

1983-84

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 9 May 1984

(Minister for Employment and Industrial Relations)

A BILL

FOR

**An Act to amend the *Conciliation and Arbitration Act 1904* and
the *Conciliation and Arbitration Amendment Act (No. 2) 1983***

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 1984*.

(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 13 shall come into operation, or be deemed to have come into
operation, as the case requires, on the commencement of section 41 of the
Conciliation and Arbitration Amendment Act (No. 2) 1983.

(3) Section 14 shall be deemed to have come into operation on 16 December 1983.

Absence of President

3. Section 10 of the Principal Act is amended by adding at the end thereof the following sub-section:

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“(2) A Deputy President who is exercising powers or functions of the President pursuant to sub-section (1) shall be deemed, for the purposes of this Act, to be an Acting President of the Commission.”.

Vacation of office of Commissioners

4. (1) Section 15 of the Principal Act is amended by omitting from paragraph (d) “Minister” and substituting “President”.

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(2) The amendment made by sub-section (1) applies only in respect of absences from duty that occur after the commencement of this section and, for the purposes of the operation of section 15 of the Principal Act as amended by this section, any grant of leave by the Minister before the commencement of this section in respect of an absence that occurs after that commencement shall be deemed to have been granted by the President.

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5. After section 127 of the Principal Act the following section is inserted:

Acting Industrial Registrar or Deputy Industrial Registrar

“127A. (1) The Minister may appoint a person to act as Industrial Registrar or as a Deputy Industrial Registrar—

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- (a) during a vacancy in the office of Industrial Registrar or an office of Deputy Industrial Registrar, as the case may be; or
- (b) during any period, or during all periods, when the Industrial Registrar or a Deputy Industrial Registrar, as the case may be, is absent from duty or from Australia or is, for any other reason, unable to perform the functions of his office,

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but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

“(2) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

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“(3) The Minister may at any time terminate an appointment under this section.

“(4) Where a person is acting as Industrial Registrar or as a Deputy Industrial Registrar in accordance with paragraph (1) (b) and the office of Industrial Registrar or of that Deputy Industrial Registrar, as the case may be, becomes vacant while that person is so acting, then, subject to sub-section (2), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

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“(5) The appointment of a person to act as Industrial Registrar or as a Deputy Industrial Registrar ceases to have effect if he resigns his appointment by writing signed by him and delivered to the Minister.

5 “(6) While a person is acting as Industrial Registrar or as a Deputy Industrial Registrar, he has and may exercise all the powers, and shall perform all the functions, of the Industrial Registrar or of a Deputy Industrial Registrar, as the case may be, under this Act or any other law.

10 “(7) The validity of anything done by or in relation to a person purporting to act under sub-section (1) shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

15 “(8) A reference in this section to the Minister shall be construed as including a reference to a person authorized in writing by the Minister to act on behalf of the Minister for the purposes of this section.”.

Casual vacancies

6. (1) Section 133AB of the Principal Act is amended—

20 (a) by omitting sub-sections (1), (2) and (3) and substituting the following sub-sections:

“(2) The rules of an organisation may provide for the filling of a casual vacancy in an office by an ordinary election or, subject to this section, in any other manner provided in the rules.

25 “(3) Rules making provision as described in sub-section (2) shall not permit a casual vacancy, or further casual vacancies, occurring within the term of an office to be filled, otherwise than by an ordinary election, for so much of the unexpired part of the term as exceeds—

(a) 12 months; or

30 (b) three-quarters of the term of the office,
whichever is the greater.”;

(b) by omitting from sub-sections (4) and (5) “made in pursuance of sub-section (2)” and substituting “making provision as described in sub-section (2) otherwise than by an ordinary election”; and

35 (c) by omitting from sub-section (6) the definition of “organisation” and substituting the following definitions:

“ ‘ordinary election’ means an election held in accordance with rules that comply with the requirements of section 133;

‘organization’ includes an association applying for registration as an organization;

40 ‘term’, in relation to an office, means the total period for which the last person elected to the office by an ordinary election (other than an ordinary election to fill a casual vacancy in the office) was entitled by virtue of that election (disregarding the rules, if

any, made in pursuance of sub-section 133 (4E) or (4F)) to hold the office without being re-elected.”.

(2) In relation to rules of an organization that provide for the filling of a casual vacancy in an office, being rules in effect before the commencement of this sub-section (in this sub-section referred to as the “commencing day”), the following provisions apply:

- (a) rules made otherwise than in pursuance of section 133AB of the Principal Act as in force before the commencing day that were inconsistent with that section as so in force are not, and shall be deemed never to have been, in contravention of sub-section 140 (1) of the Principal Act by reason only of the inconsistency;
- (b) rules made in pursuance of that section as so in force continue to have effect on and after the commencing day notwithstanding the amendment of that section by this Act, but if any such rule is inconsistent with that section as so amended—
 - (i) the rule is not in contravention of sub-section 140 (1) of the Principal Act during the period of 12 months commencing on the commencing day by reason only of the inconsistency; and
 - (ii) anything done in pursuance of the rule within that period is not invalidated after that period by reason only of the inconsistency.”.

Interpretation

7. Section 158AA of the Principal Act is amended by adding at the end thereof the following sub-section:

“(2) Notwithstanding sub-section (1), where, in accordance with paragraph (b) of the definition of ‘financial year’ in that sub-section, the rules of an organization change the period constituting the financial year in relation to the organization, the period between the commencement of the first financial year as so changed and the end of the last preceding financial year shall, for the purposes of this Part, be deemed to be a financial year.”.

