

COMMONWEALTH CONCILIATION AND ARBITRATION.

No. 28 of 1949.

An Act to make provision for the Prevention of Irregularities in connexion with Elections for Offices in Organizations registered under the *Commonwealth Conciliation and Arbitration Act 1904-1948*, to vest in the Commonwealth Court of Conciliation and Arbitration additional Powers for the Prevention of such Irregularities, and for those purposes to amend that Act.

[Assented to 12th July, 1949.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1.—(1.) This Act may be cited as the *Commonwealth Conciliation and Arbitration Act 1949*. Short title
and citation.

(2.) The *Commonwealth Conciliation and Arbitration Act 1904-1948** is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Commonwealth Conciliation and Arbitration Act 1904-1949*.

2. This Act shall come into operation on the day on which it receives the Royal Assent. Commencement

3. Section three of the Principal Act is amended by omitting the words "Part VI.—Organizations." and inserting in their stead the following words:— Parts.

"Part VI.—Organizations.

Division 1.—Registries and Registrars.

Division 2.—Registered Organizations.

Division 3.—Disputed Elections in Organizations."

Act No. 13, 1904; as amended by No. 28, 1909; No. 7, 1910; No. 6, 1911; No. 5, 1914; No. 13, 1914; No. 35, 1915; No. 39, 1918; No. 31, 1920; No. 29, 1921; No. 22, 1926; No. 8, 1927; No. 18, 1928; No. 43, 1930; Nos. 45 and 54, 1934; Nos. 14 and 30, 1946; Nos. 10 and 52, 1947; and No. 77, 1948.

Definitions.

4. Section four of the Principal Act is amended—

(a) by inserting after the definition of “ Industry ” the following definitions :—

“ ‘ Inquiry ’ means any inquiry by the Court under Division 3 of Part VI. of this Act ;

“ ‘ Irregularity ’, in relation to an election for an office, includes a breach of the rules of an organization or of a branch of an organization, and any act, omission or other means whereby the full and free recording of votes by all persons entitled to record votes, and by no other persons, or a correct ascertainment or declaration of the results of the voting is, or is attempted to be, prevented or hindered ; ” ; and

(b) by inserting after the definition of “ Judge ” the following definition :—

“ ‘ Office ’, in relation to an organization or branch of an organization, means—

(a) the office of a member of the committee of management of the organization or branch ;

(b) the office of a person holding, whether as trustee or otherwise, property of the organization or branch, or property in which the organization or branch has any beneficial interest ; and

(c) every office within the organization or branch for the filling of which an election is conducted within the organization or branch ; ”.

Headings in Part VI.

5. Part VI. of the Principal Act is amended—

(a) by inserting before the heading “ *Registries and Registrars.* ”, appearing immediately before section sixty-six, the words “ *Division 1.—* ” ;

(b) by inserting before the heading “ *Registered Organizations.* ”, appearing immediately before section seventy, the words “ *Division 2.—* ” ; and

(c) by omitting the heading “ *Organizations Generally.* ” appearing immediately before section eighty-five.

6. Part VI. of the Principal Act is amended by adding at the end thereof the following Division :—

“ *Division 3.—Disputed Elections in Organizations.*

Applications for inquiries respecting elections.

“ 96A.—(1.) Where a member of an organization, or a person who, within the preceding period of twelve months, has been a member of an organization, claims that there has been an irregularity in or in connexion with an election for an office in the organization, or in a branch of the organization, he may lodge an application for an inquiry by the Court into the matter.

“(2.) An application under this section shall—

- (a) be in writing in accordance with the prescribed form ;
- (b) be lodged with the Industrial Registrar before the completion of the election or within such time after the completion of the election as is fixed by or under the regulations ;
- (c) specify the election in respect of which the application is made and the irregularity which is claimed to have occurred, and state the facts relied on in support of the application ; and
- (d) be accompanied by a statutory declaration by the applicant declaring that the facts stated in the application are, to the best of the applicant’s knowledge and belief, true.

“ 96B.—(1.) Where an application under the last preceding section is lodged with the Industrial Registrar, he shall—

Action by
Registrar.

(a) if he is satisfied—

- (i) that there are reasonable grounds for an inquiry into the question whether there has been an irregularity in or in connexion with the election, which may have affected or may affect the result of the election ; and
- (ii) that the circumstances of the matter justify an inquiry by the Court under this Division,

grant the application and refer the matter to the Court ; or

(b) if he is not so satisfied, refuse the application and inform the applicant accordingly.

