HUMAN RIGHTS COMMISSION

REPORT NO. 12

The Oueensland Electricity (Continuity of Supply) Act 1985

March 1985

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HUMAN RIGHTS COMMISSION

HUMAN RIGHTS COMMISSION

6th Floor, AMP. Building Hobart Place, Canberra City

P.O. Box 629,
CANBERRA CITY, C.T. 2601

Telephone: 434122
Telegrams: Rightscom Canberra
Telex AA 62090

Our Ref:

29 March 1985

The Hon. Lionel Bowen, M.P.,
Deputy Prime Minister and Attorney-General,
Parliament House,
CANBERRA, A.C.T. 2600

Dear Attorney-General,

Pursuant to paragraph 9(1)(d) of the Human Rights Commission Act 1981, we present this report to you in response to your request that the Commission report by 29 March 1985 as to what action (if any), in the opinion of the Commission, needs to be :taken by Australia in relation to the Queensland Electricity (Continuity of Supply) Act 1985 in order to comply with Article 8 or any other relevant provision of the International Covenant on Civil and Political Rights.

Yours sincerely,

Chairman
for and on behalf of the
Human Rights Commission

Members of the Human Rights Commission

Chairman

The Hon. Dame Roma Mitchell, D.B.E.

Deputy Chairman

Mr P. H. Bailey, O.B.E.

Members

Associate Professor M. J. Aroney, O.B.E.
Professor P. J. Boyce
Mrs N. C. Ford
Mrs E. Geia
Ms E. Hastings

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FUNCTIONS OF THE COMMISSION

Section 9 of the Human Rights Commission Act 1981 reads:

9.(1) The functions of the Commission are -

(a) to examine enactments, and (when requested to do so by the Minister) proposed enactments, for the purpose of , ascertaining whether the enactments or proposed enactments are, or would be, inconsistent with or contrary to any human rights, and to report to the Minister the results of any such examination;

(b) to inquire into any act or practice that may be inconsistent with or contrary to any human right, and -

(i) where the Commission considers it appropriate to do So - endeavour to effect a settlement of the matters that gave rise to the inquiry; and

(ii) where the Commission is of the opinion that the act or practice is inconsistent with or contrary to any human right, and the Commission has not considered it appropriate to endeavour to effect a settlement of the matters that gave rise to the inquiry or has endeavoured without success to effect a settlement of those matters - to report to the Minister the results of its inquiry and of any endeavours it has made to effect such a settlement;

(c) on its own initiative or when requested by the Minister, to report to the Minister as to the laws that should be made by the Parliament, or action that should be taken by the Commonwealth, on matters relating to human rights;

(d) when requested by the Minister, to report to the Minister as to the action (if any) that, in the opinion of the Commission, needs to be taken by Australia in order to comply with the provisions of the Covenant, of the Declarations or of any relevant international instrument;

(e) on its own initiative or when requested by the Minister, to examine any relevant international instrument for the purpose of ascertaining whether there are any inconsistencies between that instrument and the Covenant, the Declarations or any other relevant international instrument, and to report to the Minister the results of any such examination;

(f) to promote an understanding and acceptance, and the public discussion, of human rights in Australia and the external Territories;

(g) to undertake research and educational programs, and other programs, on behalf of the Commonwealth for the purpose of promoting human rights and to co-ordinate any such programs undertaken by any other persons or authorities on behalf of the Commonwealth;

(h) to perform -

(i) any functions conferred on the Commission by any other enactment;

(ii) any functions conferred on the Commission pursuant to any arrangement in force under section 11; and

(iii) any functions conferred on the Commission by any State Act or Northern Territory enactment, being functions that are declared by the Minister, by notice published in the Gazette, to be complementary to other functions of the Commission; and

(j) to do anything incidental or conducive to the performance of any of the preceding functions.

(2) The Commission shall not -

(a) regard an enactment or proposed enactment as being inconsistent with or contrary to any human right for the purposes of paragraph (1)(a) or (b) by reason of a provision of the enactment or proposed enactment that is included solely for the purpose of securing adequate advancement of particular persons or groups of persons in order to enable them to enjoy or exercise human rights equally with other persons; or

(b) regard an act or practice as being inconsistent with or contrary to any human right for the purposes of paragraph (1)(a) or (b) where the act or practice is done or engaged in solely for the purpose referred to in paragraph (a).

