

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(Presented pursuant to leave granted and read 1^o, 3 October 1984)

(SENATOR JACK EVANS)

A BILL

FOR

**An Act for the prevention and settlement of disputes concerning
the operations of contract carriers and bailee drivers**

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title

5 **1.** This Act may be cited as the *Arbitration (Contract Carriers and Bailee Drivers) Act 1984*.

Commencement

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

Interpretation

10 **3. (1)** In this Act, unless the contrary intention appears—

“association” means a trade or other union, a branch of a union or an association or body representative of, or for furthering or protecting

the interests of, principal contractors, bailors of motor vehicles, contract carriers or bailee drivers;

“bailee driver” means a person who drives a motor vehicle bailed to him under a contract of bailment;

“bailor”, in relation to a motor vehicle, means a corporation by which the vehicle is bailed under a contract of bailment; 5

“carrier” means a person who undertakes to transport goods for another person under a contract of carriage;

“Commission” means the Australian Conciliation and Arbitration Commission established under the *Conciliation and Arbitration Act 1904*; 10

“Commissioner” means a Commissioner appointed under the *Conciliation and Arbitration Act 1904*;

“corporation” means a body corporate that—

(a) is a foreign corporation; 15

(b) is a trading corporation formed within the limits of Australia or is a financial corporation so formed;

(c) is incorporated in a Territory; or

(d) is the holding company of a body corporate of a kind referred to in paragraph (a), (b) or (c); 20

“Court” means the Federal Court of Australia;

“determination” means a determination made by a Tribunal under section 25 or 26, and includes a determination made by the Tribunal varying such a determination;

“industrial agreement” means an agreement entered into in accordance with section 8; 25

“President” means the President of the Commission, and includes an Acting President of the Commission;

“Presiding Member”, in relation to a Tribunal, means the Commissioner who is a member of the Tribunal; 30

“principal contractor” means a corporation that enters into a contract (not being a contract of employment) with another person for the transportation of goods by that other person;

“registered organization” means an association registered under section 4;

“registered organization of bailee drivers” means an association registered under section 4, being an association in respect of which paragraph 4 (c) is complied with; 35

“registered organization of contract carriers” means an association registered under section 4, being an association in respect of which paragraph 4 (d) is complied with; 40

“registered organization of employing contractors” means an association registered under section 4, being an association in respect of which paragraph 4 (a) or (b) is complied with;

“Registrar” means the Industrial Registrar or Deputy Industrial Registrar appointed under the *Conciliation and Arbitration Act 1904*; and

“Tribunal” means a Contracts Disputes Tribunal established under section 16.

5 (2) Subject to sub-section (3), a reference in this Act to a contract of carriage shall be read as a reference to a contract (whether in writing or oral or partly in writing and partly oral and whether made before or after the commencement of this Act) for the transportation of goods of a particular kind by motor vehicle by a carrier who—

10 (a) is carrying on a business of transporting goods of that kind by motor vehicle; and

(b) uses not more than 3 motor vehicles for the transportation of goods of that kind in the course of carrying on that business.

15 (3) A reference in this Act to a contract of carriage shall be read as not including—

(a) a contract of carriage under the terms of which the carrier is a common carrier; or

(b) a contract of carriage for the transportation of goods included in a prescribed class of goods.

20 (4) In this Act, a reference to a contract of bailment of a vehicle shall be read as a reference to a contract (not being a hire-purchase agreement) under which a vehicle is bailed to a person to enable him to carry on a business of transporting goods.

25 (5) For the purposes of this Act, the question whether a body corporate is the holding company of another company shall be determined in the same manner as that question is required to be determined by section 7 of the *Companies Act 1981*.

Registration of organizations

4. (1) The Registrar may, upon application made as prescribed, register—

30 (a) an association as a registered organization of employing contractors representing bailors of vehicles if, throughout the period of 6 months that immediately preceded the making of the application, the contracts of bailment of vehicles entered into by the respective members of the association included contracts with not less than 25 different bailee drivers;

35 (b) an association as a registered organization of employing contractors representing principal contractors if, throughout the period of 6 months that immediately preceded the making of the application, the contracts of carriage entered into by the respective members of the association included contracts with not less than 25 different carriers;

40 (c) an association as a registered organization of bailee drivers if members of the association include not less than 50 different drivers of vehicles who are bailees of those vehicles; and

(d) an association as a registered organization of contract carriers if members of the association include not less than 50 different carriers engaged in the carriage of goods under contracts of carriage.

(2) An association may be registered as a registered organization of employing contractors in relation to contracts of bailment of vehicles and also as a registered organization of employing contractors in relation to contracts of carriage. 5

(3) The Registrar shall cause notice of an application made under sub-section (1) to be published as prescribed.

(4) Any person may, by notice in writing served on the Registrar within the prescribed period, object to the granting of an application made under sub-section (1) on the ground that the applicant does not genuinely represent the interest of the— 10

(a) bailors under contracts of bailment of vehicles;

(b) principal contractors under contracts of carriage; 15

(c) bailee drivers of vehicles; or

(d) carriers engaged in the carriage of goods under contracts of carriage, as the case may be.

(5) Where an objection to the granting of an application under sub-section (1) is duly served on the Registrar, the Registrar shall fix a date, time and place for the hearing of the application and notify the applicant and objector of the date, time and place so fixed. 20

(6) Where no objection to the granting of an application under sub-section (1) is duly served on the Registrar but the Registrar is of the opinion that objection to the granting of the application might be sustained on a ground specified in sub-section (4), the Registrar shall fix a date, time and place for the hearing of the application and notify the applicant of the date, time and place so fixed. 25

(7) Upon the hearing of an application under sub-section (1), the Registrar shall, after affording the applicant and the objector (if any) opportunities to present evidence and make submissions— 30

(a) if he is satisfied that an objection to the granting of the application should be sustained—refuse the application; or

(b) in any other case—grant the application.

