INTER-STATE COMMISSION AMENDMENT BILL 1983

Date Introduced: 2 November 1983
House: House of Representatives
Presented by: Hon. P. Morris, M.P., Minister for Transport

Short Digest of Bill

Purpose

To amend the recently proclaimed Inter-State Commission Act 1975 to accord with present legislation and current legislative drafting practices. In particular, the Act will be updated to refer to the 1981 Airlines Agreement and the Independent Air Fares Committee legislation, to adjust the salaries of the President and Members of the Commission, to increase certain penalties, and to amend the Act in respect of retirement benefits and in the light of changes in the Public Service Act since 1975.

Background

A major concern occupying the authors of our Constitution was that, upon Federation, there should be no act of preference nor discrimination which would interfere with free trade and commerce between the States. In particular, concern was expressed that certain railway rating practices could interfere unduly with free inter-State trade. As a result of debate at various Constitutional Conventions, it was decided that the Constitution should require Parliament to establish a body which would be given the specific task of overseeing practices associated with the operation of the States' railways, thus ensuring obedience to the principle of free trade. The agreed final wording of the Constitution, however, allowed for that body (eventually designated the Inter-State Commission) to extend its activities into more general areas of trade and commerce.

The decision to establish the Commission found its expression in sections 101 to 104 of the Constitution. Section 101 states:

'There shall be an Inter-State Commission, with such powers of adjudication and administration as the Parliament deems necessary for the execution
and maintenance, within the Commonwealth, of the provisions of this Constitution relating to trade and commerce, and of all laws made thereunder.'

Section 103 sets out the general terms and conditions upon which the members of the Commission shall be appointed. Sections 102 and 104 enunciate the role of the Commission in adjudging whether or not any preference or discrimination inherent in the practices of the railways of a State could be taken to be undue and unreasonable, or unjust to any State. It might be re-emphasized that, while the Constitution makes the establishment of the Inter-State Commission mandatory, the powers of the Commission are to be determined by Parliament.

Following a number of unsuccessful attempts to establish the Inter-State Commission in the years after Federation, the Inter-State Commission Act 1912 was finally passed and the Commission began operation in 1913. While the Commission established by this Act was primarily investigative, the Act endowed the Commission with judicial powers to enforce its recommendations. A challenge in the High Court in 1915 led to the declaration that this exercise of judicial power was Constitutionally invalid. The Commission's activities subsequently ceased in 1920, by which time its members had either resigned or their terms of office expired. It was never reconvened and the enabling legislation was abolished by the Menzies Government under the Statute Law Revision Act 1950.

Although in 1920, 1937 and 1938 Bills were introduced to re-establish the Inter-State Commission, none of them were enacted. In the early 1970s the concept of the Inter-State Commission was incorporated into the platform of the Labor Party and, upon being elected into Government in 1972, the Prime Minister, Mr Whitlam, announced his Government's intention to re-establish the Commission. However, the Inter-State Commission Bill was not introduced into Parliament until April 1975. During passage of the Bill, wide-ranging amendments were made by the Senate. As a result, the Inter-State Commission Act 1975 is a severely curtailed version of the original Bill.

In the Bill introduced in 1975, the main emphasis was placed on the Commission's activities in respect of inter-State and overseas transport, although clauses 13 to 17 allowed the Commission, within the provisions of the Constitution, to extend its activities to any other matters relating to trade and commerce in general and, subject to the necessary regulations, would have enabled the Commission to exercise statutory powers in those matters.
The Commission would have been given the power to initiate its own investigations, although matters could also be referred to it by the Minister. As a result of its investigations, the Commission could have formulated recommendations and made orders on the basis of any fact found after those investigations, those orders being enforced not by the Commission, which would have given it a judicial function, but by the High Court. The Bill would have allowed the Commission to arbitrate on any matter relating to trade and commerce and would have given it a potential regulatory role by empowering it to issue licences or give consent in respect of, for example, the use of aircraft, vessels, vehicles or pipelines engaged in inter-State transport.

These provisions of the Bill were considerably amended in the Senate with the result that the powers of the Commission as conferred by the Inter-State Commission Act 1975 are very restricted compared with those sought in the Bill. To begin with, under the Act the activities of the Inter-State Commission are restricted solely to the area of transport. There is no provision for investigation into other areas under the more general heading of trade and commerce. The functions have also been narrowed to exclude any investigation into overseas transport services. They are further restricted by section 6 of the Act which requires that: "Nothing in this Act or in the regulations shall affect or authorise action in connection with any obligations imposed by any of the agreements referred to in section 3 of the Airlines Agreement Act 1952-1973 on the parties to those agreements".

