



ANNO DECIMO SEPTIMO

**ELIZABETHAE II REGINAE**

A.D. 1968

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**No. 55 of 1968**

An Act to consolidate and amend the law relating to arbitration in respect of the Public Service and for other purposes.

[Assented to 19th December, 1968.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

- Short title.**       **1.** This Act may be cited as the "Public Service Arbitration Act, 1968".
- Commence-  
ment.**           **2.** This Act shall come into operation on a day to be fixed by proclamation.
- Definitions.**   **3.** In this Act, unless the contrary intention appears—  
                   "claim" means a claim referred to in subsection (1) of section 11 of this Act :  
                   "Department" means a Department as defined in the Public Service Act, 1967 :  
                   "group" means—  
                   (a) all the occupants of Offices the nature of the duties of which is—  
                       (i) similar ;  
                       and  
                       (ii) substantially different from the nature of the duties of all other Offices ;

(b) the occupant of an Office the nature of the duties of which is substantially different from the nature of the duties of all other Offices ;

or

(c) all the occupants of the Offices prescribed as constituting a group :

“Office” means an Office as defined in the Public Service Act, 1967 :

“Officer” means an Officer or temporary Officer as defined in the Public Service Act, 1967 :

“organization” means a registered association as defined in the Industrial Code, 1967 :

“the Arbitrator” means the Public Service Arbitrator appointed under section 6 of this Act or continued in office under this Act and includes the Deputy Arbitrator :

“the Board” means the Public Service Board constituted by the Public Service Act, 1967 :

“the Deputy Arbitrator” means the Deputy Arbitrator appointed under section 7 of this Act while acting as such :

“the President” means the President of the Industrial Court of South Australia holding office pursuant to the Industrial Code, 1967, and includes the person for the time being acting in that office pursuant to that Act and the person, if any, for the time being holding or acting in the office of Deputy President of the Industrial Court of South Australia :

“the Public Service” means the Public Service as defined in the Public Service Act, 1967 :

“the repealed Act” means the Public Service Arbitration Act, 1961-1964.

**4. (1)** The Acts and portions of the Acts mentioned in the Schedule to this Act are hereby repealed. Repeal and savings.

(2) The repeal effected by subsection (1) of this section does not affect any determination made pursuant to the repealed Act and in force at the commencement of this Act and—

(a) every such determination shall continue in force and have effect as if this Act were in force when it was made and it were a determination made pursuant to this Act ;

and

(b) any proceedings commenced under the repealed Act and pending or partly heard immediately before the commencement of this Act may be continued and completed under this Act as if this Act were in force when they were commenced and they had been commenced under this Act.

Reading of  
references to  
Arbitrator, etc.

5. Any reference in any Act (other than this Act), regulation, rule, law, order of a court or commission, instrument, agreement or document of any kind to or in relation to the repealed Act or the public service arbitrator appointed under the repealed Act shall, unless a contrary intention appears, be read as reference to or in relation to this Act or the Arbitrator, as the case may require.

Public Service  
Arbitrator.

6. (1) For the purposes of this Act there shall be a Public Service Arbitrator appointed or, as the case may be, re-appointed by the Governor.

(2) The Arbitrator shall, subject to subsection (3) of this section, be appointed for a term of seven years and on the expiration of his term of office shall be eligible for re-appointment.

(3) Where the person who is to be appointed or re-appointed under subsection (1) of this section is over the age of fifty-eight years the term of his appointment or re-appointment, as the case may be, shall be the period which will expire on his attaining the age of sixty-five years.

(4) If an Officer is appointed as the Arbitrator his service as such shall, for the purpose of determining all his existing and accruing rights, be counted as service in the Public Service.

(5) Subject to this Act, the terms and conditions of appointment of the Arbitrator shall be as determined by the Governor.

(6) The public service arbitrator appointed pursuant to the repealed Act and in office immediately before the commencement of this Act shall continue in office as the Arbitrator under this Act, and, notwithstanding anything in this Act shall continue in office as if he had been appointed under this Act for the balance of the term, remaining after that commencement, for which, and under the same terms and conditions under which, he was appointed under the repealed Act.

