

1982

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Conciliation and Arbitration  
(Government Service) Amendment Bill 1982

EXPLANATORY MEMORANDUM

(Circulated by authority of  
the Minister for Employment and Industrial Relations  
the Hon Ian Macphee MP)

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## OUTLINE

### CONCILIATION AND ARBITRATION (GOVERNMENT SERVICE) AMENDMENT BILL 1982

This Bill seeks to amend the Conciliation and Arbitration Act 1904 to:

- (i) repeal the Public Service Arbitration Act 1920;
- (ii) vest the Australian Conciliation and Arbitration Commission with jurisdiction over employment by the Commonwealth, the Northern Territory, or authorities of either, by the insertion of a new Division 1A;
- (iii) exclude certain authorities and employees from Division 1A;
- (iv) exclude certain employees from the jurisdiction of the Commission entirely;
- (v) provide how the powers of the Commission under Division 1A are to be exercised;
- (vi) require the Commonwealth, the Northern Territory or their authorities to act through specified "employing authorities" where the Act applies to their employees under, or as a result of, Division 1A;
- (vii) provide for representation of such employing authorities before tribunals established under the Act;
- (viii) permit matters being heard under Division 1A to be dealt with wholly or partly under other provisions of the Act and vice versa;
- (ix) empower the Commission to make orders to bring about the cessation of, or to prevent, industrial action by employees of the Commonwealth or the Northern Territory or their authorities, or to stand-down employees concerned in

their authorities, or to stand-down employees concerned in or affected by the industrial action, or who are likely to be;

- (x) provide for consequences of being so stood-down for certain entitlements of employees;
- (xi) allow the Commission to declare awards to be common rules for all or part of the public service;
- (xii) permit the Commission to make awards affecting such employment in this area that do not accord with a law of the Commonwealth or of the Northern Territory relating to salaries, wages, rates of pay or terms or conditions of service or employment of their employees, other than specified laws;
- (xiii) provide for intervention by the Minister in proceedings involving Commonwealth or Northern Territory employees;
- (xiv) continue the registration of organisations registered by virtue of the operation of the Public Service Arbitration Act 1920, provided their membership does not fall below a certain level;
- (xv) provide for certain transitional arrangements so that determinations under the Public Service Arbitration Act 1920 continue in force, and proceedings under that Act may be dealt with, notwithstanding its repeal;
- (xvi) make certain consequential amendments as a result of the repeal of the Public Service Arbitration Act 1920.

## **NOTES ON CLAUSES**

### **COMMENCEMENT**

Under Clause 2 the Bill is to come into effect on a date to be fixed by proclamation.

### **INTERPRETATION**

Clause 3 deletes paragraph (e) of the definition of "industrial dispute" in sub-section 4(1).

### **PANELS**

Clause 4 inserts in sub-section 23(5) a reference to proposed new Division 1A.

### **INTERVENTION**

Clause 5 inserts sub-section 36(1A) to permit the Minister to intervene in the public interest on behalf of the Commonwealth in a matter before the Commission if it is, or to the extent that it involves, an industrial question within new Division 1A or what would be such a question if certain employers were not excluded by the operation of proposed sub-section 70A(1) from the Commission's jurisdiction under Division 1A.

### **CONTINUATION OF HEARING OF MATTERS**

Clause 6 deletes the reference in sub-section 37(2) to the Public Service Arbitration Act.

### **POWERS TO OVERRIDE CERTAIN LAWS AFFECTING PUBLIC SERVICE**

Clause 7 repeals existing section 41A and inserts a new section 41A which is based on the existing provision but takes account of the proposed repeal of the Public Service Arbitration Act 1920 and vesting of jurisdiction in the Commission under proposed Division 1A.

In relation to an industrial dispute coming within paragraph (d) of the definition of that term in sub-section 4(1) or to an industrial question coming within Division 1A, the Commission is empowered to make an award not in accord with a law of the Commonwealth or of the Northern Territory (other than those laws referred to below) relating to salaries, wages, rates of pay or terms or conditions of service or employment of employees covered by Division 1A.

