

1980-81-82

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 25 March 1982

(Minister for Industrial Relations)

A BILL

FOR

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

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

Short title, &c.

5 **1.** (1) This Act may be cited as the *Conciliation and Arbitration Amendment Act 1982*.

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

Commencement

10 **2.** (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.

(2) Section 10, sub-section 13 (1) and sections 14, 16, 18, 19, 21, 23, 24, 25, 26, 27 and 30 shall come into operation on a date to be fixed by Proclamation.

(3) Section 8 shall come into operation on a date to be fixed by Proclamation.

Objects of Act

3. (1) Section 2 of the Principal Act is amended by omitting from the end of paragraph (e) “and”.

(2) Section 2 of the Principal Act is amended by omitting paragraph (f) and substituting the following paragraphs: 5

“(f) to safeguard the freedom of persons to choose whether or not to be members of organizations of employees so registered; and

(g) to encourage the democratic control of organizations of employers and employees so registered and the full participation by members of those organizations in the affairs of those organizations.”. 10

Interpretation

4. (1) Section 4 of the Principal Act is amended by inserting after the definition of “Deputy President” in sub-section (1) the following definitions:

“‘De-registered State association’ means an association or body of employees that has been de-registered under a prescribed provision of a State Act; 15

‘De-registration’ means—

(a) in relation to an organization—cancellation of the registration of the organization under this Act; or

(b) in relation to an association or body of employees registered under a State Act—cancellation of the registration of the association or body under that Act;” 20

(2) Section 4 of the Principal Act is amended by omitting from paragraph (j) of the definition of “Industrial matters” in sub-section (1) “or of persons being or not being members of an organization”. 25

(3) Section 4 of the Principal Act is amended by inserting after the definition of “Postal ballot” in sub-section (1) the following definitions:

“‘Prescribed business’ means—

(a) business consisting of trade and commerce—

(i) between Australia and places outside Australia; 30

(ii) among the States; or

(iii) in a Territory, between a State and a Territory or between 2 Territories;

(b) the business of banking, being banking to which paragraph 51 (xiii) of the Constitution is applicable; 35

(c) the business of insurance, being insurance to which paragraph 51 (xiv) of the Constitution is applicable;

(d) in relation to an employer being a financial corporation to which paragraph 51 (xx) of the Constitution is applicable—financial activities of that corporation; or 40

(e) in relation to an employer being a trading corporation to which paragraph 51 (xx) of the Constitution is applicable—trading activities of that corporation;

‘Prescribed corporation’ means—

- (a) a foreign corporation to which paragraph 51(xx) of the Constitution is applicable; or
- (b) a corporation incorporated in a Territory;”.

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

Industrial disputes involving certain industrial matters

“4B. (1) In this section—

10 ‘prescribed claim’ means a claim to impose obligations on an employer in respect of any prescribed employees of the employer who are employees in respect of whom obligations are imposed on the employer under an order, award, decision or determination of a State Industrial Authority that was binding on the de-registered State association concerned before the de-registration;

15 ‘prescribed employee’ means a person who is included in a category of persons who, under the rules of a de-registered State association as in force at the time of the de-registration, were eligible for membership of the association, whether or not he was so included at that time;

20 ‘prescribed industrial matter’ means an industrial matter relating to the giving of preference in or in relation to employment to persons by reference to membership of—

- (a) in the case of an industrial matter within the meaning of section 88H—a declared body within the meaning of that section or an organization; or
- (b) in any other case—an organization.

25 “(2) For the purposes of the application of this section in relation to a provision of this Act, the expressions ‘industrial dispute’, ‘industrial question’ and ‘industrial matter’ have the same respective meanings as they have for the purposes of that provision.

“ (3) This Act—

- 30 (a) does not apply to or in relation to a prescribed claim or a prescribed industrial matter; and
- (b) does not apply to or in relation to an industrial dispute or industrial question in so far as that dispute or question involves a prescribed claim or a prescribed industrial matter.”.

35 6. After section 33A of the Principal Act the following section is inserted:

Powers of employers in relation to industrial action

“33B. (1) Where any employees of an employer engage in industrial action in relation to an industrial dispute, the employer may declare that this section applies in relation to those employees.

