

LEGISLATIVE ASSEMBLY

Read 1^o 9 September 1981

(Brought in by Mr Ramsay and Mr Maclellan)

A BILL

To amend the *Industrial Relations Act 1979* to make Provision for the Conduct of Secret Ballots with respect to Industrial Disputes.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1. (1) This Act may be cited as the *Industrial Relations (Secret Ballots) Act 1981*. Short title.

(2) The *Industrial Relations Act 1979* is in this Act referred to as the Principal Act. Principal Act No. 9365.

10 (3) This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*. Commencement.

15 2. In section 1 (3) of the Principal Act for the expression "Part XI.—Offences and Penalties ss. 98–105" there shall be substituted the expression—

"Part XI.—Secret Ballots ss. 98–107.

Part XII.—Offences Penalties Regulations, &c. ss. 108–115."

New Part inserted.

3. For the heading preceding section 98 of the Principal Act there shall be substituted the following headings and sections:

PART XI.—SECRET BALLOTS

Interpretation.

98. For the purposes of this Part—

“Industrial action.”

“Industrial action” means—

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(a) a failure or refusal by persons to attend for work or failure or refusal to perform any work at all by persons who attend for work; or

(b) any action in connexion with an industrial dispute, being—

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(i) the performance of work in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, the result of which is a restriction or limitation on, or a delay in, the performance of the work; or

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(ii) a ban, limitation or restriction on the performance of work or on acceptance or offering for work—

but does not include the performance of work in a manner, the adoption of a practice, ban, limitation or restriction, or failure or refusal, that is authorized by the employer of the persons concerned.

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“Place of work.”

“Place of work” in relation to any group of employes of an employer, includes any place at which the employes included in that group are required to report (whether in person or by telephone or any other form of communication) for the purpose of being allocated work by the employer or for any other purposes connected with the carrying on of the business of the employer.

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Secret ballot may be ordered.

99. (1) Where—

(a) an industrial association is a party to or concerned in an industrial dispute with which the Commission or a Board is empowered to deal (whether or not proceedings in relation to the dispute are before the Commission or such a Board); and

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(b) the Commission thinks that the prevention or settlement of the dispute would or might be encouraged or assisted by ascertaining the views or attitude of the members, or

of

of a section or class of the members, of the industrial association or of a branch of the association in relation to the matter—

5 the Commission may order that a vote of those members, or of the members included in that section or class, for the purpose of ascertaining their views or attitude in relation to that matter, be taken by secret ballot (with or without provision for absent voting) in accordance with directions given by the Commission.

(2) Where it appears to the Commission—

- 10 (a) that industrial action is being taken or the taking of industrial action is threatened, impending or probable; and
- 15 (b) that the cessation or prevention of the industrial action or the settlement of matters giving rise to the industrial action would or might be encouraged or assisted by ascertaining the views or attitude of the members or of a section or class of the members, of the industrial association concerned, or of a branch of that association in relation to a matter—

20 the Commission may order that a vote of those members, or of the members included in that section or class, for the purpose of ascertaining their views or attitude in relation to that matter, be taken by secret ballot (with or without provision for absent voting) in accordance with directions given by the Commission.

25 (3) The powers of the Commission under sub-sections (1) and (2) (including the power to revoke an order made under either of those sub-sections) are exercisable by the Commission in Full Session and not otherwise.

(4) Where—

- 30 (a) the members, or members included in a section or class of the members, of an industrial association or of a branch of an industrial association are directed or requested by the industrial association or by the branch to engage in industrial action; and
- 35 (b) the members to whom that direction is given or that request is made are, or include, persons who are employed by a particular employer at a particular place of work—

40 such of the persons so employed as wish to do so may, subject to sub-section (5), make application to the Commission for an order by the Commission under sub-section (7).

(5) An application shall not be made under sub-section (4) unless—

- 45 (a) all the applicants are members of the same industrial association employed by the same employer at the same place of work; and

(b) the

(b) the number of the applicants is not less than—

(i) 250 or a number equal to 5 per centum of the number of members of the industrial association employed by the employer at the place of work, whichever is the lesser number; or 5

(ii) 4, if the lesser number referred to in sub-paragraph (i) is less than 4.

Joining in application known to be false, &c.

(6) A person shall not join with other persons in making an application under sub-section (4) if the application includes a statement that, to his knowledge, is false or misleading in a material particular. 10

Penalty: \$1000.

Power to order secret ballot on application under section 98 (5).