(8) Where the time for objecting to the granting of an application under sub-section (1) has expired but the Registrar is not required to fix a date, time and place for the hearing of an application, the Registrar shall grant the application. 35

Certificate of registration

5. (1) The Registrar shall issue to each association registered under section 4 a certificate of registration in the prescribed form. 40

(2) A certificate issued to an association under sub-section (1) shall, until proof of cancellation, be conclusive evidence of the registration of the association and that it is entitled to be registered.

Incorporation of registered organization

5 6. A registered organization shall have a perpetual succession and a common seal, and may purchase, take on lease, hold, sell, lease, mortgage, exchange and otherwise own, possess and deal with any real or personal property.

Application for cancellation of registration

10 7. (1) Any organization or person interested, the Minister or the Registrar may apply to the Court for an order directing the cancellation of the registration of a registered organization on the ground that—

(a) the organization has been registered erroneously or by mistake;

15 (b) the organization has ceased to be effectively representative of the members who are—

(i) bailors under contracts of bailment of vehicles;

(ii) principal contractors under contracts of carriage;

(iii) bailee drivers of vehicles; or

20 (iv) carriers engaged in the carriage of goods under contracts of carriage,

as the case may be;

(c) the organization has been guilty of a continued breach or non-observance of a determination or a continued failure to ensure that its members comply with and observe a determination; or

25 (d) a substantial number of the members of the organization have been guilty of a continued breach or non-observance of a determination.

(2) The Court has jurisdiction to hear and determine an application under sub-section (1) and if, after adjourning the proceedings for such period, if any, as it thinks fit—

30 (a) it finds that the ground of the application has been established; and

(b) it does not consider that, having regard to the degree of gravity of the matters constituting that ground and the action, if any, that has been taken by or against the organization in relation to those matters, to do so would be unjust,

35 it shall, subject to this section, by order, direct the Registrar to cancel the registration of the organization.

(3) An organization in respect of which an application is made under sub-section (1) shall be given an opportunity of being heard by the Court.

40 (4) Where, in proceedings before the Court under sub-section (1) for an order directing the cancellation of the registration of an organization, the Court

finds that the grounds on which the proceedings are based have been established, the Court may, if it thinks it just to do so, by order—

- (a) suspend, to the extent specified in the order, any of the rights, privileges or capacities of the organization or of all or any of its members, as such members, under this Act or under a determination; 5
- (b) give directions as to the exercise of any rights, privileges or capacities that have been so suspended; or
- (c) make provision for restricting the use of the funds or property of the organization or of a branch of the organization and for the control of those funds or that property for the purpose of ensuring observance of the restrictions, 10

and, if it does so, it shall defer the determination of the question whether to direct the cancellation of the registration of the organization until such time as any orders so made have ceased to be in force.

(5) Where the Court has, under sub-section (4), deferred the determination of the question whether to direct the cancellation of the registration of an organization, the Court may, notwithstanding that sub-section, at any time, upon application by a party, proceed to determine that question if, having regard to any matters established to its satisfaction concerning the observance or non-observance of any order or any other relevant circumstances, it thinks it just to do so. 15 20

(6) An order made in pursuance of the power conferred by sub-section (4)—

- (a) has effect notwithstanding anything in the rules of the registered organization, or of a branch of the registered organization concerned; 25 and
- (b) shall, unless sooner revoked, cease to be in force at the expiration of 6 months from the day on which it came into force, but may, at any time while it remains in force, be extended by a further order made by the Court on the application of a party to the proceedings in which the original order was made. 30

(7) The Registrar may, if he thinks it appropriate to do so in the circumstances—

- (a) cancel the registration of a registered organization of employing contractors representing bailors of vehicles if the Registrar is satisfied that, throughout the immediately preceding period of 6 months, the contracts of bailment of vehicles entered into by the respective members of the association did not include contracts with not less than 25 different bailee drivers; 35
- (b) cancel the registration of a registered organization of employing contractors representing principal contractors if the Registrar is satisfied that, throughout the immediately preceding period of 6 months, the contracts of carriage entered into by the respective members of the association did not include contracts with not less than 25 different carriers; 40 45

(c) cancel the registration of a registered organization of bailee drivers if the Registrar is satisfied that members of the organization do not include at least 50 different drivers of vehicles who are bailees of those vehicles;

5 (d) cancel the registration of a registered organization of contracts drivers if the Registrar is satisfied that members of the organization do not include at least 50 different carriers engaged in the carriage of goods under contracts of carriage; or

(e) cancel the registration of any registered organization—

10 (i) if the Registrar is satisfied that the organization is defunct; or

(ii) if the organization has, in accordance with, and in circumstances prescribed by, the regulations, requested that its registration be cancelled.

15 (8) The cancellation of the registration of a registered organization does not relieve the organization or any member of the organization from any penalty or liability incurred prior to the cancellation.

20 (9) Upon cancellation of the registration of a registered organization, the organization and its members cease to be entitled to the benefits of any determination that applies to the organization or any of its members and, upon the expiration of a period of 21 days after the cancellation of the registration of the organization, such a determination shall, subject to any order to the contrary made by the Commission upon the application of any registered organization or person interested, cease in all other respects to have force or effect in relation to the organization and its members.

