

1980-81

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 14 May 1981

(*Minister for Industrial Relations*)

A BILL

FOR

An Act to amend the *Conciliation and Arbitration Act 1904*

5 BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title, &c.

1. (1) This Act may be cited as the *Conciliation and Arbitration Amendment Act 1981*.

10 (2) The *Conciliation and Arbitration Act 1904*¹ is in this Act referred to as the Principal Act.

Commencement

2. (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.

15 (2) Sections 3, 6, 7, 8, 9 and 16 shall come into operation on a date to be fixed by Proclamation.

(3) Section 4 shall come into operation on a date to be fixed by Proclamation.

Certain offences in relation to members of organizations, &c.

3 Section 5 of the Principal Act is amended—

(a) by inserting after paragraph (1) (aa) the following paragraphs:

“(ab) has made, or proposes, or has at any time proposed, to make, application to the Commission for an order under section 45 for the holding of a secret ballot; or” 5

(ac) has participated in, or proposes, or has at any time proposed, to participate in, a secret ballot ordered by the Commission under section 45; or”; and

(b) by inserting after paragraph (1A) (b) the following paragraphs: 10

“(ba) by reason of the circumstance that the employee has made, or proposes, or has at any time proposed, to make, application to the Commission for an order under section 45 for the holding of a secret ballot; or

(bb) by reason of the circumstance that the employee has participated in, or proposes, or has at any time proposed, to participate in, a secret ballot ordered by the Commission under section 45; or”.

4. After section 16 of the Principal Act the following section is inserted:

President to make members of the Commission available to serve on Industrial Appeals Tribunal of Christmas Island 20

“16A. (1) Whenever it is necessary for the Industrial Appeals Tribunal established by the *Industrial Relations Ordinance* 1976 of the Territory of Christmas Island as amended and in force from time to time to exercise its powers in respect of a particular matter, the powers of the Tribunal in respect of that matter shall be exercised by the members of the Commission designated by the President for the purpose. 25

“(2) Service by a member of the Commission as a member of the Industrial Appeals Tribunal referred to in sub-section (1) shall, for all purposes, count as service as a member of the Commission under this Act.”. 30

Appeals

5. Section 35 of the Principal Act is amended—

(a) by inserting in sub-paragraph (4) (b) (iii) “or (d)” after “paragraph (c)”;

(b) by adding at the end thereof the following sub-section: 35

“(12) For the purposes of this section, the making of an order, or the refusal to make an order, by a Presidential Member under section 142A shall be taken to be a decision of the Presidential Member.”.

Secret ballot may be ordered

6. Section 45 of the Principal Act is amended—

(a) by omitting sub-section (3) and substituting the following sub-sections:

“(3) The powers of the Commission under sub-sections (1) and (2) (including the power to revoke an order made under either of those sub-sections) are exercisable by a Presidential Member or a Full Bench and not otherwise.

“(3A) Where—

(a) the members, or members included in a section or class of the members, of an organization or of a branch of an organization are directed or requested by the organization or by the branch to engage in industrial action; and

(b) the members to whom that direction is given or that request is made are, or include, persons who are employed by a particular employer at a particular place of work,

such of the persons so employed as wish to do so may, subject to sub-section (3B), make application, as prescribed, to the Commission for an order by the Commission under sub-section (3D).

“(3B) An application shall not be made under sub-section (3A) unless—

(a) all the applicants are members of the same organization employed by the same employer at the same place of work; and

(b) the number of the applicants is not less than—

(i) 250 or a number equal to 5% of the number of members of the organization employed by the employer at the place of work, whichever is the lesser number; or

(ii) 4, if the lesser number referred to in sub-paragraph (i) is less than 4.

“(3C) A person shall not join with other persons in making an application under sub-section (3A) if the application includes a statement that, to his knowledge, is false or misleading in a material particular.

Penalty: \$1,000.

“(3D) Subject to this section, the Commission shall, upon an application made to it under sub-section (3A), order that a vote of the members to whom the application relates for the purpose of ascertaining whether or not they support the industrial action to which the application relates be taken by secret ballot in accordance with directions given by the Commission.

