Purpose

To expedite the hearing of an industrial dispute between the Electrical Trades Union and various Australian electricity authorities that was found to exist by the Commission on 18 April 1985. This dispute encompasses the recent situation in Queensland that led to mass dismissals and a State of Emergency.

Background

(i) History of the Dispute

The dispute between the South-East Queensland Electricity Board (SEQEB) and the Electrical Trades Union (ETU) concerns SEQEB's use of contract labour. This issue was initially raised on 1 February 1984 when the new manager of SEQEB issued draft guidelines on the use of contract labour. Both parties agreed to a set of guidelines on 1 June 1984, which said that the employment of contract labour should only take place during periods of peak-work load and that no permanent jobs would be lost. The dispute flared when SEQEB announced that it would employ contractors on four new projects. The ETU considered that such use of contract labour would threaten permanent jobs and, on 3 December 1984, imposed work bans on the four projects and repairs.

The ban on repairs quickly led to blackouts in some areas and the first State Industrial Commission (SIC) conference on the dispute on 5 December 1984. The SIC recommended that the contractors be withdrawn and the men return to work so that talks could begin. The SIC recommended that this position remain till its next conference on the matter. That was held on 7 January 1985, but the parties remained deadlocked. Further industrial action was commenced on 17 January 1985 when ETU members
walked off the job in response to SEQEB placing some members in a no work/no pay situation after they had refused directions to work on a banned project. Peace temporarily returned after storms blacked-out between 60,000 and 80,000 residents of Brisbane. In response to the damage, the SIC ordered the ETU to return to work and received an undertaking from SEQEB not to order ETU members to work on banned projects. Both the SIC's order and SEQEB's undertaking were to expire on 1 February 1985.

Following the expiration of the order and undertaking, SEQEB again ordered ETU members into banned areas and placed them in a no work/no pay position when they refused. As a result, approximately 1,500 ETU members commenced strike action on 6 February 1985. Talks held between the parties and the SIC on 7 February 1985 failed to reach agreement and, as a result, the SIC ordered ETU members to return to work. ETU members rejected this order and, again on 7 February 1985, the Queensland government declared a State of Emergency. This removed the SIC's power to make orders to either party in the dispute. The dispute escalated on 8 February 1985, when the Queensland government announced that it would sack workers who refused to return to work. This led to a walkout by some workers in power stations and the coal industry.

The SIC was still trying to settle the dispute and, after a compulsory conference on 10 February, recommended a secret, five point plan to the parties. The Queensland government gave an undertaking to accept the plan and ETU officials gave commitments to put the plan to its members. However, before the plan was voted on, the Queensland government implemented its threat to dismiss linesmen who refused to return to work. On 11 February 1985 dismissal notices were handed to approximately 1,200 workers who refused to return to work. At the same time, the Queensland government announced new conditions of employment for the returning men: they were to sign a no-strike contract and be required to work a 38-hour week and 10-day fortnight. Under previous conditions the employees had the right to strike and worked a 36-1/2 hour week and 9-day fortnight. The union response was swift, with power station operators reducing output to 40% of normal on 12 February 1985. On the same day ETU members voted in favour of the SIC's secret, five-point plan and SEQEB officials announced that the dispute was now being handled by the Queensland government.

A compulsory SIC conference on the power station dispute was held on 13 February 1985 and, after the parties failed to reach agreement, the SIC ordered the power station employees to resume normal operations. This was rejected on
14 February 1985. While blackouts and power rotation continued, ETU members employed by Queensland Railways were dismissed for engaging in a sympathy strike. Meanwhile, the SIC was still trying to reach a settlement and announced a new plan, which included the reinstatement of dismissed workers, on 17 February 1985. On the same day, the ETU announced that it would accept the plan while the Premier hinted that Cabinet would reject the plan. Cabinet's rejection of the plan came on the 18 February 1985 along with threats to dismiss power station employees, the Queensland government intending to replace them with interstate and overseas workers. At the same time ETU officials announced plans to have Queensland electricity workers placed under a Federal award.

