

# Public Service Arbitration

No. 10 of 1969

An Act relating to the Settlement of Matters arising  
out of Employment in the Public Service.

[Assented to 23 April 1969]

**B**E 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 1969*.

(2.) The *Public Service Arbitration Act 1920–1968\** 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 1920–1969*.

Commence-  
ment.

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

Definitions.

3. Section 3 of the Principal Act is amended—

(a) by inserting before the definition of “ Conditions of employment ” the following definitions:—

“ ‘ Commissioner ’ means a Commissioner (including the Senior Commissioner) holding office under the *Conciliation and Arbitration Act 1904–1969*;

‘ Conciliator ’ means a Conciliator holding office under the *Conciliation and Arbitration Act 1904–1969*;”;

(b) by inserting after the definition of “ Conditions of employment ” the following definition:—

“ ‘ Deputy Arbitrator ’ means a Deputy Public Service Arbitrator appointed in pursuance of this Act;”.

4.—(1.) Sections 6 and 7 of the Principal Act are repealed and the following sections inserted in their stead:—

The Arbitrator.

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

\* 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; Nos. 2 and 18, 1955; Nos. 51 and 104, 1956; No. 39, 1957; No. 41, 1959; No. 17, 1960; No. 115, 1964; No. 93, 1966; and No. 120, 1968.

“ 7. For the purposes of this Act, there shall be such Deputy Public Service Arbitrators as the Governor-General appoints. Deputy Arbitrators.

“ 7A.—(1.) Subject to this Act, a person appointed as the Arbitrator holds office for a period of seven years but is eligible for re-appointment. Period of appointment of the Arbitrator.

“ (2.) A person who has attained the age of sixty-five years shall not be appointed or re-appointed as the Arbitrator.

“ (3.) Subject to this Act, if a person who is appointed or re-appointed as the Arbitrator is at the time more than fifty-eight years of age, he holds office for the period that expires upon his attaining the age of sixty-five years.

“ 7B.—(1.) Subject to this Act, a person appointed as a Deputy Arbitrator holds office for such period, not exceeding seven years, as is specified in the instrument of his appointment but is eligible for re-appointment. Period of appointment of a Deputy Arbitrator.

“ (2.) A person who has attained the age of sixty-five years shall not be appointed or re-appointed as a Deputy Arbitrator.

“ (3.) A person shall not be appointed or re-appointed as a Deputy Arbitrator for a period that extends beyond the date on which he will attain the age of sixty-five years.

“ 7C.—(1.) The Arbitrator shall be paid a salary at the rate of Nineteen thousand five hundred dollars per annum and an annual allowance of One thousand dollars and a Deputy Arbitrator shall be paid a salary at the rate of Eleven thousand eight hundred and fifty dollars per annum, and the Consolidated Revenue Fund is appropriated accordingly. Remuneration of Arbitrator and Deputy Arbitrators.

“ (2.) A person appointed as the Arbitrator or as a Deputy Arbitrator shall be paid such allowances in respect of travelling expenses as the Minister determines.

“ (3.) If the Arbitrator or a Deputy Arbitrator is a Commissioner or a Conciliator, he is not entitled to receive any salary or allowances in respect of his office of Commissioner or Conciliator, but his holding of that office is not otherwise affected by reason of his holding office as the Arbitrator or a Deputy Arbitrator.

“ 7D.—(1.) If a person appointed as the Arbitrator or a Deputy Arbitrator was, immediately before his appointment— Preservation of rights of Commonwealth public servants.

(a) a person to whom sub-section (1.) of section twelve of the *Conciliation and Arbitration Act 1904–1969* (including that sub-section as applying by virtue of section twenty of that Act) applied; or

(b) an officer of the Public Service of the Commonwealth,

he retains his existing and accruing rights and, for the purpose of determining those rights, his service as the Arbitrator or a Deputy Arbitrator shall be taken into account as if it were service in the Public Service of the Commonwealth.

“ (2.) If a person appointed as the Arbitrator—

(a) was, immediately before his appointment, a Deputy Arbitrator; and

(b) was, immediately before his appointment as a Deputy Arbitrator—

(i) a person to whom sub-section (1.) of section twelve of the *Conciliation and Arbitration Act 1904–1969* (including that sub-section as applying by virtue of section twenty of that Act) applied; or

(ii) an officer of the Public Service of the Commonwealth,

he retains his existing and accruing rights and, for the purpose of determining those rights, his service as the Arbitrator shall be taken into account as if it were service in the Public Service of the Commonwealth.

Preservation  
of rights of  
State  
public servants.

“ 7E.—(1.) If a person appointed as the Arbitrator or a Deputy Arbitrator was, immediately before his appointment—

(a) a person to whom sub-section (2.) of section twelve of the *Conciliation and Arbitration Act 1904–1969* (including that sub-section as applying by virtue of section twenty of that Act) applied; or

(b) an officer of the Public Service of a State,

he retains his existing and accruing rights other than rights in respect of superannuation.