(3) For the purpose of the performance of its functions, the Commission may work with and consult appropriate non-governmental organizations.

I. INTRODUCTORY

This report has been prepared in response to a request by the Attorney-General under section 9(1)(d) of the Human Rights Commission Act. Pursuant to that section, he requested the Commission, on 12 March 1985, to report to him by 29 March 1985 as to What action (if any), in the opinion of the Commission, needs to be taken by Australia in relation to the Queensland Electricity (Continuity of Supply) Act 1985 (the Act) in order to comply with Article 8 or any other relevant provision of the International Covenant on Civil and Political Rights (ICCPR).

2. A copy of the Attorney-General's letter to the Chairman of the Human Rights Commission is at Appendix 1.

3. In the time available the Commission has concentrated on an analysis of the human rights issues involved in the Act. These are discussed in Chapter II, and are applied to the Act in Chapter III. The Commission's findings and recommendations are set out in Chapters IV and VI.

II. FORCED OR COMPULSORY LABOUR: THE 'ICCPR REOUIREMENT

Article 8

4. Article 8 of the ICCPR declares that forced or CoMpUlsOry labour is to be prohibited -

ARTICLE 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No One shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in sub-paragraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the 'community;

(iv) Any work or service which forms part of normal civil obligations.

5. For the purpose of this report the relevant parts of the Article are paragraphs (3)(a) and 3(o)(iii).

6. Article 8 does not define the term "forced or compulsory labour". ILO Convention No. 29 concerning Forced Labour of 28 June 1930[1] defined the term "forced or compulsory labour" as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily "[2] The question of adopting this definition for the purposes of Article 8 of the ICCPR was considered by the U.N. Human Rights Commission, but it decided that "especially when read in the light of the exceptions [it] was not considered entirely. satisfactory for inclusion in the Covenant."[3]

7. Nevertheless, the Commission considers that the element of coercion coupled with a penalty is a useful determinant in deciding whether a particular act or measure would come under the term "forced or compulsory labour."

Fuced or CompuLsory Labour Discussed

8. Support for the Commission's view on compulsory labour can be found in Iversen v. Norway,[4] Which came before the European Commission on Human Rights in December 1963, and in which Article 4 of the European Convention (dealing with forced or compulsory labour) was discussed. .Article 4 (an extract of which is at Appendix III) bears a close resemblance to Article 8 of the ICCPR. The case involved a Complaint by a dental graduate who had been required by Norwegian law to perform obligatory public dental service in a remote part of the country for up to two years. On the particular facts of the case 6 members held that there had been no forced or compulsory labour involved, while 4 members held that there had been.

---

1. ILO Convention No. 29 has been ratified by Australia and came into force for Australion 2 January 1933.

2. Article 2, para 1 of the ILO Convention. The text of Article 2 is set out in Appendix 2. Note that paragraph 2 lists a number of exceptions-

   Para 19, 10 GAOR Annexes, UN Doc. A/2929 ch. V1 (1955)

4. Iversen v. Norway cited as X against Norway C.D. 12, 80.

9. However it is pertinent to note that four members of the majority referred to the ILO Convention as an aid to interpretation. They stated that -

> the(se) elements of forced or compulsory labour are first, that the work or service is performed by the worker against his will and, secondly, that the requirement that the work or service be performed is unjust or oppressive or the work or service itself involves avoidable hardship.

10. Although the question of a penalty was not raised in the majority decision the minority members alluded to this point -

> The minority is of the opinion that the conditions under Which the Applicant was required to perform his work in Moskenes, as regards, for instance, salary, time-limit and professional facilities, do not as such exclude the applicability of Article **4,** paragraph (2), of the Convention, since the work in question was imposed upon the Applicaht subject to penal sanctions.

11. In a later case, which was heard by the European Court of Human Rights, Van Der Mussele v. Belgium,[5] the Commission's approach in the Iversen case was supported. The Van Der Mussele case involved a Belgian lawyer who, during his period of pupillage, was required under Belgian law to represent clients in need of legal aid, without payment. One of the questions before the Court was whether this amounted to forced or compulsory labour under Article 4 of the European Convention.