The excepted laws are:

- . the Compensation (Commonwealth Government Employees) Act 1971;
- . the Long Service Leave (Commonwealth Employees) Act 1976;
- . the Superannuation Act 1976;
- . any prescribed Act or certain prescribed Northern Territory Ordinances or prescribed provisions of them.

#### **JOINT SESSIONS OF THE COMMISSION**

Clause 8 deletes the reference to the Public Service Arbitration Act 1920 from section 44A.

#### **NEW DIVISION 1A**

Clause 9 proposes the insertion of a new Division 1A (comprising sections 70A to 70K, both inclusive) into Part III of the Act. This will empower the Commission to deal with industrial disputes and industrial matters concerning Commonwealth and Territory employees.

In proposed Section 70A:

- . sub-section 70A(1) defines the terms "Commonwealth authority", "employee", "employer", "employing authority",

"employment", "industrial dispute", "industrial matter", "industrial question", "Northern Territory authority", "principal officer" and "public service" for the purposes of Division 1A.

For the purposes of Division 1A, "Commonwealth authority" does not include the Australian Postal Commission, the Australian Telecommunications Commission or the Australian National Railways Commission, and, if not declared by the regulations to be such authorities, the Australian Shipping Commission, the Australian Industry Development Corporation, the Australian National Airlines Commission, the Pipeline Authority or the Health Insurance Commission.

In the definition of "employee" certain employees are specifically excluded from the operation of the legislation;

- . sub-section 70A(2) deems employees in public service or any calling, service, handicraft, occupation or vocation, in public service, or in any category, division, class, grade or branch of public service or of such calling (etc) in public service, to be employees in an industry;

- . sub-section 70A(3) excludes members of the Defence Force or persons whose employment is under the jurisdiction of tribunals established under the Northern Territory Fire Brigades Arbitral Tribunal Ordinance 1965 or Prisons Ordinance 1950 from Division 1A, unless otherwise prescribed by regulation;

- . sub-section 70A(4) makes provision for such regulations;

- . under sub-section 70A(5) references to "employees" may include references to "officers".

Section 70B sets out the Commission's powers in respect of industrial disputes and industrial matters under Division 1A. The

Commission is to be empowered to prevent or settle industrial disputes by conciliation or arbitration and to settle by conciliation, or to hear or determine, industrial matters, whether or not an industrial dispute exists in relation to those matters.

Section 70C deals in proposed sub-sections 70C(1), (2) and (3) with how the Commission is to exercise its powers under this Division. Provision is made for the President to assign a Presidential Member or Commissioner for these purposes or to deal with a particular industrial question himself, but the exercise of the Commission's powers under sections 31, 34, 34A(4), 35 and 36A is reserved to a Full Bench.

Sub-section 70C(4) makes provision along the lines of section 22A for consultation between a Commissioner and the relevant Presidential Member where the Commissioner is, by an award or certified agreement, providing for, or altering, wages or conditions of employees under Division 1A.

Section 70D provides in sub-section 70D(1) for Division 1 of Part III to apply to the Commission's powers and functions, to proceedings and to awards under Division 1A. Sub-section 70D(2) makes appropriate modifications to the meanings of terms in Division 1 for the purposes of its application under sub-section 70D(1).

Section 70E requires an employer of an employee to act through that employee's employing authority for the purposes of:

- . the provisions of Division 1A;
- . any other provisions of the Act applying through Division 1A;
- . any proceedings arising under those provisions before the Commission, the Flight Crew Officers Industrial Tribunal or any Court;



. any award made under those provisions.

An employing authority is accordingly put, by this section, in the position of an employer for these purposes.

Section 70F deals with the representation of an employing authority before the Commission, the Flight Crew Officers Industrial Tribunal or the Federal Court in proceedings arising under the Act.

Sub-section 70F(1) excludes the operation of sections 63, 88ZE and 117A (which relate to representation before the Commission, the Flight Crew Officers Industrial Tribunal and the Federal Court, respectively) from proceedings covered by this provision.

Sub-section 70F(2) provides for certain officers to represent employing authorities before such tribunals, other than in appeals under section 113 or proceedings in respect of an offence against the Act.

Sub-section 70F(3) and 70F(4) deal with the circumstances under which representation may be by counsel, solicitor or paid agent.