“(2) Where—

- (a) a declaration made by an employer under sub-section (1) by reason of industrial action is in force; and
- (b) as a result of that industrial action, any prescribed employees of that or any other employer (in this sub-section referred to, in either case, as the ‘relevant employer’), being employees not engaged in that industrial action, cannot be usefully employed,

the relevant employer may declare that this section applies in relation to those employees.

“(3) A declaration made under sub-section (1) or (2) by reason of industrial action continues in force in relation to an employee until that industrial action wholly ceases.

“(4) Where—

- (a) an employer suffers substantial loss or damage resulting from industrial action (whether engaged in by his employees or not), being loss or damage in respect of—
 - (i) in the case of an employer who is a prescribed corporation—any business carried on by him; or
 - (ii) in any other case—any prescribed business carried on by him; and
- (b) it is necessary, to avoid his further suffering substantial loss or damage as described in paragraph (a), for this section to apply in relation to those of his employees who are prescribed employees and—
 - (i) are engaged in that industrial action; or
 - (ii) as a result of that industrial action, cannot be usefully employed,

he may declare that this section applies in relation to those employees.

“(5) Subject to sub-section (7), a declaration made under sub-section (4) by reason of industrial action continues in force in relation to an employee until—

- (a) in the case of an employee engaged in that industrial action—
 - (i) he ceases to engage in that industrial action; or
 - (ii) he can be usefully employed,

whichever is the later; or

- (b) in any other case—the employee can be usefully employed.

“(6) For the purposes of sub-sections (4) and (5), the definition of ‘Industrial action’ in sub-section (1) of section 4 shall be read as if—

- (a) the words in parenthesis in paragraph (a) of that definition were omitted; and
- (b) all the words in paragraph (b) of that definition after ‘work’ (second occurring) were omitted.

“(7) A declaration made by an employer under sub-section (4) does not continue in force in relation to an employee after a time when it is no longer necessary, to avoid the employer further suffering substantial loss or damage as described in paragraph (a) of that sub-section, for this section to apply in relation to that employee.

“(8) A declaration under this section—

(a) may, notwithstanding the preceding provisions of this section, be wholly or partly revoked at any time, but without prejudice to the making of a further declaration; and

(b) may be in force during any period, including a period consisting of, or including, part of a day.

“(9) A declaration under this section or a revocation of such a declaration shall be by instrument in writing and shall be notified to the employees concerned in such manner as is appropriate in the circumstances.

“(10) An employee is not entitled to any salary, wages or other remuneration, or any allowances, in respect of any period during which a declaration made under this section is in force in relation to him.

“(11) This section, and declarations under this section, have effect notwithstanding—

(a) any other provision of this Act;

(b) any other law of the Commonwealth enacted before the date of commencement of this section; and

(c) any award made before, on or after that date,

but this section does not limit or restrict any rights of an employer existing under the terms of an award or otherwise, whether arising before, on or after that date.

“(12) In this section, ‘prescribed employee’ means an employee whose terms and conditions of employment are wholly or partly—

(a) prescribed by an award of the Commission, by an award, determination or order made by another tribunal in pursuance of a law of the Commonwealth or by or under a law of the Commonwealth; or

(b) the subject of an industrial dispute.”.

Power to grant preference to members of organizations

7. Section 47 of the Principal Act is repealed.

8. After section 49 of the Principal Act the following section is inserted:

Variation of common rules

“49A. (1) Where the Commission varies a term of an award, being a term that is a common rule of an industry in a Territory, the succeeding provisions of this section apply.

“(2) Before the Commission varies a term of a kind referred to in sub-section (1), the Registrar shall, in accordance with the regulations, give

notice of the place where, and the time when, it is proposed to hear the matter involving that term.

“(3) Where the Commission varies a term of a kind referred to in sub-section (1), the Registrar shall forthwith, in accordance with the regulations, publish a notice inviting any person or organization interested and desiring to be heard to lodge, within 28 days after the date of the decision of the Commission, notice of objection to the variation being a common rule.

5

“(4) If notices of objection in relation to a variation are lodged in accordance with sub-section (3), the Commission shall hear the objections and—

10

- (a) if it is satisfied that the variation should not be a common rule—declare that the variation shall not be a common rule; or
- (b) in any other case—declare that the variation shall be a common rule with effect from the date of effect of the variation.