“(3E) Where the Commission, in considering an application made to it under sub-section (3A), forms the view that the cessation or prevention of the industrial action, or the settlement of the matters giving rise to the industrial action, to which the application relates would not be

encouraged or assisted by ascertaining the views or attitudes of the members to whom the application relates, the Commission shall—

- (a) where the Presidential member constituting the Commission is not the President—refer the application to the President for further consideration under this section by the Commission constituted by the President; or 5
- (b) where the Presidential member constituting the Commission is the President (whether by virtue of a reference under paragraph (a) or otherwise)—refuse to grant the application.

“(3F) Where the Commission, in considering an application made to it under sub-section (3A), forms the view that, by reason that— 10

- (a) the industrial action to which the application relates has ceased;
- (b) the cessation of the industrial action to which the application relates is imminent; or
- (c) the industrial action to which the application relates is not likely to take place, 15

the application should be refused, the Commission shall—

- (d) where the Presidential Member constituting the Commission is not the President—refer the application to the President for further consideration under this section by the Commission constituted by the President; or 20
- (e) where the Presidential Member constituting the Commission is the President (whether by virtue of a reference under paragraph (d) or otherwise)—refuse to grant the application.

“(3G) The powers of the Commission under sub-section (3D) (including the power to revoke an order made under that sub-section) and sub-sections (3E) and (3F) are exercisable by a Presidential Member and not otherwise. 25

“(3H) Where more than one application is made to the Commission under sub-section (3A) in relation to a particular place of work, the President may assign the applications for consideration by a single Presidential Member. 30

“(3I) Where, in considering an application made to it under sub-section (3A), it appears to the Commission that, in the circumstances that have given rise to the making of the application, it would be appropriate to make an order for a secret ballot under sub-section (1) or (2) rather than under sub-section (3D), the Commission may make such an order under sub-section (1) or (2) instead of making such an order under sub-section (3D). 35

“(3K) Directions given by the Commission under sub-section (1), (2) or (3D) shall provide for all matters relating to the ballot, including the following matters: 40

- (a) the question or questions to be put to the vote;
- (b) the eligibility of persons to vote;
- (c) the conduct of the ballot generally. 45

5 “(3L) Before giving a direction under paragraph (c) of sub-section (3K) relating to the conduct of a ballot, the Commission shall consult with the Industrial Registrar or, if the Chief Australian Electoral Officer is to arrange for the conduct of the ballot, with the Chief Australian Electoral Officer or an officer of the Australian Electoral Office designated for the purpose by the Chief Australian Electoral Officer.

10 “(3M) An order under sub-section (3D) for the holding of a secret ballot shall not be made if it appears to the Commission that the industrial action concerned is in contravention of a term of an award in relation to which section 33 applies.

“(3N) Where—

15 (a) the Commission, upon an application made to it under sub-section (3A), has made an order for a secret ballot under sub-section (1), (2) or (3D); and

(b) before the vote is taken, the Commission forms the view that, by reason that—

20 (i) the industrial dispute concerned has been settled or the industrial action concerned has ceased;

(ii) the settlement of the industrial dispute concerned, or the cessation of the industrial action concerned, is imminent; or

25 (iii) the industrial action concerned is not likely to take place, the secret ballot should not be proceeded with, the Commission shall revoke the order for the secret ballot.

30 “(3P) A reference in this section to members to whom an application under sub-section (3A) relates shall be read as a reference to the members of the organization, or of the branch, referred to in the application, or such of those members as are included in a particular section or class referred to in the application, who—

(a) are employed by the employer referred to in the application at the place of work referred to in the application; and

35 (b) have been directed or requested by the organization or by the branch to engage in the industrial action to which the application relates.”;

(b) by omitting from sub-section (4) “the next succeeding section” and substituting “sections 45A and 45B”; and

(c) by adding at the end thereof the following sub-sections:

40 “(5) For the purposes of this section, a member of the Commission or a person authorized in writing by a member of the Commission or by the Registrar may, at any time during working hours—

(a) enter any building, mine, mine working, ship, vessel, place or premises;

45 (b) inspect or view any work, material, machinery, appliance, article, book, paper, document or other thing therein; and

(c) interview any employee engaged therein.

“(6) An employee shall not, in the course of an interview referred to in paragraph (c) of sub-section (5), make to the person conducting the interview a statement, either orally or in writing, that is false or misleading in a material particular.

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Penalty: \$100.