“(2.) The Industrial Registrar may exercise his powers under the last preceding sub-section upon the basis of the matters stated in the application, but he may nevertheless take into account any relevant information coming to his knowledge.

“(3.) At any time after the lodging with the Industrial Registrar of an application for an inquiry in connexion with an election, a Judge may authorize the Industrial Registrar, by himself or by a person acting on his behalf, to—

- (a) inspect any ballot papers, envelopes, lists or other documents which have been used in connexion with or are relevant to the election ;
- (b) for the purpose of any such inspection, enter, with such assistance as he considers necessary, any premises used or occupied by the organization or a branch of the organization in which he believes any such ballot papers, envelopes, lists or documents to be ;
- (c) require a person to deliver to him, in accordance with the requirement, any such ballot papers, envelopes, lists or other documents in the possession or under the control of that person ;
- (d) take possession of any such ballot papers, envelopes, lists or other documents ; and

- (e) retain any ballot papers, envelopes, lists or other documents delivered to him, or of which he has taken possession, until the completion of the proceedings arising out of the application or until such earlier time as the Court or a Judge orders.

“(4.) Before authorizing any action under the last preceding sub-section, the Judge shall, if he is of opinion that, having regard to all the circumstances, any person should be given an opportunity of objecting to the proposed action, give such an opportunity to that person.

“(5.) A person shall not—

- (a) refuse or fail to comply with a requirement under this section ;
or
(b) obstruct or hinder the Industrial Registrar or any other person in the exercise of his powers under this section.

Penalty : One hundred pounds or imprisonment for twelve months, or both.

“(6.) An act or decision of the Industrial Registrar under this section shall not be subject to appeal to the Court.

**Jurisdiction
of Court.**

“96c.—(1.) Upon the reference of a matter to the Court under the last preceding section, the inquiry shall be deemed to have been instituted in the Court.

“(2.) Notwithstanding anything contained in section twenty-four of this Act, the jurisdiction of the Court in and in relation to an inquiry and in matters arising out of an inquiry shall be exercised by a single Judge.

**Directions as
to hearing.**

“96d. Where an inquiry has been instituted, a Judge shall fix a time and place for conducting the inquiry, and may give such directions as he thinks necessary to ensure that all persons who are or may be justly entitled to appear or be represented at the inquiry are notified of the time and place so fixed.

Interim orders.

“96e.—(1.) At any time after an inquiry in connexion with an election has been instituted, the Court may, if it thinks fit, make one or more of the following orders :—

- (a) an order that no further steps shall be taken in the conduct of the election or in carrying into effect the result of the election ;
(b) an order that a person who has assumed an office, continued to act in an office, or claims to occupy an office, being an office to which the inquiry relates, shall not act in that office ;
(c) an order that a person who holds, or who last held before the election, an office to which the inquiry relates may act or continue to act in that office ;

(d) where it considers that an order under the last preceding paragraph would not be practicable or would be prejudicial to the efficient conduct of the affairs of the organization or would be inappropriate having regard to the nature of the inquiry, an order that a member of the organization or another person specified in the order may act in an office to which the inquiry relates ;

(e) an order incidental or supplementary to an order under this sub-section : and

(f) an order varying or discharging an order under this sub-section.

“(2.) Where the Court orders that a person may act, or continue to act, in an office, that person shall, while the order remains in force, and notwithstanding anything contained in the rules of the organization or of a branch of the organization, be deemed, for all purposes, to hold the office.

“(3.) An order under this section shall continue in force, unless expressed to operate for a shorter period or unless sooner discharged, until the completion of proceedings in the Court in connexion with the election and of all matters ordered (otherwise than under this section) by the Court in those proceedings.

“96F.—(1.) The Court shall allow to appear or be represented at an inquiry all persons who apply to the Court for leave to appear or be represented, being persons who appear to the Court to be justly entitled to be heard, and the Court may order any other person so to appear or be represented.

Procedure at hearing.

“(2.) The persons appearing or represented, or ordered to appear or be represented, at an inquiry shall be deemed to be parties to the proceedings.

“(3.) The Attorney-General may, at any stage of an inquiry, intervene by counsel, solicitor or agent on behalf of the Commonwealth.