“ (2.) If a person appointed as the Arbitrator—

(a) was, immediately before his appointment, a Deputy Arbitrator; and

(b) was, immediately before his appointment as a Deputy Arbitrator—

(i) a person to whom sub-section (2.) of section twelve of the *Conciliation and Arbitration Act 1904–1969* (including that sub-section as applying by virtue of section twenty of that Act) applied; or

(ii) an officer of the Public Service of a State,

he retains his existing and accruing rights other than rights in respect of superannuation.”

(2.) The person holding office as the Arbitrator under the Principal Act immediately before the commencement of this Act continues to hold office as the Arbitrator in accordance with the instrument of his appointment as if he had been appointed as the Arbitrator under the Principal Act as amended by this Act.

5. Section 8 of the Principal Act is amended—

- (a) by inserting in sub-sections (1.) and (2.), after the word “ Arbitra-  
tor ”, the words “ or a Deputy Arbitrator ”; and
- (b) by inserting in sub-section (4.), after the word “ Arbitrator ”, the  
words “ or Deputy Arbitrator ”.

Removal or  
suspension of  
Arbitrator or  
Deputy  
Arbitrator.

6. Sections 9 and 10 of the Principal Act are repealed and the following sections inserted in their stead:—

“ 9.—(1.) If a person appointed as the Arbitrator or as a Deputy Arbitrator—

Vacation of  
office.

- (a) engages in paid employment outside the duties of his office;
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (c) becomes permanently incapable of performing his duties; or
- (d) except on leave granted by the Minister, absents himself from duty for fourteen consecutive days or for twenty-eight days in any twelve months,

the Governor-General may terminate his appointment by notice in the *Gazette*.

“ (2.) A person appointed as the Arbitrator or as a Deputy Arbitrator may resign his office by writing under his hand delivered to the Governor-General.

“ 10.—(1.) Where the Arbitrator is, or is expected to be, absent from duty or is suspended from office, or where there is a vacancy in the office of the Arbitrator, the Governor-General may appoint a person, upon such terms and conditions as the Governor-General determines, to act in the office of the Arbitrator during the absence or suspension or until a person is appointed as the Arbitrator, as the case may be.

Appointment of person to act as Arbitrator.

“ (2.) The Governor-General may at any time terminate an appointment under this section.

“ (3.) A person appointed under this section may resign his appointment by writing under his hand delivered to the Governor-General.

“ (4.) A person appointed under this section has all the powers and functions conferred on, and shall perform all the duties imposed on, the Arbitrator by this Act.

Oath of office.

“ 10A. A person appointed to, or to act in, an office under this Act shall, before proceeding to discharge the duties of that office, take before a Judge of the Commonwealth Industrial Court or a Judge of the Supreme Court of a State or Territory of the Commonwealth an oath or affirmation in accordance with the form in the Schedule to this Act.

Protection and immunity of Arbitrator and Deputy Arbitrator.

“ 10B. A person appointed to, or to act in, an office under this Act has, in the performance of the functions and duties of that office, the same protection and immunity as a Judge of the Commonwealth Industrial Court.”.

Limitation on submission of claims to Commission.

7. Section 11A of the Principal Act is amended by inserting in paragraph (b) of sub-section (2.), after the word “ Arbitrator ”, the words “ or a Deputy Arbitrator ”.

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

Arbitrator may refer claim, application or matter to Deputy Arbitrator.

“ 12A.—(1.) The Arbitrator may refer to a Deputy Arbitrator a claim, application or matter submitted to the Arbitrator under the last preceding section.

“ (2.) Subject to the next succeeding sub-section, a Deputy Arbitrator to whom a claim, application or matter has been so referred shall hear and determine that claim, application or matter in the manner provided by this Act for the hearing and determination of claims, applications or matters by the Arbitrator.

“ (3.) Before determining a claim, application or matter referred to him under this section, a Deputy Arbitrator shall consult with the Arbitrator as to the determination that he proposes to make and, if the Arbitrator does not concur with the proposed determination, the Arbitrator shall withdraw the reference and shall, after such further hearing (if any) as he thinks necessary, himself determine the claim, application or matter.”.

Arbitrator and Deputy Arbitrator to act according to equity and good conscience.

9. Section 13 of the Principal Act is amended—

- (a) by inserting in sub-section (1.), after the word “ Arbitrator ”, the words “ or a Deputy Arbitrator ”;
- (b) by inserting in sub-section (2.), after the word “ Arbitrator ” (first occurring), the words “ or a Deputy Arbitrator ”; and
- (c) by inserting in sub-section (2.), after the word “ Arbitrator ” (last occurring), the words “ or the Deputy Arbitrator ”.

