

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

---

*(As read a first time)*

**CONCILIATION AND ARBITRATION AMENDMENT BILL (No. 2)  
1981**

TABLE OF PROVISIONS

Clause

1. Short title, &c.
2. Commencement
3. Interpretation
4. Committee to pass resolutions
5. Formation of new association
6. Scheme of amalgamation to be submitted
7. Insertion of new section—  
158FA. Declaration that amalgamation in public interest
8. Scheme to be notified
9. Objections
10. Approval of amalgamation for submission to ballot
11. Ballot of members
12. Notice of ballot
13. Repeal of section 158N and substitution of new section—  
158N. Determination of approval of amalgamation by members of organizations
14. Insertion of new section—  
158PA. Approval of amalgamations
15. Action to be taken after ballots
16. Application of amendments



1980-81

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

---

(Presented pursuant to leave granted and read 1<sup>o</sup>, 25 November 1981)

(SENATOR BUTTON)

No 254

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 (No. 2) 1981*.

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

**Commencement**

10     **2.** This Act shall come into operation on the day on which it receives the Royal Assent.

**Interpretation**

**3.** Section 158A of the Principal Act is amended—

**(a)** by inserting before the definition of “amalgamation” the following definitions:

15             “ ‘alternative amalgamation’, in relation to a scheme that contains an alternative provision, means an amalgamation that may be made in pursuance of that provision;

              ‘alternative provision’ means a provision referred to in sub-section (1A) of section 158F;” and

- (b) by inserting after the definition of “de-registration” the following definition:

“‘proposed amalgamation’ does not include an alternative amalgamation;”.

#### **Committee to pass resolutions**

5

4. Section 158D is amended by omitting “the amalgamation” and substituting “a proposed amalgamation”.

#### **Formation of new association**

5. Section 158E of the Principal Act is amended by omitting “the amalgamation” and substituting “a proposed amalgamation”.

10

#### **Scheme of amalgamation to be submitted**

6. Section 158F of the Principal Act is amended—

- (a) by omitting from sub-section (1) “the amalgamation” (first occurring) and substituting “a proposed amalgamation”; and
- (b) by inserting after sub-section (1) the following sub-sections:

15

“(1A) A scheme for a proposed amalgamation in which 3 or more existing organizations (in this sub-section referred to as ‘those organizations’) are concerned may, with the approval, by resolution, of the committee of management of each of those organizations, contain a provision to the effect that, if the members of any of those organizations do not approve the proposed amalgamation, but, in the case of some of those organizations (including, where one of those organizations is a party to the amalgamation otherwise than as a de-registering organization, that organization), the members of each of them approve both the proposed amalgamation and the amalgamation of their organization with any other of those organizations, there may be an amalgamation involving the organizations the members of which so give their approval.

20

25

“(1B) Where a scheme for a proposed amalgamation contains an alternative provision—

- (a) the particulars required by sub-section (1) to be set out in the scheme in accordance with the regulations are—

30

(i) particulars of the proposed amalgamation; and

(ii) particulars of the differences between that amalgamation and each alternative amalgamation, including the differences in any rules referred to in paragraph (a) of sub-section (1) and any proposed alterations referred to in paragraph (b) of sub-section (1); and

35

- (b) the copy of any rules and alterations required by sub-section (1) to accompany the scheme is a copy of only those rules and alterations that would apply if the proposed amalgamation were to proceed.”.

40

7. After section 158F of the Principal Act the following section is inserted:

**Declaration that amalgamation in public interest**

“158FA. (1) On the application of the existing organizations concerned in a proposed amalgamation, being an application made on the same day as the application under section 158F for approval to the amalgamation, a Full Bench may, if it is satisfied that—

- (a) the amalgamation would further the objects of this Act; and
- (b) there is a community of interest between those organizations in respect of their industrial interests,

declare that the amalgamation is in the public interest and in the industrial interests of those organizations.

