

ARBITRATION (PUBLIC SERVICE) ORDINANCE 1951.⁽¹⁾

No. 7 of 1951.

An Ordinance relating to the Settlement of Matters arising out of employment in the Public Service.

BE it ordained by the Governor-General in and over the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the Papua and New Guinea Act 1949-1950, as follows:—

1. This Ordinance may be cited as the Arbitration (Public Service) Ordinance 1951.⁽¹⁾ *Short title.*

2. This Ordinance shall come into operation on a date to be fixed by the Administrator by notice⁽¹⁾ in the Gazette. *Commencement.*

3. In this Ordinance, unless the contrary intention appears— *Definitions.*

“Organization” means a Public Service Association of the Territory recognized in writing by the Minister as a body representing officers of the Public Service;

“the Arbitrator” means the Public Service Arbitrator (Papua and New Guinea) appointed in pursuance of this Ordinance;

“the Commissioner” means the Public Service Commissioner appointed under the Public Service Ordinance 1949-1950.⁽²⁾

4.—(1.) For the purposes of this Ordinance, there shall be a Public Service Arbitrator (Papua and New Guinea) who shall be appointed from time to time by the Governor-General in accordance with this section. *Appointment of Arbitrator.*

(2.) The Arbitrator may be appointed for a specified period or to determine a specified matter or matters.

(1) Particulars of this Ordinance are as follows:—

Date on which made by Gov.-Gen. in Council.	Date on which notified in <i>Cwth. Gaz.</i>	Date on which took effect.
1. 3. 1951	8. 3. 1951	Not notified to commence before 1. 1. 1952(a)

(a) The *Arbitration (Public Service) Ordinance 1951* was not brought into operation before the date fixed under Section 35 of the *Papua and New Guinea Act 1949-1950*, and, *semble*, was not continued in force by Section 56 of that Act, and accordingly is printed in *italics*.

(2) The *Public Service Ordinance 1949* is printed in *The Laws of the Territory of Papua-New Guinea 1954-1949 (Annotated)*, on pp. 311-338. As to subsequent amendments see the Supplementary Table printed in Part D in Volume II.

PART A : PUBLIC SERVICE—

(3.) If an officer of the Public Service is appointed Arbitrator, his services as Arbitrator shall, for the purpose of determining his existing and accruing rights, be counted as service in the Public Service.

(4.) The Arbitrator shall receive such salary and allowances as the Governor-General determines.

Tenure of office.

5.—(1.) Subject to the next succeeding sub-section, the Arbitrator shall hold office until the expiration of the period or the determination of the matter or matters specified in the instrument of his appointment.

(2.) Notwithstanding anything contained in this Ordinance, the Governor-General may at any time remove the Arbitrator from office.

Oath or affirmation of allegiance and of office.

6. The Arbitrator shall, before proceeding to discharge the duties of his office, take before the Governor-General or a person thereunto authorized by the Governor-General an oath or affirmation in the form in the Schedule to this Ordinance.

Power of Arbitrator to decide applications as to salaries, &c.

7.—(1.) The Arbitrator shall, subject to such conditions as the Minister may determine and to the provisions of this section, arbitrate upon such matters as are submitted to him relating to salaries, wages, rates of pay, or terms or conditions of service or employment of officers and employees of the Public Service.

(2.) Any organization may submit to the Arbitrator by memorial an application relating to the salaries, wages, rates of pay, or terms or conditions of service or employment of members of the organization.

(3.) The Arbitrator shall forward a copy of the application to the Minister, the Administrator and the Commissioner.

(4.) The Administrator and the Commissioner may within the prescribed time lodge, either jointly or separately, any objections they see fit to make to the granting of the application.

(5.) If any objection is lodged, the Arbitrator, with the approval of the Minister, shall call a conference, to be presided over by himself, of representatives of the organization and of the Commissioner and of the Administrator if he has lodged objections to the granting of the application, and following upon that conference shall, after hearing such evidence (if any) in respect of such matters as have not been agreed to at the conference, as the Arbitrator thinks necessary, arbitrate upon the application.

(6.) If no objection is lodged, the Arbitrator shall decide the application in favour of the applicant.

Variation of decision.

8.—(1.) The Commissioner, or the Administrator or any organization affected by a decision of the Arbitrator, may submit to the Arbitrator an application to vary the decision wholly or in part.

(2.) Where an application to vary a decision is submitted to the arbitrator under the last preceding sub-section, the Arbitrator shall forward a copy of the application—

- (a) to the Minister;
- (b) where the application is submitted by the Commissioner—to any organization affected by the application and to the Administrator;
- (c) where the application is submitted by the Administrator—to any organization affected by the application and to the Commissioner; and
- (d) where the application is submitted by an organization—to any other organization affected by the application, and to the Administrator and the Commissioner.

(3.) Any organization or person to which or to whom the Arbitrator has, in pursuance of the last preceding sub-section, forwarded a copy of the application to vary a decision may, within the prescribed time, lodge any objections it or he sees fit to make to the granting of the application.

(4.) If any objection is lodged, the Arbitrator shall call a conference as provided in sub-section (5.) of the last preceding section, and thereupon the provisions of that sub-section shall apply in like manner as if the application to vary the decision were an application within the meaning of that sub-section.

(5.) If no objection is lodged, the Arbitrator shall decide the application in favour of the applicant.

9. In relation to every application made to him in pursuance of this Ordinance, the Arbitrator shall act according to equity, good conscience and the substantial merits of the case, without regard to technicalities or legal forms, and shall not be bound by any rules of evidence, but may inform his mind on any matter in such manner as he thinks fit.

Arbitrator
to act
according to
equity and
good
conscience.

