

# Conciliation and Arbitration

No. 53 of 1970

An Act to amend the *Conciliation and Arbitration Act*  
1904–1969 and for other purposes.

[Assented to 24 June 1970]

**B**E 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* 1970. Short title  
and citation.

(2.) The *Conciliation and Arbitration Act* 1904–1969\* 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* 1904–1970.

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

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\* 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. 18, 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. 28 and 86, 1949; Nos. 51 and 80, 1950; Nos. 18 and 58, 1951; No. 34, 1952; Nos. 17, 18 and 54, 1955; Nos. 44 and 103, 1956; No. 30, 1958; No. 40, 1959; Nos. 15, 17 and 110, 1960; No. 40, 1961; Nos. 99 and 115, 1964; Nos. 22 and 92, 1965; Nos. 64 and 93, 1966; No. 101, 1967; No. 38, 1968; and Nos. 12, 15 and 40, 1969.

## Interpretation.

## 3. Section 4 of the Principal Act is amended—

(a) by inserting in sub-section (1.), after the definition of “ Award ”, the following definition:—

“ ‘ Breach ’, in relation to a term of an order or award, includes a non-observance of that term;” and

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

“ (3.) A reference in this Act to engaging in conduct includes a reference to being, whether directly or indirectly, a party to or concerned in the doing of any act or thing.”.

4. After section 32 of the Principal Act the following section is inserted:—

Settlement of matters giving rise to conduct hindering observance of award.

“ 32A.—(1.) This section applies in relation to a term of an award, however expressed, by virtue of which engaging in conduct that would hinder, prevent or discourage the observance of, or the performance of work in accordance with, the award is prohibited.

“ (2.) Where it appears to a person or organization bound by an award that conduct in contravention of a term of the award in relation to which this section applies has been, is being or is likely to be engaged in, the person or organization may give notice to the Registrar accordingly.

“ (3.) Where a notice has been duly given under the last preceding sub-section, a presidential member of the Commission appointed by the President shall inquire into the matters alleged in the notice and, if it appears to him that there was good ground for the notice, take such steps as he thinks appropriate for the prompt settlement of the matters that gave rise, are giving rise or are likely to give rise to the conduct referred to in the notice and may for that purpose exercise any powers of a Commissioner and any powers of the Commission other than powers that are exercisable only by the Commission in Presidential Session.

“ (4.) Section thirty-five of this Act applies in relation to an award or order made by a presidential member of the Commission in the exercise of a power referred to in the last preceding sub-section as it applies in relation to an award made by the Commission constituted by a Commissioner.

“ (5.) A proceeding under section one hundred and nineteen of this Act in respect of conduct constituting a breach of a term of an award of the kind referred to in sub-section (1.) of this section shall not be instituted unless a presidential member of the Commission has given a certificate in writing stating that he is satisfied that the conduct alleged is conduct arising out of matters in respect of which there have been proceedings before him, or before another presidential member of the Commission, under this section.

“ (6.) A certificate under the last preceding sub-section may relate to conduct occurring before, during or after the proceedings under this section.

“ (7.) Where, on an application to a presidential member by a person or organization for a certificate under sub-section (5.) of this section in relation to any conduct, the presidential member is satisfied that the conduct arose out of matters in respect of which there have been proceedings under this section, he shall give the certificate unless he is satisfied that the giving of the certificate would be undesirable having regard to the terms on which a settlement of the matters concerned has been effected or would be likely to prevent a settlement of those matters.”.

5. Section 33 of the Principal Act is amended by inserting in sub-sections (3.) and (4.), after the word “ Act ” (wherever occurring), the words “ other than the next succeeding section ”.

Jurisdiction  
of the  
Commission.

6.—(1.) After section 33 of the Principal Act the following section is inserted:—

“ 33A.—(1.) Notwithstanding anything contained in the last preceding section but subject to this section, the power of the Commission—

Power to  
include in  
award a  
Provision  
directing  
persons not to  
hinder  
observance  
of award.

- (a) to include in an award, or to vary an award so as to include, a term, however expressed, by virtue of which engaging in conduct that would hinder, prevent or discourage the observance of, or the performance of work in accordance with, the award is prohibited;
- (b) to certify under section thirty-one of this Act an agreement that contains such a term; and
- (c) if an award includes such a term—to vary the award so as to exclude, or alter the provisions of, that term,

is exercisable by a presidential member of the Commission and not otherwise.

