

STEVEDORING INDUSTRY.

No. 39 of 1961.

An Act to amend the *Stevedoring Industry Act*
1956-1957.

[Assented to 6th June, 1961.]

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

1.—(1.) This Act may be cited as the *Stevedoring Industry Act* 1961. Short title and citation.

(2.) The *Stevedoring Industry Act* 1956-1957* is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Stevedoring Industry Act* 1956-1961.

2. This Act shall come into operation on the day on which it receives the Royal Assent. Commencement.

3. Section three of the Principal Act is amended— Parts.

(a) by inserting after the words—

“ Part III.—Port Quotas and Registration of Employers and Waterside Workers (Sections 24-45).”

the words—

“ Part IIIA.—Long Service Leave (Sections 45A-45N).”; and

* Act No. 53, 1956, as amended by No. 93, 1957.

(b) by omitting the words—

“ Part V.—Miscellaneous (Sections 53–60).”

and inserting in their stead the words—

“ Part V.—Miscellaneous (Sections 52A–60).”.

Interpretation.

4. Section seven of the Principal Act is amended—

(a) by inserting in sub-section (1.), after the definition of “award of the Commission”, the following definition:—

“ ‘continuous port’, in relation to any time or period, means a port that is or was, at that time or during that period, a continuous port for the purposes of this Act; ”;

(b) by inserting in sub-section (1.), after the definition of “Inspector”, the following definition:—

“ ‘long service leave’ means long service leave under Part IIIA. of this Act; ”;

(c) by inserting in sub-section (1.), after the definition of “prescribed representative of employers”, the following definitions:—

“ ‘qualifying service’ means qualifying service for long service leave;

“ ‘register of waterside workers’ means a register of waterside workers established and maintained under section twenty-five of this Act; ”;

(d) by inserting in sub-section (1.), after the definition of “registered employer”, the following definitions:—

“ ‘registered irregular waterside worker’ means a registered waterside worker whose name is entered in Part B of the register of waterside workers at a continuous port or a seasonal port;

“ ‘registered regular waterside worker’ means a registered waterside worker not being a registered irregular waterside worker; ”;

(e) by inserting in sub-section (1.), after the definition of “registered waterside worker”, the following definition:—

“ ‘seasonal port’, in relation to any time or period, means a port that is or was, at that time or during that period, a seasonal port for the purposes of this Act; ”; and

(f) by omitting sub-section (3.) and inserting in its stead the following sub-section:—

“(3.) A reference in this Act to stevedoring operations shall be read as a reference to stevedoring operations only in so far as those operations—

- (a) relate to trade and commerce with other countries or among the States;
- (b) relate to trade and commerce between a State and a Territory of the Commonwealth; or
- (c) are performed in a Territory of the Commonwealth.”.

5. After section seven of the Principal Act the following section is inserted:—

“7A.—(1.) Subject to this section, the ports specified in the First Schedule to this Act are, for the purposes of this Act, continuous ports. Continuous ports and seasonal ports.

“(2.) Subject to this section, the ports specified in the Second Schedule to this Act are, for the purposes of this Act, seasonal ports.

“(3.) The regulations may provide that a port not specified in the First Schedule to this Act shall be a continuous port for the purposes of this Act or that a port specified in that Schedule shall not be a continuous port for the purposes of this Act.

“(4.) The regulations may provide that a port not specified in the Second Schedule to this Act shall be a seasonal port for the purposes of this Act or that a port specified in that Schedule shall not be a seasonal port for the purposes of this Act.

“(5.) Regulations shall not be made providing that a port is to be a continuous port for the purposes of this Act unless the Governor-General is satisfied that registered regular waterside workers at that port are required to attend or make themselves available for employment from day to day throughout the year and regulations shall not be made providing that a port is to be a seasonal port for the purposes of this Act unless the Governor-General is satisfied that registered regular waterside workers at that port are required to attend or make themselves available for employment from day to day for part of the year.”.

6. Section sixteen of the Principal Act is amended—

- (a) by omitting from paragraph (b) the word “ and ”;
- (b) by omitting paragraph (c) and inserting in its stead the following paragraphs:—

“(c) to let on lease land, buildings or wharves acquired by or vested in, or taken on lease by, the Authority;

Powers of Authority in relation to land, &c.

“(d) to dispose of a lease of any land, building or wharf taken on lease by the Authority; and

“(e) to do anything incidental to any of its powers under this section.”; and

(c) by adding at the end thereof the following sub-section:—

“(2.) In this section, ‘ lease ’ includes sub-lease.”.

Functions of
the Authority.

7. Section seventeen of the Principal Act is amended by omitting paragraphs (c) and (d) of sub-section (1.) and inserting in their stead the following paragraphs:—

“(c) to pay—

(i) attendance money payable to registered waterside workers under an award of the Commission or under section thirty-one A of this Act;

(ii) amounts payable under this Act in respect of long service leave; and

(iii) any other amounts payable by the Authority under this Act or an award of the Commission;

“(d) to ensure that sufficient waterside workers are available for stevedoring operations at each port and that the labour of waterside workers is used to the best advantage and, for those purposes, where, in the opinion of the Authority, it is expedient to do so—

(i) to facilitate waterside workers registered at one port becoming registered at another port for limited periods; and

(ii) to require waterside workers registered at a port to offer for and accept employment on a daily basis at another port, being a port situated within reasonable travelling distance, by surface transport, from the port at which they are registered;”.

General
provisions
with respect
to port quotas.