12. In considering the meaning of forced or compulsory labour, the Court stated:-

> Article 4 does not define what is meant by 'forced or compulsory labour' and no guidance on this point is to be found in the various Council of Europe documents relating to the preparatory work of the European Convention.
>
> As the Commission and the Government pointed out, it is evident that the authors of the European Convention -- following the example of the authors of Article 8 Of the draft International Covenant on Civil and Political Rights -- based themselves, to a large extent, on an

5. Van Der Mussele v. Belgium: EHRR Pt. 22 Vol 6 (May 1984), p. 163.

> earlier treaty of the International Labour Organisation, namely Convention No 29 concerning Forced or Compulsory Labour..
>
> ...
>
> Subject to Article 4(3), the European Convention, for its part lays down a general And absolute 'prohibition of forced or compulsory labour.
>
> The Court will nevertheless take into account the-above-mentioned ILO Conventions -- which are binding on nearly all the member States of the Council of Europe, including Belgium -7 and especially Convention No 29. There is in fact a striking similarity, which is not accidental, between paragraph 3 of Article 4 of the European Convention and paragraph 2 of Article 2 of Convention No 29. Paragraph 1 of the last-mentioned Article provided that 'for the purposes' of the latter Convention, the term 'forced or compulsory labour' shall mean work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'. This definition can provide a starting point for interpretation of Article 4 of the European Convention. However, sight should not be lost, of that Convention's special features or of the fact that it is a living instrument to be read 'in the light of the notions currently prevailing in democratic States'.

13. The Court then went on to consider the elements which are necessary to make a particular act one involving forced or compulsory labour and to make a clear distinction between contracts voluntarily entered into as against compulsory labour. The Court said:-

> It remains to be ascertained whether there was 'forced or compulsory' labour. The first of these adjectives brings to mind the idea of physical or mental constraint, a factor that was certainly absent in the present case. As regards the second adjective, it cannot refer just to any form of legal compulsion or obligation.. For example, work to be carried out in pursuance of a freely negotiated contract cannot be regarded as falling within the scope of Article 4' on the sole ground that one of the parties has undertaken with the other to do that work and will be subject to sanctions if he does not honour his promise. On this point, the minority of the Commission agreed with the majority. What there has to be is work 'exacted under the menace of any penalty' and also performed against the will of the person concerned, that is work for which he -'has not offered himself voluntarily'.

14. Drawing on the decisions of the European Court and the Conventions of the ILO, and having reviewed the discussions in the travaux preparatoires to the ICCPR, the Commission concludes that the factors that would identify any particular order or measure of a Government as amounting to forced or compulsory labour are the element of compulsion, coupled with a penalty for, non-compliance, in relation to that particular order or measure.

Exceptions - Emergencies

15. Paragraph (c) of Article 8.3 of the ICCPR states that:-

> For the purpose of this paragraph the term 'forced or compulsorv labour' shall not include:-
>
> ...
>
> (iii) Any service exacted in cases of emergencyor calamity threatening the life or well-being of the community.

16. The intention of paragraph (c) (iii) is that only in exceptional or extraordinary circumstances - where the life or well-being of the community is threatened - will orders or directions forcing persons to carry out certain work not be treated as "forced or compulsory labour". Both the ICCPR and the European Convention allow for specific restrictions of certain specific rights, e.g. the right to freedom of expression may be subject to certain restrictions provided by law and which are necessary for respect of the rights or reputations of others, or for the protection of national security or of public order or of public health or morals (Article 19, ICCPR; Article 10, European Convention). Other examples of rights which carry similar specific restrictions are the right to freedom of assembly (Article 21, ICCPR; Article 11, European Convention), and the right to a fair and public hearing (Article 14, ICCPR; Article 6, European Convention).

17. In Klass v. Federal Republic of Germany,[6] the European Court stated that in relation to Article 8.2 of the European Convention (right to respect fora person's private and amily life, his home and his correspondence) an exception to a right guaranteed by the Convention is to be interpreted narrowly.

18. In light of the authority quoted above, the Commission holds the view that in respect of the specific exceptions in Article 8.3(c)(iii) of the ICCPR, any interpretation of the scope of such exceptions must be strictly and narrowly applied.

19. This is made abundantly clear by Article 5 of the ICCPR which states:-

> Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to , engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

Freedom of Association

20'. In addition, for the purposes of this Report, the right to freedom of association in ArtiCle 22 is relevant. Article 22 reads_-.

