

Stevedoring Industry

No. 66 of 1965

An Act relating to the Stevedoring Industry.

[Assented to 8 October, 1965]

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

PART I.—PRELIMINARY.

Short title
and citation.

1.—(1.) This Act may be cited as the *Stevedoring Industry Act 1965*.

(2.) The *Stevedoring Industry Act 1956–1962** 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 1956–1965*.

Commence-
ment.

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

Parts.

3. This Act is divided into Parts, as follows:—

Part I.—Preliminary (Sections 1–3).

Part II.—Amendments of the *Stevedoring Industry Act 1956–1962* (Sections 4–14).

Part III.—Provisions Relating to the Waterside Workers' Federation of Australia.

Division 1.—Preliminary (Section 15).

Division 2.—Declarations by Commonwealth Conciliation and Arbitration Commission (Sections 16–17).

Division 3.—Cancellation of Registration of Waterside Workers' Federation of Australia (Sections 18–21).

Division 4.—General (Section 22).

PART II.—AMENDMENTS OF THE STEVEDORING INDUSTRY ACT 1956–1962.

Interpretation.

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

* Act No. 53, 1956, as amended by No. 93, 1957; No. 39, 1961; and No. 66, 1962.

“(3.) A reference in this Act to stevedoring operations shall, unless the contrary intention appears, be read as a reference to stevedoring operations that are performed—

- (a) on goods that are in the course of trade or commerce with other countries or among the States or for the purpose of the carriage of goods in the course of such trade or commerce;
- (b) on goods that are in the course of trade or commerce between a State and a Territory of the Commonwealth or for the purpose of the carriage of goods in the course of such trade or commerce; or
- (c) in a Territory of the Commonwealth.”.

5. Section 26 of the Principal Act is amended by omitting from paragraph (a) of sub-section (3.) the words “a Union” and inserting in their stead the words “the Union in relation to the port”.

General provisions with respect to port quotas.

6. Section 29 of the Principal Act is amended—

- (a) by omitting from sub-section (1.) the words “next two succeeding sections” and inserting in their stead the words “next succeeding section”;
- (b) by inserting after sub-section (1.) the following sub-section:—

Registration of waterside workers.

“(1A.) For the purposes of sub-paragraph (i) of paragraph (b) of the last preceding sub-section, a requirement of the Authority that persons who apply for registration as waterside workers shall not have been—

- (a) convicted of an offence against this Act; or
- (b) convicted of an offence against any law of the Commonwealth or of a State or Territory of the Commonwealth, being an offence that, in the opinion of the Authority, having regard to all the circumstances, shows the person who was convicted to be unfit to be registered as a waterside worker,

is a reasonable requirement as to the suitability of those persons to be registered as waterside workers.”;

- (c) by omitting from sub-section (2.) the words “the last preceding sub-section” and inserting in their stead the words “sub-section (1.) of this section”; and

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

“(3.) Before registering a person as a waterside worker at a port (whether under this section or under the next succeeding section), the Authority shall—

(a) give notice—

(i) to the Union in relation to the port, or, if there is a branch of that Union at the port, to that branch; and

(ii) to the association of employers at the port,

stating that the Authority is considering whether to register the person as a waterside worker at the port and inviting the Union or branch, and the association, to furnish to the Authority within seven days after the notice is given a written statement of any matters that the Union, branch or association wishes the Authority to take into account in deciding whether to register the person; and

(b) take into account any matters referred to in a statement so furnished.”.

Applications
for registration
to be submitted
through Union.
Employers'
obligations.

7. Section 31 of the Principal Act is repealed.

8. Section 33 of the Principal Act is amended—

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

“(b) shall ensure that the performance of stevedoring operations by waterside workers engaged by him is, at all times, properly supervised; and”; and

(b) by omitting from sub-section (2.) the words “One hundred pounds and not more than One thousand pounds” and inserting in their stead the words “Two hundred and fifty pounds and not more than Two thousand five hundred pounds”.