8. Section twenty-six of the Principal Act is amended—

(a) by omitting from sub-section (2.) the words “ this section ” and inserting in their stead the words “ the last preceding section ”; and

(b) by adding at the end thereof the following sub-section:—

“(5.) In determining whether the quota for a continuous port or a seasonal port should be varied, the Authority shall, in addition to the matters referred to in sub-section (1.) of this section, take into account

the contribution to the performance of stevedoring operations at the port that is, in the opinion of the Authority, likely to be made by registered irregular waterside workers.”.

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

General provisions with respect to registration.

- (a) by inserting in sub-section (1.), after the word “ worker, ”, the words “ or an application under section thirty-one A of this Act, ”;
- (b) by inserting in sub-section (2.), after the word “ worker, ”, the words “ or in an application under section thirty-one A of this Act, ”; and
- (c) by adding at the end thereof the following sub-section:—

“ (4.) The Authority shall not—

- (a) enter the name of a registered waterside worker in, or transfer the name of a registered waterside worker to, Part B of the register of waterside workers at a continuous port or a seasonal port except in accordance with this Act; or
- (b) having so entered or transferred the name of a registered waterside worker, transfer his name to Part A of the register except in accordance with this Act.”.

10. Section twenty-eight of the Principal Act is amended—

Registration of employers.

- (a) by omitting from paragraph (b) the word “ and ” (last occurring); and
- (b) by inserting after paragraph (b) the following paragraph:—

“ (ba) that person satisfies the Authority that he will be able to pay, as they become due, the wages and other amounts payable by him (whether under an award of the Commission or otherwise) to registered waterside workers employed by him; and ”.

11. Section thirty of the Principal Act is amended by omitting paragraph (b) of sub-section (4.) and inserting in its stead the following paragraph:—

Registration in excess of port quotas.

- “ (b) who has not attained the age of sixty-five years and has, within the preceding period of three years, had his registration at a port cancelled at his own request.”.

12. After section thirty-one of the Principal Act the following section is inserted:—

Registration of
waterside
workers as
irregular
waterside
workers.

“ 31A.—(1.) The Authority shall—

- (a) in relation to each continuous port or seasonal port specified in the First Schedule or the Second Schedule to this Act—as soon as practicable after the commencement of this section; and
- (b) in relation to each port that becomes a continuous port or a seasonal port after the commencement of this section—as soon as practicable after that port becomes a continuous port or a seasonal port,

divide the register of waterside workers at that port into two Parts, to be called Part A and Part B of the register, respectively, and shall, so long as that port is either a continuous port or a seasonal port, maintain that division of the register.

“(2.) There shall be entered in or transferred to Part B of the register the name of each registered waterside worker registered at the port—

- (a) who has (whether before or after the commencement of this section) attained the age of seventy years;
- (b) who has (whether before or after the commencement of this section) attained the age of sixty-five years and has requested the Authority to transfer his name to that part of the register;
- (c) whose physical or mental condition is found by the Authority (whether upon application by the waterside worker or not), after the Authority has obtained a report from a legally qualified medical practitioner, to be such that, in the interests of his own health or in the interests of the expeditious, safe and efficient performance of stevedoring operations, he ought not be required to attend or make himself available for employment as a waterside worker from day to day; or
- (d) who was, as at the first day of May, One thousand nine hundred and sixty-one, or at any time after that day and before the commencement of this section—
 - (i) a waterside worker registered at a port specified in the First Schedule to this Act who was not required to attend or make himself available for employment as a waterside worker from day to day throughout the year; or

- (ii) a waterside worker registered at a port specified in the Second Schedule to this Act who was regarded by the Authority as an irregular waterside worker,

and the name of each other waterside worker registered at that port shall be entered in Part A of the register.

“(3.) Nothing in paragraph (c) of the last preceding sub-section requires the entry of the name of a registered waterside worker in, or the transfer of the name of a registered waterside worker to, Part B of a register where the Authority is satisfied that, by reason of the physical or mental condition of the waterside worker, he is not capable of carrying out the duties of a waterside worker or may be a danger to others.

“(4.) Notwithstanding anything contained in this Act or in an award of the Commission, a registered irregular waterside worker—

- (a) is not required to attend or make himself available for employment as a waterside worker; and
- (b) except as provided by the next succeeding sub-section, if he attends for employment, shall not be allotted to stevedoring operations (not being stevedoring operations at a seasonal port at a time other than during a period declared by the Authority under sub-section (2.) of section forty-five B of this Act in relation to that port) while registered regular waterside workers are available and prepared to accept engagement in those operations.

“(5.) Paragraph (b) of the last preceding sub-section does not—

- (a) prevent the allotment of a registered irregular waterside worker to particular stevedoring operations in respect of which the Authority is satisfied that there is no registered regular waterside worker suitable for employment in those operations available and prepared to accept engagement; or
- (b) prevent the allotment to a particular class of stevedoring operations of a registered irregular waterside worker, being a person referred to in paragraph (d) of sub-section (2.) of this section, where the Authority is satisfied that it was the practice, as at the first day of May, One thousand nine hundred and sixty-one, to allot that person to stevedoring operations of that class.

“(6.) Where the Authority is of the opinion that there will, on a particular day, be an insufficient number of registered regular waterside workers available for the performance of

stevedoring operations at a port, the Authority may call upon registered irregular waterside workers to attend for employment on that day.

“(7.) Where the Authority calls upon a registered irregular waterside worker to attend for employment at a port on any day and that waterside worker so attends and is not engaged for employment, the Authority shall, in respect of that day, pay attendance money to him at the rate at which attendance money is for the time being payable at the port in accordance with an award of the Commission.