> 1. Everyone shall have the right to freedom of association with others, including the right to form and-join trade unions for the protection of his interests.
>
> 2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
>
> 3. Nothing in this article shall authorize States Parties to the International Labour Organization Covention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would, prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

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6. 2 EHRR p. 214

21. The Commission notes the reference in paragraph 3 of Article 22 to ILO Convention No 87 concerning Freedom of Association and Protection of the Right to Organise This Convention does not deal expressly with the right to strike, but guarantees that "workers' and employers! Organisations shall have the right ... to organise their administration and activities". The Freedom of Association Committee of the ILO has recognised that the right to strike is a legitimate means of organising the activities of employees' organisations and of furthering and defending their interests. It has recognised that the right to strike can properly be restricted or prohibited in the essential services of a State because of the resultant hardship to the community. But it has stated that where the right to Strike is restricted, "adequate, impartial and speedy conciliation and arbitration procedures" should be available.[2]

---

1. ILO Convention No. 87, adopted on 9 July 1948, which entered into force on 4 July 1950. The Convention came into force for Australia on 28 February 1974., The text of Articles 2-4 of the Convention is attached as Appendix 4.
2. Freedom of Association, Digest of Decisions of Freedom of Association Committee, ILO Office 2nd edition (1976), paras. 292, 314 and 322.

III. THE QUEENSLAND ELECTRICITY (CONTINUITY OF SUPPLY) ACT 1985: COMPLIANCE WITH HUMAN RIGHTS

A. Forced or Compulsory Labour

22. The text of the Electricity (Continuity of Supply) Act 1985 (Queensland) is attached to the Attorney-General's letter to the Chairman of the Human Rights Commission at Appendix 1.

23. The provisions of the Act which are of primary relevance for the purposes of this report are sections 3 and 4 which are reproduced below:-

> 3. Authority of Electricity Commissioner. The Electricity Commissioner is authorized -
>
> (a) to take whatever steps he considers are necessary to have work performed to provide, to maintain or to restore a supply of. electricity;
>
> (b) to direct any person whatever who, in his opinion, is capable of carrying out the necessary work to provide, to maintain or to restore a supply of electricity.
>
> 4. Consequence of failure to comply with direction. Any employee of the Queensland Electricity Commission or of any Electricity Board who fails to comply forthwith with a direction of the Electricity Commissioner given to him or her pursuant to section 3 is liable -
>
> (a) to summary dismissal, notwithstanding the provisions of any Award;
>
> and
>
> (b) to a penalty not exceeding $1000.

24. Section 3 is very wide. If it authorises the Commissioner to direct "any person whatever", regardless of whether that person is an employee, to do work then it is clearly authorising forced labour. If, on a narrower construction, it applies only to employees, then a person employed in one capacity may be required to carry out work in another capacity so long as the

Electricity Commissioner thinks that person is capable of carrying out that other work. This imports an element of compulsion and is not in keeping with the concept of working according to the terms of a contract voluntarily entered into by that person.

25. However, section 3 must be read, for employees, with section 4 of the Act. Section 4 provides that any employee of the Queensland Electricity Commission or of any Electricity Board who fails tocomply with directions given by the Electricity Commissioner pursuant to section 3 of the Act is liable to summary dismissal *AAA* to a penalty not exceeding $1000.

26. In the view of the Commission paragraph 3(b) and section 4 of the Act place workers in the Electricity Commission and any Electricity Board in Queensland in a position where they can be coerced to work against their will, and be subject to a penalty if they refuse. They are therefore subjected to "forced or compulsory labour". This situation is distinguishable from Iversen's Case (paragraphs 8-10) where it was claimed by the respondent government that the dental service was performed under a scheme of public service and as part of normal civil obligations (Article 8.3(c)(iv)) and where the contract was to perform dental work and did not involve any diversion from chosen professional work. In the Queensland case any person employed in one capacity, e.g. for clerical work, could be required to perform in another area, e.g. to dig ditches, and there is no suggestion of the arrangements being part of a broad community service scheme.

27. The fact that section 9 of the Act provides that default in payment of the penalty is not to be dealt with by imprisonment but as a civil debt recoverable in a court of summary jurisdiction does not change the situation. An employee who refuses to carry out the directions of the Electricity Commissioner, for any reason whatsoever, has the threat of a

penalty over him or her and the work carried out under such circumstances would, in the opinion of the Commission, amount to work "exacted under the menace of a penalty".