“(2) A Full Bench shall be satisfied, for the purposes of paragraph (b) of sub-section (1), that there is a community of interest between organizations of employees in respect of their industrial interests if, and only if, it is satisfied that—

- (a) a substantial number of the members of each of the organizations are eligible to become members of the other organization or each of the other organizations, as the case may be; or
- (b) a substantial number of the members of each of the organizations are—
  - (i) engaged in the same work, in different aspects of the same work or in similar work;
  - (ii) bound by the same awards; or
  - (iii) employed in the same or related work by employers engaged in the same industry.

“(3) A Full Bench shall be satisfied, for the purposes of paragraph (b) of sub-section (1), that there is a community of interest between organizations of employers in respect of their industrial interests, if, and only if, it is satisfied that—

- (a) a substantial number of the members of each of the organizations are eligible to become members of the other organization or each of the other organizations, as the case may be; or
- (b) a substantial number of the members of each of the organizations are engaged in the same industry or bound by the same awards.”.

**Scheme to be notified**

8. Section 158G of the Principal Act is amended—

- (a) by inserting “in respect of a proposed amalgamation and that any application for a declaration under section 158FA in respect of that amalgamation has been disposed of” after “complied with” in sub-section (1);
- (b) by omitting from sub-section (1) “the last preceding section” and substituting “section 158F”; and

- (c) by omitting from sub-section (2) “the amalgamation” and substituting “any amalgamation to which the scheme relates”.

**Objections**

9. Section 158H of the Principal Act is amended by omitting from sub-sections (1) and (4) “the amalgamation” and substituting “an amalgamation”. 5

**Approval of amalgamation for submission to ballot**

10. Section 158J of the Principal Act is amended by inserting in sub-sections (1), (2) and (3) “proposed” before “amalgamation”.

**Ballot of members**

11. Section 158K of the Principal Act is amended— 10

- (a) by inserting in sub-section (1) “proposed” before “amalgamation” (first occurring);

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

“(1A) Where, under sub-section (1), the Industrial Registrar is required to arrange for the conduct of a ballot of the members of an organization in respect of a proposed amalgamation the scheme for which contains an alternative provision, the Industrial Registrar shall also arrange for the conduct, at the same time as that ballot, of a ballot of the members of that organization on the question whether, if the proposed amalgamation does not take place, they approve the amalgamation of that organization with the other organizations concerned in the amalgamation whose members give a like approval.”; 15 20

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

- (d) by inserting after sub-section (2) the following sub-sections: 25

“(2A) Where, under sub-section (1A), the Industrial Registrar is required to arrange for the conduct of 2 ballots of the members of an organization at the same time, the ballot-papers for both ballots shall be on the same piece of paper.

“(2B) A person conducting a ballot required by sub-section (1A) is not required to count the votes in that ballot unless and until he is satisfied that the result of that ballot will be required to be known for the purposes of this Act.”; 30

- (e) by omitting from sub-section (3) “each ballot paper sent to a person entitled to vote at the ballot” and substituting “the ballot paper or ballot papers sent to a person entitled to vote at the ballot or ballots”; 35

- (f) by omitting sub-sections (4) and (5) and substituting the following sub-section:

“(4) The roll of voters for a ballot shall be a roll of the persons who, one month before the date fixed under sub-section (1) of section 158L 40

as the commencing date of the ballot, had a right under the rules of the organization to vote at any ballot taken for the purpose of submitting a matter to a vote of the members of the organization.”;

(g) by omitting paragraph (7) (a) and substituting the following paragraph:

“(a) an organization is a party to a proposed amalgamation otherwise than as a de-registering organization;”;

(h) by inserting after paragraph (7) (b) the following word and paragraph:

“and (c) on the date referred to in paragraph (b), the de-registering organization, or each of the de-registering organizations, concerned in the amalgamation had less than 5,000 members;” and

(j) by omitting paragraph (8) (b) and substituting the following paragraph:

“(b) if the exemption is granted, the members of the organization granted the exemption shall be deemed to have approved the proposed amalgamation and, if the scheme for that amalgamation contains an alternative provision, to have approved each alternative amalgamation.”.

