CONCILIATION AND ARBITRATION AMENDMENT BILL (NO.2) 1983

Date Introduced: 9 November 1983
House: House of Representatives
Presented by: Hon. R. Willis, M.P., Minister for Employment and Industrial Relations

Purpose

Pending the report during 1985 of a review into Australia's industrial relations system announced during July 1983, to introduce, and in some cases reintroduce, amendments for greater State/Federal coordination in industrial matters, greater consistency of treatment for public service employees, and changes to requirements for rules, financial reports, etc. of registered organisations.

Background

Amendments to the Conciliation and Arbitration Act 1904 to improve State/Federal coordination were introduced in 1982. [See Digest for Conciliation and Arbitration (Complementary Industrial Relations System) Bill 1982]. The provisions of the present Bill are substantially the same.

The legal framework for Australian industrial relations is complex. Federal legislative capability is limited to "conciliation and arbitration" for the prevention and settlement of industrial disputes extending beyond the limits of any one State. Residual legislative capacity, in respect of intrastate disputes or ultimately affecting occupations which of their nature cannot give rise to an "industrial dispute", is a State matter. Although such occupations as nursing and teaching have previously been considered outside the scope of Federal power, the recent decision of the High Court in Re Coldham; Ex parte Australian Social Welfare Union (1983) 57 ALJR 575 indicates a wider acceptance of occupations in which "industrial disputes" may arise, thereby permitting Federal registration to a greater range of organisations. State wage determination methods etc. vary. A Federally registered employee or employer organisation may typically be also registered under State legislation in each State. Problems emerge in the classification of members according to the
nature of their work and involvement in the industry, and their consequential voting entitlement. The significance becomes acute where defects in membership can reverse a finding that an industrial dispute exists, or even undermine an award made to settle a dispute[1]. The present Bill does not vary procedures for registration of organisations under State or Federal law but makes several changes to permit co-operative settlement of industrial disputes between State and Federal Commissions.

Repeal of the Public Service Arbitration Act 1920 and diversion of functions in public service matters to the Conciliation and Arbitration Commission was recommended in the report of the Royal Commission on Australian Government Administration[2]. A Bill to amend the Conciliation and Arbitration Act 1904 in the same terms as the present Bill's provisions was introduced in the House on 10 November 1982 [see Digest for Conciliation and Arbitration (Government Service) Amendment Bill 1982.]

Part VIIIAA of the Conciliation and Arbitration Act was added in 1977 and took effect from 30 December 1980. It requires registered organisations to keep audited financial accounts, and furnish a copy to the Registrar upon request and following an annual meeting. It would be amended by clauses 28 to 36 of the Bill.

Part VIII of the Act (sections 132 to 158) deals with the registration of and requirements for organisations. The legislation both imposes substantive duties and also requires that the private rules of the organisation contain specified terms. New sections added by the Conciliation and Arbitration (Management of Organisations) Amendment Act 1982 and effective from 24 January 1983 limited the capability to hold office in an organisation of persons convicted of certain offences.

Main Provisions

Complementary industrial systems (clauses 5, 11, 13, 15 17-19).

The clauses add a new section 22AA to permit the Commission to conduct joint sittings with a State Industrial Authority and a new section 44B to permit reference of Federal disputes to a Local Industrial Board. Clause 13 amends section 67 to authorize joint conferences. The powers thus granted are exercisable by a Commissioner assigned for the purpose by the President.
Government Service (clauses 3, 6-10, 14, 16, 22, 39-41, 43).

The clauses repeal the Public Service Arbitration Act 1920 and associated Acts. Jurisdiction is transferred to the Conciliation and Arbitration Commission, over matters "industrial" in nature (clause 3). The Commissioner may make awards overriding certain Commonwealth Acts, but not compensation, long service leave or superannuation legislation (new section 41A). Substantive matters are dealt with in new sections 70A to 70K, a new Division 1A, relating to industrial disputes involving Commonwealth or Northern Territory employees. Certain Commonwealth authorities are excluded. Section 70K authorises the making of a common rule for the whole or a part of the public service. Transitional provisions in clause 43 provide for continuation of determinations in force at the proclaimed commencement date of Division 1A.

Financial reporting requirements (clauses 28-36).

Amendments to the financial reporting requirements of Division VIIIAA include fulfilment of obligations to circulate audited accounts through publication of a summary, possibly in the organisation's journal. The Division, which previously applied successively to individual (e.g. State) branches as well as the Federal organisation, would permit use of a consolidated accounting system.

Other Provisions

Section 132F, which specifies offences disqualifying a person from holding office in an organisation, is amended to omit certain offences, including some under the financial reporting requirements, and to limit offences of violence, personal injury or property damage to those for which a term of imprisonment was imposed.

Amendments to section 132 in 1977 had the effect of excluding self-employed persons from membership. Subclause 22(2) has the effect of validating continuous purported membership of such persons since 1977, and deems these people to be exempt from the exclusion in the future.

Requirements for organisations' rules relating to elections and secret ballots, casual vacancies, and the making of loans grants or donations are amended. Clause 27
permits organisations to provide for alteration of rules by the Committee of management.

For further information, if required, contact:

16 November 1983

Law & Government Group
Economics and Commerce Group
LEGISLATIVE RESEARCH SERVICE

References