“(4.) Proceedings under this Division shall be deemed to be judicial proceedings for the purposes of section forty-six of this Act.

“(5.) The provisions of section thirty-nine of this Act shall apply in relation to proceedings under this Division in like manner as they apply in relation to other proceedings before the Court.

“96G.—(1.) At an inquiry the Court shall inquire into and determine the question whether any irregularity has occurred in or in connexion with the election, and such further questions concerning the conduct and results of the election as the Court thinks necessary.

Functions and powers of Court.

“(2.) In the course of conducting an inquiry the Court may make such orders (including an order for the recounting of votes) as the Court thinks necessary for the purposes of the inquiry.

“(3.) If the Court finds that an irregularity has occurred, the Court may, in its discretion, but subject to sub-section (4.) of this section make one or more of the following orders :—

(a) an order declaring the election, or any steps taken in or in connexion with the election, to be void ;

- (b) an order declaring a person purporting to have been elected not to have been elected, and declaring another person to have been elected ;
- (c) an order directing a new election to be held, or any step in or in connexion with the election (including the submission of nominations) to be taken again, in accordance (subject to any order under the next succeeding paragraph) with the rules of the organization or branch ;
- (d) an order directing, notwithstanding anything contained in the rules of the organization or branch, the taking of such safeguards as the Court thinks necessary against irregularities in or in connexion with—
 - (i) any such new election ;
 - (ii) any such step so ordered to be taken again ; or
 - (iii) any uncompleted steps in the election,
 and, for the purposes of any such order, an order appointing and authorizing a person to act as a returning officer in conjunction with the returning officer (if any) acting under the rules of the organization or branch in connexion with the election, and to exercise such powers as the Court directs ; and
- (e) an order incidental or supplementary to any order under this section.

“ (4.) The Court shall not declare an election, or any step taken in or in connexion with an election, to be void, or declare that a person was not elected, unless the Court is of opinion that, having regard to the irregularity found, and any circumstances giving rise to a likelihood that similar irregularities may have occurred or may occur, the result of the election may have been affected, or may be affected, by irregularities.

**Enforcement
of orders.**

“ 96H.—(1.) The Court may make such orders for injunctions (including mandatory injunctions) as it thinks necessary for the effectual exercise of its powers and functions and the enforcement of its orders under this Division.

“ (2.) A person shall not refuse or fail to comply with an order of the Court under this Division or hinder or obstruct the carrying out of any such order.

Penalty : One hundred pounds or imprisonment for twelve months, or both.

“ (3.) Nothing in this section shall affect the powers of the Court in relation to the punishment of contempts of the Court.

**Validation of
certain acts, &c.**

“ 96J.—(1.) Where the Court declares void the election of a person who has, since the election, purported to act in the office to which he purported to have been elected, all acts done by him while so purporting to act and which could validly have been done by him if he had been duly elected shall, subject to this section, be valid and effectual for all purposes.

“(2.) The Court may, if it considers it desirable so to do, declare any such act to have been void, and thereupon that act shall, for all purposes, be deemed not to have been validly done.

“(3.) Where an election is held, or any step in or in connexion with an election is taken, in pursuance of an order of the Court, that election or step shall not be invalidated by reason only of any departure from the rules of the organization or branch involved in compliance with the order of the Court.

“96K.—(1.) Where upon an inquiry the Court finds that an irregularity has occurred, the Attorney-General may, if he considers the circumstances to justify him in so doing, authorize payment by the Commonwealth to the person who applied for the inquiry of the whole or a part of his costs and expenses (including expenses of witnesses). Costs.

“(2.) Where, upon an inquiry, the Court does not find that any irregularity has occurred, but certifies that the person who applied for the inquiry acted reasonably in so applying, the Attorney-General may authorize payment by the Commonwealth to that person of the whole or a part of his costs and expenses (including expenses of witnesses).

“(3.) Where the Attorney-General is satisfied that, having regard to the findings of the Court upon an inquiry, it is not just that a person (not being the person who applied for the inquiry) should be required to bear, or to bear in full, any expenses (including expenses of witnesses) incurred by him in connexion with the inquiry, the Attorney-General may authorize payment by the Commonwealth of the whole or a part of those expenses.