25 (10) The powers of the Commission to make an order for the purposes of sub-section (9) are exercisable by the Commission constituted by the President.

(11) Upon the cancellation of the registration of a registered organization—

30 (a) the organization ceases to be an organization and a corporation under this Act, but shall not, by reason of the cancellation, cease to be an association; and

35 (b) the property of the organization shall, subject to any order that the Court, upon application made by a person interested, may make with respect to the satisfaction of the debts and obligations of the organization out of that property, be the property of the association, and shall be held and applied for the purposes of the association in accordance with the constitution and rules of the organization in so far as they can be carried out and observed notwithstanding the deregistration of the organization.

40 (12) In this section, a reference to a determination shall be read as including a reference to an agreement under section 8.

(4) A certificate given under sub-section (3) is conclusive evidence of the facts stated in it.

5 (5) The production of a document purporting to be a certificate given under sub-section (3) and to be signed by the Registrar shall be *prima facie* evidence that the document is such a certificate and was duly given.

Effect of industrial agreement

11. (1) An industrial agreement is, during the term of the agreement, binding—

- 10 (a) on all the parties to the agreement; and
(b) if an organization is a party to the agreement—on all persons who, during that term, are members of the organization.

(2) Proceedings under an industrial agreement shall not be brought by or against an organization that, or person who, is not bound by the agreement.

Variation of contracts by industrial agreement

15 12. Where a provision of a contract of carriage or a contract of bailment of a vehicle to which an industrial agreement relates is inconsistent with a provision of that agreement, the provision of the agreement prevails and the provisions of the contract shall be deemed to have been varied to the extent necessary to remove the inconsistency.

20 **Enforcement of industrial agreement**

13. (1) An organization or person bound by an industrial agreement is liable for any breach or non-observance of a term of the agreement to a penalty not exceeding such amount as is fixed by the agreement or, if no amount is so fixed, then to a penalty not exceeding—

- 25 (a) in the case of an organization—\$10,000;
(b) in the case of the bailor of a vehicle under a contract of bailment—\$500;
(c) in the case of an employing contractor under a contract of carriage—\$500; or
30 (d) in any other case—\$20.

(2) A penalty under sub-section (1) may be proceeded for and recovered in the same manner and before the same courts as penalties for breach or non-observance of an order or award may be proceeded for and recovered under the *Conciliation and Arbitration Act 1904*.

35 (3) The provisions of sub-sections (1) and (2) are in addition to, and not in substitution for, any rights that a person bound by an industrial agreement has under any other law (including the common law) to take proceedings in a court in respect of a breach or non-observance of a term of the industrial agreement.

Rescinding or varying industrial agreement

40 14. An industrial agreement may be rescinded or varied by another industrial agreement made between the same parties or their representatives.

Continuance of agreement unless terminated by notice

15. Unless an industrial agreement expressly provides otherwise, the agreement shall, unless rescinded and subject to any variation, continue in force after the expiration of the term specified in it until the expiration of one month after a party to it has given written notice to the Registrar and to the other parties of that party's desire to terminate it. 5

Contracts Disputes Tribunal

16. (1) The President may, whenever the President deems it fit to do so or upon application by a registered organization, by instrument signed by the President, establish— 10

- (a) a Contracts Disputes Tribunal with respect to a class of contracts of carriage specified by the President; or
- (b) a Contracts Disputes Tribunal with respect to a class of contracts of bailment of vehicles specified by the President.

(2) A Tribunal in respect of a class of contracts of carriage or a class of contracts of bailment of vehicles shall consist of— 15

- (a) a Commissioner;
- (b) a member or members representing principal contractors under contracts of carriage included in that class of contracts of carriage or representing bailors under contracts of bailment of vehicles included in that class of contracts of bailment of vehicles, as the case requires; and 20
- (c) a member or members representing carriers under contracts of carriage included in that class of contracts of carriage or representing bailees under contracts of bailment of vehicles included in that class of contracts of bailment of vehicles, as the case requires. 25

(3) The members of a Tribunal shall be appointed by the President.

(4) The number of members of a Tribunal for the purposes of paragraph (2) (b) and the number of members of the Tribunal for the purposes of paragraph (2) (c) shall be the same.

(5) A person shall not be appointed to be a member of a Tribunal for the purposes of paragraph (2) (b) or (c) unless— 30

- (a) the person has been nominated to the President as prescribed; and
- (b) the person is eligible to be appointed to be a member of the Tribunal, that is to say—
 - (i) the person is, or has been, a party to a contract included in the class of contracts in respect of which the Tribunal is established; or 35
 - (ii) the person is otherwise well acquainted with operations under contracts included in that class.

(6) The Commissioner appointed to be a member of a Tribunal shall be the presiding member of the Tribunal. 40

(7) Where no person has been nominated as prescribed for appointment as a member of a Tribunal for the purposes of paragraph (2) (b) or (c), the President may appoint any person the President deems fit, being a person eligible for appointment as such a member, to be a member of the Tribunal.

5 **Deputies of members of a Tribunal**

17. (1) The President may appoint to be a deputy of a member, or of members, of a Tribunal for the purposes of paragraph 16 (2) (b) or (c) a person who—

(a) has been nominated as prescribed; and

10 (b) is eligible to be appointed to be a member of the Tribunal for the purposes of that paragraph.

(2) Where a member of the Tribunal is, for any reason, unable to act as a member of the Tribunal for the hearing and determination of a matter, a deputy of that member may act as a member of the Tribunal for the hearing and determination of the matter in place of that member and, while so acting, shall be deemed to be a member of the Tribunal.

