

CONCILIATION AND ARBITRATION.

No. 34 of 1952.

An Act to amend the *Conciliation and Arbitration Act 1904-1951*.

[Assented to 17th June, 1952.]

BE 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 *Conciliation and Arbitration Act 1952*.

(2.) The *Conciliation and Arbitration Act 1904-1951** is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Conciliation and Arbitration Act 1904-1952*.

Commencement.

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

Interpretation.

3. Section four of the Principal Act is amended by inserting in the definition of "Employer", after the word "includes", the words "any person who is usually an employer in an industry and also includes".

* Act No. 13, 1904, as amended by No. 28, 1909; No. 7, 1910; No. 6, 1911; Nos. 4 and 18, 1914; No. 35, 1915; No. 39, 1918; No. 31, 1920; No. 29, 1921; No. 22, 1926; No. 8, 1927; No. 18, 1928; No. 43, 1930; Nos. 45 and 54, 1934; Nos. 14 and 30, 1946; Nos. 10 and 52, 1947; No. 77, 1948; Nos. 28 and 86, 1949; Nos. 51 and 80, 1950; and Nos. 18 and 58, 1951.

4. Section thirteen of the Principal Act is amended—

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

“(c) making provision for or in relation to, or altering a provision for or in relation to, long service leave with pay;”; and

(b) by omitting sub-section (2.).

Limitation of
jurisdiction of
Conciliation
Commissioners.

5. After section fourteen of the Principal Act the following sections are inserted :—

“14A.—(1.) In this section, ‘the Chief Judge’ includes, in relation to an application for the concurrence of the Chief Judge, or an appeal to the Chief Judge, a Judge appointed by the Chief Judge to deal with the application or appeal.

Reference of
disputes to
the Court.

“(2.) Upon application by a party to an industrial dispute, a Conciliation Commissioner may, if he is of opinion that the industrial dispute, or the industrial dispute so far as it relates to a matter in dispute, is of such importance that the industrial dispute, or the industrial dispute so far as it relates to that matter, should, in the public interest, be dealt with by the Court, and subject to the concurrence of the Chief Judge, refer the industrial dispute, or the industrial dispute so far as it relates to that matter, to the Court.

“(3.) An appeal lies to the Chief Judge from a refusal of a Conciliation Commissioner to grant an application under the last preceding sub-section.

“(4.) An appeal under the last preceding sub-section shall be instituted within fourteen days after the date of the refusal of the Conciliation Commissioner.

“(5.) The Chief Judge may hear the appeal and, if he is of opinion that the industrial dispute, or the industrial dispute so far as it relates to the matter in dispute, is of such importance that the industrial dispute, or the industrial dispute so far as it relates to that matter, should, in the public interest, be dealt with by the Court, shall refer the industrial dispute, or the industrial dispute so far as it relates to that matter, to the Court.

“14B.—(1.) Subject to the next succeeding sub-section, the Court shall hear and determine an industrial dispute, or an industrial dispute so far as it relates to a matter in dispute, which has been referred to it under the last preceding section and for that purpose may make such order or award as might have been made by the Conciliation Commissioner.

Hearing by
the Court.

“(2.) Where an industrial dispute has been referred to the Court under the last preceding section, the Court may refer the industrial dispute, so far as it relates to a matter in dispute, back to the Conciliation Commissioner, who shall hear and determine the industrial dispute so far as it relates to that matter.

“(3.) The Court shall hear and determine the industrial dispute so far as it relates to matters not referred back to the Conciliation Commissioner.

“(4.) The Court may, for the purposes of this section, direct a Conciliation Commissioner to furnish a report to the Court with respect to such matter as the Court specifies and the Conciliation Commissioner shall, after making such investigation (if any) as is necessary, furnish a report accordingly.”

Award not to
be challenged
or questioned.

6. Section sixteen of the Principal Act is amended—

(a) by omitting from sub-section (1.) the word “An” and inserting in its stead the words “Subject to this Act, an”;

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

“(2.) A Conciliation Commissioner may, and, at the direction of the Chief Judge, shall, refer a question of law arising in relation to a matter before him, including a question whether he is empowered to exercise jurisdiction under this Act in relation to such a matter, for the opinion of the Court.”;

(c) by inserting in sub-section (4.), after the word “section”, the words “(not being a question whether the Commissioner is empowered to exercise jurisdiction under this Act in relation to a matter)”;

(d) by adding at the end thereof the following sub-sections:—

“(6.) Where a question referred to the Court under this section is whether the Conciliation Commissioner is, having regard to the provisions of section thirteen of this Act, empowered to exercise jurisdiction in relation to a matter—

(a) if the opinion of the Court is that the Conciliation Commissioner is so empowered, then, notwithstanding anything contained in this Act, the Conciliation Commissioner is empowered to exercise jurisdiction in relation to that matter; or

(b) if the opinion of the Court is that the Conciliation Commissioner is not so empowered, then, notwithstanding anything contained in this Act, the Conciliation Commissioner is not empowered to exercise jurisdiction in relation to that matter but the Court is empowered to exercise jurisdiction in relation to the matter.