Powers of Arbitrator and Deputy Arbitrator.

10. Section 14 of the Principal Act is amended—

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

“ (da) to make a determination affecting a person who, or an organization that, has not been represented in the proceedings but has been given an opportunity of being so represented;” and

(b) by inserting after sub-section (1.) the following sub-section:—

“(1A.) Subject to sub-section (3.) of section twelve A of this Act, a Deputy Arbitrator has, in relation to a claim, application or matter that he is hearing under this Act, the powers conferred on the Arbitrator by the last preceding sub-section other than the power referred to in paragraph (e) of that sub-section.”.

11. Section 14A of the Principal Act is amended—

- (a) by inserting after the word “Arbitrator” (first occurring) the words “, or a Deputy Arbitrator acting with the concurrence of the Arbitrator,”;
- (b) by inserting after the word “Arbitrator” (second occurring) the words “ or the Deputy Arbitrator ”; and
- (c) by inserting in paragraph (e), after the word “Arbitrator”, the words “ or the Deputy Arbitrator ”.

Arbitrator or Deputy Arbitrator may refuse to hear and determine certain claims, &c.

12. After section 15 of the Principal Act the following section is inserted:—

“ 15AA.—(1.) If the hearing of a matter has been commenced before the Arbitrator and, before the matter has been determined, the Arbitrator has become unable to continue to hear the matter, whether by reason of illness, suspension from office or otherwise, or has ceased to be the Arbitrator, whether by death or otherwise, the matter, or so much of the matter as has not been determined, may be heard and determined—

Continuation of hearing of matters.

- (a) where the Arbitrator has become unable to continue to hear the matter—
- (i) by a person appointed to act in the office of the Arbitrator;
  - (ii) except in a case where the Arbitrator has been suspended from office—by a Deputy Arbitrator nominated by the Arbitrator; or
  - (iii) by a Deputy Arbitrator nominated by a person appointed to act in the office of the Arbitrator; or
- (b) where the Arbitrator has ceased to be the Arbitrator—
- (i) by a person subsequently appointed as the Arbitrator;
  - (ii) by a person appointed to act in the office of the Arbitrator; or
  - (iii) by a Deputy Arbitrator nominated by a person referred to in either of the last two preceding sub-paragraphs.

“(2.) If the hearing of a matter has been commenced before a Deputy Arbitrator and, before the matter has been determined, the Deputy Arbitrator has become unable to continue to hear the matter, whether by reason of illness, suspension from office or otherwise, or has

ceased to be a Deputy Arbitrator, whether by death or otherwise, the Arbitrator or another Deputy Arbitrator nominated by the Arbitrator may hear and determine the matter, or so much of the matter as has not been determined.

“(3.) A person who continues the hearing of a matter or a part of a matter in pursuance of this section shall have regard to the evidence given, the arguments adduced and any order or determination made during the previous hearing.

“(4.) Sub-section (3.) of section twelve A of this Act applies in relation to the determination under this section by a Deputy Arbitrator of a matter or part of a matter to which section twelve of this Act applies as if the matter or part of a matter had been referred to that Deputy Arbitrator under sub-section (1.) of section twelve A of this Act.

“(5.) In this section, ‘matter’ means a claim or application under this Act or a matter forming part of or arising out of such a claim or application.”.

Reference  
to the  
Commission.

**13. Section 15A of the Principal Act is amended—**

(a) by omitting sub-section (7.) and inserting in its stead the following sub-sections:—

“(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 or, if the claim, application or matter had been heard by a Deputy Arbitrator, to the Arbitrator or to that Deputy 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 or, if the claim, application or matter had been heard by a Deputy Arbitrator, to the Arbitrator or to that Deputy Arbitrator, and, in that case—

(i) the Arbitrator or Deputy 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 or Deputy Arbitrator.

“(8.) In relation to the determination under the last preceding sub-section of a claim, application or matter to which section twelve of this Act applies—

(a) where the claim, application or matter was referred back to the Arbitrator—section twelve A of this Act applies; and

(b) where the claim, application or matter was referred back to a Deputy Arbitrator—sub-section (3.) of section twelve A of this Act applies as if the claim, application or matter had been referred to that Deputy Arbitrator under sub-section (1.) of section twelve A of this Act.”; and

(b) by omitting from sub-sections (9.) and (10.) the words “ the last preceding section ” and inserting in their stead the words “ section fifteen of this Act ”.

**14. Section 15C of the Principal Act is amended—**

Appeals to  
Commission.