“ (2.) In relation to the exercise of a power referred to in the last preceding sub-section, section thirty-four of this Act applies as if the presidential member of the Commission were a Commissioner dealing with an industrial dispute and as if a reference in that section to the Commissioner concerned were a reference to that presidential member of the Commission.

“ (3.) Section thirty-five of this Act applies in relation to an award or order made by a presidential member of the Commission in the exercise of a power referred to in sub-section (1.) of this section as it applies in relation to an award made by the Commission constituted by a Commissioner.”.

(2.) Section 33A of the Principal Act as amended by this Act does not prevent a Commissioner from exercising a power referred to in sub-section (1.) of that section in pursuance of an application for the exercise of that power made before the date of commencement of this Act if the Commissioner commenced to hear that application before that date.

Particular  
powers of  
Commission.

7.—(1.) Section 41 of the Principal Act is amended by omitting paragraph (c) of sub-section (1.) and inserting in its stead the following paragraph:—

“ (c) include in an award, or vary an award so as to include, a provision to the effect that engaging in conduct in breach of a specified term of the award shall be deemed to constitute the commission of a separate breach of that term on each day on which the conduct continues;”.

(2.) Where, at the commencement of this Act, an award purported to contain a provision of the kind referred to in paragraph (c) of sub-section (1.) of section 41 of the Principal Act as amended by this Act, sub-section (1c.) of section 119 of the Principal Act as so amended has effect as if that provision had been included in the award after the commencement of this Act by virtue of that paragraph.

Representation  
of parties.

8. Section 63 of the Principal Act is amended by omitting from paragraph (a), and from sub-paragraph (ii) of paragraph (b), of sub-section (1.) the words “ or officer ” and inserting in their stead the words “, officer or employee ”.

Application of  
other provisions  
of Act.

9. Section 88v of the Principal Act is amended by adding at the end thereof the following sub-section:—

“ (5.) Section thirty-two A of this Act has effect in relation to awards of the Tribunal as if—

- (a) the reference in sub-section (3.) to a presidential member of the Commission appointed by the President were a reference to the person constituting the Tribunal;
- (b) the words ‘ and may for that purpose exercise any powers of a Commissioner and any powers of the Commission other than powers that are exercisable only by the Commission in Presidential Session ’ in sub-section (3.) were omitted;
- (c) sub-section (4.) were omitted; and
- (d) the references in sub-sections (5.) and (7.) to a presidential member of the Commission were references to the person constituting the Tribunal.”.

Declared  
bodies.

10. Section 88z of the Principal Act is amended by inserting in sub-section (2.), before the word “ eighty-eight w ”, the word “ thirty-two A,”.

Representation.

11. Section 88ZE of the Principal Act is amended by omitting from paragraph (a), and from sub-paragraph (ii) of paragraph (b), of sub-section (1.), the words “ or officer ” and inserting in their stead the words “, officer or employee ”.

12. Section 96A of the Principal Act is amended by omitting from paragraph (a), and from sub-paragraph (ii) of paragraph (b), of sub-section (2.) the words “ or officer ” and inserting in their stead the words “, officer or employee ”.

Representation of parties.

13.—(1.) Section 109 of the Principal Act is amended—

Powers of Court.

- (a) by omitting paragraph (a) of sub-section (1.);
- (b) by omitting from paragraph (b) of sub-section (1.) the words “ or a breach or non-observance of an award ”;
- (c) by omitting from sub-section (2.) the words “ under paragraph (a) or (b) ” and inserting in their stead the words “ under paragraph (b) ”; and
- (d) by omitting sub-section (3.).

(2.) Upon the commencement of this Act, an order of the Commonwealth Industrial Court in force under paragraph (a) of sub-section (1.) of section 109 of the Principal Act or an order of that Court in force under paragraph (b) of that sub-section enjoining an organization or person from committing or continuing a breach or non-observance of an award ceases to have effect but nothing in this Act affects any penalty imposed by that Court before the commencement of this Act in respect of a contempt of that Court that consisted of a failure to comply with such an order.

14. Section 109A of the Principal Act is repealed.

Hearing of certain applications not to be commenced unless certain conditions fulfilled.

15. Section 111 of the Principal Act is amended by omitting from sub-section (4.) the words “ under paragraph (a) or (b) ” and inserting in their stead the words “ under paragraph (b) ”.