10.—(1.) The Arbitrator shall, at the request of the organization which has submitted an application, or of the Commissioner, or of the Administrator, if he has submitted an application or is affected by the application of the organization, and may, without any such request, appoint two assessors to advise him in relation to the application, and the assessors shall discharge such duties as are directed by the Arbitrator or as are prescribed.

Assessors.

(2.) One of the assessors shall be a person nominated by the organization, and the other person nominated jointly by the Commissioner and the Administrator, or, in default of such nomination, appointed by the Minister.

PART A : PUBLIC SERVICE—

Powers of Arbitrator in relation to applications.

11.—(1.) For the purposes of this Ordinance, the Arbitrator shall, subject to such conditions as the Minister may determine, have power, in relation to any application submitted to him under this Ordinance—

- (a) to vary any decision or re-open any question;
- (b) to summon any witness before him, and to compel the production before him of books, documents and things for the purpose of reference to such matters only as relate to the matter of the application;
- (c) to take evidence on oath or affirmation, which evidence shall, unless otherwise ordered by the Arbitrator for reasons affecting the public interest, be taken in public;
- (d) to allow the amendment of the application;
- (e) generally to give all such directions and do all such things as the Arbitrator deems necessary or expedient in the premises.

(2.) Any person who, having been summoned as a witness, refuses or fails, without lawful excuse, and after tender of reasonable expenses, to appear in obedience to the summons, or refuses or fails without lawful excuse to be sworn or to make an affirmation or to produce books documents and things which he is lawfully required to produce, or to answer questions which he is lawfully required to answer, shall be guilty of an offence.

Penalty: Fifty pounds.

Reference of application or matter for report.

12.—(1.) The Arbitrator may refer any application submitted to him under this Ordinance, or any matter arising out of the application, to a person authorized by the Governor-General in that behalf, for investigation and report, and may delegate to that person such of his powers (other than the power to arbitrate upon the application and this power of delegation) as he deems desirable.

(2.) The Arbitrator may, on the report, and after hearing further evidence or argument, or both, or without hearing further evidence or argument, as he sees fit, decide the application.

Officers to comply with decision.

13. The Commissioner and the Administrator, and all persons in the Public Service, shall comply with the provisions of any decision of the Arbitrator made under this Ordinance.

Decision not limited to application.

14. In making any decision under this Ordinance, the Arbitrator shall not be restricted to the specific claims made in the application or to the subject matter of the application, but may include in the decision any matter or thing which the Arbitrator thinks necessary in the interests of the public or of the Public Service.

No costs to be allowed.

15. Costs shall not be allowed in respect of any proceedings under this Ordinance.

16. No person or organization shall in any proceedings under this Ordinance be represented by counsel or solicitor.

No counsel or solicitor to be employed.

17. A decision of the Arbitrator made under this Ordinance shall not be challenged, appealed against, reviewed, quashed, or called in question, or be subject to prohibition or mandamus, in any Court on any account whatever.

Decisions not to be appealed against.

18.—(1.) Except as provided in this section, the Arbitrator is not empowered to make any decision which is not in accord with the Ordinances of the Territory and the regulations thereunder.

Decisions inconsistent with Ordinances or regulations.

(2.) Subject to section twenty of this Ordinance, the Arbitrator shall have power to make a decision which is not in accord with an Ordinance or regulation of the Territory relating to the salaries, wages, rates of pay or terms or conditions of service or employment of officers or⁽³⁾ employees.

(3.) Where the Arbitrator is of opinion that a decision is not, or may not be, in accord with any such Ordinance or regulation, he shall send to the Minister, with the certified copy of the decision referred to in section twenty, a statement of the Ordinance or regulation with which, in his opinion, it is not, or may not be, in accord.

19.—(1.) Any decision of the Arbitrator shall be expressed to come into operation as from a date fixed by the Arbitrator.

Date of operation of decision.

(2.) The date fixed by the Arbitrator in pursuance of the last preceding sub-section shall not be earlier than after the expiration of fourteen days after the decision has been submitted to the Governor-General in accordance with section twenty of this Ordinance.

20.—(1.) Where a decision has been made under this Ordinance the Arbitrator shall forthwith send to the Minister by registered post a certified copy of the decision.

Decisions to be submitted to Governor-General and may be disallowed.

(2.) The Minister shall, as soon as practicable after its receipt, cause such certified copy of the decision, together with any statement of the Arbitrator under section eighteen of this Ordinance, to be submitted to the Governor-General.

(3.) The Governor-General may within fourteen days thereafter, disallow any decision.

(4.) Where the Governor-General has, in pursuance of this section, disallowed a decision, the decision shall not come into operation and shall have no force or effect.

(5.) Notification of disallowance or otherwise of a decision by the Governor-General shall be published in the Gazette.

⁽³⁾ The word "or" has been substituted for the word "of" pursuant to Section 11 of *The Laws of the Territory (Proof and Printing) Ordinances 1951*.

PART A: PUBLIC SERVICE—

Regulations.

21. *The Minister may make regulations⁽⁴⁾ not inconsistent with this Ordinance, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Ordinance.*

Section 6.

THE SCHEDULE.

OATH.

I, A.B., do swear that I will be faithful and bear true allegiance to His Majesty King George the Sixth, His heirs and successors according to law, that I will well and truly serve Him in the office of Public Service Arbitrator (Papua and New Guinea) and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will: So help me God!

AFFIRMATION.

I, A.B., do solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to His Majesty King George the Sixth, His heirs and successors according to law, that I will well and truly serve Him in the office of Public Service Arbitrator (Papua and New Guinea) and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will.

(4) See the Arbitration (Public Service) Regulations printed in this Volume on p. 1035.