28. The exception contained in para 3(c)(iii) of Article 8 of the ICCPR, that any service exacted in cases of emergency or calamity threatening the life or well-being of the community is not to be treated as "forced or compulsory labour", cannot be called in aid to save sections 3 and 4 of the Act. There is no reference snywhere in the Act limiting the exercise of the powers of the Electricity Commissioner under these two sections to emergency situations. Indeed, the Second Reading speech of the Minister for Mines and Energy indicated a specifically contrary purpose - "the purpose of this Bill is to translate into statute law the provisions of the Orders in Council made during the state of emergency": and "The Bill provides - In clause three, that the Electricity Commissioner is permanently given powers to have work done and to direct any person to do work to ensure a normal supply of electricity for consumers". The steps taken to dismiss electricity workers pursuant to a Proclamation of a State of Emergency by the Government have become entrenched permanently in this Act. As they stand, the two sections give the Electricity Commissioner carte blanche to order or direct employees whenever he decides to do so, for the purpose of providing, maintaining or restoring a supply of electricity- Nor is there any reference in the Second Reading Speech to any intention to repeal the Act when the emergency situation caused by the industrial dispute is over.

29. Even if the powers given to the Electricity Commissioner under sections 3 and 4 of the Act were to be justifiable in an emergency (and the Commission does not express a view on this), the fact that they are not limited to emergency situations threatening the life or well-being of the community, but can be invoked at any time and in any situation, brings them into breach of Article of the ICCPR. As discussed in paragraphs 15-19 above, it is generally accepted that reservations to, restrictions of, and exceptions to specific rights in

international human rights covenants and conventions must be interpreted restrictively. It could possibly be argued that the Electricity Commissioner would be judicious in exercising the powers of direction under sections 3 and 4 and only invoke. them when an emergency arises. The Commission has no hesitation in indicating its view that such an assurance (if given) would not satisfy the stringent tests laid down in international human rights practice. It concludes therefore that Australia would be held to have failed to comply with its international obligations under the ICCPR if the Act continues to be law in Queensland.

B. Other Human Rights

30. Article 22 of the ICCEE. The right of a worker to join a trade union for the protection of his interests (see Article 22 of the ICCPR) implies the "freedom to protect the occupational interests of trade union members by 'trade union action'.[1] Section 8 of the Act, however, has the effect of excluding the State Industrial Commission's jurisdiction over matters relating to dismissals of employees of the Electricity Commission and of other Electricity Boards pursuant to section 4, their terms and conditions of employment, and their re-instatement or re-employment. The further effect appears to be to put these employees at a disadvantage compared to other workers in other industries who, through their respective unions, continue to be able to invoke the jurisdiction of the State Industrial Commission in industrial disputes.. The result is that the terms and conditions of employment of workers in the electricity industry, by virtue of this Act, appear to have been unilaterally fixed by the Queensland Government without consultation with the relevant unions and without opportunity

1. The judgement of the European Court in National Union of Belgium Police v. Belgium, 1 EHRR 578, which concerns the similar right to join a trade union contained in Article 11 of the European Convention.

for negotiation between unions and management. The provisions. of the Queensiand Act therefore tend to render ineffective the right of electricity supply workers to join trade unions for the protection :of their interests-

Paragraph 2 of Article 22 of the ICCPR (paragraph 20) allows only certain restrictions to be placed on the exercise of the right to freedom of association. Following the views expressed by the European Court of Human Rights in Klass' Case (paragraph 17), and the views expressed in paragraphs 20-21 in relation to the ILO Convention, and in paragraph 30 above, the Commission finds restrictions resulting from sections 3 and 8 of the Queensland Act breach the right to freedom of association.

32. It is also considered, for the same reasons, that the provisions of the Act are in breach of Article 22.3 of the ICCPR, which is reproduced below:-

> Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 194-8 concerning Freedom of Association and Protection of the Right to, Organize to take legislative measures which would Prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention,

33, The Commission notes, however, from the Second Reading Speech on the Act that the Queensland Government is proposing to set up a separate Tribunal to deal with industrial matters in the electricity supply industry. Whether the scope, power and functions of this Tribunal, when established, would preserve the right of unionists to protect their interests, and mitigate the breach of the right to freedom of association, remains to be seen.

Iv. FINDINGS

34. For the reasons given in the foregoing paragraphs of this Report the Commission is of the view that the Queensland Electricity (Continuity of Supply) Act 1985 infringes a number of Articles in the ICCPR.

