

## KEMIRA TUNNEL (ARBITRATION) ACT.

### Act No. 37, 1948.

George VI.  
No. 37, 1948.

An Act to provide means for the determination of questions which have arisen relating to the employment of persons in the construction of the Kemira Tunnel in the County of Camden in the State of New South Wales; and for purposes connected therewith. [Assented to, 9th December, 1948.]

Preamble.

WHEREAS questions have arisen relating to the employment of persons in the construction of the Kemira Tunnel in the County of Camden in the State of New South Wales: And whereas it has been agreed between the Governments of the State of New South Wales and of the Commonwealth of Australia that they shall take measures for securing the determination of the said questions: And whereas it has been further agreed between the two Governments that they shall jointly establish an authority vested with power to determine the said questions: And whereas it has been further agreed that the two Governments shall take all practicable steps to secure the passage by the Parliament of the State of New South Wales and the Parliament of the Commonwealth of legislation within the constitutional powers of the respective Parliaments providing for the establishment of such authority: And whereas each of the two Governments has undertaken not to take action, without the prior concurrence of the other, to repeal or amend any of the legislation covered by the agreement: Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title  
and com-  
mencement.

1. (1) This Act may be cited as the "Kemira Tunnel (Arbitration) Act, 1948."

(2)

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette. No. 37, 1948.

**2.** This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State, to the intent that where any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances shall not be affected. Construc-  
tion.

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

“industrial authority” means any court, commission, tribunal or person constituted by or under any law of the Commonwealth or of this State having power to determine industrial disputes or industrial matters and make awards, orders or determinations in settlement thereof;

“industrial union” means an industrial union of employees registered as such under the Industrial Arbitration Act, 1940-1948, and includes an organisation of employees registered under the Commonwealth Conciliation and Arbitration Act 1904-1947 of the Parliament of the Commonwealth;

“the arbitrator” means the arbitrator appointed under this Act;

“the Commonwealth Act” means the Kemira Tunnel (Arbitration) Act 1948 of the Parliament of the Commonwealth and includes that Act as amended from time to time;

“the work” means the work of constructing the tunnel known as the Kemira Tunnel, the portal of which is located on portion 138 in the Parish of Kembla in the County of Camden in this State.

**4.** (1) The Governor may enter into an arrangement with the Governor-General of the Commonwealth for the appointment of an arbitrator. Appoint-  
ment of  
arbitrator.

(2) The arbitrator may be appointed by the arrangement.

(3)

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(3) The arrangement may include provisions as to—

- (a) the period during which the arbitrator shall hold his office; and
- (b) the remuneration and allowances which shall be payable to the arbitrator.

(4) The person appointed as arbitrator shall be a Judge of the High Court of Australia or of the Commonwealth Court of Conciliation and Arbitration or of the Supreme Court of any State of the Commonwealth, or a member of the Industrial Commission of New South Wales, or a person who is or has been a barrister or solicitor of the High Court of Australia, or of the Supreme Court of any State of the Commonwealth, of not less than five years' standing.

**Powers of  
arbitrator.**

**5.** (1) In pursuance of agreement between the Governments of the State and of the Commonwealth it is declared that the arbitrator appointed under this Act and any industrial authority to which a reference is made under this Act are to have all the powers and functions specified in this Act in relation to the arbitrator and to that authority respectively.

(2) Subject to the Commonwealth of Australia Constitution Act those powers and functions are by this subsection, but not otherwise, vested in the arbitrator and in that authority to the extent to which they are not in excess of the legislative power of this State.

**Arbitrator  
to determine  
certain  
questions.**

**6.** (1) The arbitrator is to have power—

- (a) to conduct an inquiry for the purpose of determining whether or not the members of any particular industrial union should enjoy the right to carry out the work or any specified part thereof, as the case may be, to the exclusion of the members of any other industrial union; and
- (b) where he determines that such a right should be enjoyed by the members of any particular industrial union, to make such orders as he deems necessary to secure the enjoyment of that right to the members of that industrial union.

(2)

(2) Any order made by the arbitrator under subsection one of this section shall, notwithstanding the provisions of any award, order or determination in force under any other Act, be final and conclusive and shall have and be given effect as authorising members of the industrial union specified in the determination to be employed in the carrying out of the work or any specified part thereof, as the case may be, to the exclusion of members of any other industrial union. No. 37, 1948.

(3) Any award, order or determination in force under any other Act which is inconsistent with an order made by the arbitrator under subsection one of this section may be varied by the industrial authority which made such award, order or determination to such extent as may be necessary to remove that inconsistency.

**7.** (1) The arbitrator is to have power and authority to take such steps as he thinks necessary to determine the conditions of employment of employees engaged in carrying out the work, and the minimum rates of their remuneration and other payments, and for this purpose the arbitrator is to have power to conduct such inquiries as he thinks necessary, and to make such orders as he thinks fit in relation to the conditions of employment of, minimum rates of remuneration of, and other payments to, employees engaged in carrying out the work. Awards by  
arbitrator.

(2) In lieu of making an order under subsection one of this section the arbitrator may, if he thinks fit, refer to such industrial authority as he deems appropriate for the purpose the matter of determining the conditions of employment of employees engaged in carrying out the work and the minimum rates of their remuneration and other payments, and the industrial authority to which any such reference is made is to have jurisdiction to make such orders in the matter as it thinks fit.

(3) Any order made under subsection one or subsection two of this section shall be embodied in an award which—

(a) shall have force and effect in all respects as if it were an award made by an industrial authority having power to make awards fixing the terms and conditions of employment of employees to whom the order applies;

(b)

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(b) shall be deemed to be an award made by such industrial authority; and

(c) shall be subject to rescission or variation by such industrial authority.

(4) Except as provided in paragraph (c) of subsection three of this section, an award made under this section shall not be challenged, appealed against, quashed or called in question or be subject to prohibition, certiorari, mandamus or injunction in any court on any account whatever.

Arbitrator  
to have  
powers of  
court, etc.

**8.** (1) For the purpose of conducting any inquiry under this Act, the arbitrator is to have (in addition to any other powers conferred on him by this Act or the Commonwealth Act) all the powers which are given to the Industrial Commission of New South Wales as regards an industrial dispute of which that Commission has cognizance.

(2) The procedure at any inquiry conducted by the arbitrator under this Act shall be as determined by the arbitrator.

(3) 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 just.

Representa-  
tion at  
inquiries.

**9.** The arbitrator and any industrial authority to which any matter is referred under subsection two of section seven of this Act may, at any inquiry under this Act, hear representations from any person or body of persons who or which, in the opinion of the arbitrator or the industrial authority, as the case may be, has a sufficient interest in the subject-matter of the inquiry.

Regulations.

**10.** (1) The Governor may, upon the recommendation of the Premier in agreement with the Prime Minister of the Commonwealth, make regulations, not inconsistent with this Act, prescribing all matters which are necessary or convenient to be prescribed in relation to any matter within the powers and functions vested by this Act in the arbitrator and generally for carrying this Act into effect.

(2)

- (2) Such regulations shall
- (a) be published in the Gazette;
  - (b) take effect from the date of such publication or from a later date to be specified in the regulations; and
  - (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

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If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

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