



ANNO DECIMO

ELIZABETHAE II REGINAE

A.D. 1961

No. 42 of 1961

An Act to provide for the appointment of a Public Service Arbitrator and for other purposes.

[Assented to 16th November, 1961.]

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, 1961".

Interpretation.

2. In this Act, unless the contrary intention appears—

"arbitrator" means the Public Service Arbitrator appointed pursuant to this Act :

"board" means the Public Service Board appointed pursuant to the Public Service Act, 1936-1959 :

"commissioner" means the Public Service Commissioner appointed pursuant to the Public Service Act, 1936-1959 :

"department" means department within the meaning of the Public Service Act, 1936-1959 :

"group" means—

- (a) all the officers in a department the nature of whose duties is identical or substantially identical and which differs substantially from the nature of the duties of officers having the same titles in other departments ;
or

- (b) all officers in the public service, the nature of whose duties is identical or substantially identical ; or
- (c) an individual officer holding an office where no other office exists in the public service the nature of the duties of which is substantially identical.

“office” includes any position in the public service :

“officer” means a person employed in any capacity in the public service :

“organization” means an association registered in the Industrial Court pursuant to the provisions of the Industrial Code, 1920-1958 :

“public service” means the public service of the State as defined by section 6 of the Public Service Act, 1936-1959.

3. (1) For the purposes of this Act there shall be a public service arbitrator who shall be appointed by the Governor. Public Service arbitrator.

(2) The arbitrator shall be appointed for a term of seven years and shall be eligible for re-appointment : Provided that if the person who is appointed arbitrator is at the time of his appointment or re-appointment over the age of fifty-eight years the term of his appointment or re-appointment shall be the period which will expire on his attaining the age of sixty-five years.

(3) If any person in the employ of the Government of the State is appointed as arbitrator, his service as arbitrator shall be counted as service for the purpose of continuing all his existing and accruing rights and privileges.

(4) In the case of the illness, suspension or absence of the arbitrator, the Governor may appoint a person to act as deputy arbitrator during such illness, suspension or absence, and the deputy arbitrator shall, while so acting, have all the powers and perform all the duties of the arbitrator.

4. (1) The arbitrator shall be paid a salary at the rate of £4,350 per year : Provided that a person holding an appointment in the employ of the Government of the State may upon his appointment as arbitrator continue to hold such appointment but his total remuneration in respect of both appointments shall not exceed £4,350. Salary and expenses for arbitrator.

(2) There shall be paid to the arbitrator such sums as he may incur as travelling expenses and which are considered reasonable by the Governor.

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

Tenure of
office of
arbitrator.

5. (1) The arbitrator shall not be removable from office during any term of appointment unless an address praying for his removal is presented to the Governor by both Houses of Parliament during one session, or by one House during one session and by the other House during the next succeeding session, which sessions, however, need not be both during the same Parliament.

(2) The arbitrator shall be deemed to have vacated his office if he—

- (a) absents himself from duty for a period of fifteen working days, except on leave granted by the Governor ;
- (b) resigns his office ;
- (c) is adjudicated bankrupt, or makes a composition for the benefit of his creditors for less than twenty shillings in the pound ;
- (d) becomes a member of either House of the Parliament of the State or of the Commonwealth ; or
- (e) becomes permanently incapable of performing his duties.

Staff of
arbitrator.

6. The Governor may appoint such officers as may be necessary to assist the arbitrator in the administration of this Act. All such officers shall be under the direction and control of the arbitrator, and shall discharge and exercise such duties and functions as are imposed or conferred upon them respectively by the arbitrator.

Jurisdiction of
arbitrator.

7. (1) The arbitrator shall, subject to the provisions of this Act, determine the salaries, or ranges thereof and incremental steps therein, applicable to offices other than those of permanent heads of departments, first division offices and offices in the State Bank of South Australia.

(2) The arbitrator shall not determine conditions of employment other than those specified in subsection (1) of this section, but in determining those matters the arbitrator may take into consideration such other conditions of employment as he considers relevant.

(3) Notwithstanding anything in this Act contained the arbitrator shall not deal with any application for an alteration in the living wage.

8. (1) A claim for the determination of salaries or ranges thereof or incremental steps therein may be submitted by the Commissioner, by an organization, or by a group, and shall be lodged in the first instance with the Board. Procedure.

(2) (a) In the case of a claim by the Commissioner, the Board shall forthwith forward a copy thereof to the General Secretary, Public Service Association of South Australia, and shall give notice of the claim by publication in the *Gazette*.

(b) Any organization or group desiring to object to the claim shall lodge its objection with the Board within twenty-one days after the date of such publication.

(c) If no objection is lodged the Board shall forthwith make a return under the Public Service Act, 1936-1959, giving effect to the claim.

(d) If an objection is lodged the claim and objection shall be referred by the Board to the arbitrator who shall determine the claim.

