CONCILIATION AND ARBITRATION AMENDMENT BILL 1981

Date Introduced: 14 May 1981
House: House of Representatives
Presented by: Hon. Ian Viner M.P., Minister for Industrial Relations

Short Digest of Bill

Purpose

To provide the machinery for rank and file workers to call for a secret ballot.

Background

The proposed amendments are in accord with a number of changes made to the Conciliation and Arbitration Act 1904 during the past five years, which the Government sees as having the common theme of strengthening the rights of individual unionists against the central authority of officials. Also underlying the proposed changes is a belief that secret ballots may reduce the incidence or duration of industrial action — for example, by removing the possibility of intimidation or coercion which could occur at public meetings, and by encouraging more people to be involved in making decisions, rather than the small number who regularly attend union meetings and who are often considered to be more militant than the membership as a whole.

Secret ballots have been the subject of considerable controversy. Unions have argued that most empirical evidence suggests they extend rather than reduce strike time, are costly and time consuming, and an unwarranted intrusion into internal union affairs. Employers have expressed fears that a secret ballot which results in majority support for starting or continuing a strike may give a badge of legitimation to the strike, and that militant unionists may request a secret ballot and thereby lengthen strikes.

Since 1928 section 45 of the Act has allowed the Commission to order a secret ballot if it believes a ballot could help settle a dispute. While the section provides for the Commission to order a ballot on its own initiative, in practice employers and unions have requested it to conduct ballots. The provision is understood to have been used only five times since 1928.
In 1980 the Commonwealth Government drafted amendments to existing legislation on secret ballots, but deferred action on the proposed amendments until 1981 to allow more time for discussion and to overcome constitutional difficulties.

Main Provisions

The main purpose of the proposed changes is to give rank and file workers the right to call for a secret ballot, but certain amendments apply to both this proposed new right and the existing secret ballots legislation, and thereby strengthen the existing provisions considerably.

The proposed changes in new sub-section 45(3A) allow a group of employees the right to call for a secret ballot, if they are directed or requested to take part in industrial action by their union. All of the applicants must be members of the same organisation, and be employed by the same employer at the same place. New sub-section 45(3B) fixes the minimum number of applicants at 250 or five per cent of the relevant members (whichever is the lesser, but no fewer than four people).

Upon receiving an application the Commission is required under new sub-section 45(3D) to order a ballot, unless the Commission decides that a ballot would not help to end or prevent a strike or other industrial action [new sub-section 45(3E)]. In this case the decision must be automatically reviewed by the President of the Commission, (unlike the existing secret ballot provisions under which there is no review of the Commission's decision).

The Commission may also refuse a ballot application if it believes the industrial action to which the application relates has ceased, is about to cease or is not likely to take place [new sub-section 45(3F)]. Again, such a refusal is subject to automatic review by the President of the Commission.

New sub-section 45(3M) prohibits the Commission from ordering a ballot if the industrial action concerned is breaching a 'bans' clause in an award, and new sub-section 45(3N) allows the Commission to revoke a ballot order if the industrial action concerned has or is about to cease, or is not likely to take place.

'Place of Work' and 'Industrial action' are defined in new sub-section 45(8) for all of section 45, and the definition of 'Industrial action' extends that used in the rest of the Act to include action in relation to industrial disputes (before an award has been made).
Sub-clause 7(a) amends section 45A of the Principal Act by requiring the Commission, when it orders a secret ballot as a result of an application by employees, to direct the Industrial Registrar to make arrangements for the ballot. (Under the existing legislation, the Commission may direct the Industrial Registrar or the organisation concerned to make arrangements for the conduct of a ballot initiated by the Commission). However, new sub-section 45(3J) would allow the Commission, when considering an application made by employees, to order a secret ballot under existing sub-sections 45(1) or (2), rather than under new sub-section 45(3D).

The powers of the Commission are extended for the purposes of section 45 (i.e. for both employee and Commission - initiated ballots) by new sub-section 45(5). This allows a Commissioner or an authorised representative to enter any premises, interview any employee and inspect any work, machinery, documents etc. during working hours.

Clause 8 inserts a new section, 45B, which requires the Commission to have regard to ballot results (whether initiated by the Commission or by an employees application in any related conciliation and arbitration proceedings before it).

New sub-section 45(4) requires the Commission to order the Industrial Registrar to write a notice to eligible persons, the organisation and the employer of the results of an employee or Commission initiated ballot. However, in cases where the ballot was a result of an employee application and the majority of balloted members were not in favour of engaging in the industrial action concerned, the notice must also include a statement of the Commission's view that the majority of balloted members were not in favour of the industrial action [new sub-section 45(5)].

When a notice containing the Commission's view is issued new section 45C then allows notified members to legally disobey a direction or request from their union or organisation to engage in or support the industrial action concerned.

Clause 3 extends the protection given to employees under section 5 of the Act, by making it an offence for an employer to injure or dismiss or disadvantage an employee who participates in or requests a secret ballot. Similarly, clause 16 amends section 188 of the Principal Act through the addition of new paragraphs 188[1](f) & (g), which prevent an organisation from taking any action or imposing any penalty which will deter a person from participating in or requesting a secret ballot.
The Bill also contains a number of technical amendments, and provides for the appointment of members of the Commission to constitute the Industrial Appeals Tribunal of Christmas Island.

For further information, if required, contact:

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