35. In so far as Article 8 of the ICCPR is concerned the Commission finds that the Act breaches this Article in that it effectively places electricity workers employed by the State Electricity Boards and Commission at risk of being subjected to "forced or compulsory labour". The exception in Article 8.3(c) (iii) relating to compulsory labour in time of emergency or calamity threatening the life and well-being of the community does not save the Act, in that the Act, does not limit the powers of the Electricity Commissioner under sections 3 and 4 to emergency situations.

36. Insofar as Article 22 of the ICCPR is concerned., the Commission finds that there is an infringement of the tight to join trade unions for the protection of the workers' interests. Whether the infringement of this Article will be Mitigated when the proposed Industrial Tribunal for electricity workers is set up remains to be seem.

V. ACTION BY AUSTRALIA

37. Australia, as a signatory of the ICCPR, is bound internationally to ensure that the provisions of the Covenant are fully implemented within Australia, and as a federal State, Article 50 is also relevant. Articles 2 and 50 of the ICCPR provide -

ARTICLE 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of that State', and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

ARTICLE 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

38. When Australia notified the United Nations in October 1984 of its decision to remove most of the reservations and declarations made by Australia when it ratified the 1CCPR in 1980, it also made the following 'statement —

> Australia has a federal constitutional system in which legislative, executive and judicial powers are shared or distributed between the Commonwealth and the constituent States. The implementation of the treaty. throughout Australia will be effected by the Commonwealth, State and Territory authorities having regard to their respective constitutional powers and arrangements concerning their exercise..

39. The primary obligation imposed by Articles 2 and 50 is on Australia as the ratifying State Party to the Covenant. However, the consequence of the statement of responsibility for implementation of the Covenant quoted in the previous paragraph leads the Commission to the view that it is incumbent on Queensland to give effective implementation to the rights guaranteed under the ICCPR.

- VI. RECOMMENDATIONS

40. The Human Rights Commission, having found that the Queensland Electricity (Continuity of Supply) Act 1985 is inconsistent with Article 8 of the ICCPR,- which prohibits forced or compulsory labour and with Article 22 of the ICCPR, which guarantees the right to freedom of association, accordingly recommends -

(a) that the inconsistencies be brought to the attention of the Queensland Government with the object of persuading that Government to repeal the Act or at least amend it to limit its operation to emergency situations and in a manner consistent with the observance of human rights;

(b) that if the Queensland Government does not repeal the Act or bring it into line with Australia's obligations under the ICCPR, the Commonwealth Government should consider introducing legislation which would Rake the provisions of Article 8 applicable as part of the law of Australia. This would have the effect of converting the declaratory obligation resulting from annexation of the Article to the Human Rights Commission Act into a specific "Bill of Rights" provision having the force of law and would make it possible to challenge in a court the validity of any inconsistent State legislation; and

(c) that consideration be given to amending the Human Rights Commission Act to allow the Commission -

(i) either to receive and inquire into complaints of infringements by States of the provisions of Article 8 (the Commission can already'do this for any infringement by the Commonwealth), if it is desired that the Commission be in a position to monitor any amended Queensland legislation enacted under recommendation (a) above; or

(ii) if Commonwealth legislation is introduced in accordance with recommendation (b), and as an alternative to bringing an -action in a court, to receive and inquire into complaints of infringements of the new law.

APPENDIX 1

DEPUTY PRIME MINISTER
ATTORNEY-GENERAL
PARLIAMENT HOUSE
CANBERRA 2600

JA/85/2886: PB

Dear Dame Roma,

A question has arisen whether any of the provisions of the Queensland Electricity (Continuity of Supply) Act 1985 are inconsistent with the provisions of the International Covenant on Civil and Political Rights. I enclose a copy of the Queensland Act.

Pursuant to paragraph 9(1)(d) of the Human Rights Commission Act 1981, I request the Commission to report to me on what action (if any), in the opinion of the Commission, needs to be taken by-Australia in relation to the Queensland Electricity (Continuity of Supply) Act 1985 in Order to comply with Article 8 or any other relevant provision of the International Covenant on Civil and Political Rights. -

I should be grateful if the Commission would make a preliminary report to me On this matter by 29 March 1985.