Remuneration of members

18. (1) Subject to sub-section (2), a member of a Tribunal is not entitled to be paid any remuneration for or in respect of the performance of his duties as a member, but a member, not being a Commissioner, may be paid such travelling and subsistence expenses as are prescribed.

25 (2) For the purposes of the *Conciliation and Arbitration Act 1904*, where a Commissioner is a member of a Tribunal, his duties under that Act as a Commissioner shall be deemed to include his duties under this Act as a member of the Tribunal.

Dissolution of Tribunal

19. The President may at any time, by instrument in writing, revoke the instrument establishing a Tribunal and, if the President does so, the members of the Tribunal cease to hold office.

30 **Tenure of office**

20. (1) Subject to section 19, the Commissioner appointed to be a member of a Tribunal holds office during the pleasure of the President.

(2) Subject to section 19, a member of a Tribunal, not being a Commissioner, holds office—

35 (a) until the member resigns the office, by writing under the member's hand delivered to the President; or

(b) the organization on the nomination of which the member was appointed, notifies the President, in writing, that it withdraws the nomination,

40 whichever first occurs.

Vacancies

21. (1) Where a vacancy occurs in the membership of a Tribunal, the President shall appoint a person qualified for appointment to fill the vacancy.

(2) Unless the vacancy is in the office required to be held by a Commissioner, the person appointed to fill the vacancy shall, subject to sub-section 16 (7), be a person nominated to the President as prescribed. 5

(3) Where a vacancy in the membership of a Tribunal occurs after the Tribunal has commenced to hear and determine a matter, the Tribunal constituted by the remaining members may, notwithstanding sub-section 16 (4), complete the hearing of the matter and determine the matter. 10

Notification of appointments

22. (1) Where the President appoints a person to be a member of a Tribunal or a deputy of such a member, or a person ceases to be a member of a Tribunal or a deputy of such a member, the Registrar shall cause notice of the appointment or cessation to be published in the *Gazette*. 15

(2) Production of a copy of the *Gazette* containing a notice purporting to be a notice referred to in sub-section (1) shall, unless the contrary is proved, be conclusive evidence that the person to whom the notice relates was appointed, or ceased to be, a member or a deputy of a member of the Tribunal referred to in the notice. 20

Powers of Tribunal established with respect to a class of contracts of carriage

23. (1) A Tribunal established with respect to a class of contracts of carriage may, upon application made by a party to a contract of carriage included in that class of contracts of carriage, or by a registered organisation representing such a party, inquire into, and make a determination with respect to, a dispute concerning— 25

- (a) the remuneration of carriers under contracts of carriage included in that class of contracts of carriage;
- (b) the maximum number of hours per day, per week or in a longer period during which carriers, or employees of carriers, may drive vehicles in, or in connection with, the carriage of goods under contracts of carriage included in that class of contracts of carriage; and 30
- (c) other terms and conditions of contracts of carriage included in that class of contracts of carriage.

(2) Without limiting the generality of paragraph (1) (a), the Tribunal may make a determination for the inclusion in the remuneration of carriers under the contracts of carriage included in the relevant class of contracts of carriage of an allowance in lieu of paid sickness leave, annual leave or other holidays. 35

(3) A Tribunal shall, in making a determination of a kind referred to in paragraph (1) (b), have regard to the respective interests of carriers, principal contractors and members of the public. 40

5 (4) A Tribunal shall not make a determination fixing a penalty rate of commission for working in excess of a maximum number of hours per day or per week or for working on specified days, but, in determining remuneration of carriers under contracts of carriage included in the relevant class of contracts of carriage, shall have regard to all the circumstances in which vehicles are driven for reward under contracts of carriage included in that class of contracts of carriage.

10 (5) Without limiting the powers of a Tribunal under sub-section (1), the Tribunal may, after inquiry into a dispute covering the termination of a contract of carriage included in the class of contracts of carriage in respect of which the Tribunal is established, make a determination in respect of the dispute, including a determination that the contract be re-instated.

Powers of Tribunal established with respect to a class of contracts of bailment of vehicles

15 24. (1) A Tribunal established with respect to a class of contracts of bailment of vehicles, may, upon application made by a party to a contract of bailment of vehicles included in that class of contracts of bailment of vehicles, or by a registered organization representing such a party, inquire into and make a determination with respect to a dispute concerning—

- 20 (a) the remuneration of bailees under contracts of bailment of vehicles included in that class of contracts of bailment of vehicles;
- 25 (b) the amounts, if any, to be paid by bailors to bailees under contracts of bailment of vehicles included in that class of contracts of bailment of vehicles as attendance money when the bailees are required to attend at a place where vehicles are to be bailed but no bailment occurs;
- 30 (c) the provision under contracts of bailment of vehicles included in that class of contracts of bailment of vehicles for bailees to be entitled to be paid an allowance in lieu of leave on account of sickness, annual or other holidays;
- 35 (d) subject to sub-section (2), the maximum number of hours per day, per week or in any longer period that bailees may drive vehicles bailed to them under contracts of bailment of vehicles included in that class of contracts of bailment of vehicles; and
- (e) other conditions of contracts of bailment of vehicles included in that class of contracts of bailment of vehicles.

(2) A Tribunal shall not make a determination of a kind described in paragraph (1) (d) unless the Tribunal is satisfied that it is necessary to do so in the interest of bailors, bailees and members of the public.