“(7.) If, in relation to a matter before a Conciliation Commissioner, the question whether he is, having regard to the provisions of section thirteen of this Act, empowered to exercise jurisdiction in relation to that matter has not been referred for the opinion of the Court, then, notwithstanding anything contained in this Act, the Conciliation Commissioner is empowered to exercise jurisdiction in relation to the matter.”

7. After section sixteen of the Principal Act the following section is inserted in Part II. :—

“ 16A.—(1.) Where the hearing of an industrial dispute has been commenced before a Conciliation Commissioner and, before an order or award has been made determining the dispute—

Continuation
of hearing of
industrial
disputes.

- (a) that Conciliation Commissioner has become unable to continue to hear the industrial dispute or has ceased to be a Conciliation Commissioner ; or
- (b) the Chief Judge has, in pursuance of section eleven of this Act, assigned the industry or group of industries to which the industrial dispute relates to another Conciliation Commissioner,

another Conciliation Commissioner may complete the hearing of, and determine, the industrial dispute in whole or in part.

“ (2.) In determining the industrial dispute, the last-mentioned Conciliation Commissioner shall have regard to the evidence given and arguments adduced before the first-mentioned Conciliation Commissioner.”

8. Section twenty-four of the Principal Act is repealed and the following sections are inserted in its stead :—

“ 24.—(1.) Subject to this Act, the jurisdiction of the Court shall be exercised by not less than three Judges.

Exercise of
Court's
jurisdiction.

“ (2.) The jurisdiction of the Court may be exercised by a single Judge with respect to—

- (a) the interpretation of an order or award ;
- (b) the granting of leave to appeal to the Court from an act or decision of the Registrar ;
- (c) the power referred to in paragraph (f) of sub-section (1.) of section twenty-nine of this Act ;
- (d) an application under section seventy-one of this Act ;
- (e) a question or dispute arising under section eighty-three A of this Act ; or
- (f) a prescribed matter of practice or procedure.

“ (3.) The Court constituted by one or more Judges may sit and exercise the jurisdiction of the Court, whether under this Act or otherwise, notwithstanding that the Court constituted by one or more other Judges is at the same time sitting and exercising the jurisdiction of the Court, whether under this Act or otherwise.

“ (4.) Where the hearing of an industrial dispute or of an appeal under section thirty-one A of this Act has been commenced before the Court but, before an order or award has been made determining the dispute or appeal, one of the Judges sitting as a member of the Court hearing the dispute or appeal has become unable to continue to sit or has ceased to be a Judge, the Court constituted by the remaining Judges has jurisdiction to complete the hearing and make an order or award determining the dispute or appeal in whole or in part.

“(5.) An order or award shall not be made under the last preceding sub-section unless at least two Judges concur in the making of the order or award.

“(6.) If, by reason of the last preceding sub-section, an order or award is not made determining the dispute or appeal, or an order or award is made determining the dispute or appeal in part, the Court constituted by not less than three Judges shall hear and determine the dispute or appeal, or so much of the dispute or appeal as has not been determined, and, in the hearing of the dispute or appeal, or of so much of the dispute or appeal as has not been determined, shall have regard to the evidence given, the arguments adduced and the judgments delivered during the previous hearing.

“(7.) Subject to sub-sections (4.) and (5.) of this section, where the members of the Court are divided in opinion on a question, the question shall be decided according to the decision of the majority, if there is a majority, but if the members of the Court are equally divided in opinion, the question shall be decided according to the opinion of the Chief Judge, or, if the Chief Judge is not a member of the Court or there is a vacancy in the office of Chief Judge, according to the opinion of the next senior Judge present.

Reference to
Full Court.

“24A.—(1.) A single Judge exercising the jurisdiction of the Court by reason of the last preceding section may, if he thinks fit, refer a question of law arising in the proceedings before him for the opinion of the Court constituted by not less than three Judges.

“(2.) The Court so constituted shall hear and determine the question.”.

Jurisdiction of
Courts with
respect to
certain matters.