### **Notice of ballot**

12. Section 158L of the Principal Act is amended—

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

“(1A) Where, under sub-section (1A) of section 158K, the Industrial Registrar is required to conduct 2 ballots of the members of an organization at the same time, one date shall be fixed as the commencing date of both ballots and one date shall be fixed as the closing date of both ballots.”;

(b) by inserting in sub-section (2) “or ballots” after “ballot” (first occurring);

(c) by omitting from paragraph (2) (a) “the amalgamation” and substituting “the proposed amalgamation and, if the scheme for that amalgamation contains an alternative provision, of each alternative amalgamation”;

(d) by omitting from paragraph (2) (b) “the amalgamation” and substituting “the proposed amalgamation or, if the scheme for that amalgamation contains an alternative provision, to the proposed amalgamation or any alternative amalgamation or any 2 or more of them”;

(e) by omitting from sub-section (2) “each ballot paper sent to a person entitled to vote at the ballot” and substituting “the ballot paper or ballot papers sent to a person entitled to vote at the ballot or ballots”; and

(f) by omitting from sub-section (3) “the amalgamation” (first occurring) and substituting “an amalgamation”.

13. Section 158N of the Principal Act is repealed and the following section is substituted:

**Determination of approval of amalgamation by members of organizations**

“158N. (1) Where, in compliance with sub-section (1) or (1A) of section 158K, the question of an amalgamation is submitted to a ballot in accordance with this Part, the amalgamation shall be taken to be approved at that ballot if, and only if, in that ballot— 5

(a) ballot papers are received by the person conducting the ballot, on or before the date fixed under sub-section (1) of section 158L as the closing date of the ballot, from— 10

(i) in the case of an amalgamation to which a declaration under section 158FA 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 15

(b) more than one-half of the members who record formal votes on those ballot papers vote in favour of the amalgamation.

“(2) Where the scheme for a proposed amalgamation contains an alternative provision, then, for the purposes of the application of paragraph (b) of sub-section (1) in relation to a ballot on the question of an alternative amalgamation, a member shall not be taken to record a formal vote in that ballot if he does not record a formal vote in favour of the proposed amalgamation. 20

“(3) For the purposes of sub-section (1), where a declaration under section 158FA applies to a proposed amalgamation the scheme for which contains an alternative provision, a declaration under that section shall be taken to apply to each alternative amalgamation. 25

“(4) For the purposes of this Part, the members of an organization shall be taken to have approved an amalgamation if, and only if—

(a) the amalgamation is approved at a ballot of those members in accordance with this Part; or 30

(b) under paragraph (b) of sub-section (8) of section 158K, those members are deemed to have approved that amalgamation.”

14. After section 158P of the Principal Act the following section is inserted:

**Approval of amalgamations**

“158PA. (1) Where the members of each of the organizations concerned in a proposed amalgamation approve that amalgamation, that amalgamation shall be taken to be approved for the purposes of this Part. 35

“(2) Where the members of any of the organizations concerned in a proposed amalgamation the scheme for which contains an alternative provision do not approve the proposed amalgamation, but, in the case of some of the 40



5 organizations so concerned (including, where one of the organizations so concerned is a party to the amalgamation otherwise than as a de-registering organization, that organization), the members of each of them approve both the proposed amalgamation and the amalgamation of their organization with any of the other organizations so concerned, an amalgamation involving the organizations the members of which so give their approval shall be taken to be approved for the purposes of this Part.”.

#### Action to be taken after ballots

10 15. Section 158Q of the Principal Act is amended—

(a) by omitting paragraph (1) (a) and substituting the following paragraph:

“(a) 30 days have expired since the declaration of the results of both or all of the ballots or, if there is only one ballot, the result of that ballot; and”;

15 (b) by omitting from paragraph (1) (b) “the last preceding section” and substituting “section 158P”; and

(c) by omitting from sub-section (1) “approved at the ballots” and substituting “approved for the purposes of this Part”.

#### Application of amendments

20 16. The amendments of Part VIIIA of the Principal Act made by this Act do not apply in relation to an amalgamation the scheme for which was submitted to the Industrial Registrar 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.