“(8.) Where the Authority (whether upon application by the waterside worker or not) is satisfied, after the Authority has obtained a report from a legally qualified medical practitioner, that the physical and mental condition of a registered irregular waterside worker whose name has been entered in or transferred to Part B of the register in pursuance of paragraph (c) or (d) of sub-section (2.) of this section is such that it would not be detrimental to his health to require him to attend or make himself available for employment as a waterside worker from day to day, the Authority shall, unless it is satisfied that his physical or mental condition is such that it would not be in the interests of the expeditious, safe or efficient performance of stevedoring operations at the port to do so, transfer his name to Part A of the register.”.

13. After section thirty-two of the Principal Act the following section is inserted:—

Medical
examination
of registered
waterside
workers.

“32A.—(1.) The Authority may, by notice in writing, from time to time (but, subject to the next succeeding sub-section, at intervals of not less than twelve months) require a registered waterside worker who has attained the age of sixty-five years to submit himself to medical examination by a medical practitioner specified in the notice at a time and place specified in the notice.

“(2.) The Authority may, at any time, if it has reason to believe that the physical or mental condition of a registered waterside worker is such as to render him incapable of properly carrying out the duties of a waterside worker or a danger to others, by notice in writing, require him to submit himself to medical examination by a medical practitioner specified in the notice at a time and place specified in the notice.

“(3.) Where a registered waterside worker presents himself for medical examination to a medical practitioner in pursuance of a notice under this section, the medical practitioner shall examine him and furnish a report of the examination to the Authority.

“(4.) In this section, ‘medical practitioner’ means a legally qualified medical practitioner employed by the Authority or with whom the Authority has made an arrangement to carry out medical examinations of waterside workers for the purposes of this section.”.

14. Section thirty-three of the Principal Act is amended by adding at the end thereof the following sub-section:— Employers' obligations.

“(3.) Where the Authority has reason to believe that a registered employer may become unable to pay, as they become due, to registered waterside workers employed by him wages or other amounts payable to them by him (whether under an award of the Commission or otherwise), the Authority may, by notice in writing, require that employer to satisfy it that that employer will not become unable so to pay those amounts.”.

15. Section thirty-five of the Principal Act is amended— Cancellation or suspension of registration of employers.

(a) by inserting after paragraph (a) of sub-section (1.) the following paragraph:—

“(aa) is not able, or may become unable, to pay, as they become due, to registered waterside workers employed by him wages or other amounts payable to them by him (whether under an award of the Commission or otherwise);”; and

(b) by inserting after sub-section (2.) the following sub-section:—

“(2A.) Where the Authority has made an application to the Commission under sub-section (1.) of this section on the ground referred to in paragraph (aa) of that sub-section, the Authority may suspend the registration of the employer concerned until the determination of the application.”.

16. Section thirty-six of the Principal Act is amended— Cancellation or suspension of registration of waterside workers, &c.

(a) by inserting after paragraph (a) of sub-section (1.) the following paragraph:—

“(aa) has failed to submit himself to medical examination in compliance with a notice under section thirty-two A of this Act;”; and

(b) by omitting paragraph (d) of sub-section (1.) and inserting in its stead the following paragraph:—

“(d) being a registered regular waterside worker, has not regularly attended, or made himself available, for employment as a waterside worker or, being a registered irregular waterside worker, has attended for employment so infrequently that it may fairly be presumed that he does not intend to make his services available as a waterside worker;”; and

(c) by omitting paragraph (f) of sub-section (1.) and inserting in its stead the following paragraph:—

“(f) has been—

- (i) convicted of an offence against this Act; or
- (ii) convicted of an offence against any law of the Commonwealth or of a State or Territory of the Commonwealth, being an offence that, having regard to the circumstances in which it was committed, shows him to be unfit to be a registered waterside worker; or”;

(d) by adding at the end of sub-section (1.) the words “ or, where not inappropriate, suspend his entitlement to attendance money”;

(e) by inserting after sub-section (3.) the following sub-sections:—

“(3A.) The entitlement of a registered waterside worker to attendance money shall not be suspended under sub-section (1.) of this section unless the Authority is satisfied that the demands for the services of waterside workers at the particular port at the time are such that it would be undesirable to suspend his registration.

“(3B.) The suspension of the entitlement of a waterside worker to attendance money under sub-section (1.) of this section has effect in respect of such number of days, being days in respect of which the waterside worker could, but for the suspension, have become entitled to attendance money, as the Authority directs.

“(3C.) The number of days directed by the Authority under the last preceding sub-section shall not exceed four times the number of working days for which the Authority would, if it had suspended the registration of the waterside worker instead of suspending his entitlement to attendance money, have suspended his registration.”; and

(f) by inserting in sub-section (5.), after the word “suspended”, the words “, or whether the entitlement of a waterside worker to attendance money should be suspended,”.

17. Sections thirty-seven and thirty-seven A of the Principal Act are repealed and the following sections inserted in their stead:—

“ 37.—(1.) Where—

Appeals.