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

(a) by omitting paragraph (c) and inserting in its stead the following paragraph:—

“(c) making provision for or in relation to, or altering a provision for or in relation to, long service leave with pay;” ; and

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

“(2.) If, in relation to a matter before the Court, the question whether the Court is empowered, having regard to the provisions of the last preceding sub-section, to exercise jurisdiction in relation to that matter is not raised, or that question is raised and the opinion of the Court is that the Court is empowered to exercise jurisdiction in relation to that matter, then, notwithstanding anything contained in this Act, the Court is empowered to exercise jurisdiction in relation to the matter.

“(3.) If the opinion of the Court is that the Court is not empowered to exercise jurisdiction in relation to the matter, then, notwithstanding anything contained in this Act, a Conciliation Commissioner is empowered to exercise jurisdiction in relation to the matter.”.

10. Section twenty-six of the Principal Act is repealed and the following section inserted in its stead :—

“ 26.—(1.) The Attorney-General may, on behalf of the Commonwealth, by giving to the Registrar notice in writing of his intention so to do, intervene in the public interest in a matter before the Court.

Intervention by
the Attorney-
General.

“ (2.) If the Attorney-General intervenes in accordance with this section, a person or organization may apply to the Court for liberty to be heard and the Court may, if it is of opinion that it is desirable that the applicant should be heard, permit the applicant to be heard.”

11. Section twenty-nine A of the Principal Act is amended by omitting from sub-section (2.) the figure “ (3.) ” and inserting in its stead the figure “ (7.) ”.

Contempt of
the Court.

12. Section thirty of the Principal Act is repealed and the following section inserted in its stead :—

“ 30. The Registrar may refer a matter, or a question arising in connexion with a matter, before him to the Court for decision and the Court may decide the matter or question so referred or may refer the matter or question back to the Registrar for decision, with or without such directions or suggestions as the Court thinks fit.”

Reference of
matter to
Court by
Registrar.

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

“ 31A.—(1.) In this section, ‘ the Chief Judge ’ includes, in relation to an application for leave to appeal, a Judge appointed by the Chief Judge to deal with the application.

Appeals from
orders, &c., of
Conciliation
Commissioners.

“ (2.) Upon application by—

- (a) an organization or person bound by an order or award made by a Conciliation Commissioner ; or
- (b) an organization or person aggrieved by a decision of a Conciliation Commissioner under paragraph (d) of section forty of this Act refraining or refusing to refrain from further hearing or from determining a dispute or part of a dispute on the ground that the dispute or part of the dispute has been dealt with, is being dealt with, or is proper to be dealt with, by a State Industrial Authority,

the Chief Judge may grant leave to the organization or person to appeal against the order, award or decision and may, on such terms and conditions as he thinks fit, make an order that the operation of the whole or a part of the order, award or decision be stayed pending the determination of the appeal or until further order of the Chief Judge.

“ (3.) An application under the last preceding sub-section for leave to appeal shall be made within fourteen days after the date of the order, award or decision.

“ (4.) Leave to appeal shall not be granted under sub-section (2.) of this section upon application by an organization or person referred to in paragraph (a) of that sub-section unless, in the opinion of the Chief Judge, the order or award deals with a matter of such importance that leave to appeal should, in the public interest, be granted.

“(5.) The Court shall hear and determine an appeal with respect to which leave has been granted under this section.

“(6.) Upon the hearing of an appeal under this section, the Court may—

(a) admit further evidence ; and

(b) direct a Conciliation Commissioner to furnish a report to the Court with respect to such matter as the Court specifies, and shall—

(c) confirm, quash or vary the order, award or decision under appeal ; or

(d) make an order or award dealing with the subject-matter of the order, award or decision under appeal.

“(7.) Where, in pursuance of paragraph (b) of the last preceding sub-section, the Court directs a Conciliation Commissioner to furnish a report, the Conciliation Commissioner shall, after making such investigation (if any) as is necessary, furnish a report accordingly.

“(8.) The provisions of this Act relating to the hearing and determination, or to the hearing or to the determination, of an industrial dispute extend to the hearing and determination, or to the hearing or to the determination, as the case may be, of an appeal under this section.”.

Decisions of Court to be final.

14. Section thirty-two of the Principal Act is amended by omitting from sub-section (1.) the words “ the last preceding section ” and inserting in their stead the words “ any of the provisions of this Act ”.

Powers may be exercised by Court or Conciliation Commissioner on own motion.

15. Section thirty-four of the Principal Act is amended by omitting the word “ The ” (first occurring) and inserting in its stead the words “ Subject to this Act, the ”.

16. After section forty-seven of the Principal Act the following section is inserted :—

Commencement of orders and awards of Conciliation Commissioners.