Appointment  
of a Deputy  
Arbitrator.

7. (1) In the case of illness, suspension or absence from duty of the Arbitrator the Governor may appoint a Deputy Arbitrator to act in the place of the Arbitrator during the period of that illness, suspension or absence, as the case may be,

and while so acting the Deputy Arbitrator shall have and may exercise and perform all the powers and functions of the Arbitrator.

(2) If an Officer is appointed Deputy Arbitrator, his service as such shall, for the purpose of determining all his existing and accruing rights, be counted as service in the Public Service.

(3) Subject to this Act, the terms and conditions of appointment of a Deputy Arbitrator, including remuneration, shall be as determined by the Governor.

**8.** (1) The Arbitrator shall be paid a salary at the rate of eleven thousand four hundred dollars per annum and when the Arbitrator holds that appointment with any other appointment in the service of the State which, were it not for the fact that it was held with his appointment as Arbitrator, would be a full time appointment, he shall be paid the salary in respect of his appointment as the Arbitrator or his salary in respect of that other appointment whichever salary is the greater.

Salary and expenses of Arbitrator.

(2) Subsection (1) of this section shall not be construed so as to preclude the Arbitrator from receiving such additional remuneration as the Governor may determine in respect of any appointment or appointments held by him in the service of the State other than the appointments referred to in that subsection.

(3) The salary of the Arbitrator shall be a charge upon and be payable out of the general revenue of the State which is hereby, to the necessary extent, appropriated accordingly.

(4) There shall be paid to the Arbitrator, on account of his expenses in discharging the duties of his office, such sums as are considered reasonable by the Governor.

**9.** (1) The Governor may remove the Arbitrator from office on an address praying for that removal being presented to the Governor from both Houses of Parliament, during one session of Parliament, or from one House during one session and from the other House during the next succeeding session, which sessions however need not be both during the same Parliament.

Removal or suspension of Arbitrator.

(2) Where the Arbitrator is removed from office under subsection (1) of this section his office shall become vacant.

(3) The Governor may suspend the Arbitrator from office for misbehaviour, incompetence or incapacity.

(4) A statement of the cause of a suspension under subsection (3) of this section shall be laid before both Houses of Parliament within seven days of that suspension, if the Parliament is then

sitting, or, if the Parliament is not then sitting, then within seven days after the next meeting of Parliament and unless within one month after the day when, and during the same session as that statement is laid before Parliament an address from either House of Parliament praying for the removal from office of the Arbitrator is presented to the Governor the Arbitrator shall be restored to office but if such an address is so presented the Governor may remove the Arbitrator from office and the office shall thereupon become vacant.

**Vacation of office.**

**10.** The office of the Arbitrator shall become vacant if the Arbitrator—

- (a) dies, or resigns his office by writing addressed to the Governor ;
- (b) is adjudicated bankrupt, makes a composition with his creditors for less than one hundred cents in the dollar, applies to take the benefit of any law in force in the State for the relief of bankrupt or insolvent debtors or makes an assignment of his salary for the benefit of his creditors ;

or

- (c) becomes a member of either House of Parliament of the State or the Commonwealth.

**Jurisdiction.**

**11.** (1) Subject to this section, the Arbitrator has jurisdiction in respect of any claim by—

- (a) the Board ;
  - (b) an organization—
    - (i) not less than twenty members of which are affected by the claim ;
- or
- (ii) the members of which include not less than seventy-five per cent of the Officers who are affected by the claim ;

- (c) all the persons who constitute or the person who constitutes a group ;

and

- (d) in the case of an application submitted by the Board to the Arbitrator pursuant to subsection (5) of section 13 of this Act, the applicant,

in relation to annual salaries or limits of annual salaries and the amount of annual increments of salaries within those limits payable in respect of Offices.

