

1980-1981

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Conciliation and Arbitration Amendment Bill 1981

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Industrial
Relations the Hon R I Viner MP)

OUTLINE

Conciliation and Arbitration Amendment Bill 1981

This Bill seeks to amend the Conciliation and Arbitration Act 1904 to:

- (i) provide a procedure whereby members of an organization at a particular place of work may apply for, and the Commission order, a secret ballot in respect of industrial action in which they have been directed or requested to participate;
- (ii) provide for technical amendments to certain provisions of the Act to overcome some apparent shortcomings within the Act; and
- (iii) provide for the appointment of members of the Commission to constitute the Industrial Appeals Tribunal of Christmas Island.

NOTES ON CLAUSES

SECRET BALLOTS

Clause 3 - amends section 5 to make it an offence for an employer to dismiss or disadvantage or threaten to dismiss or disadvantage an employee who makes, proposes, or has at any time proposed, to make an application for, or participates in, proposes, or has at any time proposed, to participate in a secret ballot under the amendments proposed in clause 6.

INDUSTRIAL APPEALS TRIBUNAL OF CHRISTMAS ISLAND

Clause 4 - inserts a new section 16A to provide the President with the power to designate members of the Commission to constitute the Industrial Appeals Tribunal of Christmas Island to hear and determine appeals from the Christmas Island Arbitrator. This proposed section will complement amendments to the Industrial Relations Ordinance 1976 of the Territory of Christmas Island which provide for the establishment, powers and functions of the Industrial Appeals Tribunal.

TECHNICAL AMENDMENTS

Clause 5 - amends section 35 to provide that an appeal against a decision of a Presidential Member under section 142A, in respect of representation of employees by an organization, may be made by a person or organization aggrieved by the decision.

SECRET BALLOTS

Clause 6 - proposes an amendment to section 45 of the Act by the amendment of sub-section 3 and the addition of

sub-sections 45(3A)-(3P) inclusive and 45(5)-(8) inclusive, and proposes certain contingent changes of a technical nature.

At present, section 45 basically enables the Conciliation and Arbitration Commission (constituted by a Presidential Member or a Full Bench) to order a secret ballot of members of an organization (or a branch) to ascertain their views or attitude where the Commission believes that could help to prevent or settle an industrial dispute or industrial action.

The proposed amendments provide a method whereby a prescribed number of members of an organization at a particular place of work can apply to the Commission for a secret ballot of relevant members of the organization at that place of work in respect of a direction or request to engage in industrial action. A Presidential Member of the Commission will hear such an application and give appropriate directions. Where the Presidential Member forms the view that the application should not be granted the application is referred to the President for determination.

New sub-section 45(3A) permits only members of an organization, or a branch of the organization, employed by a particular employer at a particular place of work who are directed or requested to engage in industrial action to apply to the Commission for a secret ballot.

New sub-section 45(3B) fixes the minimum number of applicants at 250 or 5% of the relevant members of the organization, whichever is the lesser, (but in no case less than 4 members) at the place of work concerned.

It is also made clear that the applicants must all belong to the one organization, and work for the same employer at the one place of work. This permits particular work groups to indicate their desire to opt out of industrial action.

New sub-section 45(3C) prohibits wilfully false applications to the Commission for secret ballots.

New sub-section 45(3D) requires that a secret ballot shall be ordered by the Commission in respect of an application made under sub-section 45(3A).

New sub-section 45(3E) enables the Commission to determine that it ought to refuse to grant an application made under sub-section 45(3A) where it forms the view that a ballot would not encourage or assist the cessation or prevention of the industrial action or the industrial dispute giving rise to the industrial action. In such a case the application will then be referred to the President who is required either to confirm the view of the Commission and refuse the application or make an appropriate order for a ballot to be conducted.

New sub-section 45(3F) enables the Commission to determine that it ought to refuse to grant an application made under sub-section 45(3A) where it forms the view that the industrial action has ceased, its cessation is imminent or it is not likely to occur. In such a case the application will then be referred to the President who is required either to confirm the view of the Commission and refuse the application or make an appropriate order for a ballot to be conducted.

New sub-section 45(3G) provides that only a Presidential Member will be able to consider an application for a ballot at a place of work.

New sub-section 45(3H) permits a consistent approach to be taken to the applications emanating from the one place of work by enabling the same Presidential Member to deal with all the applications at the discretion of the President.

New sub-section 45(3J) permits the Commission to order a wider ballot under sub-sections 45(1) or (2) where one or more applications are made under sub-section 45(3A).

New sub-section 45(3K) provides that all matters relating to the conduct of the ballot are to be dealt with in directions given by the Commission.

New sub-section 45(3L) provides for appropriate consultation between the Commission and the Industrial Registrar or the Australian Electoral Office before directions relating to the conduct of the ballot are given.