- (a) the registration of a person as a waterside worker has been cancelled or suspended under the last preceding section (whether before or after the commencement of this section);
- (b) the entitlement of a registered waterside worker to attendance money has been suspended under the last preceding section;
- (c) the name of a registered waterside worker has, otherwise than upon his own application, been—
 - (i) entered in or transferred to Part B of a register in pursuance of paragraph (c) of sub-section (2.) of section thirty-one A of this Act; or
 - (ii) transferred to Part A of a register in pursuance of sub-section (8.) of that section; or
- (d) the Authority has refused to transfer the name of a registered irregular waterside worker to Part A of a register upon application by the waterside worker under sub-section (8.) of section thirty-one A of this Act,

that person may, within fourteen days after the date of the cancellation, suspension, entry, transfer or refusal, or within such further period as the Commission allows, appeal to the Commission, by filing a notice of appeal in accordance with the prescribed form with the prescribed person, against the cancellation, suspension, entry, transfer or refusal.

“ (2.) Upon consideration of such an appeal, the Commission may, as it thinks appropriate in the circumstances—

- (a) in the case of an appeal against a cancellation or suspension of registration or a suspension of attendance money—confirm, vary or set aside the cancellation or suspension and, where it sets aside the cancellation, if it thinks fit, substitute for the cancellation a period of suspension of registration; or
- (b) in the case of an appeal against the entry of a name in, or the transfer of a name to, Part B or Part A of a register or a refusal to transfer a name to Part A of a register—confirm the entry, transfer or refusal or order that the name of the appellant be transferred to Part A or Part B of the register, as the case requires.

“(3.) Where—

- (a) a person has appealed to the Commission against suspension of his registration as a waterside worker; or
- (b) the Authority is satisfied that a waterside worker whose registration has been suspended intends to appeal against the suspension,

the Authority may postpone the operation of the suspension for such period as it thinks fit, and during the period of postponement, the registration shall be deemed not to have been suspended.

“(4.) The Commission may arrange for a Commissioner to hear evidence and argument in respect of an appeal under this section on its behalf, and report to the Commission in respect thereof.

“(5.) Upon receiving the report of the Commissioner under the last preceding sub-section, and after hearing such further evidence and argument, if any, as it thinks fit, the Commission shall determine the appeal.

“(6.) A Commissioner hearing evidence under this section has all the powers of the Commission to secure the attendance of witnesses, the production of books, papers, documents and things and with respect to the taking of evidence on oath or affirmation.

“(7.) The powers of the Commission under this section in relation to an appeal shall be exercised by the Commission constituted—

- (a) by the President of the Commission or by a Deputy President of the Commission assigned by the President to deal with appeals under this section; or
- (b) if the President nominates another Deputy President to deal with that appeal, by that other Deputy President.

“(8.) The power of the Commission under sub-section (4.) of this section shall not be exercised where the Commission is constituted by a Deputy President except with the approval of the President of the Commission.

“(9.) In this section, ‘ Commissioner ’ has the same meaning as in the *Conciliation and Arbitration Act 1904–1961*.

Compensation
where appeal
upheld.

“ 37A.—(1.) Where—

- (a) the registration of a waterside worker has been suspended (whether before or after the commencement of this section);
- (b) the operation of the suspension has not been postponed in accordance with sub-section (3.) of the last preceding section; and

(c) the Commission, upon consideration of an appeal against the suspension, sets aside the suspension or reduces the period of the suspension or the number of working days on which it is to have effect, the Commission may, by order, direct the Authority to pay to that waterside worker such amount, by way of compensation for loss of wages and attendance money, as the Commission thinks proper.

“(2.) Where—

- (a) the entitlement of a registered waterside worker to attendance money has been suspended; and
- (b) the Commission, upon consideration of an appeal against the suspension, sets aside the suspension or reduces the number of days of the suspension,

the Authority shall pay to the waterside worker, by way of compensation, an amount equal to the amount of the attendance money to which he could have become entitled if his entitlement had not been suspended or had been suspended only for the number of days to which the Commission has reduced the suspension, as the case may be.”.

18. Section forty-three of the Principal Act is amended—

- (a) by omitting from sub-section (3.) the word “ Court ” (wherever occurring) and inserting in its stead the word “ Commission ”; and
- (b) by omitting sub-section (4.) and inserting in its stead the following sub-section:—

“(4.) The powers of the Commission under this section shall be exercised by the Commission constituted by the President of the Commission or by the presidential member of the Commission assigned by the President under sub-section (1.) of section eighty-four of the *Conciliation and Arbitration Act 1904–1961*.”.

Union rules
not to
discriminate.

19. After Part III. of the Principal Act the following Part is inserted:—

“ PART IIIA.—LONG SERVICE LEAVE.

“ 45A. In this Part, ‘ Commonwealth stevedoring legislation ’ means—

Definition.

- (a) the National Security (Waterside Employment) Regulations, the National Security (Stevedoring Industry) Regulations and the National Security (Shipping Co-ordination) Regulations, as in force at any time under the *National Security Act 1939–1940* (or that Act as amended) or under any other Act;
- (b) the *Stevedoring Industry Act 1947* or that Act as amended;

- (c) the *Stevedoring Industry Act 1949* or that Act as amended;
or
(d) this Act.

Declaration of
ports, &c., for
purposes of
ascertaining
qualifying
service.

“ 45B.—(1.) For the purposes of this Part, the Authority shall, as soon as practicable after the commencement of this Part, by notice in the *Gazette*, declare the ports at which, and the period or periods in relation to each of those ports during which, periods of registration as a waterside worker under Commonwealth stevedoring legislation before the commencement of this Part may count as qualifying service.

“ (2.) The Authority shall, from time to time, by notice in the *Gazette*, declare, in relation to each seasonal port, periods during which periods of registration as a waterside worker at that port under this Act may count as qualifying service.