Yours sincerely,

(Lionel Bowen)

The Hon; Dame Rota Mitchell,
Chairman,
Human Rights Commission,
7th Floor, AMP Building,
CANBERRA CITY ACT 2601

ELECTRICITY (CONTINUITY OF SUPPLY) ACT

ANALYSIS OF CONTENTS

(Queensland)

ANNO TRICESIMO QUARTO

ELIZABETHAE SECUNDAE REGINAE

No. 1 of 1985

An Act to declare with respect to securing continuity of supply within the electricity industry

[ASSENTED TO 6TH MARCH, **1985]**

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. **Short title.** This Act may be cited as the *Electricity (Continuity of Supply) Act 1985.*

2. Interpretation. In this Act, except where a contrary intention appears—

"Award" means an Award within the meaning of the *Industrial Conciliation and Arbitration Act 1961-1983;*

"Electricity Board" means an Electricity Board within the meaning of the *Electricity Act 1976-1984;*

"Electricity Commissioner" means the person holding the office of Electricity Commissioner under the *Electricity Act 1976-1984;*

"Industrial Commission" means The Industrial Conciliation and Arbitration Commission established by the *Industrial Conciliation and Arbitration Act 1961-1983* and includes each Commissioner thereof;

"supply of electricity" includes a supply of electricity within Queensland and a supply of electricity from a place within Queensland to a place outside Queensland.

3. Authority of Electricity Commissioner. The Electricity Commissioner is authorized—

(a) to take whatever steps he considers are necessary to have work performed to provide, to maintain or to restore a supply of electricity;

(b) to direct any person whatever who, in his opinion, is capable of carrying out the necessary work to provide, to maintain or to restore a supply of electricity.

4. Consequence of failure to comply with direction. Any employee of the Queensland Electricity Commission or of any Electricity Board who fails to comply forthwith with a direction of the Electricity Commissioner given to him or her pursuant to section 3 is liable—

(a) to summary dismissal, notwithstanding the provisions of any Award;

and

(b) to a penalty not exceeding $1 000.

5. Obstruction or harassment prohibited. (1) A person shall not either alone or in concert with any other person—

(a) do any act that is calculated to obstruct or interfere with the proper performance by any person of duties ordinarily

performed by him or her in the course of his or her employment in connection with a supply of electricity;

(b) do any act that is calculated to obstruct or interfere with the proper provision of services by any person who is voluntarily providing his or her services in connection with a supply of electricity for the purpose of preserving life, health, welfare or safety of any person or persons or performing work in compliance with a direction given by the Electricity Commissioner;

(c) do or omit to do any act, which act or omission is calculated to harass, annoy or cause harm or distress to any person on account of-

(i) his or her performance of duties ordinarily performed by him or her in the course of his or her employment in connection with a supply of electricity; or

i) his or her voluntarily providing services in connection with a supply of electricity for the purpose of preserving life, health, welfare or safety of any person or persons or performing work in compliance with a direction given by the Electricity Commissioner.

(2) A person who contravenes any provision of subsection (1) is liable to a penalty not exceeding $1 000.

6. Continued effectiveness of dismissals by SEQEB. Every dismissal of a person by the General Manager of The South East Queensland Electricity Board under the authority conferred on him by Order in Council of 8 February 1985, published in the Gazette of the same date and purporting to be made in connexion with a state of emergency proclaimed under the *State Transport Act 1938-1981* by Proclamation of emergency of 7 February 1985 published in the Gazette of the same date shall continue to be lawful and effectual notwithstanding that the Proclamation of emergency has ceased to be in force.

7. Contracts of service made or to be made by SEQEB. (1) Every contract of service entered into by The South East Queensland Electricity Board under the authority conferred on it by Order in Council of 11 February 1985, published in the Gazette of the same date and purporting to be made in connexion with a state of emergency proclaimed under the *State Transport Act 1938-1981* by Proclamation of emergency of 7 February 1985 published in the Gazette of the same date shall continue to be lawful and of full force and effect and The South East Queensland Electricity Board shall continue to be authorized to employ each person with whom such a contract has been made in accordance with the terms of the contract, including the terms prescribed or construed by that Order in Council, notwithstanding that the Proclamation of emergency has ceased to be in force.

(2) The South East Queensland Electricity Board is authorized to enter into a contract of service with any person who, but for this subsection, would have been employed by the Board subject to and in

accordance with the provisions of the Electrical Engineering Award—State, and thereafter to employ such person in accordance with the terms of the contract.