40 (3) A Tribunal shall not make a determination fixing a penalty rate of commission for working in excess of a maximum number of hours per day or per week or for working on specified days but, in determining a rate of commission under paragraph (1) (a), the Tribunal shall have regard to all the circumstances in which vehicles are driven for reward under contracts of bailment of vehicles.

(4) Without limiting the powers of a Tribunal under sub-section (1), a Tribunal may, after inquiry into a dispute concerning the termination of a contract of bailment of vehicles included in the class of contracts of bailment of vehicles in respect of which the Tribunal is established, make a determination in respect of the dispute, including a determination that the contract be re-instated. 5

Conferences

25. (1) Where application is made to a Tribunal under section 23 or 24, the Presiding Member of the Tribunal shall direct the applicant and such other persons to whom the application relates as the Presiding Member deems fit to attend, on a date and at a time and place specified in the direction, at a conference with the Tribunal. 10

(2) A direction under sub-section (1) may be given orally, in writing signed by the Presiding Member of the Tribunal or by telegram.

(3) A person directed under sub-section (1) shall attend the conference and continue the attendance as directed by the Presiding Member. 15

Penalty: \$1,000.

(4) A conference shall be held in private unless the Tribunal otherwise directs.

(5) At a conference, the Tribunal— 20

(a) shall ascertain the matters to which the application relates that are in dispute;

(b) shall ascertain whether there are any special circumstances or problems relating to contracts of the kind with which the application is concerned; and 25

(c) shall take such reasonable steps as it deems fit to effect a settlement of matters in dispute.

(6) If agreement is reached at a conference on any matter, the Tribunal may—

(a) require the agreement to be set out in writing; and 30

(b) make a determination giving effect to the agreement.

(7) Upon the completion of a conference with respect to an application under section 23 or 24, the Tribunal may—

(a) dismiss the application; 35

(b) adjourn the application for such period as it deems fit; or

(c) fix a date, time and place for the hearing of the application.

(8) Where the Tribunal adjourns an application under section 23 or 24, it may, at any time, fix a date, time and place for the hearing of the application.

Hearing of application

26. (1) Where the Tribunal fixes a date, time and place for the hearing of an application under section 23 or 24, the Tribunal shall give directions with 40

respect to service of a copy of the application and of notice of the date, time and place of hearing the application on such persons as it deems fit.

(2) Upon the completion of the hearing of an application under section 23 or 24, the Tribunal may—

- 5 (a) dismiss the application upon any of the following grounds:
- (i) lack of information;
 - (ii) lack of co-operation by a party to the application; or
 - (iii) any other reason; or
- 10 (b) make a determination with respect to all or any matters with which the application is concerned.
- (3) Without limiting the powers of the Tribunal under sub-section (2), where the Tribunal makes a determination with respect to a matter or matters—
- 15 (a) it may defer the operation of the determination, or of a part of the determination, for such period, and subject to such conditions (if any), as it deems fit;
- (b) it may specify a period at the end of which the determination shall cease to have effect;
- 20 (c) it shall specify the class of contracts in respect of which the determination is to operate; and
- (d) it may limit the operation of the determination to contracts included in that specified class of contracts, being contracts—
- (i) in the case of a class of contracts of carriage—made with specified principal contractors; or
 - 25 (ii) in the case of a class of contracts of bailment of vehicles—made with specified bailors of vehicles.
- (4) The Tribunal may, upon making a determination under sub-section (2) or at any subsequent time while the determination is in force, exempt from the application of the determination or a part of the determination—
- 30 (a) if the determination relates to a class of contracts of carriage—
- (i) a specified principal contractor to whom the determination would otherwise apply;
 - (ii) carriers specified either by names or by reference to the kind of work performed by those carriers; or
 - 35 (iii) a specified kind of work performed by carriers to whom the determination applies; or
- (b) if the determination relates to a class of contracts of bailment of vehicles—
- (i) a specified bailor;
 - 40 (ii) bailees specified either by names or by reference to the kind of work performed by those bailees; or
 - (iii) a specified kind of work performed by bailees to whom the determination applies.

Variation and revocation of determination

27. A determination made with respect to contracts of carriage of a particular kind, or contracts of bailment of vehicles of a particular kind, may, at any time, be varied or revoked by a Tribunal established in respect of that kind of contracts of carriage or contracts of bailment of vehicles, as the case may be, and, if it is revoked, the Tribunal may make another determination in its place. 5

Effect of determination

28. (1) A determination made by a Tribunal under section 25 or 26 with respect to a class of contracts of carriage is binding, according to its tenor, on all principal contractors and carriers who are parties to contracts of carriage included in that class of contracts of carriage until it is revoked or ceases to have effect. 10

(2) A determination made by a Tribunal under section 25 or 26 with respect to a class of contracts of bailment of vehicles is binding, according to its tenor, on all bailors and bailees who are parties to contracts of bailment of vehicles included in that class of contracts of bailment of vehicles until it is revoked or ceases to have effect. 15

(3) Where a provision of a contract of carriage, or a contract of bailment of a vehicle, to which a determination under section 25 or 26 relates is inconsistent with a provision of that determination that is applicable in relation to that contract, the provision of the determination prevails and the provision of the contract shall be deemed to have been varied to the extent necessary to remove the inconsistency. 20

(4) Where a provision of an industrial agreement to which a determination under section 25 or 26 relates is inconsistent with a provision of that determination that is applicable in relation to that agreement— 25

- (a) the provision of the determination prevails and the provision of the agreement shall be deemed to have been varied to the extent necessary to remove the inconsistency; and
- (b) section 12 applies to and in relation to the agreement as deemed to have been so varied in like manner as it applied to the agreement before it was to be deemed to be so varied. 30