“ (3.) The Authority shall not—

- (a) declare a period in relation to a port under sub-section (1.) of this section unless it is satisfied that waterside-workers registered at the port under Commonwealth stevedoring legislation were required to attend or make themselves available for employment from day to day at that port during that period; or
- (b) declare a period in relation to a seasonal port under the last preceding sub-section unless it is satisfied that registered waterside workers at that port were or are required to attend or make themselves available for employment from day to day at that port during that period.

Qualifying
service
for long
service leave.

“ 45C.—(1.) Subject to section fifty-two A of this Act, the period of qualifying service of a person for the purposes of this Part is the period during which that person has been continuously registered as a waterside worker under Commonwealth stevedoring legislation (whether at the same port or not), less any periods required by sub-section (4.) of this section to be deducted from that period.

“ (2.) For the purposes of this Part, a person shall be deemed not to have ceased to be continuously so registered by reason of—

- (a) a break in the continuity of his registration not exceeding a continuous period of two months, irrespective of the cause of that break;
- (b) a break in the continuity of his registration due to illness or injury that rendered him incapable of carrying out the duties of a waterside worker;
- (c) a break in the continuity of his registration caused by the suspension of his registration; or

- (d) a break in the continuity of his registration caused by the cancellation of his registration at a port under sub-section (1.) of section thirty-two of this Act if he was subsequently registered at that port under sub-section (5.) of that section.

“ (3.) The last preceding sub-section does not apply in relation to a break in the continuity of the registration of a person if the Authority has given a certificate under sub-section (2.) of the next succeeding section in respect of the cessation of his registration that caused the break.

“ (4.) In ascertaining the period of qualifying service of a person for the purposes of this Part, the following periods shall be deducted from the period during which he has been continuously registered as a waterside worker under Commonwealth stevedoring legislation within the meaning of this section:—

- (a) the period of any break in the continuity of his registration to which paragraph (a), (b), (c) or (d) of sub-section (2.) of this section applies;
- (b) any period after the commencement of this Part during which he was registered at a port not being a continuous port or a seasonal port;
- (c) any period after the commencement of this Part during which he was registered at a seasonal port at a time other than during a period declared by the Authority under sub-section (2.) of the last preceding section in relation to that port;
- (d) any period before the commencement of this Part during which he was registered at a port not being a port declared by the Authority under sub-section (1.) of the last preceding section;
- (e) any period before the commencement of this Part during which he was registered at a port being a port declared by the Authority under sub-section (1.) of the last preceding section at a time other than during a period so declared in relation to that port;
- (f) any period during which he was a registered irregular waterside worker, less, in the case of a person who has, during periods (whether before or after the commencement of this Part) when he was required to attend or make himself available for employment as a waterside worker from day to day, completed not less than eight years' qualifying service, any days during that period and before he attained the age of seventy years on which he was employed as a waterside worker at a continuous port, or at a seasonal port during a period declared by the Authority under sub-section (2.) of the last preceding section in relation to that seasonal port;

- (g) any period before the commencement of this part during which he was a waterside worker who was not required to attend or make himself available for employment as a waterside worker from day to day, less, in the case of a person who—
- (i) was such a waterside worker by reason of his physical or mental condition or his age or infirmity; and
 - (ii) had, during periods when he was required to attend or make himself available for employment as a waterside worker from day to day, completed not less than eight years' qualifying service,
- any days during that period on which he was employed as a waterside worker at a port declared by the Authority under sub-section (1.) of the last preceding section during a period so declared in relation to that port;
- (h) any day on which he was dismissed from his employment for misconduct or failed to comply with—
- (i) a provision of Commonwealth stevedoring legislation or an award, order or direction made or given under that legislation;
 - (ii) an award or order of the Commonwealth Court of Conciliation and Arbitration; or
 - (iii) an award of the Commission,
- except where, as a consequence of that misconduct or failure—
- (iv) his qualifying service is reduced by the operation of section fifty-two A of this Act; or
 - (v) his registration was suspended under Commonwealth stevedoring legislation; or
- (i) any period during which he was unavailable for employment, whether with or without the permission of the Authority or any Board or Commission constituted under Commonwealth stevedoring legislation, not being—
- (i) a period during which he was on annual leave or long service leave;
 - (ii) a period, not exceeding fifteen days in any year ending on the thirtieth day of June, during which he was on sick leave with pay or was incapacitated and was, in respect of that incapacity, in receipt of compensation under a law of the Commonwealth or of a

- State or Territory of the Commonwealth relating to the payment of compensation to employees in respect of injury or illness; or
- (iii) a period in relation to which the next succeeding sub-section applies.

“(5.) Subject to the next succeeding sub-section, where a person—

- (a) has, whether before or after the commencement of this Part, served as a member of the Defence Force for any period; and
- (b) was, before the commencement of that period, registered as a waterside worker under Commonwealth stevedoring legislation,

he shall, if he again became so registered after the expiration of that period, be deemed for the purposes of this Part to have been, during that period, so registered as a waterside worker at the port at which he was last so registered before the commencement of that period.

“(6.) The last preceding sub-section does not apply in relation to a period of service of a person in the Permanent Naval, Military or Air Forces of the Commonwealth, unless that period was—

- (a) a period of service before the thirtieth day of June, One thousand nine hundred and forty-nine; or
- (b) a period of service in the portion of the Permanent Military Forces raised or maintained for service in Korea or Malaya in pursuance of an enlistment for a period not exceeding three years on or after the twenty-sixth day of June, One thousand nine hundred and fifty.