“(5) If no notices of objection in relation to a variation are lodged in accordance with sub-section (3), the Commission shall declare that the variation shall be a common rule with effect from the date of effect of the variation.

15

“(6) Where the Commission makes a declaration under sub-section (4) or (5), the Registrar shall, in accordance with the regulations, publish a notice of that fact.

20

“(7) A common rule under this section is not enforceable before the Commission makes a declaration in relation to the common rule under sub-section (4) or (5), as the case may be.”.

Interpretation

25

9. Section 81 of the Principal Act is amended by omitting from paragraph (k) of the definition of “industrial matters” in sub-section (1) “or of waterside workers being or not being members of an organization”.

Registration of organizations

10. Section 132 of the Principal Act is amended—

30

- (a) by omitting from the end of paragraph (1) (b) “and”;
- (b) by adding at the end of sub-section (1) the following word and paragraph:

“; and (d) Any association the membership of which consists of—

- (i) not less than 100 employees, where the Registrar is satisfied that—

35

(A) all those employees are employed in a single industry, being an industry consisting of a prescribed class of business, trade, manufacture, undertaking or calling of employers;

40

(B) those employees constitute a substantial majority of the total number of persons employed in that industry; and

(C) the association is capable of satisfactorily representing the interests of all those persons;

(ii) persons, if any, who are employees who are qualified to be employed in that industry; and

(iii) other persons, if any, who are officers of the association.”;

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

“(1A) An association referred to in paragraph (d) of sub-section (1) that has members referred to in sub-paragraph (ii) of that paragraph shall not be registered as an organization unless it is effectively representative of the other members of the association (not being officers of the association).”; and

(d) by omitting from sub-section (4) “and sub-paragraph (ii) of paragraph (c)” and substituting “sub-paragraph (ii) of paragraph (c), and sub-paragraph (ii) of paragraph (d)”.

Rules to provide for elections, secret ballots and certain other matters

11. Section 133 of the Principal Act is amended—

(a) by omitting from sub-section (1) “organizations” (third occurring) and substituting “organization”;

(b) by omitting from sub-paragraph (1)(a)(ii) “an office the duties of which are of a full-time nature” and substituting “a full-time office”;

(c) by adding at the end of paragraph (1)(db) “, except in accordance with provisions made in pursuance of sub-section (4E)”;

(d) by inserting after sub-section (4D) the following sub-sections:

“(4E) The rules of an association or organization may include provisions to the effect that, where a person elected to a full-time office will attain the retirement age within 12 months after the expiration of the period for which he is elected, he may hold that office, without being re-elected, until he retires.

“(4F) Where the rules of an association or organization include provisions of the kind referred to in sub-section (4E), the rules—

(a) shall include provisions to the effect that, where a candidate duly nominated for election to a full-time office is a person who, if elected, will hold that office in the circumstances mentioned in that sub-section, the ballot papers for the election shall indicate the maximum period for which, if elected, he may so hold office; and

(b) may include provisions to the effect that, where a person holding a full-time office immediately before the commencement of this sub-section will attain the retirement age within 12 months after the expiration of his current period of office, he

may hold that office, without being re-elected, until he retires.”; and

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

“(7) In this section—

‘full-time office’ means an office the duties of which are of a full-time nature; 5

‘retirement age’, in relation to a person, in relation to an office, means the retirement age applicable to that person, in relation to that office, under the rules of the association or organization concerned or, where the rules provide for a minimum retirement age and a maximum retirement age, that maximum retirement age.”. 10

12. After section 133AA of the Principal Act the following section is inserted:

Casual vacancies 15

“133AB. (1) This section has effect notwithstanding any other provision of this Act.

“(2) Subject to this section, the rules of an organization may provide for the filling of a casual vacancy in an office in such manner as is provided in the rules. 20

“(3) This section does not apply in relation to a vacancy in an office where the unexpired period of office of the person who held the office immediately before the vacancy exceeds 12 months.