Cancellation or
suspension of
registration of
waterside
workers, &c.

9. Section 36 of the Principal Act is amended by omitting from sub-paragraph (ii) of paragraph (f) of sub-section (1.) the words “having regard to the circumstances in which it was committed” and inserting in their stead the words “having regard to all the circumstances”.

10. After section 36 of the Principal Act the following section is inserted:—

“ 36A.—(1.) A reference in this section to an inquiry shall be read as a reference to an inquiry under the last preceding section. Procedure in relation to inquiry under section 36.

“ (2.) The procedure in relation to an inquiry is within the discretion of the Authority.

“ (3.) In making an inquiry the Authority is not bound to act in a formal manner but may inform itself on any matter in such manner as it thinks just.

“ (4.) Subject to sub-section (7.) of this section, in making an inquiry the Authority shall give any waterside worker who appears to the Authority to be directly concerned an opportunity of presenting to the Authority a statement of any facts and contentions material to the inquiry but the Authority may require any such statement to be submitted in writing.

“ (5.) In giving a waterside worker an opportunity of presenting to the Authority a statement for the purposes of an inquiry, the Authority shall serve on the waterside worker a notice setting out the matters to be inquired into, the fact that he may present the statement and—

(a) in the case of an oral statement—the person to whom, and the place, date and time at which, the statement is to be made; and

(b) in the case of a written statement—the address to which, and the period within which, the statement is to be delivered.

“ (6.) The Authority may make one inquiry into matters concerning any number of waterside workers if it appears to the Authority that those matters arose, or may have arisen, out of acts or things done or omitted to be done on the same day by those waterside workers, or by a substantial number of those waterside workers, in concert, or at the direction or instigation of a Union, a branch of a Union or an officer or member of a Union or of a branch of a Union.

“ (7.) Where, for the purposes of an inquiry referred to in the last preceding sub-section, it appears to the Authority that a substantial number of waterside workers is concerned, the Authority may, if it considers that by so doing it will become apprised of all the facts and contentions material to the interests of those waterside workers in relation to the inquiry, give an opportunity of presenting statements as to those facts and contentions to some only of those waterside workers, being persons whose statements would, in the opinion of the Authority, present all those facts and contentions.

“(8.) Where, for the purposes of an inquiry, the Authority is required by the preceding provisions of this section to serve on a substantial number of waterside workers notices setting out any matters, it is a sufficient compliance with that requirement if the Authority notifies the waterside workers concerned of those matters by any of the means by which those waterside workers would usually be notified of their allotment to stevedoring operations.

“(9.) The Authority is not authorized to cancel, after an inquiry, the registration of a waterside worker unless the Authority gave the waterside worker an opportunity of presenting to the Authority an oral or written statement under sub-section (4.) of this section.

“(10.) The Authority is not authorized to suspend, after an inquiry, the registration, or the entitlement to attendance money, of a waterside worker unless—

- (a) the Authority gave the waterside worker an opportunity of presenting to the Authority an oral or written statement under sub-section (4.) of this section; or
- (b) the Authority exercised its powers under sub-section (7.) of this section in relation to the inquiry.”.

Appeals.

11. Section 37 of the Principal Act is amended—

- (a) by omitting paragraphs (a) and (b) of sub-section (1.) and inserting in their stead the following paragraphs:—

“(a) the registration of a person as a waterside worker has been cancelled, or suspended until the expiration of a period exceeding seven days or until the expiration of a number of working days exceeding seven, under section thirty-six of this Act on a ground other than the ground referred to in paragraph (a) of sub-section (1.) of section thirty-seven B of this Act; or

“(b) the entitlement of a registered waterside worker to attendance money has been suspended under section thirty-six of this Act in respect of a number of days exceeding seven.”;

- (b) by omitting sub-section (2.) and inserting in its stead the following sub-section:—

