

# PUBLIC SERVICE ARBITRATION.

**No. 36 of 1952.**

An Act to amend the *Public Service Arbitration Act 1920-1950.*

[Assented to 17th June, 1952.]

**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 *Public Service Arbitration Act 1952.* Short title and citation.

(2.) The *Public Service Arbitration Act* 1920–1950\* is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Public Service Arbitration Act* 1920–1952.

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

**Definitions.** 3. Section three of the Principal Act is amended—

(a) by inserting before the definition of “Organization” the following definition :—

“ ‘Determination’ includes an order under paragraph (e) of sub-section (1.) of section fourteen of this Act ;”;

(b) by inserting after the definition of “The Board” the following definition :—

“ ‘The Chief Judge’ means the Chief Judge of the Court and includes a Judge of the Court acting as Chief Judge by virtue of section twenty of the *Conciliation and Arbitration Act* 1904–1952 ;” ;

and

(c) by inserting after the definition of “The Court” the following definition :—

“ ‘The Full Court’ means the Court constituted by not less than three Judges ;”.

**Powers of Arbitrator.** 4. Section fourteen of the Principal Act is amended by omitting from paragraph (a) of sub-section (1.) the words “and to give an interpretation of any determination”.

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

**Reference to the Full Court.**

“ 15A.—(1.) Upon application by—

- (a) the Board ;
- (b) a Minister affected by the claim or application ; or
- (c) the organization by which the claim or application was submitted to the Arbitrator,

the Arbitrator may, if he is of opinion that a claim or application made to him under this Act, or a matter arising out of such a claim or application (including a question whether a term of a determination should be a common rule, and, if so, whether the common rule should be a common rule of the Public Service or of any branch or part of the Public Service), is of such importance that the claim, application or matter should, in the public interest, be dealt with by the Full Court, and subject to the concurrence of the Chief Judge, refer the claim, application or matter to the Full Court.

\* Act No. 23, 1920, as amended by No. 1, 1928 ; No. 25, 1929 ; No. 45, 1934 ; No. 52, 1947 ; and Nos. 51 and 50, 1950.

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

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

“(4.) The Chief Judge may hear the appeal and, if the Chief Judge is of opinion that the claim, application or matter is of such importance that it should, in the public interest, be dealt with by the Full Court, the Chief Judge shall refer the claim, application or matter to the Full Court.

“15B.—(1.) Subject to the next succeeding sub-section, the Full Court shall hear and determine a claim, application or matter which has been referred to it under the last preceding section and for that purpose may make such determination as might have been made by the Arbitrator. Hearing by the Full Court.

“(2.) Where a claim or application has been referred to the Full Court under the last preceding section, the Full Court may refer a matter arising in relation to that claim or application back to the Arbitrator, who shall hear and determine the claim or application so far as it relates to that matter.

“(3.) The Full Court shall hear and determine the claim or application so far as it relates to matters not referred back to the Arbitrator.

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

“(5.) The Full Court has, in relation to a claim, application or matter before it under this section, the same powers, duties and functions as the Arbitrator has in relation to a claim or application submitted to him under this Act.

“15c.—(1.) The Chief Judge may, upon application, grant leave to appeal against a determination made by the Arbitrator 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 determination be stayed pending the determination of the appeal or until further order of the Chief Judge. Appeals to the Full Court.

“(2.) An application under the last preceding sub-section for leave to appeal shall be made within fourteen days after the date of the determination and may be made by—

- (a) the Board ;
- (b) a Minister affected by the determination ; or
- (c) an organization affected by the determination.

“(3.) Leave to appeal shall not be granted under sub-section (1.) of this section unless, in the opinion of the Chief Judge, the determination deals with a matter of such importance that leave to appeal should, in the public interest, be granted.

“(4.) The Full Court shall hear and determine an appeal with respect to which leave has been granted under sub-section (1.) of this section.

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

- (a) admit further evidence ; and
- (b) direct the Arbitrator to furnish a report to the Full Court with respect to such matter as the Full Court specifies,

and shall—

- (c) make a determination confirming, quashing or varying the determination under appeal ; or
- (d) make a determination dealing with the subject-matter of the determination under appeal.

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

“(7.) The provisions of this Act relating to the hearing and determination of claims or applications submitted to the Arbitrator under this Act extend to the hearing and determination of an appeal under this section.

Certain provisions not applicable to consent determinations.

“15D. The last three preceding sections do not apply to a determination made under sub-section (6.) or (10.) of section twelve of this Act.

Application of certain provisions to the determinations of the Full Court.

“15E. Subject to sub-section (2B.) of section twenty-one of this Act, the provisions of this Act (other than the provisions of sections fifteen A, fifteen B and fifteen C) which apply to and in relation to determinations made by the Arbitrator apply to and in relation to determinations made by the Full Court under this Act and, in the application of those provisions to determinations made by the Full Court, references to the Arbitrator shall be read as references to the Full Court.

Interpretation of determinations.

“15F.—(1.) The Arbitrator may give an interpretation of a determination made under this Act.

“(2.) The Arbitrator may, if he thinks fit, refer an application for the interpretation of a determination to the Full Court and the Full Court may give an interpretation of the determination.”

Determinations not to be challenged.

6. Section twenty of the Principal Act is amended by omitting the word “No” and inserting in its stead the words “Subject to section fifteen c of this Act, no”.

7. Section twenty-one of the Principal Act is amended by omitting sub-section (2.) and inserting in its stead the following sub-sections :—

Determination to be laid before Parliament.

“(2.) When a determination has been made by the Arbitrator under this Act, the Arbitrator shall send a certified copy of the determination to the Prime Minister and to the Attorney-General—

- (a) if no application for leave to appeal against the determination is made—forthwith after the time for making the application has elapsed ; or
- (b) if an application for leave to appeal is made and the application is refused—forthwith after the refusal.

“(2A.) If leave to appeal is granted, the Arbitrator shall send a certified copy of the determination to the Prime Minister and to the Attorney-General—

- (a) forthwith ; or
- (b) if the Chief Judge has made an order that the operation of the whole of the determination be stayed—forthwith after the stay has ceased to operate.

“(2B.) When a determination has been made by the Full Court under this Act, the Registrar of the Court shall forthwith send a certified copy of the determination to the Prime Minister and to the Attorney-General.”

8. Section twenty-two of the Principal Act is amended by omitting sub-section (6.) and inserting in its stead the following sub-sections :—

Determination inconsistent with Commonwealth law or regulation.

“(6.) Notwithstanding the provisions of the last preceding sub-section, where leave to appeal against a determination has been granted under section fifteen c of this Act and the Chief Judge has made an order that the operation of a part of the determination be stayed—

- (a) either House of the Parliament may, within thirty days after the determination with the statement or opinion has been laid before both Houses, pass a resolution disapproving the part of the determination the operation of which has not been stayed, and, in that event, that part of the determination shall not come into operation ; and
- (b) either House of the Parliament may, within thirty days after the next meeting of that House after the stay has ceased to operate, pass a resolution disapproving the part of the determination the operation of which was stayed, and, in that event, that part of the determination shall not come into operation.

“(7.) Subject to the last two preceding sub-sections and to the Constitution, a determination, or part of a determination, shall, from the expiration of the period of thirty days during which the determination, or part of the determination, may be disapproved, or from the expiration of such later period as is specified in the determination, have full force and effect notwithstanding the provisions of any law or regulation of the Commonwealth.”