Date of effect of determination

29. (1) Where a Tribunal makes a determination under section 25 or 26, it may direct that, when the determination comes into operation, it shall have effect as from a date specified in the determination, which may be a date before the date on which the determination is made but not before the date on which the application was made. 35

(2) A determination made under section 25 or 26 shall come into operation 14 days after the day on which a copy of the determination is published in the *Gazette*. 40

Evasion of Act

30. Where a Tribunal, after holding an inquiry in accordance with the regulation, is satisfied that the parties to a contract, being a contract as a result of which goods have been or will be carried by motor vehicle—

- 5 (a) entered into the contract for the purpose of evading or avoiding the provisions of this Act with respect to contracts of carriage; and
- (b) that, but for having entered into that contract, the parties would have entered into a contract of carriage of those goods,

10 the Tribunal shall declare that it is of that opinion and, if it does so, this Act applies to and in relation to the contract as if it were a contract of carriage of those goods.

Procedure of Tribunal

31. (1) In the hearing and determination of an application under section 23 or 24 before a Tribunal—

- 15 (a) the procedure of the Tribunal is, subject to this Act and the regulations, within the discretion of the Tribunal;
- (b) the Tribunal is not bound to act in a formal manner and is not bound by any rules of evidence but may inform itself on any matter in such manner as it thinks fit; and
- 20 (c) the Tribunal shall act according to equity and good conscience and the substantial merits of the case, without regard to technicalities and legal forms.

25 (2) A Tribunal may determine the periods which are reasonably necessary for the fair and adequate presentation of the respective cases of the parties to the proceedings and require that those cases be presented within the respective periods so determined.

(3) A Tribunal may require evidence or argument to be presented in writing and may decide the matters upon which the Tribunal will hear oral evidence or argument.

30 (4) A determination or decision made by a Tribunal shall be made in writing and signed by the Presiding Member and dated with the date on which it is so signed, which date shall, for the purposes of this Act, be deemed to be the date of the determination or decision.

35 (5) The determination or decision so signed shall be filed in the office of the Registrar and copies shall, subject to the regulations, be made available upon application and payment of the prescribed fee (if any).

Particular powers of Tribunal

32. A Tribunal may in relation to an application under section 23 or 24—

- 40 (a) take evidence on oath or affirmation;
- (b) make a determination (including a provisional or interim determination) relating to all or any matters in dispute or give a direction in pursuance of the hearing or determination;

- (c) include in a determination, or vary a determination so as to include, a provision to the effect that engaging in conduct in breach of a specified term of the determination shall be deemed to constitute the commission of a separate breach of that term on each day on which the conduct continues; 5
- (d) dismiss a matter or part of a matter, or refrain from hearing or determining a dispute or part of a dispute, to which an application under section 23 or 24 relates if it appears—
 - (i) that the matter, dispute or part is trivial;
 - (ii) that the matter, dispute or part has been dealt with or is being dealt with or is proper to be dealt with by the Commission or by a State Industrial Tribunal within the meaning of the *Conciliation and Arbitration Act 1904*; or 10
 - (iii) that further proceedings are not necessary or desirable in the public interest; 15
- (e) hear and determine the application in the absence of a party who has been summoned or served with notice to appear;
- (f) sit at any place;
- (g) conduct its proceedings or any part of its proceedings in private;
- (h) adjourn to any time and place; 20
- (j) refer any matter to an expert and accept the report of the expert as evidence;
- (k) direct parties to be joined or struck out;
- (l) allow the amendment, on such terms as it thinks fit, of any proceedings; 25
- (m) correct, amend or waive any error, defect or irregularity, whether in substance or in form;
- (n) extend any time;
- (p) summon before it the parties to the application, and witnesses, and compel the production before it of books, papers, documents and things for the purpose of reference to such entries or matters only as relate to the application; and 30
- (q) generally give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of the application. 35

Safety, health and welfare

33. In determining an application under section 23 or 24, a Tribunal shall take into consideration the provisions of any law of a State or Territory relating to the safety, health and welfare of contract carriers and bailee drivers and their employees (including children). 40

Form of determination

34. A determination shall be framed in such manner as best to express the decision of the Tribunal and to avoid unnecessary technicalities.

Decisions of Tribunal to be final

35. (1) A determination—

- (a) is final and conclusive;
- (b) shall not be challenged, appealed against, reviewed, quashed or called in question in any court; and
- (c) is not subject to prohibition, mandamus or injunction in any court on any account.

(2) A determination shall not be called in question in any way on the ground that it was made by a Tribunal constituted otherwise than as provided by this Act.

Offences in relation to Tribunal

36. A person shall not—

- (a) wilfully insult or disturb a member of a Tribunal when exercising powers or functions;
- (b) interrupt the proceedings of a Tribunal;
- (c) use insulting language towards a member of a Tribunal;
- (d) by writing or speech use words calculated—
 - (i) to influence improperly a member of a Tribunal or a witness before a Tribunal; or
 - (ii) to bring a member of a Tribunal or a Tribunal into disrepute.

Penalty: \$500 or imprisonment for 12 months, or both.

Creating disturbances

37. A person creating a disturbance or taking part in creating or continuing a disturbance in or near any place in which a Tribunal is sitting shall be guilty of an offence punishable, upon conviction, by a fine not exceeding \$200 or imprisonment for a period not exceeding 6 months, or both.

