

1981

THE SENATE

CONCILIATION AND ARBITRATION AMENDMENT BILL (NO. 2) 1981

EXPLANATORY MEMORANDUM

(Circulated by Senator John Button)

Conciliation and Arbitration Amendment Bill (No. 2) 1981

The Bill amends Part VIIIA of the Conciliation and Arbitration Act 1904 (sections 158A to 158U) to facilitate the amalgamation of organizations registered under the Act.

Existing Part VIIIA sets out a process for amalgamations as follows:

- the committee of management of each organization involved passes a resolution proposing amalgamation (section 158D)
- where a new organization will be created (rather than smaller organizations becoming part of an existing organization) the organizations concerned shall form an association in accordance with the requirements for registration, including rules (section 158E)
- all organizations (and any association formed under section 158E) submit a scheme of amalgamation to the Industrial Registrar setting out the rules of proposed new organizations and applying for approval under section 158J to submit the scheme to ballot (section 158F)
- if the Industrial Registrar is satisfied that the requirements of the legislation so far are complied with, he publishes details of the scheme in the Gazette (section 158G)
- objections may be made to the proposal insofar as it involves registration, change of name, alteration of rules or deregistration. These are heard by the Registrar (section 158H).

- . if the Registrar finds that the objections are unfounded and the amalgamation is otherwise in accordance with the legislation, he approves the submission of the amalgamation to ballots. If not he may decide not to approve or to approve subject to the making of alterations (section 158J)
- . ballots are conducted of all members of the organizations involved (members who are unfinancial for 12 months before the ballot are excluded)
- . these are secret postal ballots and are conducted by the Registrar or his staff or by the Electoral Office.
Exemptions from ballots may be granted where an existing organization, which is not being deregistered and into which another organization or organizations are to be subsumed, will not increase in size by more than 5% of its existing membership (section 158K)
- . statements supporting and opposing the amalgamation may be made and shall accompany the ballot-papers (section 158L)
- . the amalgamation is approved by an organization if at least half of the eligible voters return their ballot-papers and more than half of these are in favour (section 158N)

The Bill proposes three main changes to facilitate amalgamations:

- . where there are three or more organizations, the scheme may include an alternative provision which allows amalgamation of such of the organizations as approve amalgamation, even if not all of them do so (new sub-sections 158F (1) and (2))

- provision for a declaration by a Full Bench of the Conciliation and Arbitration Commission that the proposed amalgamation is in the public interest (new section 158FA) coupled with a reduction, in the percentage of voters who must return their ballot-papers, from one-half to one-quarter, where such a declaration is made (new sub-paragraph 158N (1) (a) (i))
- a change in voting entitlements from financial membership to entitlement (one month before the ballot commences) under the rules of the organization concerned to vote in any ballot

Notes on clauses

- Clause 1: Short title etc
- Clause 2: The Act will operate from Royal Assent
- Clause 3: The new process, enabling voting on alternatives to a scheme of amalgamation, requires new definitions in section 158A of 'alternative amalgamation', 'alternative provision' and 'proposed amalgamation'
- Clauses 4 and 5: As a consequence of the new concept of 'alternative amalgamations' references to "the amalgamation" are changed to "the proposed amalgamation" in section 158D (which requires a vote by each committee of management as a first step) and section 158E (which deals with cases where a new organization must be registered as part of an amalgamation)

- Clause 6 amends section 158 (F)
- paragraph (a): in sub-section (1) a consequential amendment
is made because of the new definitions
- paragraph (b): new sub-section (1A) allows the scheme for a
proposed amalgamation of three or more
organizations to contain an alternative
provision that allows some of the
organizations to amalgamate, if they approve
the scheme with the alternative provision at a
ballot, even if other organizations involved
do not.
new sub-section (1B) sets out the particulars
which must accompany a scheme containing an
alternative provision.
- Clause 7: new section 158FA enables all the existing
organizations to a proposed amalgamation to
apply to a Full Bench of the Conciliation and
Arbitration Commission for a declaration that
the amalgamation is in the public interest. A
Full Bench must be satisfied that the
amalgamation would further the objects of the
Act and that there is a community of interest
between the organizations.
- Clause 8 amends section 158 (G)
- paragraph (a): the paragraph amends sub-section (1), dealing
with gazettal of a scheme, to include a
reference to an application for a declaration
from a Full Bench, as a matter to be concluded
before gazettal can proceed.

paragraph (b): consequential on the insertion of new section 158(FA).

paragraph (c) amends sub-section (2) to take into account that a scheme may relate to a proposed amalgamation and one or more alternatives.

Clauses 9 and 10: consequential amendments to section 158H (dealing with objections) and section 158J (dealing with approval by the Registrar) to take account of the new terminology.

Clause 11 amends section 158K

paragraph (a): consequential amendment to take account of the new terminology

paragraph (b): new sub-section (1A) requires a ballot on alternative amalgamations to be conducted simultaneously with the ballot for a proposed amalgamation

paragraph (c): consequential on the insertion of sub-section 1(A)

paragraph (d): new sub-section (2A) provides that where there is more than one ballot-paper they shall be on the same piece of paper.

new sub-section (2B) provides that ballots for alternative amalgamations will only be counted when the result is needed (i.e. if the proposed amalgamation has failed)

- paragraph (e): consequential on there possibly being more than one ballot-paper
- paragraph (f): adds a new condition to those applying for exemptions from a ballot - any deregistering organization involved must be less than 5000 members (Note: these organizations would have to vote but it would mean that once organizations became very large, so that 5% of their membership was still a substantial number of people, the members would be involved in a ballot when new organizations were added to them, unless the new organizations were very small (less than 5000 people)
- paragraph (j): makes it clear that where an organization is exempted from a ballot, it shall be deemed to have approved a scheme including any alternative amalgamation
- Clause 12 amends section 158L
- paragraph (a): under new sub-section (1) one date is fixed for the beginning and end of each ballot where there are alternative provisions in a scheme and two or more ballots are thus required
- paragraph (c): organizations may lodge statements in support of a proposed amalgamation and any alternative amalgamations
- paragraph (d): 5% (or 250) of the members may lodge statements of opposition to the proposed amalgamation and any alternative amalgamations

- paragraph (e): takes into account that statements in support of objection may be attached to more than one ballot paper
- Clause 13: under new section 158(N) members of an organization are taken to have approved a ballot where at least half the members on the roll return their ballot-papers and of these one-half were in favour.
Where a Full Bench has declared that a proposed amalgamation is in the public interest, only one-quarter of those enrolled need return their ballot papers
- Clause 14: new section 158(PA) sets out the circumstances in which a proposed amalgamation or an alternative amalgamation is deemed to be approved
- Clause 15 amends section 158Q
- paragraph (a): amends sub-section (1) to include a reference to situations where there is only one ballot (e.g. where the non-deregistering organization is exempt from a ballot)
Note: This does not appear to be consequential upon other changes but only a clarification of the existing provision
- paragraph (b): consequential on the insertion of new section 158PA
- paragraph (c): makes it clear that an approval can be deemed where a non-deregistering organization is exempted from a ballot
- Clause 16: the amendments do not apply to amalgamations where the scheme was already submitted before commencement