(2) This section shall not be construed as conferring on the Arbitrator jurisdiction in or in relation to—

- (a) any matter or thing arising out of the employment of—
  - (i) any Permanent Head within the meaning of the Public Service Act, 1967 ;
  - (ii) any person employed in any capacity by the State Bank of South Australia ;
  - (iii) any person or Office in respect of whom or in respect of which the Governor by proclamation under section 12 of this Act declares that the Arbitrator shall not have jurisdiction under this Act ;
- (b) the determination of any condition of employment other than the conditions of employment referred to in subsection (1) of this section ;

or

- (c) the determination of any claim for the alteration of the living wage within the meaning of the Industrial Code, 1967.

(3) Paragraph (b) of subsection (2) of this section shall not prevent the Arbitrator from having regard to conditions of employment outside his jurisdiction for the purpose of determining any matter or thing within his jurisdiction.

**12.** (1) The Governor may by proclamation declare that the Arbitrator shall not have jurisdiction in respect of any claims relating to an Office or a person specified in the proclamation and subject to subsection (2) of this section, on the publication of that proclamation in the *Gazette*, the proclamation shall have effect according to its tenor.

Exclusion from jurisdiction.

(2) The Governor may by proclamation amend, vary or revoke a declaration made, amended or varied by a proclamation under this section and that amendment, variation or revocation shall have effect according to its tenor.

**13.** (1) Where the Board makes a claim it shall—

Claims by Board.

- (a) serve a copy of that claim on the organization which, in its opinion, has as members the majority of persons affected by the claim ;

and

- (b) publish a copy of that claim in the *Gazette*.

(2) Where a claim published pursuant to subsection (1) of this section affects—

- (a) any member of any organization ;
- (b) any person who constitutes any group ;
- or
- (c) all the persons who constitute any group,

that organization, that person or those persons, as the case may be, may object to that claim by serving notice of that objection on the Board within twenty-one days after the day of that publication.

(3) If—

- (a) no objection is lodged under subsection (2) of this section ;

or

- (b) an objection is lodged and agreement is reached on the claim between the Board, the objector or objectors to the claim and the organization referred to in subsection (1) of this section,

then the Board shall forthwith make a return under the Public Service Act, 1967, giving effect to that claim or agreement as the case may be.

(4) If within twenty-one days after the day of publication referred to in subsection (1) of this section agreement has not been reached between the Board and the organization referred to in subsection (1) of this section and any organization or group referred to in subsection (2) of this section which has pursuant to that subsection objected to the claim, the Board may submit the claim to the Arbitrator for determination.

(5) Notwithstanding anything in section 14 of this Act or this section, the Board may in its discretion submit to the Arbitrator for determination any application made to it which if it were made by an organization or group would constitute a claim within the jurisdiction of the Arbitrator and in that case a claim for the determination of the matter will be deemed to have been submitted by the applicant, who made the application to the Board, on the day the application was submitted by the Board to the Arbitrator under this section.

(6) Nothing in subsection (5) of this section shall be construed as affecting, limiting, restricting or abridging the powers conferred on the Board by Division III of Part III of the Public Service Act, 1967.

Claims by  
organizations  
and groups.

**14.** (1) Where an organization or a group makes a claim it shall serve a copy of the claim on the Board.

(2) Within twenty-one days of receiving a claim under subsection (1) of this section the Board shall inform the organization or all of the persons who constitute or the person who

constitutes the group, as the case may be, or cause the organization, those persons or the person, as the case may be, to be informed whether or not the Board is in agreement with the claim.

(3) If the Board is in agreement with the claim or agreement has been reached in respect of the claim between the Board and the organization or between the Board and the group, as the case may be, the Board shall forthwith make a return under the Public Service Act, 1967, giving effect to the claim or agreement as the case may be.

(4) If at the expiration of the period of twenty-one days referred to in subsection (2) of this section—

(i) the Board has not informed or caused to be informed the organization or the person or persons constituting the group, as the case may be, that it is in agreement with the claim;

or

(ii) agreement between the Board and the organization or group, as the case may be, has not been reached in respect of the claim,

then the organization or the person or persons constituting the group, as the case may be, may submit the claim to the Arbitrator for determination.

**15.** When the Arbitrator determines a claim under this Act, other than by dismissing the claim, the Board shall forthwith make a return under the Public Service Act, 1967, giving effect to that determination.