“(4) Where a vacancy in an office is filled by virtue of rules making provision as described in sub-section (2), the person so filling the vacancy shall be taken, for the purposes of the provisions of this Act (other than this section) and the provisions of the rules of the organization (other than the first-mentioned rules), to have been elected to that office in accordance with those provisions. 25

“(5) Where— 30

(a) a vacancy in an office in an organization is filled by a person by virtue of rules making provision as described in sub-section (2);

(b) the rules of the organization provide for a collegiate electoral system under which the holders of certain offices are entitled to be members of a particular electoral college in the manner described in sub-section (5) of section 4; and 35

(c) as a result of his so filling the vacancy—

(i) he is a member of that electoral college; and

(ii) he is elected by and from that college to one of those offices,

his holding of the last-mentioned office by reason of that election does not entitle him to be further elected by and from that electoral college to any of those offices (including that last-mentioned office). 40

“(6) In this section—

‘electoral college’ means a body of persons by and from whom persons are elected at any stage of a collegiate electoral system subsequent to the first stage;

5 ‘organization’ includes an association applying for registration as an organization.”.

Alteration of name or rules of organization

13. (1) Section 139 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-sections:

10 “(1) This section does not apply in relation to a change of the name, or an alteration of the rules, of an organization, being a change or alteration in relation to which section 139A applies.

“(1A) A change of the name of an organization, or an alteration of the rules of an organization in so far as they relate to—

- 15 (a) conditions of eligibility for membership; or
(b) the description of the industry, or the industrial pursuit or pursuits, in connection with which the organization is registered,

does not have effect unless the Registrar consents to the change or alteration upon an application made as prescribed.”.

20 (2) Section 139 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(7) The Registrar shall refuse to consent to an alteration of the rules of an organization of employees if, in his opinion, persons who are prescribed employees within the meaning of section 4B would, as a result of the alteration, become eligible to be members of that organization unless he is satisfied that—

- 25 (a) the de-registered State association by reference to which those persons are prescribed employees is defunct or has been re-registered under the relevant State Act; or
30 (b) a body substantially similar to that association has been registered under that Act.”.

14. After section 139 of the Principal Act the following section is inserted:

Certain changes in organizations of employees

35 “139A. (1) An alteration of the rules of an organization registered under paragraph (d) of sub-section (1) of section 132 does not have effect if it would result in the organization becoming an association other than an association of a kind referred to in that paragraph.

40 “(2) Except in accordance with Part VIIIA, an alteration of the rules of an organization registered under paragraph (b) or (c) of sub-section (1) of section 132, being an alteration that would result in the organization becoming an association of a kind referred to in paragraph (d) of that sub-section, and any

associated change of the name of the organization, do not have effect except as provided in the succeeding provisions of this section.

“(3) The organization shall make application to the Registrar as prescribed.

“(4) On receipt of the application, the Registrar shall, subject to sub-sections (5) and (6), record the alteration and the change (if any) in the register and upon the certificate of registration, and thereupon—

- (a) the alteration and the change (if any) have effect; and
- (b) the organization shall be taken, for the purposes of this Act, to be registered under the paragraph last referred to in sub-section (2).

“(5) The Registrar shall not act under sub-section (4) unless he is satisfied—

- (a) that the alteration and the change (if any) have been made in accordance with the relevant procedures laid down by the rules of the organization; and
- (b) that, if, in his opinion, persons who are prescribed employees within the meaning of section 4B will, as a result of the alteration, become eligible to be members of the organization—
 - (i) the de-registered State association by reference to which those persons are prescribed employees is defunct or has been re-registered under the relevant State Act; or
 - (ii) a body substantially similar to that association has been registered under that Act.

“(6) In the case of an alteration of a rule which may effect a change in the persons eligible to be members of a branch of the organization that is registered under the law of a State, the Registrar shall, before acting under sub-section (4), give notice of the proposed change to the Industrial Registrar or similar officer appointed under the law of the State in which the branch operates and, if so requested, consult with that Industrial Registrar or officer.”.

Repeal of sections 141A and 141B

15. Sections 141A and 141B of the Principal Act are repealed.

Power to refuse registration of certain organizations

16. Section 142 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(2) Sub-section (1) does not apply in relation to the registration of an association under paragraph (d) of sub-section (1) of section 132.”.