“(4.) Where the Court orders—

- (a) a new election to be held ;
- (b) any step in or in connexion with an election to be taken again ; or
- (c) any safeguards, not provided for in the rules of the organization or branch, to be taken in or in connexion with any uncompleted steps in an election,

the Attorney-General may, if he is satisfied that the nature of the irregularity found by the Court to have occurred is such that it would be unreasonable for the organization to be required to bear, or to bear in full, the expenses involved in compliance with the order of the Court, authorize payment by the Commonwealth of the whole or part of those expenses.

“(5.) Nothing in this section shall limit the power of the Court to make an order as to the costs and expenses (including expenses of witnesses) of proceedings before the Court in or in connexion with an inquiry.

“96L. Notwithstanding anything contained in the rules of an organization or of a branch of the organization, an organization and every officer of an organization or branch of an organization

Ballet papers,
&c., to be
preserved.

who is able to do so, shall take such steps as are necessary to ensure that all ballot papers, envelopes, lists and other documents used in connexion with, or relevant to, an election for an office are preserved and kept at the registered office of the organization (or, if the election is for an office in a branch of the organization, at the registered office of that branch) for a period of one year after the completion of the election.

Penalty : One hundred pounds or imprisonment for twelve months, or both.

Registrar to
conduct
elections upon
request.

“ 96M.—(1.) An organization or a branch of an organization may request the Industrial Registrar to conduct an election for an office in the organization or in the branch (as the case may be) with a view to ensuring that no irregularity occurs in or in connexion with the election.

“(2.) Upon the making of such a request, the Industrial Registrar may, if he considers that it is practicable for him to do so, conduct the election, and may, notwithstanding anything contained in the rules of the organization or branch, take such action and give such directions as he considers necessary with a view to ensuring that no irregularities occur in or in connexion with the election.

“(3.) A person shall not—

(a) refuse or fail to comply with a direction of the Industrial Registrar under this section ; or

(b) obstruct or hinder the Industrial Registrar in the taking of any action under this section or any person in the carrying out of a direction of the Industrial Registrar under this section.

Penalty : One hundred pounds or imprisonment for twelve months, or both.

“(4.) Where the Industrial Registrar is conducting, or has conducted, an election, the provisions of this Division relating to inquiries shall not apply in relation to the election.

“(5.) An election shall not be invalidated by reason of any breach of the rules of the organization or branch involved in any act, or in compliance with any direction, of the Industrial Registrar under this section.

Offences in
connexion with
elections.

“ 96N.—(1.) A person shall not, without lawful authority or excuse, in or in connexion with an election for an office—

(a) personate another person to secure a ballot paper to which the personator is not entitled, or personate another person for the purpose of voting ;

(b) destroy, deface, alter, take or otherwise interfere with a nomination paper, ballot paper or envelope ;

(c) put or deliver a ballot paper or other paper—

(i) into a ballot box or other ballot receptacle ;

(ii) into the post ; or

(iii) to a person receiving ballot papers for the purposes of the election ;

- (d) record a vote which he is not entitled to record ;
- (e) record more than one vote ;
- (f) forge or alter, knowing the same to be forged, a nomination paper, ballot paper or envelope ;
- (g) supply a ballot paper ;
- (h) obtain, or have in his possession, a ballot paper ; or
- (i) destroy, take, open or otherwise interfere with a ballot box.

“(2.) A person shall not, in or in connexion with an election for an office—

- (a) threaten, offer or suggest any violence, injury, punishment, damage, loss or disadvantage for or on account of, or to induce—
 - (i) any candidature or withdrawal of candidature ;
 - (ii) any vote or omission to vote ;
 - (iii) any support or opposition to any candidate ; or
 - (iv) any promise of any vote, omission, support or opposition ; or
- (b) use, cause, inflict or procure any violence, punishment, damage, loss or disadvantage for or on account of any such candidature, withdrawal, vote, omission, support or opposition.

Penalty : One hundred pounds or imprisonment for twelve months, or both.”.

LIQUID FUEL (DEFENCE STOCKS).

No. 29 of 1949.

An Act to provide, in the interests of Defence, for the Maintenance of Stocks of Liquid Fuel within Australia.

[Assented to 12th July, 1949.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

1. This Act may be cited as the *Liquid Fuel (Defence Stocks) Act 1949.* Short title.

2. This Act shall come into operation on the day on which it receives the Royal Assent. Commencement.

3. In this Act, “liquid fuel” means aviation spirit, motor spirit, kerosene, automotive diesel oil, diesel oil fuel, residual fuel oil, lubricating oil or crude petroleum. Definition.