Board to give effect to determination of Arbitrator.

**16.** (1) For the purposes of this Act, the Arbitrator may—

- (a) take evidence on oath, affirmation or otherwise either in public or in private or partly in public and partly in private ;
- (b) by summons under his hand require the attendance of witnesses ;
- (c) direct that witnesses, other than witnesses in the employ of the State, be paid such fees as are specified in the direction, by the party to the proceedings on whose behalf they are called ;
- (d) permit the amendment or withdrawal of a claim ;
- (e) direct the parties to the proceedings to confer ;
- (f) adjourn the proceedings from time to time or from place to place ;
- (g) when a claim purports to be made by a group, determine whether or not an Officer or the Officers making the claim constitute a group ;

Powers and functions of Arbitrator.



- (h) refrain from hearing or continuing to hear a claim or dismiss a claim ;
  - (i) fix the date of effect of a determination not being earlier than the day on which the claim, in respect of which the determination was made, was submitted to him ;
  - (j) subject to subsection (6) of this section fix the period of operation of a determination ;
  - (k) require the Board to further consider a claim or part of a claim with or without such directions or suggestions as the Arbitrator thinks fit ;
  - (l) determine any matter arising out of the interpretation of any determination made by him ;
  - (m) enter the premises of any Department in the exercise and discharge of the powers and functions conferred on him under this Act ;
  - (n) by summons under his hand, require the production of books, papers or other documents ;
- and
- (o) generally give all such directions and do all such things as he considers necessary or expedient to give effect to this Act.

(2) If without reasonable cause (the proof of which shall lie upon him) a person summoned under this section, after being paid or tendered his reasonable expenses—

- (a) fails to appear in accordance with the summons ;
- (b) fails or refuses to be sworn or to answer any question put to him ;

or

- (c) fails to produce any book, paper or other document pursuant to that summons,

he shall be guilty of an offence.

Penalty : One hundred dollars.

(3) Nothing in this section shall be construed as compelling a person to answer any question which would tend to incriminate him.

(4) A person shall not, without the permission of the Arbitrator—

- (a) inspect any books, papers or other documents produced in obedience to a summons under subsection (1) of this section :

or

(b) publish any information obtained from such an inspection.

Penalty : One hundred dollars.

(5) Where a return has been made by the Board under the Public Service Act, 1967, in consequence of a determination under this Act in relation to which a period of operation has been fixed, on the expiration of that period that return shall continue in full force and effect until—

(a) a new return is made in substitution therefor ;

or

(b) that return is varied or rescinded,

whichever first occurs.

(6) Notwithstanding anything in paragraph (j) of subsection (1) of this section the Arbitrator may, in determining a claim, vary or rescind a determination referred to in that paragraph before the expiration of the period of operation referred to in that paragraph.

17. In proceedings under this Act, the Arbitrator shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms and he shall not be bound by any rules of evidence but may inform his mind on any matter in such manner as he sees fit.

Arbitrator to act according to equity and good conscience.

18. Nothing in this Act shall be construed as affecting the exercise of any power conferred on the Industrial Commission of South Australia by the Industrial Code, 1967, or the operation of an award or order of that Commission or an industrial agreement filed pursuant to the Industrial Code, 1967.

Operation of Industrial Code, etc., not affected.

19. (1) Except by leave of the Arbitrator, a party shall not be represented by counsel, solicitor or paid agent.

Representation, etc.

(2) Subsection (1) of this section shall not prevent—

(a) an organization from being represented by an officer, member or employee of that organization ;

(b) a group from being represented by a member of that group or an officer, member or employee of an organization at least one member of which is for the time being comprised in the group ;

or

(c) the Board from being represented by an Officer.

20. No costs shall be allowed in any proceedings under this Act.

Costs.

Extension of  
jurisdiction of  
Arbitrator.

**21.** (1) Notwithstanding anything in this Act, the Governor may by proclamation extend the jurisdiction of the Arbitrator to claims in relation to annual salaries or limits of annual salaries and the amount of annual increments of salaries within those limits, payable to persons employed in the service of the State or of any State authority or instrumentality otherwise than as Officers.

