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CONCILIATION AND ARBITRATION (AMENDMENT) BILL 1986

(Private Senator's Bill)

Date introduced: 14 March 1986
House: Senate
Presented by: Senator the Hon. Ronald Boswell

DIGEST OF BILL

Purpose

To exclude matters relating to employer contributions to superannuation schemes from the definition of industrial matters contained in the Conciliation and Arbitration Act 1904 (the Principal Act).

Background

The question of employer contributions to superannuation funds has come to prominence since the Government's agreement to support an ACTU application to the National Wage Case that employers pay a 3% levy to superannuation funds to cover productivity increases.

At the time this Bill was introduced there was some doubt as to whether superannuation was within the jurisdiction contained in sub-section 51(xxxv) of the Constitution which allows the Commonwealth to make laws with respect to 'Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of one State'. Those that argued that this power did not cover superannuation awards relied on the case of Reg. v Hamilton Knight; Ex parte the Commonwealth Steamship Owners Association (1952) 86 CLR 283. In that case it was decided that pension rights that would be payable for an indefinite time after the employment relationship was terminated did not constitute an industrial matter and so was outside sub-section 51(xxxv).

To test this situation a number of employers sought an order prohibiting the Conciliation and Arbitration Commission (the Commission) from hearing the application to do with superannuation. In the case Re the Manufacturing Grocers' Employees Federation of Australia and the Association of Professional Engineers, Australia v Ex parte the Australian Chamber of Manufacturers and the Victorian Employers Federation, decided on 15 May 1986, the six High Court Justices then sitting unanimously rejected the employers' arguments and found that certain applications relating to superannuation were industrial matters and within the Commission's jurisdiction. The arguments based on Reg. v Hamilton Knight; Ex parte the Commonwealth Steamship Owners Association were rejected as a misinterpretation of that case.

In the June 1986 National Wage Case decision the Commission refused to order compulsory contributions by employers but left the way open for negotiated occupational superannuation schemes.

Main Provisions

Clause 3 will amend section 4 of the Principal Act to exclude matters relating to employer contributions to superannuation or pension schemes from the definition of industrial matters contained in that section.

For further information, if required, contact the Law and Government Group.

13 August 1986

Bills Digest Service
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