“(2.) Upon such an appeal—

- (a) if the appellant satisfies the Commission that the cancellation or suspension should be set aside or varied—the Commission shall

set aside or vary the cancellation or suspension accordingly and, where it sets aside a cancellation, it may, if it thinks fit, substitute for the cancellation a period of suspension of registration; and

- (b) if the appellant does not so satisfy the Commission—the Commission shall confirm the cancellation or suspension.”;
- (c) by inserting in paragraph (b) of sub-section (3.), after the word “suspended”, the words “until the expiration of a period exceeding seven days or until the expiration of a number of working days exceeding seven”; and
- (d) by adding at the end of sub-section (5.) the words “as provided by sub-section (2.) of this section”.

12. After section 41 of the Principal Act the following section is inserted:—

“41A. A reference in any of the last three preceding sections to stevedoring operations shall be read as not including a reference to stevedoring operations that are performed on goods that are in the course of trade or commerce among the States or for the purpose of the carriage of goods in the course of such trade or commerce.”.

Certain provisions not to apply in relation to inter-State trade and commerce.

13. Section 43 of the Principal Act is amended by omitting from sub-section (1.) the words “persons registered as waterside workers by virtue of sub-section (5.) of section thirty-one of this Act” and inserting in their stead the words “persons who become registered as waterside workers after the commencement of the *Stevedoring Industry Act 1965*”.

Union rules not to discriminate.

14. Section 44 of the Principal Act is amended—

- (a) by omitting from paragraph (a) of sub-section (1.) the words “by virtue of sub-section (5.) of section thirty-one of this Act”; and
- (b) by omitting from sub-section (3.) the words—

“Penalty: Where the offence is committed by a body corporate, Five hundred pounds; in any other case, Fifty pounds.”

and inserting in their stead the words—

“Penalty: Where the offence is committed by a body corporate, One thousand pounds; in any other case, One hundred pounds or imprisonment for six months.”.

Boycott of waterside workers &c.

PART III.—PROVISIONS RELATING TO THE WATERSIDE
WORKERS' FEDERATION OF AUSTRALIA.

Division 1.—Preliminary.

Interpretation.

15. In this Part—

- (a) the expressions “award”, “the Commission in Presidential Session” and “the Registrar” have the same respective meanings as they have in the *Conciliation and Arbitration Act 1904–1965*;
- (b) the expression “the Federation” means the Waterside Workers' Federation of Australia; and
- (c) expressions defined by section 7 of the *Stevedoring Industry Act 1956–1965* have, unless the contrary intention appears, the same respective meanings as they have in that Act.

Division 2.—Declarations by Commonwealth Conciliation and Arbitration Commission.

Application to
Commission
for declaration
in relation to
Federation.

16.—(1.) The Minister may apply to the Commission for a declaration under this section.

(2.) Upon such an application, if the Commission is satisfied that the conduct of the Federation (whether in respect of its continued breach or non-observance of any award or of an order by the Authority in force under the *Stevedoring Industry Act 1956–1965* or its continued failure to ensure that its members comply with and observe such an award or order or in any other respect), or the conduct of a substantial number of the members of the Federation (whether in respect of their continued breach or non-observance of such an award or order or in any other respect), has—

- (a) prevented or hindered the achievement of an object of the *Conciliation and Arbitration Act 1904–1965*; or
- (b) prevented, hindered or interfered with the carriage of goods or the conveyance of passengers—
 - (i) in the course of trade or commerce with other countries or among the States;
 - (ii) in the course of trade or commerce between a State and a Territory of the Commonwealth; or
 - (iii) in a Territory of the Commonwealth,

the Commission shall make a declaration to that effect.

(3.) If the Commission is not so satisfied, the Commission shall not make the declaration.

17.—(1.) The powers of the Commission under the last preceding section are exercisable by the Commission in Presidential Session and not otherwise. Powers and procedure of Commission.

