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Workplace Relations Amendment (Secret Ballots
for Protected Action) Bill 2002 [No. 2]

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Protected Action) Bill 2002 [No. 2]

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Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002 [No. 2]

Date Introduced: Reintroduced on 13 November 2002

House: House of Representatives

Portfolio: Employment and Workplace Relations

Commencement: Most proposed amendments would commence on the earlier of a day to be fixed by proclamation or 6 months after Royal Assent.

This Bill is identical to a Bill introduced in the House of Representatives on 20 February 2002. The previous Bill was negated at the Third Reading stage in the Senate on 25 September 2002.

Readers are referred to the previous [Bills Digest](#) of 22 April 2002.¹

Purpose

To require the conduct of a secret ballot by employees as a prerequisite to gain authorisation from the Australian Industrial Relations Commission to take 'protected' industrial action during enterprise bargaining negotiations. The Government states that this is to ensure that those participating in the action have decided upon the action and have not been misled by union officials.

Background

Update: Proposed Democrats Amendments

In his Second Reading Speech to the Bill on reintroduction, the Minister referred to amendments proposed on the previous Bill by the Australian Democrats.² Senator Murray summarised the effect of his package of 10 amendments as being to:

gut the Bill so that the government's proposition would be rejected and to replace it with the one area in which secret ballots are deficient – namely, that unions presently do not have rules of their own which provide for secret ballots and which members

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can access. There are unions that do have those rules, but a substantial number do not. These amendments are simply an attempt to make sure that all unions have rules which members can access on a voluntary basis when they so choose.³

These amendments were rejected by the Senate. Opposition Senators, whilst generally commending Senator Murray's contribution, also did not agree to the amendments on the grounds that it should be left to the workers and their unions to determine how they make a decision to take a strike and that the amendments would nevertheless create a system that is unnecessary given existing checks and balances.⁴ The existing checks and balances included that:

- union membership is voluntary
- members can ignore a so-called union directive to strike
- there is no compulsion to strike following a meeting decision, and
- section 136 of the *Workplace Relations Act 1996* allows for a secret ballot to be ordered by the Commission on the application of a small proportion of members.⁵

It was also noted that there have been no cases of alleged coercion by union or non-union members in respect of industrial action before the Commission.⁶

In his Second Reading Speech, the Minister stated that

[Democrats] amendments would not have made a secret ballot a mandatory precondition to protected action. They would not have protected union members from possible coercion or intimidation in requesting a secret ballot prior to industrial action.⁷

Possible double-dissolution trigger

It should be noted that the Bill has the potential to be a double dissolution trigger. Pursuant to section 57 of the Australian Constitution, the Prime Minister may advise the Governor-General to dissolve both Houses of Parliament when the following requirements are met:

- a Bill is passed by the House of Representatives, but the Senate 'rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree'
- a three-month interval elapses from the date of the Senate's action or inaction, and⁸
- the House of Representatives again passes the Bill ('with or without any amendments which have been made, suggested, or agreed to by the Senate') and the Senate again 'rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree'.

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In the present case, if the House of Representatives passes this Bill again and the Senate refuses or fails to pass⁹ the Bill or passes it with amendments unacceptable to the House, the requirements of the section will have been satisfied.

Once all necessary preconditions have been met, the Government may advise the Governor-General to dissolve both Houses immediately or it may delay its request for a simultaneous dissolution until any date up to 6 months before the House of Representatives is due to expire.¹⁰ The latest polling date for a double dissolution election is Saturday, 16 October 2004.

Endnotes

- 1 Steve O'Neill, 'Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002', *Bills Digest No. 116, 2001-02* Department of the Parliamentary Library. Available at: <http://www.aph.gov.au/library/pubs/bd/2001-02/02bd116.htm>
- 2 The Hon Tony Abbott MP, Minister for Employment and Workplace Relations, Second Reading Speech, Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002 [No. 2], House of Representatives Hansard, *Debates*, 13 November 2002, p. 8854.
- 3 Senator Murray, *Senate Debates*, 25 September 2002, p. 4910.
- 4 *ibid.*, Senators Murphy and Sherry, p. 4907.
- 5 *ibid.*
- 6 *ibid.*
- 7 The Hon. Tony Abbott, *op cit.*, 2.
- 8 See: *Victoria v Commonwealth* (1975) 134 CLR 81.
- 9 If the Senate did not reject the Bill outright but declined to deal with it within the Government's timeframe, such a delay may or may not amount to a 'failure to pass' within the meaning of section 57 of the Constitution. What amounts to a 'failure to pass' depends on the particular circumstances. In *Victoria v Commonwealth* the Court stated that the Senate must have a proper opportunity to consider the Bill, see Barwick CJ at 134 CLR 121-122.
- 10 Rob Lundie, 'Timetables for the Next Commonwealth Election', *Research Note No.37*, Department of the Parliamentary Library, 2001-02. Available at: <http://www.aph.gov.au/library/pubs/rn/2001-02/02rn37.htm>.

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