17. After section 142 of the Principal Act the following sections are inserted:

Refusal to register organization de-registered in State

5 “142AA. The Registrar shall refuse to register an association of employees as an organization if, in his opinion, the association is a de-registered State association or a body substantially similar to a particular de-registered State association and has not been re-registered, or registered, as the case may be, under the relevant State Act.

Registrar may make inquiries, &c.

10 “142AB. For purposes of forming an opinion under sub-section (7) of section 139, paragraph (b) of sub-section (5) of section 139A or section 142AA, the Registrar may make such inquiries as he thinks necessary and have regard to such information as he considers relevant.”.

Application for cancellation of registration

15 **18.** Section 143 of the Principal Act is amended—

(a) by inserting after paragraph (1) (ab) the following paragraph:

20 “(ac) the organization, being an association registered under paragraph (d) of sub-section (1) of section 132, is not an association that, if it were applying for registration, would be entitled to registration under that paragraph;”;

(b) by omitting paragraph (3G) (a) and substituting the following paragraphs:

25 “(a) in the case of an organization that is registered under paragraph (a) or (aa) of sub-section (1) of section 132—the number of persons employed by the members of the organization, or by the employer, as the case may be, has fallen below the number specified in that paragraph;

30 “(aa) in the case of an organization that is an association registered under paragraph (b), (c) or (d) of that sub-section—the number of employees of the kind first referred to in that paragraph who are members of the association has fallen below the number specified in that paragraph;”.

Entitlement to membership of organizations

35 **19.** Section 144 of the Principal Act is amended by omitting sub-sections (1), (2), (2A) and (3) and substituting the following sub-sections:

“(1) A person included in a category of persons who are, under the rules of an organization of employees, eligible for membership of the organization is, unless he is of general bad character, entitled, subject to payment of any amount properly payable in respect of membership—

40 (a) to be admitted as a member of the organization; and

(b) to remain a member so long as he is so included and he complies with the rules of the organization.

“(2) Sub-section (1) has effect notwithstanding the rules of the organization except to the extent that it expressly requires compliance with those rules.”.

20. Section 144A of the Principal Act is repealed and the following section is substituted:

5

No compulsion to join organizations of employees

“144A. (1) An employer shall not—

- (a) dismiss an employee, or injure him in his employment, or alter his position to his prejudice, for the reason that the employee is a prescribed person;
- (b) threaten to dismiss a prescribed person, or to injure him in his employment, or to alter his position to his prejudice, for the purpose of coercing him to join an organization of employees;
- (c) refuse to employ, or to promote, a person in employment for the reason that the person is a prescribed person;
- (d) employ, or promote, a person in employment in preference to another person for the reason that the first-mentioned person is a member of an organization of employees and the other person is a prescribed person; or
- (e) employ, or promote, a prescribed person in employment on condition that that person joins or undertakes to join an organization of employees.

10

15

20

“(2) An organization of employees shall not—

- (a) advise, encourage or incite an employer to engage in conduct in relation to a person that would be a contravention of sub-section (1);
- (b) take, or threaten to take, industrial action against an employer for the purpose of coercing the employer to engage in conduct in relation to a person that would be a contravention of sub-section (1); or
- (c) engage, or threaten to engage, in conduct having the effect, directly or indirectly, of prejudicing a prescribed person in his employment, for the purpose of coercing the person to join an organization of employees.

25

30

“(3) A person who suffers loss or damage as a result of a contravention or contraventions of this section by another person or other persons may recover the amount of the loss or damage by action against that person or all or any of those persons, as the case may be.

35

“(4) Where 2 or more actions are brought under this section in respect of the same loss or damage, the amounts recoverable shall not exceed in the aggregate the amount of that loss or damage.

“(5) Where—

- (a) in an action against an employer under sub-section (3) in respect of any conduct, the employer joins an organization of employees as a party to the action for the purposes of this sub-section; and

40

(b) the Court finds that conduct engaged in by the organization induced the employer, and was engaged in for the purpose of inducing the employer, to engage in the conduct referred to in paragraph (a),

5 the Court may give judgment against the organization instead of the employer, or partly against the organization and partly against the employer, as the Court considers just and equitable in the circumstances.