(3) Every contract entered into pursuant to subsection (2) shall be deemed to contain—

(a) the provisions of the Electrical Engineering Award—State except that-

(i) any reference in the award to hours of duty being 361/4 per week or 71/4 per day shall be deemed to read 38 hours and 7 3/5 hours respectively and any provision in the award based on 361/4 hours per week or 71/4 hours per day shall be varied accordingly;

(ii) the proviso to clause 10 (1) (b) shall be deemed to be deleted;

and

(iii) clause 24 thereof shall be deemed to be deleted;

(b) a provision that such employee shall not take part in any strike within the meaning of the *Industrial Conciliation and Arbitration Act 1961-1983.*

(4) Where a term of a contract referred to in subsection (1) or entered into pursuant to subsection (2) is prescribed (by an Order in Council or by subsection (3)) by reference to the *Industrial Conciliation and Arbitration Act 1961-1983,* then if that Act is amended in any relevant respect the term of the contract shall be taken to have been prescribed by reference to that Act as last amended.

8. Limitation of Industrial Commission's jurisdiction. Notwithstanding the provisions of any other Act, the Industrial Commission has not jurisdiction to make any decision within the meaning of the *Industrial Conciliation and Arbitration Act 1961-1983* or recommendation, or give any other indication that—

(a) is directed to the re-instatement or re-employment of-

(i) any person whose dismissal is declared by section 6 to continue to be lawful and effectual;

or

(ii) any person summarily dismissed by reason of his failure to comply with a direction of the Electricity Commissioner given to him or her pursuant to section 3;

or

(b) is directed to or might result in the negation or avoidance of the provisions of section 3 or 7 or the substitution, in respect of persons employed under contracts referred to in section 7, of other terms of employment-

(i) for the terms of employment prescribed or construed by the Order in Council referred to in section 7 (1);

(ii) for the terms of employment prescribed or construed by section 7 (3).

9. Recovery of penalties. (1) Subject to this section, a per)alty incurred under this Act may be recovered in a summary way by complaint in accordance with the *Justices Act 1886-1982*.

(2) Where an order for the payment of a penalty incurred under this Act or of costs in connexion therewith is made against any person, an order that, upon default in payment of the penalty or costs, the person in default be imprisoned or that the amount thereof be recovered by levy and distress shall not be made by the Magistrates Court but the following provisions of this section shall apply in relation to the recovery thereof

(3) Where an order referred to in subsection (2) is made the clerk of the court or other person having custody of the record of the proceeding in which the order was made shall furnish to the complainant, or other person authorized by the Premier of the State, a certificate of the order in the prescribed form and that certificate may be registered in a court having jurisdiction in civil proceedings in which the amount claimed is the amount required by the order to be paid.

(4) The registrar of a court to whom a certificate referred to in subsection (3) is duly produced for registration shall, upon payment of the appropriate fee, register the certificate in the court and thereupon the certificate shall be a record of the court in which it is registered and the order to which it refers shall be deemed to be a judgment of that court, duly entered, obtained by the complainant, or other person to whom the certificate was furnished, as plaintiff against the person in default as defendant for the payment to the plaintiff of money comprising—

(a) the amount of the penalty;

(b) any costs ordered to be paid by the person in default in the proceeding in which the penalty was imposed;

and

(c) costs of registration of the certificate in the court,

to the intent that like proceedings (including proceedings in bankruptcy) may be taken to recover the amount of the judgment as if the judgment had been given by the court in favour of the plaintiff.

10. Regulations. The Governor in Council may make regulations providing for all matters required or permitted by this Act to be prescribed.

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APPENDIX 2

THE FORCED LABOUR CONVENTION

Article 2

1. For the purposes of this Convention the term "forced or compulsory labour" shall mean all work of service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

2. Nevertheless, for the purposes of this Convention, the term "forced or compulsory labour" shall not include:

(a) Any work or service exacted in virtue of compulsory military service laws for ¯work of a purely military character';

(b) Any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;

(c) Any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;

(d) Any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstances that would endanger the existence or the well-being of the whole or part of the population;

(e) Minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.

APPENDIX 3

THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Article 4

1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

3. For the purpose of this article the term "forced or compulsory labour" shall not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;

(b) any service of ,a military character or, in case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service;

(c) any service exacted in case of an emergency or calamity threatening the life or wellbeing of the community;

(d) any work or service which forms part of normal civic obligations.

APPENDIX 4

THE FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE CONVENTION

Articles 2-4

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject, only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Article 3

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.