

1993—No. 359

INDUSTRIAL RELATIONS ACT 1991—REGULATION
(Relating to ballot requirements for certain proposed amalgamations)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Industrial Relations Act 1991, has been pleased to make the Regulation set forth hereunder.

KERRY CHIKAROVSKI,
Minister for Industrial Relations and Employment.

The Industrial Relations Regulation 1992 is amended by inserting after clause 103 the following clause:

Ballot of members not required for certain amalgamations

103A. (1) The members of each existing organisation concerned in a proposed amalgamation under the Act (a "State amalgamation") are taken to have approved the amalgamation without the necessity for submission of the proposed amalgamation to ballot if the Industrial Registrar has certified that he or she is satisfied a sufficient ballot for that purpose has already been conducted under the Commonwealth Act in the course of a Federal amalgamation.

(2) The Industrial Registrar may issue such a certificate only if satisfied that:

- (a) the State amalgamation will result in an industry coverage by an amalgamated organisation that is identical or substantially similar to the industry coverage of the State branches of the Federal organisations concerned in the Federal amalgamation; and
- (b) for each Federal organisation concerned in the Federal amalgamation there is a State branch registered under the Commonwealth Act whose membership is identical or

substantially similar to an organisation concerned in the State amalgamation; and

- (c) the Federal amalgamation has been approved by a ballot in accordance with the Commonwealth Act and that ballot is not subject to any inquiry into alleged irregularities in relation to it; and
- (d) the members of the organisations concerned in the State amalgamation have been notified as provided by this clause that the Industrial Registrar is considering whether a certificate should be issued under this clause in relation to the proposed amalgamation, and of the effect of such a certificate; and
- (e) no proceedings seeking to prevent the State amalgamation are pending.

(3) The notice to members must specify a date (not earlier than 21 days after the date on which the notice is given) by which a member who wishes to object to the issue of a certificate under this clause must lodge his or her objection with the Industrial Registrar.

(4) The notice to members may be given in any of the following ways:

- (a) personally or by post addressed to the residential address of the member shown in the register of members of the organisation;
- (b) in any journal published by the organisation which is circulated generally to members of the organisation;
- (c) by publication in a newspaper circulating throughout the State.

(5) The Industrial Registrar must consider any objection to the issue of the certificate that is received within the time specified in the notice to members, before deciding whether to issue a certificate under this clause.

(6) The Industrial Registrar may give such directions and orders in relation to the variation of the provisions of Division 9 of Part 3 of Chapter 5 of the Act in their application to a State amalgamation that is the subject of a certificate under this clause as may be necessary or convenient by reason of the operation of this clause, and those provisions are varied accordingly.

(7) In this clause:

“Federal amalgamation” means an amalgamation or proposed amalgamation under the Commonwealth Act;

“Federal organisation” means an organisation registered under the Commonwealth Act;

“State organisation” means an organisation registered or recognised under the Act;

“the Commonwealth Act” means the Industrial Relations Act 1988 of the Commonwealth.

EXPLANATORY NOTE

Section 568 of the Industrial Relations Act 1991 provides that the regulations may vary the requirements of Division 9 of Part 3 of Chapter 5 (dealing with amalgamation of organisations), including exclusion or modification of any of those requirements, so far as they relate to a proposed amalgamation or a class of proposed amalgamations.

The object of this Regulation is to vary those provisions by providing that the members of certain amalgamating organisations are taken to have approved the amalgamation without the necessity for a ballot of members (which would otherwise be required by those provisions).

The amalgamating organisations concerned are those whose membership is identical or substantially similar to that of State branches of Federal organisations that have amalgamated, or propose to amalgamate, under the Industrial Relations Act 1988 of the Commonwealth and in respect of which a ballot of members has been held under that Act and approved of the amalgamation.

The Regulation will remove the necessity for the holding of a ballot under the State Act to approve a scheme already approved by ballot under the Commonwealth Act where the amalgamation concerned involves the same, or substantially similar, membership and industry coverage.

This Regulation is made under section 568 of the Industrial Relations Act 1991.