10 “(6) Nothing in this section limits or restricts any rights arising otherwise than under this section and, in particular, sub-section (5) does not prevent the joinder of parties otherwise than for the purposes of that sub-section or affect the powers of the Court in relation to, or in consequence of, such a joinder of parties.

“(7) An action under this section may be commenced at any time within 6 years after the date on which the cause of action accrued.

15 “(8) Jurisdiction is conferred on the Court with respect to matters arising under this section, and that jurisdiction is exclusive of the jurisdiction of any other court, other than the jurisdiction of the High Court under section 75 of the Constitution.

“(9) A contravention of this section is not an offence against this Act.

20 “(10) Without prejudice to its effect apart from this sub-section, this section also has the effect it would have if any references in sub-sections (1) and (2) to an employer were, by express provision, confined to an employer that is a prescribed corporation.

25 “(11) Without prejudice to its effect apart from this sub-section, this section also has the effect it would have if any references in sub-sections (1) and (2) to an employer were, by express provision, confined to an employer engaged in prescribed business and in no other business.

“(12) Without prejudice to its effect apart from this sub-section, this section also has the effect it would have if—

30 (a) any references in sub-section (1) and paragraph (c) of sub-section (2) to an employee or to a prescribed person were, by express provision, confined to an employee or a prescribed person whose normal work is, or is to be, performed wholly or partly in the course of prescribed business; and

35 (b) any references in sub-section (1) and paragraph (c) of sub-section (2) to employment were, by express provision, confined to employment normally consisting of work that is, or is to be, performed wholly or partly in the course of prescribed business.

40 “(13) This section has effect notwithstanding anything in an award in force immediately before the commencement of this section.

“(14) For the purposes of this section, any act or thing done by—

(a) the committee of management of an organization;

(b) the committee of management of a branch of an organization;

- (c) an officer, employee or agent of an organization;
- (d) a group of members of an organization; or
- (e) a member of an organization who performs the function of dealing with an employer on behalf of himself and other members of the organization,

5

shall be deemed to have been done by the organization.

“(15) A reference in this section to a reason, to a purpose, or to a condition, is a reference to reasons that include that reason, to purposes that include that purpose, or to conditions that include that condition, as the case may be.

“(16) In this section—

10

‘organization’ includes a declared body within the meaning of section 88H; ‘prescribed person’ means a person who is not a member of any organization of employees.”.

Resignation from membership of employees’ organization

21. Section 145 of the Principal Act is amended by omitting paragraph (1) (a) and substituting the following paragraphs:

15

“(a) being a member of an organization registered under paragraph (b) or (c) of sub-section (1) of section 132—he ceases to be employed in or in connection with the industry, or to be engaged in the industrial pursuit or pursuits, in connection with which the organization is registered;

20

(aa) being a member of an organization registered under paragraph (d) of that sub-section—he ceases to be employed as described in that paragraph; or”.

Interpretation

25

22. Section 158A of the Principal Act is amended by omitting the definition of “de-registration”.

Duty of Registrar where amalgamation proposed

23. Section 158B of the Principal Act is amended by omitting paragraph (c) and substituting the following paragraph:

30

“(c) the giving of consent under section 139, or the performing of any act under sub-section (4) of section 139A, in relation to an organization,”.

24. After section 158C of the Principal Act the following section is inserted:

Certain amalgamations prohibited

35

“158CA. A proposed amalgamation involving an organization registered under paragraph (d) of sub-section (1) of section 132 does not comply with this Part if, under the proposed amalgamation, that organization will be de-registered and the amalgamated organization will not be an association of a kind referred to in that paragraph.”.

40

Ballot of members

25. Section 158K of the Principal Act is amended—

(a) by omitting from sub-section (4) “the next succeeding sub-section” and substituting “sub-sections (5) and (5A)”;

5 (b) by inserting after sub-section (5) the following sub-section:

10 “(5A) In the case of a ballot conducted in relation to an amalgamation where, in the opinion of the Industrial Registrar, the amalgamated organization will be an association of a kind referred to in paragraph (d) of sub-section (1) of section 132, the roll of voters for the ballot shall be a roll of the persons who, one month before the date fixed under sub-section (1) of section 158L as the commencing date of the ballot, had a right under the rules of the existing organization concerned to vote at any ballot taken for the purpose of submitting a matter to a vote of the members of the organization.”.