(7) Subject to this section the Commission shall, upon application made to it under sub-section (4), order that a vote of members to whom the application relates for the purpose of ascertaining whether or not they support the industrial action to which the application relates be taken by secret ballot in accordance with directions given by the Commission. 15

Referral or refusal of application.

(8) Where the Commission, in considering an application made to it under sub-section (4), forms the view that the cessation or prevention of the industrial action, or the settlement of the matters giving rise to the industrial action, to which the application relates would not be encouraged or assisted by ascertaining the views or attitudes of the members to whom the application relates, the Commission shall— 20
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(a) where the Commissioner constitutes the Commission—refer the application to the President for further consideration under this section by the Commission constituted by the President; or

(b) where the President constitutes the Commission (whether by virtue of a reference under paragraph (a) or otherwise)—refuse to grant the application. 30

(9) Where the Commission, in considering an application made to it under sub-section (4), forms the view that, by reason that—

(a) the industrial action to which the application relates has ceased; 35

(b) the cessation of the industrial action to which the application relates is imminent; or

(c) the

- (c) the industrial action to which the application relates is not likely to take place—

the application should be refused, the Commission shall—

- 5 (d) where the Commissioner constitutes the Commission—refer the application to the President for further consideration under this section by the Commission constituted by the President; or

- 10 (e) where the President constitutes the Commission (whether by virtue of a reference under paragraph (d) or otherwise)—refuse to grant the application.

(10) Where more than one application is made to the Commission under sub-section (4) in relation to a particular place of work, the President may assign the applications for consideration by a Commissioner.

Where more than one application.

- 15 (11) Where, in considering an application made to it under sub-section (4), it appears to the Commission that, in the circumstances that have given rise to the making of the application, it would be appropriate to make an order for a secret ballot under sub-section (1) or (2) rather than under sub-section (7), the
20 Commission may make such an order under sub-section (1) or (2) instead of making such an order under sub-section (7).

(12) Directions given by the Commission under sub-section (1), (2) or (7) shall provide for all matters relating to the ballot, including the following matters:

Content of directions.

- 25 (a) The question or questions to be put to the vote;
(b) The eligibility of persons to vote;
(c) The conduct of the ballot generally.

- 30 (13) Before giving a direction under sub-section 12 (c) relating to the conduct of a ballot the Commission shall consult with the registrar or, if the Chief Electoral Officer is to arrange for the conduct of the ballot, with the Chief Electoral Officer.

Consultations as to conduct of ballot.

(14) Where—

- 35 (a) the Commission, upon an application made to it under sub-section (4) has made an order for a secret ballot under sub-section (1), (2) or (7); and
(b) before the vote is taken, the Commission forms the view that, by reason that—
(i) the industrial dispute concerned has been settled or the industrial action concerned has ceased;

Power to Commission to revoke order for secret ballot.

(ii) the

(ii) the settlement of the industrial dispute concerned, or the cessation of the industrial action concerned, is imminent; or

(iii) the industrial action concerned is not likely to take place—

the secret ballot should not be proceeded with, the Commission shall revoke the order for the secret ballot.

Construction.

(15) A reference in this section to members to whom an application under sub-section (4) relates shall be read as a reference to the members of the association, or of the branch, referred to in the application, or such of those members as are included in a particular section or class referred to in the application, who—

(a) are employed by the employer referred to in the application at the place of work referred to in the application; and

(b) have been directed or requested by the association or by the branch to engage in the industrial action to which the application relates.

Powers of entry, inspection, &c.

100. (1) For the purposes of this Part a member of the Commission or a person authorized in writing by a member of the Commission or by the registrar may, at any time during working hours—

(a) enter any building, mine, mine working, ship, vessel, place or premises;

(b) inspect or view any work, material, machinery, appliance, article, book, paper, document or other thing therein; and

(c) interview any employé engaged therein.

(2) An employé shall not, in the course of an interview referred to in sub-section (1) (c), make to the person conducting the interview a statement, either orally or in writing, that is false or misleading in a material particular.

Penalty: \$100.

Directions by industrial association.

101. For the purposes of this Part, a direction or request to members of an industrial association or of a branch of an industrial association to engage in industrial action that is given or made by or on behalf of—

(a) the committee of management of the industrial association or of the branch, as the case may be;

(b) an officer or officers, of the industrial association or of the branch, as the case may be; or

(c) a member

- (c) a member or a group of members of the industrial association or of the branch acting in pursuance of the rules of the association or of the branch, as the case may be—

shall be deemed to be a direction or request given or made by the industrial association or the branch, as the case may be.