The 20 February 1985 saw the first Federal intervention when the Prime Minister requested that all parties accept the latest peace plan. On the same day, court action was commenced against power station operators and their union, with maximum fines of $50,000 for individuals and $250,000 for the union. As well, the Federal government announced that it would not allow overseas operators to enter Australia to replace Australian staff. Continued power restrictions led to further SIC talks on the power station dispute and, on 21 February 1985, the SIC recommended that the operators return to work. In return, the Government offered to re-employ the dismissed linesmen on the new no-strike, 38-hour week contracts. As a result of the SIC moves, full power was restored on the night of 21 February 1985.

However, industrial action in support of the dismissed linesmen continued from other groups. The coal miners' strike continued as did bans by seamen, waterside workers and Telecom and Australia Post unions. The most costly of the strikes, that by the coal miners, ceased on 28 February 1985 but by that time it had cost the coal industry over $100m and the Queensland government an estimated $25m in lost royalties and rail charges.[1] The ETU also continued to apply for Federal arbitration coverage, the Commission being notified of an interstate industrial dispute on 25 February 1985. New South Wales residents in the Tweed Shire were affected by the dispute as they receive power from SEQEB.

The first part of the Queensland government's legislative package designed to eliminate industrial disputes in the electricity industry, the Electricity (Continuity of Supply) Act, was introduced in Parliament on 5 March 1985 and received the Royal Assent on the next day. The Act legislated for no-strike contracts in the power industry, gave the Electricity Commissioner power to direct
people to perform certain jobs to ensure the normal supply of electricity and restricted the SIC's jurisdiction in certain ways (e.g. it removed the SIC's power to reinstate dismissed workers). The new powers given to the Electricity Commissioner allowed the State of Emergency to end on 7 March 1985.

The Australian Council of Trade Unions (ACTU) intervened on the dismissed linesmen's behalf on 13 March 1985. The ACTU sought the reinstatement of the dismissed men on their previous conditions of employment as a forerunner for talks with the Queensland government. If this was not done by 19 March 1985 the ACTU threatened to take industrial action against Queensland and its government. This plan was rejected by the Queensland government on the same day.

Further parts of the Queensland government's legislative package aimed at eliminating strikes from the power industry were introduced on 19 and 21 March 1985. Amendments to the State Conciliation and Arbitration Act allowed for easier deregistration of unions, increased fines and widened the definition of a strike to include 'any action varying normal work practices and discussion about such actions by two or more people'. The width of this definition should be remembered when considering the Electricity Authorities Industrial Causes Act which was introduced on 21 March 1985. This Act outlawed strikes, as defined above, in the electricity industry and provided for summary dismissal without notice for anyone taking part in a strike. The Minister or Electricity Commissioner, depending on who is the employer, is given power to determine if anyone has been engaged in a strike. There is no appeal from such a determination, the right to appeal on points of law being removed in the Act. The Act also established a Tribunal to deal with disputes in the electricity industry, which were previously handled by the SIC.

Before the final piece of the Queensland government's legislative package was introduced, the first ACTU sponsored industrial action occurred, with members of the Waterside Workers' Federation stopping work at Port Brisbane for 24 hours on 23 March 1985. On the same day the ACTU announced that it would target individual companies who supported or assisted the Queensland government. Amendments to the Electricity (Continuity of Supply) Act introduced and passed on 26 March 1985 completed the Queensland government's legislative package. The amendments gave the Police greater powers to arrest those taking action 'calculated to harass, annoy or cause harm or distress' to electricity workers. People convicted under the amendments
are liable to a $1,000 fine which can be recovered by civil rather than criminal action. This amendment aimed to prevent picketers disrupting SEQEB operations and in its first week, 48 picketers were arrested. A further 100 picketers were arrested on 17 April 1985.

In response to the Queensland government's failure to reinstate the dismissed linesmen, the ACTU stepped up its industrial campaign. On 16 April 1985, the NSW Transport Workers' Union announced a 3 day ban on Queensland freight. On 17 April 1984 the names of 50 companies on the ACTU 'hit list', which were to be targeted for their support of the Queensland government, were made public. A 24 hour Australia-wide ban on Queensland freight was imposed by the ACTU on 19 April 1985. The industrial action continued through April, with a 24 hour building and construction industry in Queensland on 30 April and Australia-wide on 1 May.

