

1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Conciliation and Arbitration Amendment Bill 1983

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Employment and Industrial Relations
the Hon Ralph Willis MP)

OUTLINE

CONCILIATION AND ARBITRATION AMENDMENT BILL 1983

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

- (i) abolish the Industrial Relations Bureau and establish an Arbitration Inspectorate within the Department of Employment and Industrial Relations; and
- (ii) facilitate the amalgamation of organizations registered under the Act.

NOTES ON CLAUSES

ABOLITION OF THE INDUSTRIAL RELATIONS BUREAU AND ESTABLISHMENT
OF INSPECTORS

Clause 3

- . amends section 4 by adding the definition of "Inspector". This is consequential upon the establishment of Inspectors under new section 125 proposed in clause 7.

Clause 4

- . amends section 45A dealing with secret ballots. It is a technical amendment to enable secret ballots relating to industrial action to be conducted by a member of the staff of the Australian Electoral Office where the Commission directs the Industrial Registrar to arrange for the conduct of such ballot. This will bring it into conformity with other provisions of the Act dealing with the conduct of ballots by the Australian Electoral Office.

Clause 5

- . repeals section 54 and substitutes a new section 54. Existing section 54 empowers a member of the Conciliation and Arbitration Commission to request the Industrial Relations Bureau to investigate and report on safety matters at a workplace which arise in connection with industrial disputes. The proposed new section 54 provides for Inspectors to have responsibility for safety inspections when directed by the Commission.

Clause 6

- . amends section 119 by substituting an Inspector for the Bureau as the body empowered to take action for the imposition of penalties for breaches of awards. This is consequential upon the amendments proposed in clauses 7 and 9 to establish Inspectors and abolish the Industrial Relations Bureau.

Clause 7

- . inserts a new section 125 which establishes Inspectors to secure the observance of the Act, the Regulations and awards. Section 125 provides for:
 - the appointment by the Minister or a person authorized by him of Inspectors who are to be officers of the Public Service;
 - the duties of Inspectors to be as the Minister directs;
 - arrangements with State appointed Inspectors to operate within the Federal jurisdiction on a reciprocal basis;
 - appropriate powers for Inspectors to enter buildings etc, interview persons and inspect documents etc for the purpose of ascertaining whether awards and the requirements of the Act and Regulations are being observed;
- . the Secretary of the Department to furnish the Minister with a Report for tabling each year.

Clause 8

- . amends section 126 to empower the Commission to direct an Inspector to institute proceedings for offences against the Act or for the recovery of penalties for breaches of awards other than breaches of bans clauses. This is consequential upon the establishment of Inspectors proposed in clause 7.

Clause 9

- . repeals Part VIA which provides for the establishment and general powers of the Bureau.

Clause 10

- . amends section 132B to enable the Industrial Registrar to take the place of the Bureau in respect of applications to the Federal Court for declaration as to whether persons are disqualified from holding or being eligible for office in an organization by virtue of having been convicted of a prescribed offence.

Clause 11

- . amends section 158AH dealing with accounts and financial statements of organizations. Under existing section 158AH, where any deficiencies, failures or shortcomings are revealed in accounts or statements filed by an organization with the Industrial Registrar, the Registrar is required to refer those matters to the Bureau for investigation.

There is also provision for members of an organization to request the Bureau to investigate the finances and financial administration of the organization. The Bureau is empowered, upon conclusion of its investigations, to request the organization to rectify the matter. The effect of the proposed amendments is to give to the Registrar those powers of investigation and rectification currently exerciseable by the Bureau.

AMALGAMATIONS

Clause 12

- . amends section 158A by adding definitions of three new terms: "alternative amalgamation", "alternative provision" and "proposed amalgamation". As a consequence of the proposed introduction of provisions to enable a scheme for a multi-organization amalgamation to provide for an alternative amalgamation, the new terms are necessary to differentiate the alternative amalgamation from other amalgamations.

The introduction of these new terms has necessitated consequential amendments to several sections in Part VIII A.

Clauses 13 and 14

- . amend sections 158D and 158E respectively to take account of the term "proposed amalgamation".

Clause 15

- . amends section 158F to permit a scheme involving a multi-organization amalgamation to provide for an amalgamation to proceed for those organizations which have endorsed it at a ballot in accordance with the Act despite the fact that in that ballot one or more of the other organizations does not approve the amalgamation.

Clause 16

- . adds a new section 158FA to provide that a Full Bench of the Commission, on the application of organizations who have, on the same day lodged a scheme of amalgamation, may declare that the proposed amalgamation is in the public interest and that there is a community of interest between the organizations.

New sub-sections 158FA(2) and (3) provide a set of criteria to which a Full Bench of the Commission must have regard when determining whether a community of interest exists between the organizations, whether of employees or employers, that are proposing to amalgamate.

Clause 17

- . amends section 158G to provide that where an application is made for a declaration of community of interest under the proposed section 158FA at the same time as the lodgement of the scheme of amalgamation under section 158F, the Registrar shall publish the scheme in the Gazette only after the application under section 158FA has been determined by the Commission.

Clauses 18 and 19

- . propose consequential amendments to sections 158H and 158J respectively to ensure consistency of terminology with the other provisions of Part VIII A.