15 **Determination of result of ballot**

26. Section 158N of the Principal Act is amended by omitting paragraph (a) and substituting the following paragraph:

“(a) ballot papers are received by the person conducting the ballot, on or before the day fixed for the closing of the ballot, from—

20 (i) in the case of a ballot to which sub-section (5A) of section 158K applies—at least one-quarter of the members on the roll of voters; or

(ii) in any other case—at least one-half of the members on the roll of voters; and”.

25 **Action to be taken after ballots**

27. Section 158Q of the Principal Act is amended by inserting after paragraph (3) (b) the following paragraph:

“(ba) if—

30 (i) the amalgamated organization is already registered under paragraph (b) or (c) of sub-section (1) of section 132; and

(ii) the Industrial Registrar is satisfied that it is an association of a kind referred to in paragraph (d) of that sub-section,

35 the Industrial Registrar shall record in the register and upon the certificate of registration that the organization is an association of that kind, and thereupon it shall be taken, for the purposes of this Act, to be registered under paragraph (d) of that sub-section;”.

Repeal of section 168

28. Section 168 of the Principal Act is repealed.

29. After Part X of the Principal Act the following Part is inserted:

**PART XA—FINANCIAL ASSISTANCE IN CONNECTION WITH
CERTAIN PROCEEDINGS**

Interpretation

“181. In this Part, unless the contrary intention appears— 5
‘applicant’ does not include an organization;
‘party’ does not include an organization;
‘proceedings’ means proceedings pending at, or instituted after, the
commencement of this Part.

Counsel’s fees

10

“181A. Except in the case of an application under section 181F, nothing in
this Part authorizes a payment in respect of fees of more than one counsel
appearing for the person to whom assistance is granted unless 2 or more counsel
appeared, or are to appear, for another party to, or an intervener in, the
proceedings. 15

Applicants in proceedings under sections 140 and 141

“181B. (1) A person who is an applicant in proceedings under section 140
or 141 may apply to the Court or a Judge for a certificate under this section.

“(2) Upon an application made by a person under sub-section (1), if it
appears to the Court or Judge, having regard only to the material presented by
the person, that it would be proper to grant the application under section 140 or
141, as the case may be, the Court or Judge shall issue to the person a certificate
to that effect. 20

“(3) A person to whom a certificate has been issued under sub-section (2)
in relation to proceedings may apply to the Attorney-General for financial
assistance by the Commonwealth in respect of the costs or expenses that the
person has paid, has become liable to pay, or may become liable to pay, in
connection with the proceedings. 25

“(4) Where an application is made under sub-section (3) by a person and
the Attorney-General is satisfied that it is likely that hardship would be caused
to the person if assistance were not given by the Commonwealth in respect of
the costs or expenses that he has paid, has become liable to pay, or may become
liable to pay, in connection with the proceedings, the Attorney-General may,
subject to sub-section (5), authorize payment by the Commonwealth to or on
behalf of the person of such amount as is, or such amounts as are from time to
time, determined— 30

(a) by the Attorney-General; or

(b) in accordance with a direction given, or directions from time to time
given, by the Attorney-General, 35

in respect of those costs or expenses. 40

“(5) The Attorney-General may refuse an application under sub-section (3) in respect of proceedings if he is satisfied that—

- (a) the order sought in the proceedings is the same or substantially the same as an order obtained or sought in other relevant proceedings and the proceedings involve the determination of the same or substantially the same questions of fact or law or mixed fact and law as were or are involved in the determination of the other proceedings; or
- (b) it would be contrary to the interests of justice to grant financial assistance to the applicant in connection with the proceedings.

“(6) For the purposes of sub-section (5), “other relevant proceedings” means proceedings that—

- (a) were instituted before the proceedings in respect of which the application under sub-section (3) was made; and
- (b) have been heard and determined by, or are pending before, the Court.

Applicants in proceedings under section 144

“181C. (1) The applicant in proceedings under section 144 may apply to the Attorney-General for financial assistance by the Commonwealth in respect of the costs or expenses that he has paid, has become liable to pay, or may become liable to pay, in connection with the proceedings.

