

PUBLIC SERVICE ARBITRATION.

No. 51 of 1956.

An Act to amend the *Public Service Arbitration Act 1920-1955*, and for other purposes.

[Assented to 30th June, 1956.]

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

Short title
and citation.

1.—(1.) This Act may be cited as the *Public Service Arbitration Act 1956*.

(2.) The *Public Service Arbitration Act 1920-1955** is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Public Service Arbitration Act 1920-1956*.

Commencement.

2.—(1.) Sections one, two and four of this Act shall come into operation on the day on which this Act receives the Royal Assent.

(2.) The remaining sections of this Act shall come into operation on the date fixed under sub-section (2) of section two of the *Conciliation and Arbitration Act 1956*.

Definitions.

3. Section three of the Principal Act is amended—

(a) by inserting after the definition of "Organization" the following definition :—

" 'Presidential member of the Commission' has the same meaning as in the *Conciliation and Arbitration Act 1904-1956* ; " ; and

(b) by omitting the definitions of "The Chief Judge", "The Court" and "The Full Court" and inserting in their stead the following definitions :—

" 'The Commission' means the Commonwealth Conciliation and Arbitration Commission ;

" 'The President' has the same meaning as in the *Conciliation and Arbitration Act 1904-1956* ; " .

Salary and
expenses of
Arbitrator.

4. Section seven of the Principal Act is amended by omitting from sub-section (2.) the word "Governor-General" and inserting in its stead the word "Minister".

* Act No. 28, 1920, as amended by No. 1, 1928 ; No. 25, 1929 ; No. 45, 1934 ; No. 52, 1947 ; Nos. 51 and 80, 1950 ; No. 36, 1952 ; and Nos. 2 and 18, 1955.

5. Section eleven of the Principal Act is amended—

- (a) by omitting from sub-section (1.) the word “ Court ” and inserting in its stead the word “ Commission ” ; and
- (b) by omitting from sub-section (4.) the word “ Court ” and inserting in its stead the words “ Commonwealth Court of Conciliation and Arbitration ”.

Organizations not entitled to submit claims to the Commission.

6. Sections fifteen A, fifteen B, fifteen C, fifteen D, fifteen E and fifteen F of the Principal Act are repealed and the following sections inserted in their stead :—

“ 15A.—(1.) In this section, ‘ the Commission ’ means the Commission constituted by presidential members of the Commission to the number of at least two and the Arbitrator.

Reference to the Commission.

“ (2.) For the purposes of the constitution of, and the exercise of functions by, the Commission under this section, the Arbitrator shall be deemed to be a member of the Commission.

“ (3.) The Arbitrator shall, upon application made as provided by the next succeeding sub-section, on the ground that a claim or application, or a matter forming part of or arising out of a claim or application (including a question whether a term of a determination should be a common rule, and, if so, whether the common rule should be a common rule of the Public Service or of any branch or part of the Public Service), is of such importance that the claim, application or matter should, in the public interest, be dealt with as provided by this section, consult with the President as to whether the claim or application should be so dealt with.

“ (4.) An application under the last preceding sub-section may be made by—

- (a) the Board ;
- (b) a Minister affected by the claim or application ; or
- (c) the organization by which the claim or application was submitted to the Arbitrator.

“ (5.) If the President, having regard to the reasons for the application, is of opinion that the claim or application should, in the public interest, be dealt with as provided by this section, he may direct accordingly.

“ (6.) Where the President so directs, the Commission shall, subject to the next succeeding sub-section, hear and determine the claim, application or matter and for that purpose may make such determination as might have been made by the Arbitrator.

“ (7.) Where a claim, application or matter has been referred to the Commission under this section—

- (a) the Commission may refer the claim, application or matter back to the Arbitrator, who shall hear and determine it ;
- or

(b) the Commission may refer a matter forming part of, or arising out of, the claim, application or matter back to the Arbitrator, and, in that case—

(i) the Arbitrator shall hear and determine the matter referred back; and

(ii) the Commission shall hear and determine the claim, application or matter with the exception of the matter referred back to the Arbitrator.

“(8.) The Commission may, for the purposes of this section, direct the Arbitrator to furnish a report to the Commission with respect to such matter as the Commission specifies and the Arbitrator shall, after making such investigation (if any) as is necessary, furnish a report accordingly.

“(9.) The Commission has, in relation to a claim, application or matter before it under this section, the same powers, duties and functions as the Arbitrator has in relation to a claim or application submitted to him under this Act.

Appeals to the
Commission.

“15c.—(1.) In this section, ‘the Commission’ means the Commission constituted by presidential members of the Commission to the number of at least three.

“(2.) An appeal lies to the Commission against a determination made by the Arbitrator.

“(3.) An appeal does not lie under the last preceding sub-section unless, in the opinion of the Commission, the determination deals with a matter of such importance that, in the public interest, an appeal should lie.

“(4.) An appeal under this section—

(a) shall be made within fourteen days after the date of the determination appealed against; and

(b) may be made by—

(i) the Board;

(ii) a Minister affected by the determination; or

(iii) an organization affected by the determination.

