbitrator is to have power :—

- (a) to conduct an inquiry for the purposes of determining whether or not the members of any particular industrial union should enjoy the right to carry out the work or any specified part thereof, as the case may be, to the exclusion of the members of any other industrial union ; and
- (b) where he determines that such a right should be enjoyed by the members of any particular industrial union—to make such orders as he deems necessary to secure the enjoyment of that right to the members of that industrial union.

(2.) Any order made by the Arbitrator under the last preceding sub-section shall, notwithstanding the provisions of any award, order or determination in force under any other Act or under any Act of the State, be final and conclusive and shall have and be given effect as authorizing members of the industrial union or unions specified in the determination to be employed in the carrying out of the work or any specified part thereof, as the case may be, to the exclusion of members of any other industrial union.

(3.) Any award, order or determination in force under any other Act, which is inconsistent with an order made by the Arbitrator under sub-section (1.) of this section may be varied by the industrial authority which made such award, order or determination to such extent as may be necessary to remove that inconsistency.

Awards by  
Arbitrator.

7.—(1.) The Arbitrator is to have power and authority to take such steps as he thinks necessary to determine the conditions of employment of employees engaged in carrying out the work, and the minimum rates of their remuneration and other payments, and for this purpose the Arbitrator is to have power to conduct such inquiries as he thinks necessary, and to make such orders as he thinks fit in relation to the conditions of employment of, minimum rates of remuneration of, and other payments to, employees engaged in carrying out the work.

(2.) In lieu of making an order under sub-section (1.) of this section the Arbitrator may, if he thinks fit, refer to such industrial authority as he deems appropriate for the purpose the matter of determining the conditions of employment of employees engaged in carrying out the work and the minimum rates of their remuneration and other payments, and the industrial authority to which any such reference is made is to have jurisdiction to make such orders in the matter as it thinks fit.

(3.) Any order made under either of the last two preceding sub-sections shall be embodied in an award which—

- (a) shall have force and effect in all respects as if it were an award made by an industrial authority having power to make awards fixing the terms and conditions of employment of employees to whom the order applies;
- (b) shall be deemed to be an award made by such industrial authority; and
- (c) shall be subject to rescission or variation by such industrial authority.

(4.) Except as provided in paragraph (c) of the last preceding sub-section, an award made under this section shall not be challenged, appealed against, quashed or called in question or be subject to prohibition, certiorari, mandamus or injunction in any court on any account whatever.

8.—(1.) For the purpose of conducting any inquiry under this Act the Arbitrator is to have (in addition to any other powers conferred on him by this Act or the State Act) all the powers which are given to the Court or the Chief Judge of the Court or to a Conciliation Commissioner as regards an industrial dispute of which the Court or Commissioner has cognizance.

*Arbitrator to have powers of Court, &c.*

(2.) The procedure at any inquiry conducted by the Arbitrator under this Act shall be as determined by the Arbitrator.

(3.) 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 just.

9. The Arbitrator and any industrial authority to which any matter is referred under sub-section (2.) of section seven of this Act may, at any inquiry under this Act, hear representations from any person or body of persons who or which, in the opinion of the Arbitrator or the industrial authority, as the case may be, has a sufficient interest in the subject-matter of the inquiry.

*Representation at inquiries.*

10. The Governor-General may, upon the recommendation of the Prime Minister in agreement with the Premier of the State, make Regulations, not inconsistent with this Act, prescribing all matters which are necessary or convenient to be prescribed in relation to any matter within the powers and functions vested by this Act in the Arbitrator and generally for carrying this Act into effect.

*Regulations.*