“(7) For the purposes of this section, a direction or request to members of an organization or of a branch of an organization to engage in industrial action that is given or made by, or on behalf of—

- (a) the committee of management of the organization or of the branch, as the case may be;
- (b) an officer or officers of the organization or of the branch, as the case may be; or
- (c) a member or a group of members of the organization or of the branch acting in pursuance of the rules of the organization or of the branch, as the case may be,

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shall be deemed to be a direction or request by the organization or by the branch, as the case may be.

“(8) In this section—

‘industrial action’ means—

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- (a) any action, or failure to act, that is industrial action as defined in sub-section (1) of section 4; or
- (b) any action in connection with an industrial dispute, being—
 - (i) the performance of work in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, the result of which is a restriction or limitation on, or a delay in, the performance of the work; or
 - (ii) a ban, limitation or restriction on the performance of work or on acceptance or offering for work,

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but does not include the performance of work in a manner, or the adoption of a practice, ban, limitation or restriction, that is authorized by the employer of the persons concerned.

‘place of work’, in relation to any group of employees of an employer, includes any place at which the employees included in that group are required to report (whether in person or by telephone or any other form of communication) for the purpose of being allocated work by the employer or for any other purpose connected with the carrying on of the business of the employer.”

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Conduct of ballot

7. Section 45A of the Principal Act is amended—

(a) by inserting after sub-section (1) the following sub-section:

“(1A) A direction shall not be given in accordance with paragraph (a) of sub-section (1) where the order for the holding of the secret ballot was made upon an application made to the Commission under sub-section (3A) of section 45.”;

(b) by omitting from sub-section (2) “the last preceding sub-section” and substituting “sub-section (1)”;

(c) by adding at the end thereof the following sub-sections:

“(4) Where the result of a ballot conducted in accordance with an order under section 45 is communicated to the Commission, the Commission shall cause the Industrial Registrar to inform each of the following persons, by notice in writing, of that result:

- (a) all persons who were eligible to vote in the ballot;
- (b) the organization to which those persons belonged, and the employer or employers by whom those persons were employed, when those persons became eligible to vote in the ballot.

“(5) Where the Commission forms the view that the results of a ballot conducted in accordance with an order under sub-section (3D) of section 45 show that the majority of the members of an organization, or of a branch of an organization, who recorded a valid vote in the ballot were not in favour of engaging in the industrial action with which the ballot was concerned, the Commission shall cause the Industrial Registrar to include in each notice issued under sub-section (4) with respect to that ballot a statement of the view formed by the Commission with respect to that ballot.”.

8. After section 45A of the Principal Act the following sections are inserted:

Commission to have regard to result of ballot

“45B. In any conciliation or arbitration proceedings before the Commission that relate to, or are connected with, a matter in relation to which the views or attitudes of persons have been expressed in a ballot conducted in accordance with an order under section 45, the Commission shall have regard to the result of the ballot.

Certain members not required to obey directions of organization

“45C. (1) Where a notice under sub-section (4) of section 45A with respect to a ballot that is issued to a member of an organization, or of a branch of an organization, includes a statement that the Commission has formed the view that the results of the ballot to which the notice relates show that the majority of the members of the organization, or of the branch, who recorded a valid vote in the ballot were not in favour of engaging in the industrial action with which the ballot was concerned, then, notwithstanding any rule or practice of

the organization or of the branch, that member is not required to obey any direction or request with respect to engaging in, or supporting in any way, that industrial action that is given or made by the organization or by the branch.

“(2) For the purposes of this section, a direction or request to members of an organization, or of a branch of an organization, that is given or made by, or on behalf of—

- (a) the committee of management of the organization or of the branch, as the case may be;
- (b) an officer or officers of the organization or of the branch, as the case may be; or
- (c) a member or a group of members of the organization or of the branch acting in pursuance of the rules of the organization or of the branch, as the case may be,

shall be deemed to be a direction or request given or made by the organization or the branch, as the case may be.”.

Offences in relation to ballots

9. Section 46 of the Principal Act is amended by omitting from sub-section (1) “the last preceding section” and substituting “section 45A”.

Interpretation

10. Section 76 of the Principal Act is amended by omitting paragraph (a) of the definition of “employee” and substituting the following paragraph:

“(a) an employee engaged by the Authority under section 22 of the Act;”.

Intervention

11. Section 106 of the Principal Act is amended by omitting from sub-section (1) “Registrar” and substituting “Registrar of the Federal Court of Australia”.