“(7.) Where, after the commencement of this Part, a person dies after he has ceased to be a registered waterside worker, he shall, for the purposes of this Part other than for the purpose of determining the period of his qualifying service, be deemed to have continued to be registered, until his death, at the port at which he was last registered, unless, if he had not died, no subsequent registration of him could have been treated, for the purposes of this Part, as having been continuous with the registration that had ceased.

“45D.—(1.) A registered waterside worker is entitled—

- (a) after the completion of twenty years' qualifying service—to long service leave for a period of thirteen weeks; and
- (b) after the completion of each subsequent ten years' qualifying service—to additional long service leave for a period of six and one-half weeks.

Entitlement to long service leave.

“(2.) Subject to the next succeeding section, where a person ceases to be a registered waterside worker and the Authority, on the application of that person, certifies that his ceasing to be so registered—

- (a) arose on account of such an illness, incapacity or disability as renders him permanently incapable, or likely to be permanently incapable, of properly carrying out the duties of a waterside worker or as renders him a danger to others;
- (b) arose from a request to cancel his registration made by him on account of pressing necessity of such a nature as to justify the making of that request;
- (c) arose from a request to cancel his registration made by him after he attained the age of sixty-five years; or
- (d) arose from the cancellation of his registration under section thirty-two of this Act,

he shall, if the period of his qualifying service is not less than ten years, in addition to any entitlement under sub-section (1.) of this section, be deemed to have been entitled, immediately before he ceased to be so registered, to long service leave for a period determined in accordance with sub-section (4.) of this section.

“(3.) Subject to the next succeeding section, where—

- (a) a registered regular waterside worker becomes a registered irregular waterside worker; or
- (b) a registered waterside worker dies,

he shall, if the period of his qualifying service is not less than ten years, be deemed, in addition to any entitlement under sub-section (1.) of this section, to have been entitled, immediately before he became a registered irregular waterside worker or died, as the case may be, to a period of long service leave determined in accordance with the next succeeding sub-section.

“(4.) The period of long service leave to which a registered waterside worker is to be deemed to have been entitled under sub-section (2.) or sub-section (3.) of this section is—

- (a) if the period of his qualifying service is less than twenty years—one-eightieth of that period; or
- (b) if the period of his qualifying service exceeds twenty years—one-eightieth of so much of that period as has elapsed since he last became entitled to a period of long service leave under sub-section (1.) of this section in respect of his qualifying service.

“(5.) Where the period of qualifying service of a registered irregular waterside worker to whom sub-section (3.) of this section does not apply is not less than ten years, he is entitled to long service leave for a period equal to one-eightieth of the period of his qualifying service.

“ 45E.—(1.) This section applies to a person who—

- (a) immediately before the twenty-eighth day of March, One thousand nine hundred and forty-seven, was registered, or was deemed to be registered, as a waterside worker under Part V. of the National Security (Shipping Co-ordination) Regulations;
- (b) as at the commencement of this Part, had been continuously registered as a waterside worker under Commonwealth stevedoring legislation since that date;
- (c) was, as at the first day of May, One thousand nine hundred and sixty-one, registered as a waterside worker under this Act at a port specified in the First Schedule or the Second Schedule to this Act; and
- (d) was not, as at the first day of May, One thousand nine hundred and sixty-one, or any day after that day and before the commencement of this Part, a waterside worker referred to in sub-paragraph (i) or (ii) of paragraph (d) of sub-section (2.) of section thirty-one A of this Act.

Special provisions applicable to certain waterside workers.

“(2.) A person to whom this section applies who has attained the age of seventy years before the commencement of this Part and whose period of qualifying service was, at the commencement of this Part, not less than ten years shall be paid an amount equal to the amount which he would be entitled to receive in respect of long service leave for a period of thirteen weeks.

“(3.) A person to whom this section applies—

- (a) who has attained the age of sixty-five years before the commencement of this Part;
- (b) whose period of qualifying service is not less than ten years; and
- (c) who, within two months after the commencement of this Part—
 - (i) ceases to be a registered waterside worker upon the cancellation of his registration at his own request; or
 - (ii) becomes a registered irregular waterside worker at his own request,

shall be paid an amount equal to the amount which he would be entitled to receive in respect of long service leave for a period of thirteen weeks.

“(4.) A person to whom this section applies—

- (a) who has attained the age of sixty-five years after the commencement of this Part;

- (b) who, on a date within one month after attaining that age—
 - (i) ceases to be a registered waterside worker upon the cancellation of his registration at his own request; or
 - (ii) becomes a registered irregular waterside worker at his own request;
- (c) who, from the date of commencement of this Part until the date referred to in the last preceding paragraph, has been continuously registered as a waterside worker under this Act at a continuous port or a seasonal port (otherwise than in Part B of the register);
- (d) whose period of qualifying service is not less than ten years; and
- (e) who is not entitled under the last preceding section to long service leave for a period of at least thirteen weeks,

shall be paid an amount equal to the amount which he would be entitled to receive in respect of long service leave for a period of thirteen weeks.

“(5.) For the purposes of ascertaining the amount which a person would be entitled to receive in respect of a period of long service leave for the purposes of this section, that period of leave shall be deemed to have commenced immediately before the person ceased to be a registered waterside worker or became a registered irregular waterside worker, as the case may be.

“(6.) The entitlement of a person to a payment under this section is in substitution for and not in addition to any entitlement of that person to long service leave under any other provision of this Part.

Taking of
long service
leave.