Contempt by witness

38. A person who has been summoned to appear, or appears, before a Tribunal shall not, without just cause (proof whereof shall lie upon the person)—

- (a) disobey the summons so to appear;
- (b) refuse to be sworn or make an affirmation as a witness;
- (c) refuse to answer any question that the person is required by the Tribunal to answer; or
- (d) refuse to produce any books, papers, documents or things that the person is required by the Tribunal to produce.

Penalty: \$500.

False representation as to membership of organization

39. A person shall not falsely represent in an application under section 23 or 24 that the person is a member of a registered organization.

Penalty: \$500 or imprisonment for 6 months.

Inspection of books, &c.

40. All books, papers, documents and things produced in evidence before a Tribunal may be inspected by the Tribunal and by such of the parties before the Tribunal as the Tribunal allows.

Extension of section 51 of Trade Practices Act

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41. Section 51 of the *Trade Practices Act 1974* applies, by virtue of this section, as if paragraph 51 (2) (a) of that Act extended to any act done in relation to, or to any provision of a contract, industrial agreement or determination to the extent that the provision relates to, the remuneration, conditions of work, hours of work or working conditions of bailee drivers or carriers within the meaning of this Act.

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Registration of associations under Conciliation and Arbitration Act

42. For the purpose of section 132 of the *Conciliation and Arbitration Act 1904*—

- (a) an association of employers in an industry relating to the driving of vehicles or the transportation of goods by vehicle that complies with paragraph 132 (1) (a) of that Act may be registered under that section as an organization notwithstanding that its members include persons who do not employ employees in that industry but are bailors of vehicles or principal contractors within the meaning of this Act; and
- (b) an association of employees in such an industry that complies with paragraph 132 (1) (b) of the *Conciliation and Arbitration Act 1904* may be registered under that section as an organization notwithstanding that its members include persons who are not employees in that industry but are bailees of vehicles or carriers within the meaning of this Act.

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Regulations

43. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular—

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- (a) regulating the practice and procedure of the Tribunal;
- (b) regulating matters with respect to the costs and expenses (including expenses of witnesses) of proceedings before the Tribunal;
- (c) prescribing fees to be charged with respect to proceedings and other matters under this Act;
- (d) authorizing the making of orders with respect to the costs and expenses (including the expenses of witnesses) of proceedings before the Tribunal;
- (e) prescribing the duties of Industrial Registrars and other officers of the Tribunal under this Act;

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- (f) providing for the exhibiting, on the premises of a principal contractor or bailor bound by an industrial agreement or by a determination, of any of the terms of the agreement or determination; and
 - (g) prescribing penalties, not exceeding a fine of \$500 or imprisonment for a period not exceeding 6 months, or both, for offences against the regulations.







1983-84

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 2 May 1984

(*Minister for Finance*)

A BILL

FOR

An Act to amend the *Audit Act 1901*

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title, &c.

1. (1) This Act may be cited as the *Audit Amendment Act 1984*.

5 (2) The *Audit Act 1901*¹ is in this Act referred to as the Principal Act.

Commencement

2. (1) Subject to sub-section (2), this Act shall come into operation on the day on which it receives the Royal Assent.

(2) Sections 7 to 14 (inclusive) shall come into operation on 1 July 1984.

10 3. After section 4 of the Principal Act the following sections are inserted:

Leave of absence

“4A. The Minister may grant to the Auditor-General leave of absence from duty on such terms and conditions as to remuneration or otherwise as the Minister determines.

Resignation

“4B. The Auditor-General may resign the office of Auditor-General by writing signed by the Auditor-General and delivered to the Governor-General.”

Incapacity for other position

4. Section 5 of the Principal Act is amended by omitting paragraphs (2) (c) and (d) and substituting the following word and paragraph: 5

“or (c) if he is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any 12 months.”

How removed from office or suspended

5. Section 7 of the Principal Act is amended by inserting in sub-section (2) “physical or mental” before “incapacity”. 10

6. Sections 8 and 9 of the Principal Act are repealed and the following sections are substituted:

Acting appointment

“8. (1) The Governor-General may appoint a person to act in the office of Auditor-General— 15

(a) during a vacancy in that office; or

(b) during any period, or during all periods, when the person holding that office is absent from duty or from Australia or is, for any other reason, unable to perform the functions of that office, 20

but a person appointed to act during a vacancy shall not continue so to act for more than 6 months.

“(2) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment. 25

“(3) The Governor-General may—

(a) subject to this section, determine the terms and conditions of appointment, including remuneration and allowances, of a person acting in the office of Auditor-General; and

(b) terminate such an appointment at any time. 30

“(4) Where a person is acting in the office of Auditor-General in accordance with paragraph (1) (b) and that office becomes vacant while that person is so acting, that person may continue so to act until the Governor-General otherwise directs, the vacancy is filled or a period of 6 months from the date on which the vacancy occurred expires, whichever first happens. 35

“(5) While a person is acting in the office of Auditor-General in accordance with sub-section (1)—

(a) the person has, and may exercise, all the powers, and shall perform all the functions, of that office under this Act; and 40

- (b) the person has, and may exercise, the powers (if any) exercisable by the Auditor-General by virtue of a delegation to the Auditor-General under any other law.

5 “(6) The validity of anything done by or in relation to a person purporting to act in the office of Auditor-General under an appointment made under sub-section (1) shall not be called in question on the ground that the occasion for his or her appointment had not arisen, that there is a defect or irregularity in or in connection with his or her appointment, that the appointment had ceased to have effect or that the occasion for him or her to act had not arisen or had
10 ceased.