Industrial action against the Queensland government reached a peak in May 1985. On 7 May Australia Post employees in the other States voted in favour of not handling Queensland mails on Mondays, Wednesdays and Fridays. A 48-hour transport blockade was held on 9 and 10 May and a further blockade was planned for the next week, the 13-17 May. At this stage the Federal Government, under increasing pressure from both unions and employers, proposed a 'secret' plan to the ACTU. The ACTU accepted this plan and suspended the planned week long blockade of Queensland. It soon became clear that the plan involved legislation to expedite the transfer of the dispute to the Commonwealth Conciliation and Arbitration Commission. This had become possible since the Full Bench of the Commission, on 17 May 1985, upheld an earlier (18 April) decision that an interstate industrial dispute existed. This decision, which is subject to appeal in the High Court, brings the dispute within Commonwealth constitutional power. The Bill was assured of passage when the Australian Democrats said they would support the Bill on 23 May 1985. This followed an ACTU assurance that they would lift the blockade and accept any Federal Conciliation and Arbitration Commission recommendations for solving the dispute.

(ii) Federal and State Industrial Tribunals

The Federal Conciliation and Arbitration power is contained in section 51(xxxxv) of the Constitution and allows the Parliament to make laws with respect to 'conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State'. As the power to prevent or solve intra-State disputes remains with the States, seven separate sets of
tribunals have evolved, the Federal Commission and six State bodies.

The proliferation of industrial tribunals has resulted in confusion as to the status of union branches when the union is established in more than one State. For example, it is possible for a State branch of such a union to be registered under State law as a State union, which will enable the branch to be covered by the State industrial tribunal, while also being registered as a branch of the Federal union to enable coverage under the Federal Conciliation and Arbitration Act. In the current dispute the ETU has been seeking to bring the Queensland branch under Federal coverage by its involvement in an interstate industrial dispute. The Full Bench of the Commonwealth Conciliation and Arbitration Commission has found that such a dispute exists on the basis of a log of claims served by the Federal ETU on various electricity authorities across Australia. This decision is subject to a High Court appeal. If the Commonwealth Conciliation and Arbitration Commission's decision is upheld, the dispute will be removed from the newly established Electricity Authorities Industrial Causes Tribunal.

Outline

This Bill aims to expedite the hearing of an industrial dispute between the ETU and various Australian electricity authorities, including those in Queensland. The Bill eliminates some provisions of the Conciliation and Arbitration Act 1904 that may delay the hearing of the dispute. Special provisions will enable the dispute in Queensland to be determined separately and prior to the other parts of the dispute.

Main Provisions

The disputes that may be dealt with under this Bill are defined in clause 6. This clause refers specifically to the dispute between the ETU and electricity authorities that was found to exist by the Commission on 18 April 1985. It also includes other disputes that could lead to the making of an award that is binding on Queensland electricity authorities if the award would establish the terms of employment for the authorities employees.

Clause 8 of the Bill removes the Commission's discretionary power to refuse to hear the dispute on the grounds that it would be more appropriate for the Queensland tribunal to deal with the dispute or that proceedings are not necessary in the public interest. This will ensure that the Commission determines the dispute and that the
Queensland government cannot delay proceedings by arguing for the exercise of the discretion.

The desire for a speedy decision is emphasised in clause 7 which requests the Commission to act expeditiously.

Clause 9 requires any dispute covered by this Bill to be heard by a Full Bench of the Commission. This will remove any possible delays in appeals to the Full Bench that may occur if the matter was heard by a single Commissioner. Sub-clause 9(6) allows the Full Bench, if it considers it appropriate, to deal with that part of the dispute involving Queensland electricity authorities separately and prior to hearing the other parts of the dispute. If the Full Bench adopts this course, the other parts of the dispute will cease to be covered by this Bill.

Clause 10 gives the Governor-General power to make regulations for the carrying out of the Bill.

The Bill is to come into force on a day fixed by Proclamation (clause 2) and, by clause 10, will cease to have effect 3 years after it comes into force, or on an earlier date by Proclamation.

For further information, if required, contact:

28 June 1985

Economics and Commerce Group
LEGISLATIVE RESEARCH SERVICE

References

2. The amending Bill received the Royal Assent on 20 March 1985.
5. The Bill received the Royal Assent on 28 March 1985.