

CONCILIATION AND ARBITRATION (NO. 2).

No. 103 of 1956.

An Act to amend the Law relating to Conciliation and Arbitration.

[Assented to 15th November, 1956.]

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

1.—(1.) This Act may be cited as the *Conciliation and Arbitration Act (No. 2) 1956*.

Short title
and citation.

(2.) The *Conciliation and Arbitration Act 1904–1955*,* as amended by the *Conciliation and Arbitration Act 1956*,† is in this Act referred to as the Principal Act.

(3.) Section one of the *Conciliation and Arbitration Act 1956* is amended by omitting sub-section (3.).

(4.) The Principal Act, as amended by this Act, may be cited as the *Conciliation and Arbitration Act 1904–1956*.

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

Commencement.

(2.) Sections twenty-three and twenty-four of this Act shall be deemed to have come into operation on the fourteenth day of August, One thousand nine hundred and fifty-six.

3. Section three of the Principal Act is amended by inserting after the words—

Parts.

“Division 4.—Industrial Matters—Stevedoring Industry (Sections 81–88).”

the words—

“Division 5.—Industrial Matters—Commonwealth Projects (Sections 88A–88D).”

* Act No. 13, 1904, as amended by No. 28, 1909; No. 7, 1910; No. 6, 1911; Nos. 5 and 18, 1914; No. 35, 1915; No. 39, 1918; No. 31, 1920; No. 29, 1921; No. 22, 1926; No. 8, 1927; No. 13, 1928; No. 43, 1930; Nos. 45 and 54, 1934; Nos. 14 and 30, 1946; Nos. 10 and 52, 1947; Nos. 65 and 77, 1948; Nos. 23 and 86, 1949; Nos. 51 and 80, 1950; Nos. 18 and 58, 1951; No. 34, 1952; and Nos. 17, 18 and 54, 1955.

† Act No. 44, 1956.

Interpretation.

4. Section four of the Principal Act is amended by omitting from the definition of "Industrial dispute" in sub-section (1.) all the words after paragraph (b) and inserting in their stead the following words :—

"and includes—

- (c) such a dispute in relation to employment in an industry carried on by, or under the control of, a State or an authority of a State ;
- (d) a dispute in relation to employment in an industry carried on by, or under the control of, the Commonwealth or an authority of the Commonwealth, whether or not the dispute extends beyond the limits of any one State ; and
- (e) a claim which an organization is entitled to submit to the Commission under section eleven A of the *Public Service Arbitration Act* 1920–1956 or an application or matter which the Public Service Arbitrator has refrained from hearing, or from further hearing, or from determining under section fourteen A of that Act, whether or not there exists in relation to the claim, application or matter a dispute as to industrial matters which extends beyond the limits of any one State ;”.

5. After section forty-one of the Principal Act the following section is inserted :—

Powers of the Commission in relation to disputes, &c., affecting employees of the Commonwealth.

“41A.—(1.) In relation to an industrial dispute, being a dispute referred to in paragraph (d) of the definition of ‘Industrial dispute’ in sub-section (1.) of section four of this Act or a claim, application or matter referred to in paragraph (e) of that definition, the Commission may, where it thinks it proper to do so, make an award that, in the opinion of the Commission, is not, or may not be, in accord with a law of the Commonwealth relating to salaries, wages, rates of pay or terms or conditions of service or employment of employees in the Public Service as defined by section three of the *Public Service Arbitration Act* 1920–1956, not being—

- (a) the *Commonwealth Employees’ Compensation Act* 1930–1954, the *Commonwealth Employees’ Furlough Act* 1943–1953 or the *Superannuation Act* 1922–1956 ; or
- (b) any other prescribed Act or the prescribed provisions of any other Act.

“ (2.) The provisions of section twenty-one, and of sub-sections (2A.) to (7.) (inclusive) of section twenty-two, of the *Public Service Arbitration Act* 1920–1956 (including those provisions as applied by

virtue of section fifteen E of that Act) apply in relation to an award made by the Commission in relation to an industrial dispute referred to in the last preceding sub-section, as if—

(a) in the case of an award made by the Commission otherwise than under section thirty-four or thirty-five of this Act—
the award were a determination of the Public Service Arbitrator; and

(b) in the case of an award made under either of those sections—
the award were a determination of the Commission.

“(3.) Where an award referred to in sub-section (1.) of this section applies also to persons other than employees in the Public Service, the provisions of the last preceding sub-section do not affect the operation of the award in so far as it applies to those other persons.”.

6. Section fifty-four of the Principal Act is repealed.

Employees not to be required to notify membership of organization.

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

Jurisdiction of Commission.

“(1.) Subject to the next two succeeding sub-sections, the powers of the Commission in respect of industrial questions are exercisable by the Commission constituted by a presidential member of the Commission assigned by the President for the purpose and not otherwise.