New sub-section 45(3M) precludes the Commission from ordering a ballot under sub-section 45(3D) in respect of industrial action that is in breach of a bans clause in an award.

New sub-section 45(3N) provides that the Commission may revoke an order for a ballot made in relation to an application under sub-section 45(3A) any time before a vote is taken in a ballot, if the Commission forms the view that the industrial action has ceased or its cessation is imminent or it is not likely to occur.

New sub-section 45(3P) ensures that each application, which under sub-section 45(3B) could only be made by members of the same organization employed by the same employer at the one place of work, that is successful under sub-section 45(3D) leads to a ballot confined to those members.

New sub-section 45(5) permits entry of places of work; inspection or viewing of work, plant, records, etc; and the interviewing of employees, to permit proper arrangements to be made for the conduct of a ballot.

New sub-section 45(6) makes it an offence to make false or misleading statements in interviews conducted pursuant to sub-section 45(5).

New sub-section 45(7) deems a direction or request to engage in industrial action that is made by a committee of management or by an officer or officers, or by a member or a group of members acting pursuant to the rules of the organization or branch to be a direction or request of the organization or branch concerned.

New sub-section 45(8) defines the terms 'industrial action' and 'place of work' for the purposes of section 45.

'Industrial action' extends the definition of "industrial action" in sub-section 4(1) of the Act, to the situation where industrial action occurs in connection with an industrial dispute before an award is made prescribing, wholly or partly, the terms and conditions of work affected by the industrial action.

'Place of work' is defined to include any place at which employees are required to report by one means or another for the purposes of being allocated work or directed in their employment by their employer. This is designed to assist the Commission to identify the place of work of mobile employees such as aircrew.

Clause 7 - amends section 45A by adding new sub-sections 45A(1A), (4) and (5).

Sub-clause (a) inserts sub-section 45A(1A) which restricts the Commission to directing an officially conducted ballot where the ballot is ordered under proposed sub-section 45(3D).

Sub-clause (b) is an amendment of style.

Sub-clause (c) inserts new sub-sections 45A(4) and (5).

New sub-section 45A(4) requires written notification to be given of the result of a ballot to all those who were eligible to vote in a ballot under section 45, their organization and their employer or employers.

New sub-section 45A(5) provides that where the Commission forms the view that the majority of members who recorded a valid vote in the ballot are not in favour of engaging in industrial action, the notice issued under sub-section(4) is to include a statement of the view formed by the Commission.

Clause 8 - inserts new sections 45B and 45C into the Act.

New section 45B requires the Commission in conciliation or arbitration proceedings before it that are associated with a matter upon which a section 45 secret ballot has been conducted, to have regard to the result of the ballot.

New section 45C provides in sub-section 45C(1) that where a notice of the kind specified by sub-section 45A(5) is issued, a member of an organization or of a branch of an organization who was eligible to vote in the ballot is not required to obey a direction or request to engage in or support the industrial action concerned, notwithstanding any rule or practice of the organization or branch concerned.

New sub-section 45C(2) deems, for the purposes of section 45C that a direction or request to members to engage in industrial action that is made by a committee of management or by an officer or officers, or by a member or a group of members acting pursuant to the rules of the organization or branch to be a direction or request of the organization or branch concerned.

Clause 9 - contains a consequential amendment to section 46.

TECHNICAL AMENDMENTS

Clause 10 - contains an amendment to the definition of the term "employee" in section 76 which is consequential upon amendments in 1979 to the Snowy Mountains Hydro-electric Power Act 1949.

Clause 11 - amends section 106 to provide that notice of a proposed intervention by the Attorney-General in the public interest in a matter before the Federal Court shall be given to the Registrar of the Federal Court and not the Industrial Registrar as the section currently provides.

Clause 12 - amends sub-section 118B(2) to provide that a matter arising under Part VIII AA - Accounts and Audit in respect of Registered Organizations - which is before a Full Court of the Federal Court of Australia is not appealable to the High Court.

Clause 13 - proposes an amendment to section 132 of the Act by correcting the citation of the Western Australian Industrial Arbitration Act 1979 in sub-section (4)(b)(iv).

Clause 14 - amends section 142A to correct a reference within that section.

Clause 15 - amends section 158V to insert the correct citation of the Western Australian Industrial Arbitration Act 1979.

SECRET BALLOTS

Clause 16 - amends section 188 to provide that it shall be an offence for an organization either to take action to deter a person from making application for a secret ballot under section 45 or to penalize a member who acts or proposes to act in respect of applying for or participating in a secret ballot under section 45.

Certain consequential amendments to section 188 contingent on the amendment of section 5 by clause 3 are also made.

TECHNICAL AMENDMENT

Clause 17 - amends section 4(Interpretation) by way of a Schedule to the Bill to re-arrange the terms defined in that section into strict alphabetical sequence.

