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COLLECTIVE AGREEMENTS (CORPORATIONS) BILL 1983

Date Introduced: 14 December 1983
House: Senate
Presented by: Senator Jack Evans, Private Senator's Bill

Short Digest of Bill

Purpose

To provide institutional mechanisms for collective bargaining outside of the Commonwealth and State systems of conciliation and arbitration. The Bill aims at complementing the present system rather than replacing or amending it.

Background

The Collective Agreements (Corporations) Bill aims to provide a legal framework for voluntary collective bargaining between associations of employees and individual corporations, to co-exist with Commonwealth and State laws on conciliation and arbitration. The legislation should enable such bodies to enter into voluntary negotiations to conclude binding collective agreements affecting the terms and conditions of employment.

Collective bargaining is already widespread in Australia. Over award bargaining is common place but an Australian court would be most unlikely to hold that such an agreement was enforceable.

Under the present law many formal collective agreements often concern matters such as payment of health insurance which it would not be possible to incorporate in federal awards because their coverage is beyond the limitations of the federal "industrial power".

There are inherent difficulties associated with the present system of conciliation and arbitration. The Federal Parliament's power is constitutionally limited. Further the present system of Federal and State awards which prescribe minimum wage rates and work rules often results in parties engaging in over-award bargaining which may lead to a change in stability within the industry. The limited nature of the
"industrial power" in the Constitution may inhibit the
development of formal industrial practices in the area of
"management prerogatives" such as redundancy schemes.

Main Provisions

Clause 5 specifies that an agreement shall only be
entered into if it affects 5 or more employees of a
corporation.

Clause 6 provides that a Collective Agreement may
be lodged with the Industrial Registrar up to 30 days after
it was reached. The Industrial Registrar is responsible for
examining and certifying the Agreement as being in
compliance with the Act.

Clause 11 acts in such a way as to bind each of the
parties to the agreement during its life-time. Further the
collective agreement is binding on each person who is, at
any point of the agreement, a member of an association of
employees which is a party to the agreement - until such
person ceases membership or the agreement is terminated,
whichever first occurs.

Clause 14 operates to prevent the parties from
recourse to settlement under certain provisions of the
Conciliation and Arbitration Act.

Clause 16 allows the Federal Court to restrain a
State Industrial Authority, if that Authority intervenes (or
so intends) in a matter dealt with in an agreement.

Clause 20 prevents a corporation from acting in
such a way as to prejudice a person who is entitled to the
benefits of an agreement or is seeking improved conditions.
Employees may not take action to prevent the operation of an
agreement nor apply pressure for variation to an agreement.

Clause 24 provides that in the event of demarcation
disputes that such disputes may be settled under the
Conciliation and Arbitration Act.

For further information, if required, contact:

30 March 1984

Law & Government Group
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References


2. The case of R v Coldham & Ors; ex parte The Australian Social Welfare Union (the NSWA case) (1983) 57 ALJR 573 is instructive in this regard. Useful comment on this case is to be found in an article "Industrial Law and Relations", 1983 11 ABL Rev. 265 at 265-270.

3. Further information on these points can be obtained from 26 Journal Of Industrial Relations, G.F. Smith and R.C. McCallum p.3-24 at page 14.