(2.) The provisions of the *Conciliation and Arbitration Act* 1904–1965, and of the regulations in force under that Act, relating to the procedure and powers of the Commission in relation to proceedings before the Commission under that Act apply, so far as they are capable of application, to and in relation to an application to the Commission under the last preceding section.

(3.) On an application under the last preceding section—

- (a) the Minister may be represented by counsel or solicitor; and
- (b) the Commission shall give the Federation an opportunity of being heard.

Division 3.—Cancellation of Registration of Waterside Workers' Federation of Australia.

18.—(1.) Where the Commission has made a declaration under section 16 of this Act, the Governor-General may, within six months after the declaration was made, by Proclamation, declare that this section applies in relation to the Federation. Declaration by Governor-General in relation to Federation.

(2.) Where a declaration is made under this section—

- (a) the registration of the Federation under the *Conciliation and Arbitration Act* 1904–1965 is thereupon, by force of this section, cancelled; and
- (b) notwithstanding anything contained in that Act, the Federation is not to be again registered, or, if again registered, to remain registered, as an organization under that Act unless such conditions (including conditions specifying provisions that are, or are not, to be included in the rules of the Federation) as the Governor-General, by instrument in writing published in the *Gazette*, determines are complied with or continue to be complied with, as the case may be.

19.—(1.) Where the registration of the Federation under the *Conciliation and Arbitration Act* 1904–1965 is cancelled under section 143 of that Act or by the operation of the last preceding section, the succeeding provisions of this section have effect. Effect of cancellation of registration of Federation.

(2.) Sub-section (5.) of section 143 of the *Conciliation and Arbitration Act* 1904–1965 does not apply in relation to the Federation and its members but sub-sections (4.) and (6.) of that section apply.

(3.) Any award that applies to the Federation and its members ceases to have any force or effect in relation to the Federation and its members.

(4.) Except as otherwise provided by—

(a) an award that is made on the application of the Authority, of a prescribed representative of employers or of an organization of employees in relation to which a declaration has been made under section 21 of this Act; or

(b) an order of the Authority that is made under the *Stevedoring Industry Act 1956–1965*,

the terms and conditions of employment of registered waterside workers who are engaged, and the rights in respect of attendance money of registered waterside workers who are available for engagement, in stevedoring operations at a port that are performed—

(c) on goods that are in the course of trade or commerce with other countries or among the States or for the purpose of the carriage of goods in the course of such trade or commerce;

(d) on goods that are in the course of trade or commerce between a State and a Territory of the Commonwealth or for the purpose of the carriage of goods in the course of such trade or commerce; or

(e) in a Territory of the Commonwealth,

shall be the same as the terms and conditions of employment (other than any terms and conditions that confer rights or benefits in relation to that employment on the Federation or its officers), and as the rights in respect of attendance money, that would, but for the cancellation of the registration of the Federation, be applicable in relation to members of the Federation engaged or available for engagement in such operations at that port, and the payment of attendance money, or of other amounts payable by the Authority, to waterside workers in accordance with those terms and conditions or rights shall be deemed, for the purposes of the *Stevedoring Industry Act 1956–1965*, to be a function of the Authority.

(5.) The Federation ceases to be a Union for the purposes of section 18 of the *Stevedoring Industry Act 1956–1965*.

(6.) The Federation ceases, for the purposes of the *Stevedoring Industry Act 1956–1965*, to be the Union in relation to any port in relation to which the Federation was the Union immediately before its registration was cancelled.

(7.) The members of the Federation shall not be represented in any proceeding before the Court or the Commission, or in connexion with any inquiry by the Authority, by an officer or member of the Federation.

20.—(1.) Upon the cancellation, under section 143 of the *Conciliation and Arbitration Act 1904–1965* or by the operation of section 18 of this Act, of the registration of the Federation under the *Conciliation and Arbitration Act 1904–1965*—

Termination of
leases, &c.