“45F.—(1.) Subject to this section, where a registered waterside worker who is entitled under this Part to a period of long service leave desires to take the whole or a part of that leave, the Authority shall, upon his application, determine the period within which the leave that he so desires to take is to be taken.

“(2.) A registered waterside worker who has become entitled to any period of long service leave is not entitled to take that leave in more than two instalments.

“(3.) In making a determination under this section, the Authority shall have regard to the labour requirements of the port at which the applicant for the determination is registered, but, subject to those requirements and to the next succeeding section, shall authorize the applicant to take the long service leave to which the application relates during a period commencing on, or as early as practicable after, the date as from which the applicant desires to take the leave.

“(4.) A determination under this section as to the period within which any long service leave to which a registered waterside worker is entitled is to be taken ceases to have effect if, before the commencement of that period, he ceases to be a registered waterside worker at the port at which he was registered when the determination was made.

“45G.—(1.) Subject to the next succeeding sub-section, long service leave to which a person is entitled under this Part shall not be taken, and payment in respect of any such long service leave shall not be made, before the expiration of the period of three years from the commencement of this Part.

Long service leave not to be taken before three years from commencement of this Part except in certain cases.

“(2.) The last preceding sub-section does not apply in relation to—

- (a) any payment in respect of the long service leave to which a deceased registered waterside worker was entitled, or is deemed to have been entitled, immediately before his death;
- (b) any payment in respect of the long service leave to which a person in relation to whom a certificate under section forty-five D of this Act has been granted was entitled, or is deemed to have been entitled, immediately before he ceased to be a registered waterside worker;
- (c) any payment in respect of the long service leave to which a person who has become a registered irregular waterside worker is entitled or is deemed to have been entitled; or
- (d) any payment to which a person is entitled under section forty-five E of this Act.

“45H. Notwithstanding anything contained in this Act or an award of the Commission, a registered waterside worker is not, while he is on long service leave, required to attend or make himself available for employment as a waterside worker.

Waterside worker not required to attend, &c., while on long service leave.

“45J.—(1.) Where a registered regular waterside worker takes a period of long service leave, he shall be paid an amount equal to the assessed amount of pay for that period.

Payments in respect of long service leave, &c.

“(2.) Unless otherwise agreed by the Authority and the waterside worker, the amount payable to him under the last preceding sub-section in respect of a period of long service leave shall be paid to him in equal weekly instalments throughout the period of the leave.

“(3.) A person who has ceased to be a registered regular waterside worker (otherwise than by reason of his death) and was entitled, or is deemed to have been entitled, immediately before he ceased to be a registered regular waterside worker, to a period of long service leave shall be paid, in respect of that long service leave, an amount equal to the assessed amount of

pay that he would have received if he had not ceased to be a registered regular waterside worker and had taken that leave during a period commencing on the day on which he in fact so ceased, less any sum that has already been paid to him in respect of that leave.

“(4.) Where a registered waterside worker who has died was entitled, or is deemed to have been entitled, immediately before his death, to a period of long service leave, there shall be paid to his legal personal representative an amount equal to the assessed amount of pay that the waterside worker would have received if he had not died and had taken the leave during a period commencing on the day on which he in fact died, less any sum that has already been paid to the waterside worker in respect of that leave.

Assessed
amount of pay.

“45K.—(1.) For the purposes of this Part, the assessed amount of pay for any period in relation to a person is the amount of pay that would have been due to that person in respect of that period if, throughout that period, he had been entitled to be paid a weekly amount equal to the amount determined by the Authority under this section to be the average weekly earnings of registered regular waterside workers at continuous ports during the last applicable period of twelve months.

“(2.) For the purposes of this section, the Authority shall, as soon as practicable after each quarter day in each year, determine the amount of the average weekly earnings of registered regular waterside workers at continuous ports during the period of twelve months ending on that quarter day.

“(3.) In determining the amount of those average weekly earnings, the Authority shall not have regard to any sums paid—

- (a) by way of attendance money;
- (b) in respect of absence on account of illness or injury; or
- (c) for any day that was a holiday for waterside workers under an award of the Commission.

“(4.) For the purposes of this section—

- (a) the last day of each of the months of March, June, September and December is a quarter day; and
- (b) the last applicable period of twelve months, in relation to a period of long service leave, means the period of twelve months that ended on the quarter day last but one preceding the day on which that period of leave commenced.

Payments in
respect of long
service leave.

“45L. Amounts payable under this Part in respect of long service leave and amounts payable under section forty-five E of this Act shall be paid by the Authority.

“ 45M.—(1.) Any question arising under this Part as to—

- (a) the entitlement of a person to long service leave;
- (b) the period of long service leave to which a person is or was entitled; or
- (c) the entitlement of a person to a payment under this Part or the amount of such a payment,

Determination of entitlement to long service leave, &c.

shall, in the first instance, be determined by the Authority.

“ (2.) A person aggrieved by the decision of the Authority in respect of such a question may appeal to the Court.

“ (3.) The Court has jurisdiction to hear and determine the appeal and that jurisdiction shall be exercised by a single Judge.

“ 45N. A person shall not, for the purpose of obtaining, or establishing his entitlement to, any long service leave or payment in respect of long service leave under this Part, or for the purpose of obtaining a payment under section forty-five B of this Act, make a statement or furnish information that he knows to be false or misleading or does not believe to be true.

False representations in connexion with long service leave, &c.

Penalty: One hundred pounds.”.