Section 70G provides a procedure whereby, on the direction of the President, an industrial question before the Commission under Division 1A may be wholly or partly dealt with by the Commission as constituted under another Division of Part III of the Act, or by the Flight Crew Officers Industrial Tribunal.

Sub-section 70G(1) provides for consultation with the President by the Commission as constituted under Division 1A on such a matter where the Commission considers that the industrial question before it should be dealt with as described above.

Sub-section 70G(2) enables the President to give appropriate directions and sets out the powers of the Commission or Flight Crew Officers Industrial Tribunal in such circumstances.

Under sub-section 70G(3) the President's powers under this provision are in addition to those he enjoys under sections 23 and 44A.

Sub-section 70G(4) makes the term "industrial question" inclusive of a part of an industrial question for the purpose of this provision.

Section 70H provides a procedure whereby a matter before the Commission (other than a Full Bench) as constituted under another Division of Part III of the Act or before the Flight Crew Officers Industrial Tribunal may, on the direction of the President, be dealt with wholly or partly under Division 1A.

Sub-section 70H(1) makes section 70H applicable where such a matter appears to the Commission, as constituted under Part III otherwise than under Division 1A, or to the Tribunal to be an industrial question which should be dealt with under Division 1A.

Sub-section 70H(2) provides for consultation with the President.

Under sub-section 70H(3), the President may direct that the matter be dealt with under Division 1A and, in so dealing with it, the Commission is able to have regard to previous proceedings.

Sub-section 70H(4) sets out the types of matters covered by section 70H.

Section 70J effectively carries over to Division 1A the powers of the Public Service Arbitrator under section 12D of the Public Service Arbitration Act 1920.

Sub-section 70J(1) empowers the Commission to make orders to end or prevent industrial action, or to prevent further industrial action and to make such other orders as may be necessary or desirable.

Under sub-section 70J(2), these orders concern the conditions of employment of relevant employees, the cessation of industrial action, and the standing-down of employees who are concerned in or affected by the industrial action or who are likely to be.

Sub-sections 70J(3) to 70J(7), both inclusive, deal with the effect of being stood-down on the entitlements of employees.

Under sub-section 70J(8), the powers given to the Commission under section 70J are in addition to any other powers it has under the Act.

Section 70K deals with the making of common rules.

Under sub-section 70K(1) the Commission may declare terms of awards to be common rules for the whole or a part of the public service.

Sub-section 70K(2) allows interested organizations and persons to be heard.

#### **REPEAL OF SECTION 79**

Clause 10 repeals section 79 which dealt with the jurisdiction of the Public Service Arbitrator in respect of employees under the Snowy Mountains Hydro-Electric Power Act 1949.

#### **REGISTRATION OF ORGANIZATIONS**

Clause 11 inserts a new sub-section 132(5) to provide for the continuance of the registration of associations of less than 100 employees which were registered under the authority of the Public Service Arbitration Act. The registration of such bodies is not to be cancelled by virtue of sub-section 132(1)(b) of the Conciliation and Arbitration Act unless their membership falls below sixty per cent of the number of employees in the relevant industry in the public service.

**VARIATION OF INDUSTRIAL AGREEMENTS TO CONFORM WITH COMMON RULES**

Clause 12 amends section 179 to include a reference to employment to which Division 1A applies.

**REPEAL OF PUBLIC SERVICE ARBITRATION ACT**

Under Clause 13 the relevant legislation to be repealed is set out in Schedule 1 to the Bill.

**CONSEQUENTIAL AMENDMENTS**

Under Clause 14, amendments to various pieces of Commonwealth legislation affected by the repeal of the Public Service Arbitration Act are set out in Schedule 2 to the Bill.

**TRANSITIONAL**

Provision is made in Clause 15 for:

- . determinations made under the Public Service Arbitration Act to continue in force;
- . matters pending under the Public Service Arbitration Act before its repeal to be dealt with as if it had not been repealed and sections 37 and 44A of the Conciliation and Arbitration Act are to apply to them as if those sections had not been amended by the Bill;
- . conferences which were pending or uncompleted under the Public Service Arbitration Act before its repeal to be held or completed as if it had not been repealed;
- . section 22 of the Public Service Arbitration Act to continue to apply in relation to determinations made by virtue of sub-section 22(2).

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