Clause 20

- . amends section 158K to provide, in new sub-sections (1a), (2A) and (2B), that where a scheme for a multi-organization amalgamation provides for an alternative amalgamation to occur, the Industrial Registrar is to arrange for the conduct of a ballot on the alternative amalgamation together with the ballot on the proposed amalgamation, and that the ballot on the alternative amalgamation will only be counted if it is necessary for the result of that ballot to be known.

The amendment to paragraph 158K(2)(a) proposed in sub-clause 17(d) is a technical amendment to enable an amalgamation ballot to be conducted by a member of the staff of the Australian Electoral Office where the Registrar arranges for the conduct of the ballot by that Office. This will bring it into conformity with other provisions of the Act dealing with the conduct of ballots by the Australian Electoral Office.

Section 158K is further amended by replacing existing sub-sections (4) and (5) with new sub-section (4), and amending sub-section (8).

New sub-section (4) provides that the roll of voters in an amalgamation ballot will be those persons who, as at one month prior to the ballot, were eligible under the rules of the organization to vote in an amalgamation ballot or, where the rules do not so provide, eligible under the rules to vote in an election. Existing sub-sections (4) and (5) provide that the roll of voters consists of those persons who were members of the organization on the day on which the Industrial Registrar gave his approval under section 158J for the amalgamation to be submitted to ballot.

Existing sub-section (7) enables an absorbing organization in an amalgamation to gain an exemption from a ballot of its members where the total membership of the organization(s) being absorbed in the amalgamation is less than 5% of the membership of the absorbing organization. The amendment to sub-section (8) provides that where an organization is granted an exemption under sub-section (7) the proposed amalgamation will be deemed to have been approved by the members of that organization.

Clause 21

- amends section 158L to provide that where a scheme for a proposed multi-organization amalgamation provides for an alternative amalgamation the ballots on both questions are to be conducted at the same time.

Section 158L is to be further amended to provide that the statements presenting arguments for and against the proposed amalgamation are to take account of any alternative amalgamations which may occur.

Clause 22

- . amends section 158N, which requires that, for an amalgamation to be approved, in each organization in which ballot is conducted at least one half of the persons on the roll of voters must vote and, of those voting formally, more than one half must vote in favour of the amalgamation. The effect of the amendment is that, for a proposed amalgamation in respect of which the Commission has made a "community of interest" declaration under new section 158FA proposed in clause 13, only one quarter of the persons on the roll of voters is required to vote, and of those voting formally at least one half must vote in favour of the amalgamation.

New sub-section (2) provides that in respect of a multi-organization amalgamation under section 158F(1A) the ballot in relation to the alternative amalgamation shall be only taken from members voting in favour of the proposed amalgamation.

Clause 23

- . inserts a new section 158PA to provide that where a scheme of amalgamation proposes a multi-organization amalgamation under section 158F(1A) then the amalgamation will be approved for those organizations who approve of the amalgamation at ballot even though one or more of the other organizations fail to approve the amalgamation at ballot.

Clause 24

- . proposes consequential amendments to section 158Q to ensure consistency of terminology with other proposed provisions dealing with amalgamations.

Clause 25

- . amends section 160 dealing with applications for inquiries into alleged irregularities in elections. Existing section 160 provides that, for the purposes of deciding whether to refer an application to the Court, the Industrial Registrar may refer the application to the Bureau for inquiry and report. Under the proposed amendments, the Registrar or a person acting on his behalf will inquire into the alleged irregularities instead of the Bureau.

Clause 26

- . amends section 162A. This is an amendment to a reference consequential upon the amendments proposed in clause 25.

Clause 27

- . proposes amendments, as contained in the Schedule to the Bill, to provisions throughout the Act which presently give the Bureau specific powers and responsibilities and awards. These amendments are consequential upon the abolition of the Bureau through the repeal of Part VIA proposed in clause 9.

TRANSITIONAL PROVISIONS

Clause 28

- . contains a transitional provision to ensure that the proposed amendments concerning amalgamations will only apply to schemes of amalgamations submitted to the Industrial Registrar after the proposed amendments have been proclaimed to come into effect.

Clause 29

- . contains transitional provisions which are necessary as a consequence of the abolition of the Bureau.

Sub-clause (1) is designed to enable any proceedings which have been instituted by the Bureau prior to the coming into operation of the proposed amendments to be proceeded with. Proceedings under section 132B in respect of applications to the Federal Court for declaration as to whether persons are disqualified from holding or being eligible for office in an organization by virtue of having been convicted of a prescribed offence will be proceeded with by the Industrial Registrar. Any other proceedings may be continued by a person designated by the Minister or by a person authorized by him.

Sub-clause (2) enables an Inspector, in accordance with his powers and duties under section 125 proposed in clause 7, to take proceedings in relation to offences or breaches which have occurred prior to the commencement of the section.

Sub-clause (3) will allow the Public Service Board to arrange for officers of the Bureau who are unattached officers of the Australian Public Service following the abolition of the Bureau to become unattached officers of a Department. This is designed to ensure that a Department has administrative responsibility for these officers, including in respect of their redeployment.