Contempt of the Court.

16. Section 114 of the Principal Act is amended by omitting from sub-section (1.) the words “ one hundred and nine A,”.

Limitation on appeals to High Court.

17. Section 117A of the Principal Act is amended by omitting from paragraph (a), and from sub-paragraph (ii) of paragraph (b), of sub-section (2.) the words “ or officer ” and inserting in their stead the words “, officer or employee ”.

Representation of parties.

18. Section 119 of the Principal Act is amended—

Imposition and recovery of penalties.

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

“ (1.) Where any organization or person bound by an order or award has committed a breach or non-observance of a term

of the order or award, a penalty may be imposed by the Court or, except in the case of a breach or non-observance of a term of an order or award of the kind referred to in sub-section (1.) of section thirty-two A of this Act, by any District, County or Local Court or Court of summary jurisdiction that is constituted by a Judge, by a Police, Stipendiary or Special Magistrate or by an Industrial Magistrate appointed under any State Act who is also a Police, Stipendiary or Special Magistrate.

“(1A.) Subject to the next two succeeding sub-sections, where a Court finds that two or more breaches by the same organization or person of a term of an order or award have been committed and those breaches appear to that Court to have arisen out of a course of conduct by that organization or person, those breaches shall, for the purposes of this section, be treated as constituting a single breach of that term.

“(1B.) A breach by an organization or person of a term of an order or award committed after a Court has imposed a penalty in respect of an earlier breach by that organization or person of that term shall not be taken to have arisen out of the same course of conduct as the earlier breach.

“(1C.) Sub-section (1A.) of this section does not apply in relation to separate breaches of a term of an order or award that are to be deemed to have been committed by virtue of a provision included in an order or award in accordance with paragraph (c) of sub-section (1.) of section forty-one of this Act.

“(1D.) The maximum penalty that may be imposed under sub-section (1.) of this section in respect of a breach of a term of an order or award is—

(a) where the penalty is imposed by the Court—

- (i) in a case to which the next succeeding sub-paragraph does not apply—One thousand dollars; or
- (ii) if the breach is a separate breach by virtue of a provision included in an order or award in accordance with paragraph (c) of sub-section (1.) of section forty-one of this Act—Five hundred dollars; or

(b) in any other case—Two hundred and fifty dollars.”; and

(b) by omitting from sub-sections (2.) and (4.) the words “ or non-observance ” (wherever occurring).

Directions that proceedings be instituted.

19. Section 126 of the Principal Act is amended by adding at the end thereof the words “ other than a penalty for a breach of a term of an order or award in relation to which section thirty-two A of this Act applies.”.

20. In the application by virtue of section 36 of the *Coal Industry Act 1946–1966* of section 32A of the *Conciliation and Arbitration Act 1904–1970* to orders and awards made by the Coal Industry Tribunal—

Application of section 32A of Conciliation and Arbitration Act to orders or awards of the Coal Industry Tribunal.

- (a) the reference in sub-section (3.) of section 32A to a presidential member of the Commission appointed by the President shall be read as if it were a reference to the person constituting the Coal Industry Tribunal;
- (b) the words “ and may for that purpose exercise any powers of a Commissioner and any powers of the Commission other than powers that are exercisable only by the Commission in Presidential Session ” in sub-section (3.) of section 32A shall be deemed to be omitted;
- (c) sub-section (4.) of section 32A shall be deemed to be omitted; and
- (d) the references in sub-sections (5.) and (7.) of section 32A to a presidential member of the Commission shall be read as if they were references to the person constituting the Coal Industry Tribunal.

21.—(1.) The Conciliation and Arbitration Regulations are amended as set out in the Schedule to this Act.

Amendments of Conciliation and Arbitration Regulations.

(2.) The amendments made by the last preceding sub-section shall be deemed to have taken effect on the twenty-first day of May, One thousand nine hundred and seventy.

(3.) The Conciliation and Arbitration Regulations as amended by sub-section (1.) of this section may be amended or repealed by a regulation under the *Conciliation and Arbitration Act 1904–1970*.

(4.) Any payments made during the period from and including the thirteenth day of December, One thousand nine hundred and sixty-seven, to and including the twenty-first day of May, One thousand nine hundred and seventy, that would have been lawfully made if the amendments of the Conciliation and Arbitration Regulations effected by sub-section (1.) of this section had taken effect on the thirteenth day of December, One thousand nine hundred and sixty-seven, shall be taken to have been lawfully made.