(2) In a proclamation under subsection (1) of this section the Governor may provide for the reading of references in this Act to—

(a) Officers as references to certain classes of persons employed in the service of the State or of any State authority or instrumentality otherwise than as Officers ;

(b) Offices as references to certain classes of positions of employment in the service of the State or of any State authority or instrumentality ;

(c) the Board as references to some other person or authority ;

and

(d) returns by the Board under the Public Service Act, 1967, as references to some other form of wage or salary fixation by a person or authority,

and may generally make such other provision as may be necessary or expedient for giving effect to this section.

(3) A proclamation made under subsection (2) of section 2 of the repealed Act and in force on the commencement of this Act, shall, upon that commencement, have effect as if it had been made pursuant to subsection (1) of this section.

(4) The Governor may by proclamation amend, vary or revoke a proclamation made or which has effect as if it had been made pursuant to subsection (1) of this section and that amendment, variation or revocation shall have effect according to its tenor.

Appeal.

**22.** (1) Except as is provided in subsection (6) of this section, there shall be an appeal against any determination or part of a determination or any decision of the Arbitrator under this Act to the President.

(2) An appeal under this section—

- (a) shall be made in the prescribed manner and shall be lodged with the Industrial Registrar, appointed under or continued in office by the Industrial Code, 1967, within twenty-one days after the delivery of the decision or determination appealed against ;
  - (b) may be made by any party to the proceedings before the Arbitrator ;
- and
- (c) shall specify the determination or decision or the part of the determination appealed against and the relief sought.

(3) Where an appeal is made under this section against a determination or part of a determination or against any decision, notwithstanding anything in this Act or any other Act, a return made by the Board pursuant to that determination or part or decision shall not have any force or effect until the appeal is determined or the President otherwise orders.

(4) On the hearing of an appeal, the President may—

- (a) admit fresh evidence ;
  - (b) confirm, quash or vary the determination or part of the determination or confirm, quash or vary any decision of the Arbitrator appealed against by substituting any decision or determination within the jurisdiction of the Arbitrator ;
  - (c) refer the determination or part of the determination or refer the decision appealed against back to the Arbitrator for reconsideration with or without such directions or suggestions as the President may think fit ;
- or
- (d) dismiss an appeal or any part thereof.

(5) On determining an appeal the President may make such order, in relation to all or part of the determination or decision of the Arbitrator appealed against, as to him seems necessary or desirable and the Board shall forthwith give effect to so much of that order as is applicable to it by return under the Public Service Act, 1967.

(6) No appeal referred to in subsection (1) of this section shall lie where the Arbitrator, who gave the decision or made the determination referred to in that subsection, for the time being occupies the office of the President.

**Contempt.**

**23.** (1) A person shall not—

(a) wilfully insult the Arbitrator, the President or any person assisting the Arbitrator or President in proceedings under this Act ;

(b) wilfully interrupt or disturb any such proceedings ;

or

(c) otherwise misbehave himself during any such proceedings.

Penalty : One hundred dollars.

(2) The President or the Arbitrator, as the case may be, may impose a fine, not exceeding one hundred dollars on a person who commits an act referred to in subsection (1) of this section.

**Summary proceedings.**

**24.** Except as provided by subsection (2) of section 23 of this Act, proceedings for offences against this Act shall be disposed of summarily.

**Regulations.**

**25.** The Governor may make regulations not inconsistent with this Act prescribing any matters which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**Financial provision.**

**26.** The moneys required for the purposes of this Act shall be paid out of moneys provided by Parliament for those purposes.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

J. W. HARRISON, Governor.

**THE SCHEDULE**

Section 4 (1).

- Public Service Arbitration Act, 1961.
- Section 5 of Statutes Amendment (Public Salaries) Act, 1963.
- Public Service Arbitration Act Amendment Act, 1964.
- Section 5 of the Statutes Amendment (Public Salaries) Act, 1964.
- Section 5 of the Statutes Amendment (Public Salaries) Act, 1965.
- Section 7 of the Statutes Amendment (Public Salaries) Act, 1967.