102. (1) Where the Commission orders the holding of a secret ballot under section 99 the Commission shall, by order—

Conduct of
ballot.

- 10 (a) direct the industrial association concerned to make arrangements for the conduct of the ballot by a person approved by the registrar; or
- (b) direct the registrar to make arrangements for the conduct of the ballot—

15 and may give any further directions that it considers necessary for ensuring the secrecy of votes and otherwise for the purposes of the conduct of the ballot or the communication of the result to the Commission.

(2) A direction shall not be given in accordance with sub-section (1) (a) where the order for the holding of the secret ballot was made under section 99 (7).

(3) Where a direction is given in accordance with sub-section (1) (b) the registrar shall—

- 25 (a) conduct the ballot himself;
- (b) direct an officer employed in the registry to conduct the ballot; or
- (c) make arrangements with the Chief Electoral Officer for the conduct of the ballot.

(4) Where a direction is given in accordance with sub-section (1) (a) the Minister is liable to pay to the industrial association the reasonable costs of the conduct of the ballot as assessed by the registrar.

(5) Where the result of a ballot conducted in accordance with an order under section 99 is communicated to the Commission, the Commission shall cause the registrar to inform each of the following persons, by notice in writing, of that result—

- 35 (a) all persons who were eligible to vote in the ballot;
- (b) the industrial association to which those persons belonged, and the employer or employers by whom those persons were employed, when those persons became eligible to vote in the ballot.
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(6) Where

(6) Where the Commission forms the view that the results of a ballot conducted in accordance with an order under section 99 (7) show that the majority of the members of an association, or of a branch of an association, who recorded a valid vote in the ballot were not in favour of engaging in the industrial action with which the ballot was concerned, the Commission shall cause the registrar to include in each notice issued under sub-section (5) with respect to that ballot a statement of the view formed by the Commission with respect to that ballot. 5

Commission to have regard to result of ballot.

103. In any conciliation or arbitration proceedings before the Commission that relate to, or are connected with, a matter in relation to which the views or attitudes of persons have been expressed in a ballot conducted in accordance with an order under section 99 the Commission shall have regard to the result of the ballot. 10 15

Ballot not in favour of engaging in industrial action.

104. (1) Where a notice under section 102 (5) with respect to a ballot that is issued to a member of an association, or of a branch of an association, includes a statement that the Commission has formed the view that the results of the ballot to which the notice relates show that the majority of the members of the association, or of the branch, who recorded a valid vote in the ballot were not in favour of engaging in the industrial action with which the ballot was concerned, then, notwithstanding any rule or practice of the association or of the branch, that member is not required to obey any direction or request with respect to engaging in, or supporting in any way, that industrial action that is given or made by the association or by the branch. 20 25

(2) For the purposes of this section, a direction or request to members of an association, or of a branch of an association, that is given or made by, or on behalf of— 30

- (a) the committee of management of the association or of the branch, as the case may be;
- (b) an officer or officers of the association or of the branch, as the case may be; or
- (c) a member or a group of members of the association or of the branch acting in pursuance of the rules of the association or of the branch, as the case may be— 35

shall be deemed to be a direction or request given or made by the industrial association or branch, as the case may be.

Offences in relation to ballots.

105. (1) An industrial association or other person to whom a direction is given under section 102 shall comply with the direction. 40

(2) An officer of an industrial association, upon being notified by the person conducting a ballot ordered under section 99 that that person requires him to provide or make available to that person a register or list of the members of the industrial association, or of 45

a branch

a branch or section of the industrial association, for the purposes of the ballot, shall comply promptly with the requirement, so far as he is able to do so.

5 (3) A person shall not, in connexion with a ballot ordered under section 99—

- (a) obstruct the taking of the ballot;
- (b) use any form of intimidation to prevent from voting, or to influence the vote of, a person entitled to vote at the ballot;
- 10 (c) threaten, offer or suggest, or use, cause, inflict or procure, any violence, injury, punishment, damage, loss or disadvantage for or on account of, or to induce—
 - (i) a vote or omission to vote;
 - 15 (ii) any support of, or opposition to, voting in a particular manner; or
 - (iii) any promise of a vote or omission to vote or of any such support or opposition; or
- (d) counsel or advise a person entitled to vote to refrain from voting.

