

Parliament of Australia
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Conciliation and Arbitration Amendment Bill (No. 2) 1976

Introduced on 21 October 1976

House of Representatives

Mr. Street

Short Digest of Bill

Purpose

The purpose of the Bill is to give statutory approval to the use of a collegiate electoral system in elections for officials of trade unions and employer organizations as an alternative to a direct voting system. The system used will depend on the rules of the organization concerned.

Background and legislative history

Section 133 of the Conciliation and Arbitration Act 1904 sets out various matters relating to elections which must be contained in the rules of organizations (trade unions and employer organizations) which are registered under the Act.

Before 1973 there was no specific requirement that any form of voting system be used; the most important requirement was that elections for certain offices be by secret ballot.

During 1973 the section was amended¹ to introduce a requirement that elections for all offices must be by a voting system at which all financial members of the organization or branch were eligible to vote (section 133 (i) (a)); an exception was made for certain part-time officers who could continue to be elected by a system under which a direct vote of members elects a college of delegates who vote to fill the position from among their number, if provision for this kind of election was already contained in the rules of the organization (section 133 (1A)).

There was also an amendment to section 4 of the Act whereby the concept of office was enlarged with the result that all positions were to be filled by an election in accordance with section 133.

The Minister for Labour (Mr. Clyde Cameron) announced in his Second Reading Speech on the Bill that this policy of requiring a direct vote of the membership for all full-time officials but permitting a collegiate electoral system for some part-time officials was arrived at after discussion at the A.L.P. Conference in 1973.² A Bill introduced earlier in 1973 and rejected by the Senate had contained provision for a direct voting system which was compulsory for elections of part-time officials but not for elections of full-time officials.

The new requirements applied immediately to all bodies seeking registration. Organizations already registered whose rules did not comply with these requirements

1 Conciliation and Arbitration Act 1973 (Act No. 138 of 1973).

2 Hansard, H. of R. 30 August 1973 p. 663.

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were given a period of three years to alter their rules (section 133 (4A)). This period expires on 13 November 1976.

Since 1973 there have been no alterations to the requirements of section 133 in relation to the type of voting system to be used. Section 133 was amended earlier this year to introduce a requirement that all bodies seeking registration have rules requiring secret postal ballots for most elections; organizations already registered are also to have secret postal ballot for these elections by virtue of section 133 AA.³

Amendments made by the Bill

The main amendment made by the Bill is to section 133 (1) (a) (clause 4 (a)). The proposed amendment requires the rules of an organization to provide for elections of full-time officials either by a direct voting system or a one-tier collegiate electoral system; part-time offices may also be filled by a multi-tier collegiate electoral system. There are amendments to section 4 of the Act to define “direct voting system”, “collegiate electoral system” and “one-tier collegiate electoral system” (clause 3 (a) and (c)).

Organizations whose rules would have been subject to alteration by the Industrial Registrar after 13 November 1976 may now continue with their existing rules. Some organizations whose rules currently per a full-time office to be filled by a multi-tier collegiate electoral system are given a period of two years, or longer if the Industrial Registrar permits, to comply with the new requirements; if they fail to do so, the usual provision for consultation and alteration by the Industrial Registrar will apply (new section 133 (3) and (4) as substituted by clause 4 (c)).

Section 133 (1A) which currently permits a one-tier collegiate electoral system for part-time offices is now redundant and is repealed (clause 4 (b)). There are also consequential amendments to the existing transitional provisions in section 133.

Another amendment made by the Bill is to the definition of “office” in section 4 (clause 3 (b)), with the result that not all positions will be filled by an election; however members of the committee of management, all executive officers, trustees and members of rule-making bodies will still be required to be elected and a direct vote of the membership by secret postal ballot will be included in some stage of the election process.

Implications

The issue of direct voting versus collegiate elections is a controversial one with both sides claiming that the system they favour is the more democratic. The Shop Distributive and Allied Employees Association and the Federated Clerks Union of Australia have publicly attacked each other over the issue.⁴

The Minister for Employment and Industrial Relations, Mr. Street, in his Second Reading Speech on the Bill, points out that where branches of an organization are unequal in size, a direct vote for all positions may be less fair to the smaller branches than a collegiate system. He also points out that greater democracy will not be attained by a collegiate system unless the elected college is “truly representative”, but

3 Conciliation and Arbitration Amendment Act 1976 (Act No. 64 of 1976).

4 Advertisements in the Australian on 7 and 8 April 1976.

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he believes that section 140 (1) (c) of the Act gives adequate protection to permit an alteration to the rules of any organization which are “unreasonable, oppressive and unjust” having regard to the purposes of the Act; and that regulation 115 of the Conciliation and Arbitration Regulations, dealing with conditions of registration, also gives protection against unrepresentative colleges.

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