

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 10 October 1985

(*Mr Shack*)

A BILL

FOR

An Act to make provision with respect to certain matters concerning Commonwealth employees

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

Short title

- 5 1. This Act may be cited as the *Commonwealth Employees (Employment Provisions) Act 1985*.

Commencement

2. This Act shall come into operation on a date to be fixed by Proclamation.

Interpretation

- 0 3. (1) In this Act, unless the contrary intention appears—
“Commonwealth authority” means an authority or body, whether a body corporate or not, established for a public purpose by or under a law of the Commonwealth or of a Territory, and includes a company or other body corporate incorporated under a law of a State or Territory, being a company or other body corporate in which the Commonwealth has a
5 controlling interest;

“Commonwealth employee” means—

- (a) a person who is an officer or employee for the purposes of the *Public Service Act 1922* or is the holder of a statutory office;
- (b) any other person employed by the Commonwealth or by a Commonwealth authority, whether in a permanent capacity or otherwise; or
- (c) a person holding an office or appointment in the Commonwealth Teaching Service or an office or appointment under the *Supply and Development Act 1939* or under regulations under the *Naval Defence Act 1910*,

but does not include a member of the Defence Force;

“declaration” means a declaration by an employing authority under section 4 or 5;

“determination” means a determination by an employing authority under section 7, and includes an instrument under sub-section 7 (1), and an instrument under section 8;

“employing authority”, in relation to a Commonwealth employee, means—

- (a) if the Commonwealth employee is an officer or employee for the purposes of the *Public Service Act 1922* or is the holder of a statutory office—the Public Service Board; and
- (b) in any other case—the authority, body or person by which or whom the Commonwealth employee is employed, or was appointed or engaged;

“industrial action” means—

- (a) the performance of work in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, the result of which is a restriction or limitation on, or a delay in, the performance of the work;
- (b) a ban, limitation or restriction on the performance of work or on acceptance or offering for work; or
- (c) an unauthorized failure or refusal by persons to attend for work or an unauthorized failure or refusal to perform any work at all by persons who attend for work.

(2) Conduct is capable of constituting industrial action notwithstanding that the conduct concerned relates to part only of the duties that persons are required to perform in the course of their employment.

(3) A reference in this Act to industrial action shall be read as including a reference to a course of conduct consisting of a series of industrial actions.

Commonwealth employees engaged in industrial action may be suspended

4. Where persons who are Commonwealth employees in relation to an employing authority are engaged in industrial action, the employing authority may, by instrument in writing, declare that Commonwealth employees specified in the declaration, being all or some of the first-mentioned

Commonwealth employees, are suspended during the period commencing at such time as is specified in the declaration (not being a time earlier than the time at which the declaration is made) and ending at the time at which the declaration ceases, or is deemed to have ceased, to have effect.

5 **Commonwealth employees affected by industrial action of other persons may be stood down**

5. Where, by reason of the existence of any industrial action (including industrial action in which Commonwealth employees are not engaged)—

10 (a) persons who are Commonwealth employees in relation to an employing authority cannot be usefully employed; or

(b) there is serious disruption to the performance of a function by an employing authority, being a function in connection with the performance of which persons who are Commonwealth employees in relation to the employing authority are employed,

15 the employing authority may, by instrument in writing, declare that Commonwealth employees specified in the declaration, being all or some of the Commonwealth employees referred to in paragraph (a) or (b) but not being Commonwealth employees engaged in the industrial action, are stood down during the period commencing at such time as is specified in the declaration
20 (not being a time earlier than the time at which the declaration is made) and ending at the time at which the declaration ceases, or is deemed to have ceased, to have effect.

Salary, &c., not payable during a period when Commonwealth employee suspended or stood down

25 6. During any period when a Commonwealth employee is, by virtue of a declaration under section 4, suspended or, by virtue of a declaration under section 5, stood down, the employee is not, except as provided in the declaration, entitled to any salary, wages or other remuneration, or allowances, that, but for this section, would be payable to him as a Commonwealth
30 employee in respect of the period.