20 (4) A person shall not, without lawful authority or excuse, in connexion with a ballot ordered under section 99—

- (a) personate another person to secure a ballot paper to which the personator is not entitled or personate another person for the purpose of voting;
- 25 (b) destroy, deface, alter, take or otherwise interfere with a ballot paper or envelope;
- (c) put or deliver a ballot paper or other paper—
 - (i) into a ballot box or other ballot receptacle;
 - (ii) into the post; or
 - 30 (iii) to a person receiving ballot papers for the purposes of the ballot;
- (d) record a vote which he is not entitled to record;
- (e) record more than one vote;
- 35 (f) forge a ballot paper or envelope or utter a ballot paper or envelope that he knows to be forged;
- (g) supply a ballot paper;
- (h) obtain or have in his possession a ballot paper;
- (i) destroy, take, open or otherwise interfere with a ballot box.

(5) A person

(5) A person shall not, in connexion with a ballot ordered under section 99—

- (a) request, require or induce another person to show a ballot paper to him, or to permit him to see a ballot paper, in such a manner that he can see the vote, while the ballot paper is being marked or after it has been marked; or 5
- (b) being a person performing duties for the purposes of the ballot, show to another person, or permit another person to have access to, a ballot paper used in the ballot, otherwise than in performance of those duties. 10

Penalty: \$500 or imprisonment for six months.

Offences by industrial associations in relation to secret ballots.

106. (1) An industrial association—

- (a) shall not take, or threaten to take, any action having the effect, directly or indirectly, of prejudicing a person in his employment with the intent to deter the person from making application to the Commission for an order under section 99 for the holding of a secret ballot; or 15
- (b) shall not impose or threaten to impose, a penalty, forfeiture or disability of any kind upon a member of the association by reason of the circumstance that the member— 20
 - (i) has made, or proposes, or has at any time proposed to make, application to the Commission for an order under section 99 for the holding of a secret ballot; or 25
 - (ii) has participated in, or proposes, or has at any time proposed, to participate in, a secret ballot ordered by the Commission under section 99. 30

Penalty.

(2) A contravention of sub-section (1) is an offence against that sub-section punishable upon conviction—

- (a) where the action constituting the offence has continued for more than a day—by a penalty not exceeding a fine of \$400 for each day during which that action has continued; or 35
- (b) in any other case—by a penalty not exceeding a fine of \$400.

(3) In any proceedings for an offence against sub-section (1), if all the relevant facts and circumstances, other than the reason or intent of an action alleged in the charge, are proved, it lies upon the person charged to prove that that action was not actuated by that reason or taken with that intent. 40

(4) For

(4) For the purposes of this Part, an action taken by—

Acts imputed
to industrial
association.

(a) the committee of management of an industrial association;

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(b) the committee of management of a branch of an industrial association;

(c) an officer, employé or agent of an industrial association;

(d) a group of members of an industrial association;

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(e) a member of an industrial association who performs the function of dealing with an employer on behalf of himself and other members of the association—

shall be deemed to have been taken by the industrial association.

107. (1) An employer shall not dismiss an employé or injure him in his employment, or alter his position to his prejudice, by reason of the circumstances that the employé—

Offences by
employers in
relation to
secret ballots.

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(a) has made or proposes, or has at any time proposed, to make, application to the Commission for an order under section 99 for the holding of a secret ballot; or

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(b) has participated in or proposes, or has at any time proposed, to participate in, a secret ballot ordered by the Commission under section 99.

Penalty: \$400.

(2) An employer shall not threaten to dismiss an employé, or to injure him in his employment, or to alter his position to his prejudice—

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(a) by reason of the circumstance that the employé has made, or proposes, or has at any time proposed, to make, application to the Commission for an order under section 99, for the holding of a secret ballot; or

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(b) by reason of the circumstance that the employé has participated in, or proposes, or has at any time proposed, to participate in, a secret ballot ordered by the Commission under section 99.

Penalty: \$400.

35 (3) In any proceedings for an offence against this section, if all the relevant facts and circumstances, other than the reason or intent set out in the charge as being the reason or intent of an action alleged in the charge, are proved, it lies upon the person charged to prove that that action was not actuated by that reason or taken with that intent.

(4) Where

(4) Where an employer is convicted for an offence against this section the court by which the employer is convicted may order that the employé be reimbursed any wages lost by him and may also direct that the employé be reinstated in his old position or in a similar position. 5

PART XII.—OFFENCES PENALTIES REGULATIONS, ETC.’.

Consequential
amendment of
numbering of
sections of Act.

4. In Part XI. of the Principal Act for the numbers 98, 99, 100, 101, 102, 103, 104 and 105 occurring at the commencement of the sections in that Part there shall be substituted the numbers 108, 109, 110, 111, 112, 113, 114 and 115 respectively. 10