There is no authority given to the Commission to initiate its own investigations nor to make orders upon the recommendations stemming from its investigations. The Commission is empowered only to investigate those matters specified by the Minister in a notice presented to the Commission. Where several matters are to be investigated, the order in which the Commission is to investigate those matters may also be determined by Ministerial direction. Upon completion of an investigation, the Commission shall furnish to the Minister a report setting out any findings made by the Commission and any recommendations that the Commission thinks fit to make in consequence of those findings. Any report furnished by the Commission shall be tabled by the Minister in each House of Parliament within 15 sitting days of having received it.

The Commission is not empowered to arbitrate on any matters, nor does it have any regulatory function. The Commission does, in the course of its investigations, have the power to summon witnesses and to require the production
of documents. Failure to comply with such a summons or direction by the Commission may lead to the imposition of a penalty. The Inter-State Commission can therefore be likened to a standing Royal Commission, able to inquire into certain transport matters. In order to give force to the Commission's recommendations, the Government may, in many instances, be required to introduce appropriate legislation into Parliament.

Although the Inter-State Commission Act received assent in October 1975, it had not been proclaimed before the termination of the Whitlam Government. It was neither proclaimed nor repealed during the terms of office of successive Fraser Governments. The Labor Party remained committed to the establishment of the Commission and the Act was finally proclaimed on 26 September 1983.

Given the period of time which has elapsed between the receipt of assent and proclamation, there are various machinery amendments which are required to update the Act to accord with present legislation and current drafting practices. This is the purpose of the present Bill. In particular, the Airlines Agreement Act 1952-73 referred to in the Principal Act has since been repealed and replaced by the Airlines Agreement Act 1981. With the deregulation of air freight in the 1981 Airlines Agreement, the Inter-State Commission will now have powers to investigate matters relating to railways, roads, coastal shipping, pipelines and air freight.

It is interesting to note that, in a press release dated 26 September 1983, the Minister for Transport, Mr Morris, foreshadowed an amendment to the Act to insert a sunset provision which would terminate the Commission upon the expiration of the terms of office of the initial Commissioners. Due, apparently, to Constitutional constraints, such a clause has not been included in the present Bill. Instead, the Minister has promised, in his Second Reading Speech, that there will be a review of the Commission's operations within the first seven years of its life.

Main Provisions

Clause 5 inserts a new section 6 which ensures that nothing in the Act or regulations affects or authorises action in connection with the operation of the Airlines Agreement Act 1981 or of the Agreement referred to in section 5 of that Act, nor with the activities of the Independent Air Fares Committee under the Independent Air Fares Committee Act 1981 or the performance of functions or the exercise of powers by the Minister under that Act.
Clause 6 amends sub-section 12(2) of the Principal Act to enable the Commission to give directions as to who may be present during the hearing of confidential evidence and to prohibit or restrict the publication of such evidence, or of matters contained in documents lodged with the Commission.

Clauses 7 and 8 amend sections 15 and 16 of the Principal Act to increase the maximum penalty from 3 to 6 months' imprisonment for the failure of a witness to attend a hearing, for refusal by a witness to be sworn in or to answer questions or produce a document as required by the Commission. Clause 8 also amends sub-section 16(2) to provide that self incrimination is no excuse for not answering questions or producing documents. However such answers or documents are not admissible as evidence against the person except in the case of proceedings for giving false evidence, proceedings under section 16 of the Act or proceedings under prescribed sections of the Crimes Act 1914.

Clause 9 makes minor amendments to section 17 of the Principal Act relating to contempt of the Commission and increases the maximum penalty for contempt from 3 to 6 months' imprisonment.

Clause 11 amends section 19 of the Principal Act to adjust the initial salaries and allowances payable to the President and members of the Commission.

Clause 14 repeals sections 22, 23 and 24 of the Principal Act. Section 22 preserved the rights of a public servant appointed as a Commissioner. This is now adequately covered by section 87 of the Public Service Act. A new section 24 redefines the provision of retirement benefits in line with legislative developments since 1975.

Clause 17 inserts a new section 29 to ensure that provisions in relation to the disclosure of Commissioners' interests accord with current practices.

Clause 18 amends section 32 of the Principal Act to require the Minister to lay before each House of Parliament the annual report of the Commission within 15 sitting days of receiving that report.

For further information, if required, contact:
References