Cancellation, termination and modification of declarations

7. (1) An employing authority may, by instrument in writing, cancel a declaration either wholly, or in relation to such Commonwealth employees as are specified in the instrument, and thereupon the declaration shall be deemed
35 not to have been made, or not to have been made in relation to the employees so specified, as the case may be.

(2) An employing authority may, by instrument in writing, determine that, after a time specified in the determination (which may be a time earlier than the time at which the determination is made), a declaration specified in the
40 determination ceases, or shall be deemed to have ceased, to have effect, either wholly or in relation to such Commonwealth employees as are specified in the determination.

(3) An employing authority may, by instrument in writing, determine that, after a time specified in the determination (which may be a time earlier than the time at which the determination is made), a declaration specified in the determination has effect or shall be deemed to have had effect, with such modifications as are specified in the determination, being modifications that may be expressed to apply to all Commonwealth employees in relation to whom the declaration applies or in relation to such of those Commonwealth employees as are specified in the instrument.

Dismissal

8. (1) Where—

- (a) a Commonwealth employee has been suspended by virtue of a declaration by an employing authority under section 4;
- (b) the declaration has not been cancelled or otherwise ceased to be in force; and
- (c) the employing authority or a Minister is of the opinion that it is in the public interest that the powers of the employing authority under this sub-section should be exercised in relation to the employee,

the employing authority may, by instrument in writing, terminate the employment of the employee.

(2) Where an employing authority has, under sub-section (1), terminated the employment of a Commonwealth employee, the employing authority may, if the employing authority thinks it proper so to do, revoke the termination of employment by instrument in writing, and thereupon the employment of the employee shall be deemed, for all purposes, not to have been terminated.

(3) Where an employing authority revokes the termination of employment of a Commonwealth employee, the employing authority may, in the instrument of revocation—

- (a) direct that the Commonwealth employee shall, during the period commencing at the time the termination took effect and ending at the time the revocation takes effect, be deemed to have been suspended under section 4; and
- (b) give such other directions in relation to the terms and conditions of employment of the employee as the employing authority considers appropriate in the circumstances.

(4) Nothing in sub-section (3) shall be taken as affecting the powers of the Australian Conciliation and Arbitration Commission or of the Public Service Arbitrator in relation to terms and conditions of employment that are the subject of directions under paragraph (3) (b).

Notification of declarations and determinations

9. Where an employing authority makes a declaration or determination, or cancels a declaration, the employing authority shall cause such notice as the authority thinks appropriate to be given of the making of the declaration or determination, or of the cancellation, as the case may be.

Specifying of Commonwealth employees in declarations, &c.

5 10. Commonwealth employees may be specified in a declaration or determination in such manner as the employing authority making the declaration or determination thinks appropriate, and, without limiting the generality of the foregoing, may be specified by reference to Commonwealth employees included in a class of employees specified in the declaration or determination.

Declaration and determination to prevail over awards, &c.

10 11. (1) A declaration or determination has effect according to its tenor, and so has effect notwithstanding any law, or any award, that is inconsistent with the declaration or determination.

(2) Except as provided in sub-section (1), nothing in this Act, or in a declaration or determination, shall be taken as affecting—

- 15 (a) the application of any law, or of any award, to or in relation to an employing authority or a Commonwealth employee; or
(b) the terms and conditions of employment of a Commonwealth employee.

20 (3) In this section, “award” includes a determination (other than a determination as defined in sub-section 3 (1)) or other instrument making provision with respect to terms and conditions of employment, being a determination or instrument of a kind similar to an award.

Ministerial directions

25 12. An employing authority shall comply with any directions given to the authority by a Minister under this section in relation to the exercise by the authority of the authority’s powers under this Act.

Delegations

35 13. (1) An employing authority may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the authority, or, where the employing authority is a body corporate, by writing under its common or official seal, delegate to a person any of its powers under this Act, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the employing authority.

40 (3) A delegation under this section does not prevent the exercise of a power by the employing authority.

Regulations

45 14. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