- (a) any lease or tenancy of any land that the Federation, or an officer or member of the Federation in his capacity as such an officer or member, has from the Commonwealth or from the Authority; and
- (b) any subsisting right or licence to occupy or use any land, building or wharf, or any part of any building or wharf, that has been granted by the Commonwealth or by the Authority to the Federation, or to an officer or member of the Federation in his capacity as such an officer or member,

is, by force of this section, terminated.

(2.) Where the operation of the last preceding sub-section results in the acquisition of any property from the Federation or from an officer or member of the Federation, the Commonwealth is liable to pay to the Federation or to that officer or member such compensation as is determined by agreement between the Commonwealth and the Federation, or between the Commonwealth and that officer or member, as the case may be, or, in the absence of agreement, by action brought by the Federation or that officer or member against the Commonwealth in a court of competent jurisdiction.

(3.) For the purposes of the last preceding sub-section, the following courts are courts of competent jurisdiction:—

- (a) the High Court;
- (b) the Supreme Court of the State or Territory of the Commonwealth in which the land, building or wharf is situated; and
- (c) a County Court, District Court, Local Court or Magistrates Court of a State or Territory of the Commonwealth, presided over by a Judge or by a Chief, Police, Stipendiary, Resident or Special Magistrate, being a court that has jurisdiction—
 - (i) in actions for the recovery of debts up to an amount not less than the amount of compensation claimed; and
 - (ii) in respect of the locality in which the land, building or wharf is situated.

(4.) The courts of the States referred to in the last preceding sub-section are invested with federal jurisdiction, and jurisdiction is conferred on the courts of the Territories of the Commonwealth referred to in that sub-section, to the extent necessary for the purposes of this section.

(5.) The jurisdiction with which a court of a State is invested by the last preceding sub-section is subject to the conditions and restrictions specified in paragraphs (a), (b) and (c) of sub-section (2.) of section 39 of the *Judiciary Act* 1903–1960.

Declaration by Governor-General in relation to organization of employees in relation to a port.

21.—(1.) Where the registration of the Federation under the *Conciliation and Arbitration Act* 1904–1965 has been cancelled under section 143 of that Act or by the operation of section 18 of this Act, the Governor-General may, by Proclamation, declare that this section applies in relation to an organization of employees specified in the Proclamation (whether or not the organization is registered as an organization of employees under the *Conciliation and Arbitration Act* 1904–1965) in relation to a port so specified.

(2.) Where a declaration is made under this section in relation to an organization of employees in relation to a port—

(a) that organization shall, for the purposes of the *Stevedoring Industry Act* 1956–1965—

(i) be deemed to be the Union in relation to that port; and

(ii) if that organization is not a Union for the purposes of that Act—be deemed to be a Union for those purposes; and

(b) if that organization is not registered as an organization of employees under the *Conciliation and Arbitration Act* 1904–1965 but the Minister is satisfied that that organization complies with the conditions prescribed by or under that Act for registration of organizations of employees under that Act—the Minister may direct the Registrar to register that organization under that Act in connexion with the stevedoring industry and the Registrar shall forthwith comply with the direction.

Division 4.—General.

22. Where—

(a) the exercise of a power, or the performance of a function or duty, by the Authority under the *Stevedoring Industry Act* 1956–1965 depends upon—

(i) the Authority consulting with, or with representatives of, the Union, or a branch of the Union, in relation to a port;

Exercise of powers by Authority where there is no organization of employees that is the Union in relation to a port.

- (ii) the Authority giving notice to, or serving a document upon, the Union, or a branch of the Union, in relation to a port; or
 - (iii) a person being a member, or satisfying the Authority that he has applied for membership, of the Union in relation to a port; and
- (b) by virtue of the operation of this Part, there is not at a particular time an organization of employees that is the Union in relation to that port for the purposes of that Act,

the Authority may exercise that power, or perform that function or duty, at that time in relation to that port as if the Authority were not required to have such a consultation, give such a notice or serve such a document, or the person were not required to be such a member or to satisfy the Authority of his having applied for such membership, as the case may be.