“(1A.) The powers of the Commission in respect of a particular industrial question may be exercised by the President or by a presidential member of the Commission assigned by the President for the purpose.”.

8. Section seventy-four of the Principal Act is amended by omitting from sub-section (2.) the words “sub-section (1.) of the last preceding section” and inserting in their stead the words “sub-section (1.) or (1A.) of the last preceding section, as the case may be”.

Application of Division 1.

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

Jurisdiction of Commission.

“(1.) Subject to the next two succeeding sub-sections, the powers of the Commission in respect of industrial questions are exercisable by the Commission constituted by a presidential member of the Commission assigned by the President for the purpose and not otherwise.

“(1A.) The powers of the Commission in respect of a particular industrial question may be exercised by the President or by a presidential member of the Commission assigned by the President for the purpose.”.

Application of
Division 1.

10. Section eighty of the Principal Act is amended by omitting from sub-section (2.) the words “ sub-section (1.) of section seventy-eight of this Act ” and inserting in their stead the words “ sub-section (1.) or (1A.) of section seventy-eight of this Act, as the case may be ”.

Jurisdiction of
Commission.

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

“ (1.) Subject to the next two succeeding sub-sections, the powers of the Commission in respect of industrial questions, and all other powers of the Commission under this Division, are exercisable by the Commission constituted by a presidential member of the Commission assigned by the President for the purpose and not otherwise.

“ (1A.) The powers of the Commission in respect of a particular industrial question, or in respect of a particular matter or application under this Division, may be exercised by the President or by a presidential member of the Commission assigned by the President for the purpose.”.

Directions to
Authority, &c.,
to deal with
industrial
questions.

12. Section eighty-six of the Principal Act is amended by omitting from sub-section (3.) the words “ sub-section (1.) of section eighty-four of this Act ” and inserting in their stead the words “ sub-section (1.) or (1A.) of section eighty-four of this Act, as the case may be ”.

Application of
Division 1.

13. Section eighty-eight of the Principal Act is amended by omitting from sub-section (2.) the words “ sub-section (1.) of section eighty-four of this Act ” and inserting in their stead the words “ sub-section (1.) or (1A.) of section eighty-four of this Act, as the case may be ”.

14. After Division 4 of Part III. of the Principal Act the following Division is inserted :—

“ *Division 5.—Industrial Matters—Commonwealth Projects.*

Definitions.

“ 88A. In this Division, unless the contrary intention appears—

‘ Commonwealth project ’ means a work or undertaking which is for the time being declared to be a Commonwealth project for the purposes of this Division ;

‘ industrial dispute ’ means a dispute (including a threatened, impending or probable dispute) as to industrial matters, whether or not the dispute extends beyond the limits of any one State, and includes—

(a) a part of an industrial dispute ;

(b) an industrial dispute so far as it relates to a matter in dispute ; or

(c) a question arising in relation to an industrial dispute ;

‘ industrial matters ’ means industrial matters, as defined by sub-section (1.) of section four of this Act, in relation to employment on the site of, or in connexion with, a Commonwealth project, whether or not the persons employed are employed by the Commonwealth or an authority of the Commonwealth, and includes a question arising in relation to such a matter.

“ 88B.—(1.) The Minister may, by notice published in the *Gazette*, declare a work or undertaking which is to be, or is being, carried out or undertaken by or for the Commonwealth or an authority of the Commonwealth to be a Commonwealth project for the purposes of this Division.

Commonwealth projects.

“(2.) A notice under the last preceding sub-section shall specify the site on which the work or undertaking is to be, or is being, carried out or undertaken.

“(3.) The Minister may, by notice published in the *Gazette*, declare that this Division shall not apply in relation to the employment of persons or a class of persons specified in the notice, being persons employed on the site of a Commonwealth project, and in that case the Commission is not empowered to exercise powers or functions under this Division in relation to the employment of those persons or a person included in that class of persons.

“(4.) The Minister may, by notice published in the *Gazette*, declare that the persons or a class of persons specified in the notice are employed in connexion with a Commonwealth project and in that case the Commission is empowered to exercise powers or functions under this Division in relation to the employment of those persons or a person included in that class of persons.

“(5.) Except as provided by the last preceding sub-section, the Commission is not empowered to exercise powers or functions under this Division in relation to the employment of persons who are employed in connexion with a Commonwealth project but are not employed on the site of that project.

“ 88c. Subject to this Division, the Commission is empowered—

(a) to prevent or settle, by conciliation or arbitration, industrial disputes; and

(b) to hear and determine industrial matters submitted to it.

Settlement of industrial disputes and determination of industrial matters.

“ 88D.—(1.) Subject to this Division, Division 1 of this Part extends to and in relation to the powers and functions of the Commission under this Division, to and in relation to proceedings under this Division and to and in relation to awards made under this Division.

Application of Division 1.