20. Before section fifty-three of the Principal Act the following section is inserted in Part V.:—

“ 52A.—(1.) Where—

- (a) registered regular waterside workers at a port fail on any day—
 - (i) to attend or make themselves available for employment, to commence, continue or complete an engagement for employment or to perform stevedoring operations that they are lawfully required to perform; or
 - (ii) to comply with a provision of this Act, an order or direction of the Authority or an award of the Commission;
- (b) the number of such waterside workers who so fail (whether in the same respect or not) exceeds two hundred and fifty or one-third of the number of registered regular waterside workers registered at the port, whichever is the less; and
- (c) the Authority has not exercised, and does not propose to exercise, its powers under section thirty-six of this Act in relation to all the registered regular waterside workers who have so failed,

Reduction of qualifying service for long service leave, &c., on account of participation in port stoppage.

the Authority is authorized to declare, in writing, that a port stoppage occurred on that day at that port and shall declare accordingly.

“(2.) Where the Authority makes a declaration under the last preceding sub-section, it shall, in such manner as it considers appropriate, identify in the declaration or, if it thinks fit, in a supplementary declaration made within seven days after the original declaration, the registered regular waterside workers who participated in the port stoppage (that is to say, the registered regular waterside workers who failed as specified in the last preceding sub-section).

“(3.) Where the Authority makes a declaration under sub-section (1.) of this section or a supplementary declaration under the last preceding sub-section, it shall, as soon as practicable—

- (a) serve a copy of the declaration or the supplementary declaration on the Union in relation to the port to which the declaration relates and, if there is a branch of that Union at that port, on that branch; and
- (b) furnish a copy of the declaration or supplementary declaration to the Industrial Registrar or a Deputy Industrial Registrar appointed under the *Conciliation and Arbitration Act 1904–1961*.

“(4.) Subject to sub-sections (6.) and (7.) of this section, where a declaration under sub-section (1.) of this section is made and served in accordance with this section—

- (a) the entitlement to attendance money of each waterside worker identified in the declaration, or in a declaration supplementary to that declaration and so made and served, is, by force of this section, suspended for the next four days that are days in respect of which he could otherwise have become entitled to attendance money; and
- (b) the qualifying service for long service leave of the waterside workers so identified is, by force of this section, reduced by a number of days (not exceeding thirty) which the Commission shall, after such inquiry as it thinks fit, by order, determine.

“(5.) Subject to the next two succeeding sub-sections, a declaration or supplementary declaration that the Authority has made or purported to make in pursuance of this section shall, for the purposes of this section, be deemed to have been validly made and, so far as it identifies or purports to identify the registered regular waterside workers who took part in a port stoppage, to identify correctly those waterside workers.

“(6.) Where a waterside worker identified in a declaration or supplementary declaration under this section satisfies the Authority that he did not participate in the port stoppage to which the declaration or supplementary declaration relates, the

Authority shall certify in writing accordingly, and, where the Authority so certifies, that waterside worker shall be deemed not to have been so identified.

“(7.) Where the Authority has made or purported to make a declaration under sub-section (1.) of this section, the Commission may, by order, upon application made by the Union in relation to the port to which the declaration relates before the Commission has made an order under sub-section (4.) of this section in relation to that declaration—

(a) if it is satisfied that—

(i) the making of the declaration was not authorized by this section; or

(ii) that the port stoppage was, having regard to all the circumstances (including the availability of means provided by law for the prevention and settlement of industrial disputes), excusable,

rescind the declaration; or

(b) if it is satisfied that particular waterside workers identified in the declaration, or in a declaration supplementary to the declaration, did not participate in the port stoppage—rescind the declaration or supplementary declaration in so far as it identifies those waterside workers.

“(8.) The powers of the Commission under this section shall be exercised by the Commission constituted by—

(a) the President of the Commission;

(b) the presidential member of the Commission assigned by the President under sub-section (1.) of section eighty-four of the *Conciliation and Arbitration Act 1904-1961*; or

(c) if the President of the Commission assigns another presidential member of the Commission to exercise the powers of the Commission under this section in a particular case, the presidential member so assigned.

“(9.) Where the Authority makes a declaration under sub-section (1.) of this section, it shall not subsequently, unless the declaration has been rescinded under this section, exercise its powers under section thirty-six of this Act in relation to the waterside workers identified in the declaration or in a supplementary declaration in respect of the acts or omissions that constituted their participation in the port stoppage to which the declaration relates.

“(10.) In this section, ‘presidential member of the Commission’ has the same meaning as in the *Conciliation and Arbitration Act 1904–1961.*”.

Schedules.

21. The Principal Act is amended by adding at the end thereof the following heading and Schedules:—

“ THE SCHEDULES.

FIRST SCHEDULE.

Section 7A (1).

CONTINUOUS PORTS.

New South Wales—
Newcastle.
Port Kembla.
Sydney.

Victoria—
Geelong.
Melbourne.

Queensland—
Brisbane.
Cairns.
Rockhampton.
Thursday Island.
Townsville.

South Australia—
Port Adelaide.
Port Lincoln.
Port Pirie.
Thevenard.
Wallaroo.
Whyalla.

Western Australia—
Bunbury.
Fremantle.
Geraldton.

Tasmania—
Beauty Point.
Burnie.
Devonport.
Hobart.
King Island.
Launceston.
Strahan.

Northern Territory of Australia—
Darwin.

SECOND SCHEDULE.

Section 7A (2).

SEASONAL PORTS.

Queensland—
Bowen.
Gladstone.
Maryborough.
Urangan.”.