“ 47A. An order or award of a Conciliation Commissioner shall not, unless all parties to the industrial dispute who appear or are represented before the Conciliation Commissioner consent or the Conciliation Commissioner otherwise directs, have effect until after the expiration of twenty-one days from the date of the order or award.”.

Conference with State Authorities.

17. Section fifty-two of the Principal Act is amended—

(a) by omitting the words “ Court or a Conciliation Commissioner ” and inserting in their stead the words “ Chief Judge or the Chief Conciliation Commissioner ” ; and

(b) by omitting the words “ it or ”.

18. Section fifty-five of the Principal Act is repealed and the following section inserted in its stead :—

Employees not to be required to notify membership of organization.

“ 55. The Court or a Conciliation Commissioner shall not include in an order or award a provision requiring a person claiming the benefit of an award to notify his employer that he is a member of an organization bound by the award.”.

19. Section fifty-nine of the Principal Act is amended by omitting from paragraph (aa) of sub-section (2.) the words "appointed under" and inserting in their stead the words "referred to in section sixty-four of".

Imposition and recovery of penalties.

20.—(1.) Section sixty-four of the Principal Act is amended—

Inspectors.

(a) by omitting from sub-section (1.) the words "subject to this section,"; and

(b) by omitting sub-section (2.).

(2.) Persons holding office, at the commencement of this Act, as Inspectors under section sixty-four of the Principal Act shall not cease to hold office by reason of the enactment of the last preceding sub-section and that section continues to apply to those persons as if that sub-section had not been enacted.

(3.) Regulations under the Principal Act as amended by this Act may prescribe the terms and conditions of appointment of Inspectors referred to in the last preceding sub-section.

21. Section sixty-five of the Principal Act is amended by omitting the words "appointed under" and inserting in their stead the words "referred to in".

Directions that proceedings be instituted.

22. Section seventy-one of the Principal Act is repealed and the following section inserted in its stead :—

"71.—(1.) The Court may, upon the application of an association applying to be registered as an organization, grant leave to the association, on such terms and conditions as the Court thinks fit, to alter its rules to enable it to comply with the prescribed conditions or to remove a ground of objection taken by an objector in accordance with the regulations or by the Registrar and, notwithstanding the fact that the application for registration is pending, the association may alter its rules accordingly.

Adoption of rules to comply with prescribed conditions, &c.

"(2.) Where the rules of an association have been altered in accordance with leave granted under this section, the rules, as so altered, are, notwithstanding anything in the constitution of the association, but subject to any further alterations lawfully made, binding on the members of the association, and the rules, as so altered, become the rules of the association for the purposes of the application for registration."

23. After section eighty-three of the Principal Act the following section is inserted :—

"83A.—(1.) A person employed in connexion with an industry, or engaged in an industrial pursuit, is, unless he is of general bad character, entitled, subject to payment of any amount properly payable in respect of membership, to be admitted as a member of an organization (being an organization of employees in or in connexion with that industry or of employees engaged in that industrial pursuit) and to remain a member so long as he complies with the rules of the organization.

Certain persons entitled to be members of organizations.

“(2.) The last preceding sub-section has effect notwithstanding the rules of the organization.

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

- (a) a person whose usual occupation is that of employee in an industry or engagement in an industrial pursuit ; or
- (b) a person who is qualified to be an employee in an industry or to engage in an industrial pursuit and desires to become such an employee or so to engage,

shall be deemed to be employed in that industry or to be engaged in that industrial pursuit.

“(4.) Nothing in this section applies to a person as to whom there is reasonable ground for believing that—

- (a) he is a member of an unlawful association within the meaning of sub-section (1.) of section thirty A of the *Crimes Act* 1914-1950 ; or
- (b) he advocates or encourages, or has, within one year immediately before seeking to become a member of the industrial organization, advocated or encouraged, any of the matters referred to in that sub-section.

“(5.) The Court has jurisdiction to hear and determine a question or dispute arising under this section and may, notwithstanding anything contained in the rules of the organization concerned, make such order as it thinks fit in relation to the question or dispute.

“(6.) The orders which the Court may make under the last preceding sub-section include an order requiring the organization concerned to treat a person to whom sub-section (1.) of this section applies as being a member of the organization and, upon the making of such an order, or as otherwise specified in the order, the person specified in the order becomes, by force of this Act, a member of the organization.”.

Records to be kept and filed by organizations.

24. Section ninety-one of the Principal Act is amended by omitting from sub-section (2.) the words “ or after the commencement of this section (whichever is the later) ”.