“(5.) Where an appeal has been instituted under this section, the Commission may, on such terms and conditions as it thinks fit, make an order that the operation of the whole or a part of the determination under appeal be stayed pending the determination of the appeal or until further order of the Commission.

“(6.) Upon the hearing of an appeal under this section, the Commission may—

(a) admit further evidence; and

(b) direct the Arbitrator to furnish a report to the Commission with respect to such matter as the Commission specifies, and shall—

- (c) make a determination confirming, quashing or varying the determination under appeal; or
- (d) make a determination dealing with the subject-matter of the determination under appeal.

“(7.) Where, in pursuance of paragraph (b) of the last preceding sub-section, the Commission directs the Arbitrator to furnish a report, the Arbitrator shall, after making such investigation (if any) as is necessary, furnish a report accordingly.

“(8.) The provisions of this Act relating to the hearing and determination of claims submitted to the Arbitrator under this Act extend to the hearing and determination of an appeal under this section.

“15D. The last two preceding sections do not apply to a determination made under sub-section (6.) or (10.) of section twelve of this Act.

Reference and appeal provisions not applicable to consent determinations.

“15E. Subject to sub-section (2B.) of section twenty-one of this Act, the provisions of this Act (other than the provisions of sections fifteen A and fifteen c) which apply to and in relation to determinations made by the Arbitrator apply to and in relation to determinations made by the Commission under this Act and, in the application of those provisions to determinations made by the Commission, references to the Arbitrator shall be read as references to the Commission.

Application of certain provisions to the determinations of the Commission.

“15F.—(1.) The Arbitrator may give an interpretation of a determination made under this Act.

Interpretation of determinations.

“(2.) The Arbitrator may, if he thinks fit, refer an application for the interpretation of a determination to the Commission and the Commission constituted by a presidential member of the Commission may give an interpretation of the determination.”

7. Section nineteen of the Principal Act is amended by omitting sub-section (3.) and inserting in its stead the following sub-section:—

Representation.

“(3.) In proceedings under this Act before the Commission, a person or organization may be represented by counsel or solicitor—

- (a) by leave of the Commission and with the consent of all parties to the proceedings; or
- (b) by leave of the Commission, granted upon application made by a party to the proceedings, on the ground that, having regard to the subject-matter of the proceedings, there are special circumstances which make it desirable that the parties and interveners may be so represented.”

Determination
to be laid before
Parliament.

8. Section twenty-one of the Principal Act is amended by omitting sub-sections (2.), (2A.) and (2B.) and inserting in their stead the following sub-sections :—

“(2.) When a determination has been made by the Arbitrator under this Act, the Arbitrator shall send a certified copy of the determination to the Prime Minister and to the Attorney-General forthwith after the time for instituting an appeal against the determination has elapsed.

“(2A.) If an appeal against the determination is instituted, the Arbitrator shall send a certified copy of the determination to the Prime Minister and to the Attorney-General—

(a) forthwith after the institution of the appeal; or

(b) if an order has been made that the operation of the whole of the determination be stayed—forthwith after the stay has ceased to operate.

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

Determination
inconsistent
with
Commonwealth
law or
regulations.

9. Section twenty-two of the Principal Act is amended—

(a) by omitting from sub-section (1.) the word “Court” and inserting in its stead the words “Commonwealth Court of Conciliation and Arbitration or of the Commission”; and

(b) by omitting from sub-section (6.) the words “leave to appeal against a determination has been granted under section fifteen c of this Act and the Chief Judge has made an order” and inserting in their stead the words “an order has been made”.

Continuance of
proceedings
before the
Commonwealth
Court of
Conciliation
and Arbitration.

10.—(1.) The Commonwealth Court of Conciliation and Arbitration constituted as provided by the Principal Act is empowered to continue and complete the hearing and determination of matters before it under the Principal Act the hearing and determination of which had been begun but had not been completed before the commencement of this section.

(2.) In the continuance of the hearing of a matter under the last preceding sub-section, the Court shall have regard to any evidence given and arguments adduced during that portion of the hearing which took place before the commencement of this section.

(3.) For the purposes of this section, the Principal Act continues in force as if this Act had not been enacted.

Saving of
determinations.

11. Determinations of the Commonwealth Court of Conciliation and Arbitration made under the Principal Act before the commencement of this section shall not cease to be in force by reason of the

enactment of this Act and those determinations and determinations made under the last preceding section—

- (a) shall be deemed to be determinations made by the Commission ; and
- (b) shall have effect, and proceedings may be taken thereon or in relation thereto, under the Principal Act as amended by this Act as though they were determinations made by the Commission.

12. Where, before the commencement of this section—

- (a) a claim, application or matter had been referred to the Commonwealth Court of Conciliation and Arbitration under section fifteen A of the Principal Act ; or
- (b) leave to appeal had been granted under section fifteen c of the Principal Act,

References
and appeals.

but the Court had not, before the commencement of this section, commenced the hearing of the claim, application, matter or appeal, the claim, application, matter or appeal shall be dealt with under section fifteen A or fifteen c, as the case may be, of the Principal Act as amended by this Act.