“(2) Where an application is so made and the Attorney-General is satisfied that it is likely that hardship would be caused to the applicant if assistance were not given by the Commonwealth in respect of the costs or expenses that he has paid, has become liable to pay, or may become liable to pay, in connection with the proceedings, the Attorney-General may authorize payment by the Commonwealth to or on behalf of the applicant of such amount as is, or such amounts as are from time to time, determined—

- (a) by the Attorney- General; or
- (b) in accordance with a direction given, or directions from time to time given, by the Attorney-General,

in respect of those costs or expenses.

Other parties in proceedings under sections 140, 141 and 144

“181D. (1) A person who—

- (a) has been a party, otherwise than as an applicant, to proceedings under section 140, 141 or 144; and
- (b) has paid, or become liable to pay, costs or expenses in connection with the proceedings,

may apply to the Attorney-General for financial assistance by the Commonwealth in respect of those costs or expenses.

“(2) Where a person applies for financial assistance in accordance with this section, the Attorney-General may, if he is satisfied that it would involve hardship to that person to refuse the application and that, in all the circumstances, it is reasonable that the application should be granted, authorize

payment by the Commonwealth to or on behalf of that person in respect of the costs and expenses of such amount as he determines or of such amounts as he, from time to time, determines.

Parties in certain other proceedings

“181E. (1) A person who is or has been a party to proceedings under section 171C, 171D or 171E arising out of or otherwise connected with proceedings under section 140 or 141 or an inquiry under Part IX may apply to the Attorney-General for financial assistance by the Commonwealth in respect of the costs or expenses that he has paid, has become liable to pay, or may become liable to pay, in connection with the proceedings. 5
10

“(2) Where an application is so made and the Attorney-General is satisfied that it is likely that hardship would be caused to the applicant if assistance were not given by the Commonwealth in respect of the costs or expenses that he has paid, has become liable to pay, or may become liable to pay, in connection with the proceedings, the Attorney-General may authorize payment by the Commonwealth to or on behalf of the applicant of such amount as is, or such amounts as are from time to time, determined— 15

(a) by the Attorney-General; or

(b) in accordance with a direction given, or directions from time to time given, by the Attorney-General, 20

in respect of those costs or expenses.

Inquiries under Part IX

“181F. (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 the costs and expenses that he has paid, or has become liable to pay, in connection with the inquiry. 25

“(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 the costs and expenses that he has paid, or has become liable to pay, in connection with the inquiry. 30

“(3) Where, in relation to an inquiry, the Attorney-General is satisfied that it is likely that hardship would be caused to a person (not being the person who applied for the inquiry) if assistance were not given by the Commonwealth in respect of the costs or expenses that he has paid, or has become liable to pay, in connection with the inquiry, the Attorney-General may authorize payment by the Commonwealth of the whole or a part of those costs or expenses. 35

“(4) Nothing in this section limits the power of the Court to make an order as to the costs and expenses of proceedings before the Court in or in connection with an inquiry. 40

“(5) In this section—
 ‘inquiry’ means an inquiry under Part IX;
 ‘person’ does not include an organization.”.

Regulations

5 **30.** Section 198 of the Principal Act is amended by inserting after paragraph (ca) of sub-section (1) the following paragraph:

10 “(cb) for and in relation to the taking of a vote by secret ballot for the purpose of determining whether a substantial majority of the total number of persons employed as described in sub-sub-paragraph (A) of sub-paragraph (i) of paragraph (d) of sub-section (1) of section 132 wish to form, or to join, as the case requires, an association of a kind referred to in that paragraph;”.

Transitional

15 **31. (1)** An application made before the commencement of this section for payment under a prescribed provision shall be dealt with as if that provision had not been repealed by this Act.

20 **(2)** An authority granted, determination made or direction given by the Attorney-General under a prescribed provision has effect after the commencement of this section as if it had been granted, made or given under that prescribed provision.

(3) In this section, “prescribed provision” means section 141A, 141B or 168 of the Principal Act as in force immediately before the commencement of this section.

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; Nos. 35, 36 and 90, 1980; and No. 71, 1981.