## THE SCHEDULE

Section 21.

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AMENDMENTS OF THE CONCILIATION AND ARBITRATION  
REGULATIONS

**Parts.**

1. Regulation 3 of the Conciliation and Arbitration Regulations is amended by inserting after the words—

“ Part IV.—Procedure of the Commonwealth Court of Conciliation and Arbitration (Regulations 108-114).”

the words—

“ Part IVA.—The Flight Crew Officers Industrial Tribunal (Regulations 114A-114D).”

2. After Part IV. of the Conciliation and Arbitration Regulations the following Part is inserted:—

“ PART IVA.—THE FLIGHT CREW OFFICERS INDUSTRIAL TRIBUNAL.

**Interpretation.**

“ 114A.—(1.) In this Part, unless the contrary intention appears—

‘ industrial question ’ has the same meaning as in Part IIIA. of the Act;

‘ the Tribunal ’ means The Flight Crew Officers Industrial Tribunal established by Part IIIA. of the Act.

“ (2.) In this Part—

(a) a reference to the person constituting the Tribunal shall be read as a reference to the person appointed by the Governor-General under section 88j of the Act to constitute the Tribunal; and

(b) a reference to a person appointed to perform the functions of the Tribunal in relation to an industrial question shall be read as a reference to the person appointed under section 88R of the Act to perform the functions of the Tribunal in relation to that industrial question.

**Remuneration payable to the person constituting the Tribunal.**

“ 114B. For the purpose of paragraph (a) of section 88L of the Act, a fee of Seventy-five dollars is payable to the person constituting the Tribunal in respect of a day on which—

(a) the Tribunal, constituted by that person, sits for the purpose of—

(i) considering, inquiring into or investigating an industrial question;

(ii) making an award in relation to an industrial question;

(iii) considering a memorandum of the terms of an agreement made under section 31 of the Act in its application to the Tribunal; or

(iv) exercising a power conferred on it by paragraph (d) of sub-section (1.) of section 41 of the Act in its application to the Tribunal;

(b) the person constituting the Tribunal presides over a conference convened in accordance with section 29 of the Act in its application to the Tribunal;

(c) the person constituting the Tribunal sits as Chairman of a Conciliation Committee appointed under section 88ZA of the Act or sits for the purpose of considering a memorandum of agreement made under that section; or

(d) the Tribunal constituted by that person sits for the purpose of considering whether to make, or of making, an order under section 88Y of the Act.

**Remuneration payable to person appointed to perform the functions of the Tribunal.**

“ 114C. For the purpose of paragraph (a) of section 88L of the Act in its application, by virtue of sub-section (2.) of section 88R of the Act, to a person appointed to perform the functions of the Tribunal in relation to an industrial question, a fee of One hundred dollars is payable to that person in respect of a day on which—

(a) the Tribunal, constituted by that person, sits for the purpose of—

(i) considering, inquiring into or investigating that industrial question;

(ii) making an award in relation to that industrial question;

(iii) considering a memorandum of the terms of an agreement made under section 31 of the Act in its application to the Tribunal, being an agreement in relation to that industrial question between all or any of the parties to that industrial question; or



THE SCHEDULE—*continued*

- (iv) exercising, in relation to that industrial question, a power conferred on the Tribunal by paragraph (d) of sub-section (1.) of section 41 of the Act in its application to the Tribunal;
- (b) the person presides over a conference convened, in accordance with section 29 of the Act in its application to the Tribunal, in relation to that industrial question;
- (c) the person sits as Chairman of a Conciliation Committee appointed under section 88ZA of the Act in relation to that industrial question or sits for the purpose of considering a memorandum of agreement made under that section in relation to that industrial question; or
- (d) the Tribunal constituted by that person sits for the purpose of considering whether to make, or of making, an order under section 88Y of the Act in relation to that industrial question.

“ 114D. Where the person constituting the Tribunal or a person appointed to perform the functions of the Tribunal in relation to an industrial question is, in order to exercise his functions under the Act, necessarily absent overnight from his place of residence, he is entitled to be paid travelling allowance at the rate of Twenty-one dollars per day in respect of the time during which he is necessarily so absent from his place of residence.”

Travelling  
allowance.

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