Application of Part with respect to organizations divided into branches

8. Section 158AAA of the Principal Act is amended by omitting from sub-section (1) “and sub-section 158AG (4)” (wherever occurring) and substituting “, sub-section 158AG (4) and section 158AHA”.

Copies of report and audited accounts to be supplied to members and presented to meetings

9. Section 158AG of the Principal Act is amended—

- (a) by omitting sub-section (2) and substituting the following sub-section:

“(2) An organization that—

- (a) fails to comply with sub-section (1); or
- (b) has not supplied the report, accounts and statements referred to in sub-section (1) to a member of the organization within 14 days after the receipt by the organization of a request by the

member made in pursuance of paragraph (1A) (c) (in this sub-section referred to as the 'relevant period'),

is guilty of an offence against that sub-section punishable, upon conviction, by a fine not exceeding \$500 plus \$50 for each completed week of the period commencing on the expiration of—

(c) in a case referred to in paragraph (a)—the period within which the documents to which the offence relates were required to be supplied; or

(d) in a case referred to in paragraph (b)—the relevant period, and ending on—

(e) if the organization supplied the documents to which the offence relates before the day on which the organization is convicted—the day on which the documents were so supplied; or

(f) in any other case—the day on which the organization is convicted.”;

(b) by inserting in paragraph (4A) (a) “, or the summary referred to in sub-section (1A) is,” after “are”; and

(c) by omitting from paragraph (5) (a) “after the expiration of the period provided for presenting those documents and”.

Copies of reports, &c., to be filed with Registrar

10. Section 158AH of the Principal Act is amended by omitting from paragraph (2) (a) “after the expiration of the period provided for filing and”.

11. After section 158AH of the Principal Act the following section is inserted:

Organization may submit accounts, &c., of all branches

“158AHA. (1) The rules of a relevant branch of a relevant organization may provide that this section applies in relation to the branch or otherwise provide for the relevant documents of the branch to be filed in accordance with sub-section (2), and where the rules of each relevant branch of the organization so provide and the financial years in relation to all those branches end on the same date—

(a) the following provisions of this section apply in relation to the organization; and

(b) subject to sub-section (4), sub-sections 158AH (1) and (2) do not apply to a relevant branch of the organization.

“(2) The organization shall, within 14 days (or such longer period as the Registrar allows) after the relevant day, file with the Registrar copies of the relevant documents of each relevant branch of the organization that were presented to a meeting of the committee of management, or general meeting of members, of the branch in accordance with sub-section 158AG (4A) or (4B), whichever is applicable, together with a certificate by the secretary, or other

prescribed officer, of the branch that the documents so filed are copies of the relevant documents so presented.

“(3) Where the organization fails to comply with sub-section (2), each relevant branch of the organization shall, within 14 days (or such longer period as the Registrar allows) after the expiration of the period referred to in that sub-section, file with the Registrar copies of the relevant documents of the branch that were presented to a meeting of the committee of management, or general meeting of members, of the branch in accordance with sub-section 158AG (4A) or (4B), whichever is applicable, together with a certificate by the secretary, or other prescribed officer, of the branch that the documents so filed are copies of the relevant documents so presented.

“(4) If sub-section (3) applies to a relevant branch of the organization, sub-section 158AH (2) applies to the branch as if the reference in sub-section 158AH (2) to sub-section 158AH (1) were a reference to sub-section (3) of this section.

“(5) Sub-sections 158AH (3) to (9) (inclusive) apply in relation to a relevant branch of the organization as if the references in those sub-sections to documents filed with the Registrar under sub-section 158AH (1) were references to relevant documents in relation to the branch filed—

- (a) where sub-section (3) of this section does not apply in relation to the branch—by the organization under sub-section (2) of this section; or
- (b) where sub-section (3) of this section applies in relation to the branch—by the branch under that sub-section.

“(6) In this section, unless the contrary intention appears—

‘relevant branch’, in relation to a relevant organization, means each part of an organization to which this Part (other than this section, section 158AAA and sub-section 158AG (4)) applies by virtue of paragraph 158AAA (1) (a) or (b);

‘relevant day’, in relation to a relevant organization, means the day on which relevant documents in relation to a relevant branch of the organization in respect of a financial year are presented to a general meeting of the members, or a committee of management, of the branch in accordance with sub-section 158AG (4A) or (4B), whichever is applicable, being a day on or before which relevant documents in respect of that financial year are or have been so presented by each of the other relevant branches of the organization;

‘relevant documents’, in relation to a relevant branch, means the report, accounts and statements referred to in sub-section 158AG (1);

‘relevant organization’, means an organization that is divided into branches, not being an organization in relation to which a certificate issued by the Registrar under sub-section 158AAA (3) is in force.”.

Alteration of name or rules of organization

12. Section 27 of the *Conciliation and Arbitration Amendment Act (No. 2) 1983*² is repealed.

Consequential amendments

13. Schedule 2 to the *Conciliation and Arbitration Amendment Act (No. 2) 1983* is amended by omitting from the amendment of section 32 of the *Australian Industry Development Corporation Act 1970* “that” and substituting “than”.

Formal amendments

14. Schedule 3 to the *Conciliation and Arbitration Amendment Act (No. 2) 1983* is amended—

- (a) by omitting from the amendment of sub-section 5 (2) “200” and substituting “\$200”; and
- (b) by omitting from the amendment of sub-section 119 (4) “six” (second occurring) and substituting “6”.

NOTES

1. No. 13, 1904. 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; No. 10, 1947 (as amended by No. 39, 1947); No. 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 (as amended by No. 80, 1982); 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; Nos. 61 and 71, 1981; No. 143, 1982; and Nos. 33, 115 and 144, 1983.
2. No. 115, 1983.