(a) by adding at the end of sub-section (2.) the words “ or a Deputy Arbitrator ”;

(b) by inserting in paragraph (b) of sub-section (6.), after the word “Arbitrator ”, the words “ or, if the appeal is against a determination of a Deputy Arbitrator, the Arbitrator or that Deputy Arbitrator ”;

(c) by inserting in sub-section (7.), after the word “ Arbitrator ” (first occurring), the words “ or a Deputy Arbitrator ”; and

(d) by inserting in sub-section (7.), after the word “ Arbitrator ” (last occurring), the words “ or Deputy Arbitrator ”.

**15. Section 16 of the Principal Act is amended by inserting after the word “ Arbitrator ” the words “ or a Deputy Arbitrator ”.**

Officers to  
comply with  
determinations.

**16. Section 17 of the Principal Act is amended—**

Determination  
not limited  
to claim.

(a) by inserting after the word “ Arbitrator ” (first occurring) the words “, or a Deputy Arbitrator acting with the concurrence of the Arbitrator,”; and

(b) by inserting after the word “ Arbitrator ” (last occurring) the words “ or the Deputy Arbitrator ”.

**17. Section 18 of the Principal Act is amended by adding at the end thereof the words “ other than proceedings in respect of offences against this Act.”.**

Costs.

**18. Section 20 of the Principal Act is amended by inserting after the word “ Arbitrator ” the words “ or a Deputy Arbitrator ”.**

Determination  
not to be  
challenged.

**19. After section 20 of the Principal Act the following section is inserted:—**

“ 20A. References in the next two succeeding sections to the Arbitrator shall be read as including references to a Deputy Arbitrator.”.

References to  
Arbitrator to  
include Deputy  
Arbitrator.



Determinations  
to be laid  
before  
Parliament.

20. Section 21 of the Principal Act is amended by omitting sub-section (1.) and inserting in its stead the following sub-section:—

“(1.) Subject to this Act, a determination of the Arbitrator shall come into operation upon such date as the Arbitrator specifies in the determination.”.

Determinations  
inconsistent  
with  
Common-  
wealth law.

21. Section 22 of the Principal Act is amended—

(a) by omitting from sub-section (5.) the words “ the determination shall not come into operation ” and inserting in their stead the following word and paragraphs:—

“ then—

(a) if the determination has not come into operation—the determination shall not come into operation; or

(b) if the determination has come into operation—the determination shall not have any force or effect from and including the date on which the resolution was passed ”;

(b) by omitting from paragraph (a) of sub-section (6.) the words “ in that event, that part of the determination shall not come into operation; and ” and inserting in their stead the following words and sub-paragraphs:—

“ in that event—

(i) if that part of the determination has not come into operation—that part of the determination shall not come into operation; or

(ii) if that part of the determination has come into operation—that part of the determination shall not have any force or effect from and including the date on which the resolution was passed; and ”;

(c) by omitting from paragraph (b) of sub-section (6.) the words “ in that event, that part of the determination shall not come into operation ” and inserting in their stead the following words and sub-paragraphs:—

“ in that event—

(i) if that part of the determination has not come into operation—that part of the determination shall not come into operation; or

(ii) if that part of the determination has come into operation—that part of the determination shall not have any force or effect from and including the date on which the resolution was passed ”; and

(d) by omitting from sub-section (7.) the words “ a determination, or part of a determination, shall, from the expiration of the period of thirty days during which the determination, or part of

the determination, may be disapproved, or from the expiration of such longer period as is specified in the determination, have full force and effect” and inserting in their stead the words “a determination or part of a determination that has come into operation has full force and effect”.

22. After section 22 of the Principal Act the following section is inserted:—

“ 22A.—(1.) A person shall not—

Offences.

- (a) wilfully insult or disturb the Arbitrator or a Deputy Arbitrator when exercising his powers or functions under this Act;
- (b) interrupt any proceedings before the Arbitrator or a Deputy Arbitrator;
- (c) use insulting language towards the Arbitrator or a Deputy Arbitrator; or
- (d) by writing or speech use words calculated—
  - (i) to influence improperly the Arbitrator or a Deputy Arbitrator or a witness in proceedings before the Arbitrator or a Deputy Arbitrator; or
  - (ii) to bring the Arbitrator or a Deputy Arbitrator into disrepute.

Penalty: Two hundred dollars or imprisonment for twelve months, or both.

“(2.) A reference in the last preceding sub-section to the Arbitrator includes a reference to a person acting in the office of the Arbitrator and to a person to whom a claim, application or matter has been referred under this Act for investigation and report.”.

23. After section 23 of the Principal Act the following Schedule is added:—

“ THE SCHEDULE

Section 10A.

OATH OR AFFIRMATION

I, \_\_\_\_\_, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law, that I will well and truly serve Her in the Office of (*insert name of office*) and that I will faithfully and impartially perform the duties of that office. So help me God!

Or, I, \_\_\_\_\_, do solemnly and sincerely promise and declare that (*as above, omitting the words ‘So help me God’*).”.