Limitation on appeals

12. Section 118B of the Principal Act is amended by omitting paragraph (2) (a) and substituting the following paragraph:

“(a) in a matter arising under section 107, 109, 110, 112 or 158P or under Part VIII, VIII^{AA} or IX (including a prosecution for an offence against Part VIII, VIII^{AA} or IX or against regulations made for the purposes of section 158P or Part VIII^{AA}); or”.

Registration of organizations

13. Section 132 of the Principal Act is amended by omitting sub-paragraph (4) (b) (iv) and substituting the following sub-paragraph:

“(iv) in the case of a person so employed or engaged in Western Australia— is an employee for the purposes of the *Industrial Arbitration Act, 1979* of that State or that Act as amended from time to time.”.

Representation of employees by an organization

14. Section 142A of the Principal Act is amended by omitting from sub-section (8) "sub-section (5)" and substituting "sub-section (7)".

Interpretation

15. Section 158v of the Principal Act is amended by omitting "1912-1968" from paragraph (d) of the definition of "State Act" and substituting "1979".

Offences by organizations in relation to industrial action

16. Section 188 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) "paragraph (aa) of sub-section (1), or paragraph (aa)" and substituting "paragraph (aa), (ab) or (ac) of sub-section (1), or paragraph (aa), (ba) or (bb)";
- (b) by omitting from paragraph (1) (b) "paragraph (aa) of sub-section (1), or paragraph (aa)" and substituting "paragraph (aa), (ab) or (ac) of sub-section (1), or paragraph (aa), (ba) or (bb)";
- (c) by omitting from paragraph (1) (d) "or" (last occurring); and
- (d) by adding at the end of sub-section (1) the following paragraphs:
 - "(f) shall not take, or threaten to take, any action having the effect, directly or indirectly, of prejudicing a person in his employment with the intent to deter the person from making application to the Commission for an order under section 45 for the holding of a secret ballot; or
 - (g) shall not impose, or threaten to impose, a penalty, forfeiture or disability of any kind upon a member of the organization by reason of the circumstance that the member—
 - (i) has made, or proposes, or has at any time proposed, to make, application to the Commission for an order under section 45 for the holding of a secret ballot; or
 - (ii) has participated in, or proposes, or has at any time proposed, to participate in, a secret ballot ordered by the Commission under section 45."

Correction of order of definitions

17. The Principal Act is further amended as set out in the Schedule.

SCHEDULE

Section 17

CORRECTION OF ORDER OF DEFINITIONS

Section 4 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the definitions of “Commissioner” and “Deputy President”;
- (b) by inserting in sub-section (1) after the definition of “Collegiate electoral system” the following definition:
“ ‘Commissioner’ means a Commissioner appointed under this Act;”;
- (c) by inserting in sub-section (1) after the definition of “Committee of management” the following definition:
“ ‘Deputy President’ means a Deputy President of the Commission and includes an Acting Deputy President;”;
- (d) by omitting from sub-section (1) the definition of “Employer”;
- (e) by inserting in sub-section (1) after the definition of “Employee” the following definition:
“ ‘Employer’ means any employer in any industry and includes any person who is usually an employer in an industry and also includes a Club;”;
- (f) by inserting in sub-section (1) after the definition of “Office” the following definition:
“ ‘One-tier collegiate electoral system’ means a collegiate electoral system comprising only one stage after the first stage;”;
- (g) by omitting from the end of sub-section (1) the definition of “One-tier collegiate electoral system”.

NOTE

1. No. 13, 1904, as amended. For previous amendments, see No. 28, 1909; No. 7, 1910; No. 6, 1911; Nos. 5 and 18, 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; Nos. 65 and 77, 1948; Nos. 28 and 86, 1949; Nos. 51 and 80, 1950; Nos. 18 and 58, 1951; No. 34, 1952; Nos. 17, 18 and 54, 1955; Nos. 44 and 103, 1956; No. 30, 1958; No. 40, 1959; Nos. 15, 17 and 110, 1960; No. 40, 1961; Nos. 99 and 115, 1964; Nos. 22 and 92, 1965; Nos. 64 and 93, 1966; No. 101, 1967; No. 38, 1968; Nos. 12, 15 and 40, 1969; No. 53, 1970; No. 37, 1972; No. 138, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 89, 1974; No. 64, 1975; Nos. 3, 64, 91, 117 and 160, 1976; Nos. 64, 108, 111 and 124, 1977; No. 53, 1978; No. 110, 1979; and Nos. 35, 36 and 90, 1980.

