



ANNO TRICESIMO QUARTO

ELIZABETHAE II REGINAE

A.D. 1985

No. 52 of 1985

An Act to amend the Industrial Conciliation and Arbitration Act, 1972.

[Assented to 30 May 1985]

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

1. (1) This Act may be cited as the "Industrial Conciliation and Arbitration Act Amendment Act, 1985". Short title.
- (2) The Industrial Conciliation and Arbitration Act, 1972, is in this Act referred to as "the principal Act".
2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.
3. Section 6 of the principal Act is amended by inserting the following paragraph after paragraph (i) of the definition of "industrial matter": Amendment of s. 6—
Interpretation.
 - (ia) the dismissal of an employee by an employer;
4. Section 31 of the principal Act is amended— Amendment of s. 31—
Special Jurisdiction of the Commission to deal with cases of unfair dismissal.
 - (a) by striking out from subsection (1) the passage "the employer's decision to dismiss him took" and substituting the passage "the dismissal takes";
 - (b) by striking out from subsection (2) the passage "the employer's decision to dismiss" and substituting the passage "the dismissal of";
 - (c) by striking out subsection (3) and substituting the following subsection:
 - (3) Where in proceedings under this section the Commission is of the opinion that the dismissal of the applicant was harsh, unjust or unreasonable, the Commission may—
 - (a) order that the applicant be re-employed by the employer in the applicant's former position without prejudice to the former conditions of employment;

(b) where it would be impracticable for the employer to re-employ the applicant in accordance with an order under paragraph (a), or such re-employment would not, for some other reason, be an appropriate remedy—order that the applicant be re-employed by the employer in some other position (if such a position is available) on conditions (if any) determined by the Commission;

or

(c) where, after considering whether to make an order under paragraph (a) or (b), the Commission considers that re-employment by the employer of the applicant in any position would not be an appropriate remedy—order the employer to pay to the applicant an amount of compensation determined by the Commission.;

and

(d) by striking out subsection (4) and substituting the following subsection:

(4) Where the Commission makes an order for re-employment under this section, then, subject to any contrary direction of the Commission—

(a) the employee shall be remunerated in respect of the period intervening between the date that the dismissal took effect and the date of re-employment as if the employee's employment in the position from which the employee was dismissed had not been terminated;

(b) the employer shall be entitled to the repayment of any amount paid to the employee on dismissal on account of any accrued entitlement to recreation leave or long service leave;

and

(c) for the purposes of determining rights to recreation leave, sick leave and long service leave, the continuity of service of the employee shall be deemed not to have been interrupted by the dismissal.

5. Section 58 of the principal Act is amended by striking out from subsection (1) the passage "(who shall be a Commissioner)".

6. Section 59 of the principal Act is repealed and the following section is substituted:

59. (1) The President shall, after consultation with associations representing the relevant employers and employees, appoint a Commissioner to be the chairman of a Committee.

(2) The President may appoint another Commissioner to act as an alternative chairman of a Committee.

Amendment of
s. 58—
Members of
Committees.

Repeal of s. 59
and substitution
of new section.

Chairman of
Committees.

(3) Where the chairman of a Committee is for any reason absent or unable to act as chairman, the Commissioner appointed as the alternative chairman may act as chairman of the Committee.

(4) The appointment of a Commissioner as a chairman or an alternative chairman of a Committee may be cancelled at any time by the President.

7. Section 96 of the principal Act is amended—

Amendment of
s. 96—
Right of appeal.

(a) by striking out the word “and” after paragraph (b) of subsection (1);
and

(b) by inserting after paragraph (c) of subsection (1) the following word and paragraph:

and

(d) against the whole or part of a decision or order made by the Commission pursuant to section 31.

8. Section 97 of the principal Act is amended by striking out paragraph (g) and substituting the following paragraph:

Amendment of
s. 97—
Persons entitled
to appeal.

(g) by any of the parties concerned where the appeal is against a decision or order made by the Commission—

(i) in the exercise of the jurisdiction conferred on the Commission by section 25 (1) (b);

or

(ii) on an application made to the Commission under section 31.

9. Section 98 of the principal Act is amended—

Amendment of
s. 98—
Notice, hearing of
appeals, etc.

(a) by striking out from subsection (1) the passage “Any appeal” and substituting the passage “Subject to subsection (1a), an appeal”;

(b) by inserting after subsection (1) the following subsection:

(1a) Notice of an appeal under section 96 (1) (d) must be lodged within fourteen days of the decision or order subject to the appeal, but the Full Commission may, if it is satisfied that it is just and reasonable in the circumstances to do so, extend the time within which the notice may be lodged (whether the application for an extension of time is made before or after the period of fourteen days has elapsed);

(c) by inserting in subsection (3) after the passage “hearing of an appeal” the passage “otherwise than under section 96 (1) (d),”;
and

(d) by inserting after subsection (3) the following subsection:

(3a) On the hearing of an appeal under section 96 (1) (d), the Full Commission may—

(a) take fresh evidence;

(b) direct a member of the Commission to furnish a report with respect to any aspect of the subject matter of the appeal;

- (c) confirm, quash or vary the whole or part of the decision or order which is under appeal;
- (d) make any decision or order that should have been made in the first instance in substitution for a decision or order that has been quashed under paragraph (c) or in addition to a decision or order that has been confirmed or varied under that paragraph;
- (e) remit the subject matter of the appeal to the Commission (whether constituted of the member of the Commission who heard the matter at first instance or of another member of the Commission) for further hearing or consideration or for rehearing or reconsideration (and the Full Commission may, in making the remission, give any direction or make any suggestion to the Commission that the Full Commission thinks fit);
- (f) dismiss the appeal or any part of the appeal.

Amendment of
s. 99—
Stay of operation
of award.

10. Section 99 of the principal Act is amended—

(a) by striking out from subsection (1) the word “When” and substituting the passage “Subject to subsection (1a), when”;

and

(b) by inserting after subsection (1) the following subsection:

(1a) Where an appeal has been made against an award or decision of the Commission on an application under section 31, the Full Commission may only stay the operation of an order of the Commission for the payment of compensation.

Amendment of
s. 111—
Rescinding or
varying
agreement.

11. Section 111 of the principal Act is amended by striking out the passage “section 110 of”.

Amendment of
s. 133—
Certain matters
not to be
challenged.

12. Section 133 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “Subject to subsection (2) of this section, the” and substituting the word “The”;

and

(b) by striking out subsection (2) and substituting the following subsection:

(2) This section operates both retrospectively and prospectively.

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

D. B. DUNSTAN, Governor