(3) (a) In the case of a claim by an organization or a group, the Board shall forthwith forward a copy thereof to the Commissioner, who shall within twenty-one days of receipt thereof inform the Board whether or not he is in agreement therewith.

(b) If the Commissioner is in agreement with the claim the Board shall forthwith make a return under the Public Service Act, 1936-1959, giving effect to the claim.

(c) If the Commissioner is not in agreement with the claim it shall be referred by the Board to the arbitrator, who shall determine the claim.

(4) Forthwith after the making of any determination by the arbitrator (not being a determination dismissing a claim), the Board shall make a return under the Public Service Act, 1936-1959, giving effect to the determination. Provided that if the arbitrator is satisfied by such evidence as he requires that any salary fixed by him or any variation should be payable as from a day earlier than the day when the return comes into operation he may fix the date from which that salary shall be payable; but the day fixed by such determination shall not be earlier than the day on which the application for the fixation of salary in question was referred to the arbitrator.

(5) (a) If the Board is not unanimously of the opinion that an officer or officers submitting a claim constitute a group it shall refer the question to the arbitrator whose decision thereon shall be final. If the arbitrator decides that the officer or officers do not constitute a group the claim shall be considered by the Board under the Public Service Act, 1936-1959.

(b) a claim submitted by an individual officer or officers (not constituting a group) shall be considered by the Board in accordance with the provisions of the Public Service Act, 1936-1959, unless the Board unanimously decides that it is desirable that the claim shall be dealt with by the arbitrator in which event the Board may refer the claim to the arbitrator who may in his discretion determine it or refer it to the Board for its determination.

(6) Notwithstanding the provisions of any other Act any return made by the Board in pursuance of paragraph (c) of subsection (2) or paragraph (b) of subsection (3) or subsection (4) of this section shall not be subject to appeal either to the Board or to the arbitrator.

(7) Notwithstanding any other provision in this section, an organization or a group which has submitted a claim to the Board, may, if it is of the opinion that consideration of the claim has been unduly delayed apply to the arbitrator to determine or direct the Board to deal with the claim. Upon such application the arbitrator may proceed to determine the claim or may direct the Board to consider it.

**Powers of
arbitrator.**

9. (1) The arbitrator shall have power—

- (a) to take evidence on oath or affirmation or otherwise and either in public or in camera, at his discretion ;
- (b) to require the attendance of witnesses ;
- (c) to direct the payment of appropriate witness fees to witnesses, other than witnesses who are employed by the Government, such witness fees to be payable by the party calling the witness ;
- (d) to allow the amendment or withdrawal of any claim or application ;
- (e) to direct the parties to confer ;
- (f) to adjourn proceedings from time to time ;
- (g) to determine whether an officer or officers making a claim as a group constitute a group ;
- (h) to refrain from hearing, or continuing to hear, any application or claim or to dismiss a claim ;
- (i) generally to give all such directions and do all such things as the arbitrator deems necessary or expedient to give effect to the intention of this Act.

(2) Any person who on being summoned as a witness refuses or fails without reasonable excuse and after tender of

reasonable expenses, to appear in obedience to the summons, or who refuses or fails without reasonable excuse to be sworn or make affirmation, or to answer questions, shall be guilty of an offence.

Penalty : £50.

10. (1) In respect of every claim, application or matter coming before him in pursuance of this Act, the arbitrator shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms and shall not be bound by any rules of evidence, but may inform his mind of any matter in such manner as he thinks fit.

Arbitrator to act according to good conscience.

(2) Any return giving effect to a determination of the arbitrator under this Act shall be subject to any award or order of the Industrial Court and to any Industrial agreement filed in the said Court.

(3) Nothing in this Act shall be so construed as to abridge any power of the Industrial Court under the Industrial Code, 1920, and the Acts amending same.

11. No costs shall be allowed in respect of any proceedings under this Act.

Costs.

12. Except by leave of the arbitrator on the application of either party, the Commissioner or an organization or group shall not be represented in proceedings under this Act by counsel or solicitor or paid agent, provided that this shall not prevent the representation of an organization or group by a member, officer or employee of that organization or group or representation of the Commissioner by an officer of the public service.

Representation.

13. If any person shall—

Contempt.

- (a) wilfully insult the arbitrator or any official, during the proceedings before the arbitrator, or in going to or proceeding from such proceedings ; or
- (b) wilfully disturb or interrupt the proceedings before the arbitrator ; or
- (c) otherwise misbehave himself during the proceedings, or be guilty in any manner of contempt of the arbitrator,

the arbitrator may order that the offender be taken into custody and detained until the end of the day's proceedings and may impose a fine not exceeding £50.

**Summary
procedure.**

14. Proceedings for offences against this Act shall be disposed of summarily.

Regulation.

15. 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.

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

EDRIC BASTYAN, Governor.