“(2.) In the application of Division 1 of this Part under the last preceding sub-section, references to industrial disputes shall be read as references to industrial disputes and industrial matters as defined by section eighty-eight A of this Act and a reference in sub-section (1.) of section twenty-six of this Act to a particular industry shall be read as a reference to a Commonwealth project.”.

15. After section ninety-six of the Principal Act the following section is inserted :—

Representation
of parties.

“ 96A.—(1.) In proceedings before the Commonwealth Court of Conciliation and Arbitration under this Part, a party—

- (a) may appear personally ; or
- (b) may be represented by counsel or solicitor or as provided by the next succeeding sub-section.

“(2.) Except in proceedings before the Court under paragraph (c) of sub-section (1.) of section ninety-five of this Act, a party—

- (a) being an organization, may, with the leave of the Court, be represented by a member or officer of the organization ; or
- (b) not being an organization, may, with the leave of the Court, be represented by—
 - (i) an employee of that party ; or
 - (ii) a member or officer of an organization of which that party is a member.

“(3.) In this section, ‘ party ’ includes an intervener.”.

16. After section one hundred and seventeen of the Principal Act the following section is inserted :—

Representation
of parties.

“ 117A.—(1.) In proceedings before the Court under this Act or the *Stevedoring Industry Act* 1956, a party—

- (a) may appear personally ; or
- (b) may be represented by counsel or solicitor or as provided by the next two succeeding sub-sections.

“(2.) Subject to the next succeeding sub-section, and except in proceedings under section one hundred and thirteen of this Act or in proceedings in respect of an offence against this Act or the *Stevedoring Industry Act* 1956, a party—

- (a) being an organization, may be represented by a member or officer of the organization ; or
- (b) not being an organization, may be represented by—
 - (i) an employee of that party ; or
 - (ii) a member or officer of an organization of which that party is a member.

“(3.) In proceedings before the Court under Part V. of this Act (other than section one hundred and thirteen of this Act), a party shall not be represented as provided by the last preceding sub-section except with the leave of the Court.

“(4.) In this section, ‘party’ includes—

- (a) an intervener; and
- (b) the Australian Stevedoring Industry Authority.”.

17. Section one hundred and thirty-one of the Principal Act is amended— Registers of organizations.

- (a) by omitting from sub-section (1.) the words “and a list of all proclaimed organizations”; and
- (b) by omitting from sub-section (2.) the words “and a list of all proclaimed organizations existing in the State”.

18. Section one hundred and thirty-three of the Principal Act is amended by omitting from sub-section (2.) the words “section eighty” and inserting in their stead the words “section one hundred and forty”. Rules to provide for secret ballots.

19. Section one hundred and forty-three of the Principal Act is amended by omitting from sub-sections (1A.) and (5.) the words “the Act” and inserting in their stead the words “this Act”. Application for cancellation of registration.

20. Section one hundred and eighty-six of the Principal Act is amended by omitting from sub-section (3.) the words “or him”. Trade secrets, &c., tendered in evidence.

21. Section one hundred and ninety-one of the Principal Act is amended by inserting in sub-section (1.), after the words “this Act” (wherever occurring), the words “or the regulations”. Court may impose penalties for offences.

22. Section one hundred and ninety-eight of the Principal Act is amended— Regulations.

- (a) by omitting from paragraph (c) of sub-section (1.) the word “and” (last occurring); and
- (b) by adding at the end of sub-section (1.) the following word and paragraph:—

“; and (e) for prescribing penalties not exceeding a fine of One hundred pounds or imprisonment for a period not exceeding six months, or both, for offences against the regulations.”.

Continuance of
certain
proceedings
before
Commonwealth
Court of
Conciliation
and Arbitration.

23. Section forty-six of the *Conciliation and Arbitration Act* 1956 is amended by omitting all the words after the words "as the case may be" and inserting in their stead the following paragraphs:—

"(a) is empowered to continue and complete the hearing and determination of an industrial dispute, an industrial question or any other matter (but not including a matter the determination of which involves the exercise of judicial power) the hearing and determination of which had been begun by the Court but had not been completed before the commencement of this section ;

"(b) is empowered to grant leave to appeal from an act or decision of the Registrar upon an application for leave to appeal made before the commencement of this section and, if leave is granted, to hear and determine the appeal ; and

"(c) is empowered to hear and determine an appeal from an act or decision of the Registrar in respect of which leave to appeal was granted before the commencement of this section."

24. After section forty-eight of the *Conciliation and Arbitration Act* 1956 the following section is inserted :—

Jurisdiction
of the
Commonwealth
Industrial
Court with
respect to
certain appeals.

"48A. The jurisdiction of the Commonwealth Industrial Court under section one hundred and thirteen of the Principal Act as amended by this Act to hear and determine certain appeals extends to such an appeal instituted under section thirty-one of the Principal Act but not heard and determined before the commencement of this section."