Superannuation

15 “9. For the purposes of the *Superannuation Act 1976*, the removal under section 7 of this Act of an Auditor-General from office following his or her suspension from office on the ground of physical or mental incapacity shall be deemed to be retirement on the ground of invalidity.”

Private moneys collected by officers, &c.

7. Section 25 of the Principal Act is amended by omitting from sub-section (5) “may” and substituting “shall”.

20 8. Before section 31 of the Principal Act the following sections are inserted in Part V:

Notional items

25 “29. (1) Where a subdivision in a Schedule to an Appropriation Act for a financial year is not divided into items, the Minister may direct in writing that, for the purposes of this Part and of the regulations, that subdivision shall be taken to be divided into notional items set out in the direction.

“(2) Where, in the opinion of the Minister, it is desirable to do so, the Minister may approve in writing the variation of a direction under sub-section (1) by way of—

- 30 (a) the reduction, by an amount specified in the approval, of the amount in one of the notional items into which a subdivision referred to in that sub-section is to be taken to be divided; and
35 (b) the increase, by that amount specified in the approval, of the amount in another of those notional items into which that subdivision is to be taken to be divided,

and, where the Minister approves such a variation of a direction, the direction shall, for the purposes of this Part (including this sub-section) and of the regulations, be taken to be so varied.

Notional items taken to be items

40 “30. Where, because of a direction under sub-section 29 (1), a subdivision referred to in that sub-section is to be taken to be divided into notional items, sections 34, 35, 36A and 36C have effect as if those notional items were items of that subdivision.”

Act of grace payments

9. Section 34A of the Principal Act is amended—

(a) by inserting after sub-section (1) the following sub-sections:

“(1A) A payment, or payments, to a person by virtue of a direction under sub-section (1) shall be made on such terms or conditions as are determined by an authorized person before the payment is, or the payments are, made, being such terms or conditions as the authorized person considers to be appropriate. 5

“(1B) Where a payment or payments to a person by virtue of a direction under sub-section (1) is or are subject to terms or conditions determined under sub-section (1A), in addition to those terms or conditions, that payment is, or those payments are, subject to the condition that, if any of those terms or conditions is not or are not complied with, the person will, on demand by an authorized person, pay to the Commonwealth an amount equal to the amount of that payment. 10 15

“(1C) Where a person is liable to pay an amount to the Commonwealth under sub-section (1B), the Commonwealth may recover that amount as a debt due to the Commonwealth by action in a court of competent jurisdiction.”; 20

(b) by omitting from sub-section (2) “\$25,000” and substituting “\$50,000”; and

(c) by omitting from sub-section (2) “\$5,000” and substituting “\$10,000”.

Bank accounts

10. Section 63D of the Principal Act is amended by omitting sub-section (3) and substituting the following sub-section: 25

“(3) In this section, ‘approved bank’, in relation to an authority, means a trading bank as defined in sub-section 5 (1) of the *Banking Act 1959* or another bank declared by the Treasurer or a person authorized by the Treasurer to give approvals under this section to be an approved bank in relation to that authority.”. 30

Investment of moneys

11. Section 63E of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section:

“(2) In sub-section (1), ‘approved bank’, in relation to an authority, means a trading bank as defined in sub-section 5 (1) of the *Banking Act 1959* or another bank declared by the Treasurer or a person authorized by the Treasurer to give approvals under this section to be an approved bank in relation to that authority.”. 35

Bank accounts

12. Section 63J of the Principal Act is amended by omitting sub-section (3) and substituting the following sub-section:

5 “(3) In this section, ‘approved bank’, in relation to an authority, means the Reserve Bank of Australia or another bank for the time being declared by the Treasurer or a person authorized by the Treasurer to give approvals under this section to be an approved bank in relation to that authority.”

Audit, &c., by arrangement

10 13. Section 63P of the Principal Act is amended by omitting sub-section (3) and substituting the following sub-section:

15 “(3) Arrangements for the purposes of sub-paragraph (1) (a) (i) with a body, arrangements for the purposes of paragraph (1) (b) with a Government, or an arrangement made under sub-section (2) with a body, may include provision for the payment of a fee by the body or Government, as the case requires, to the Commonwealth in respect of the carrying out of an inspection and audit to which the arrangement relates.”

Writing off, and waiver of rights to, certain moneys and stores

14. Section 70C of the Principal Act is amended—

- 20 (a) by omitting from paragraph (2) (a) “and”;
- (b) by adding at the end of sub-section (2) the following word and paragraph:
“; and (c) to allow an amount payable to the Commonwealth to be paid in instalments.”; and
- 25 (c) by omitting from sub-section (4) “\$25,000” and substituting “\$50,000”.

Schedule 1

15. Schedule 1 to the Principal Act is repealed.

NOTE

1. No. 4, 1901, as amended. For previous amendments, see No. 8, 1906; No. 4, 1909; No. 6, 1912; No. 32, 1917; No. 23, 1920; No. 34, 1924; No. 18, 1926; No. 45, 1934; No. 52, 1947; No. 60, 1948; No. 51, 1950; No. 79, 1952; No. 12, 1953; No. 29, 1954; No. 18, 1955; No. 39, 1957; No. 8, 1959; Nos. 17 and 77, 1960; No. 89, 1961; No. 74, 1962; No. 75, 1964; No. 126, 1965; No. 93, 1966; No. 120, 1968; No. 20, 1969; No. 216, 1973; No. 56, 1975; No. 36, 1978; Nos. 8 and 155, 1979; Nos. 74 and 176, 1981; Nos. 26 and 80, 1982; and No. 62, 1983.





