



Industrial Relations Legislation Amendment Act 1990

No. 19 of 1991

TABLE OF PROVISIONS

PART 1—PRELIMINARY

Section

1. Short title
2. Commencement

PART 2—AMENDMENTS OF THE INDUSTRIAL RELATIONS ACT 1988

3. Principal Act
4. Objects of Act
5. Interpretation
6. Additional operation of Act
7. Appeals to Full Bench
8. Limitation on appeals to Full Court
9. Acting Deputy Industrial Registrars
10. Repeal of section 118 and substitution of new sections:
 118. Demarcation disputes
 - 118A. Organisation coverage
11. Power to grant preference to members of organisations etc.
12. Criteria for registration
13. Registration
14. Repeal of section 193 and substitution of new sections:
 193. Designated Presidential Member to review registration of small organisations—stage 1
 - 193A. Designated Presidential Member to review registration of small organisations—stage 2
15. Repeal of Division 7 of Part IX and substitution of new Division:

TABLE OF PROVISIONS—*continued*

Section

Division 7—Amalgamation of organisations

Subdivision A—General

- 233. Application of objects to Division etc.
- 234. Interpretation
- 235. Procedure to be followed for proposed amalgamation etc.

Subdivision B—Preliminary matters

- 236. Federations
- 237. Use of resources to support proposed amalgamation

Subdivision C—Commencement of amalgamation procedure

- 238. Scheme for amalgamation
- 239. Alternative scheme for amalgamation
- 240. Approval by committee of management
- 241. Community of interest declaration
- 242. Application for approval for submission of amalgamation to ballot
- 243. Holding office after amalgamation
- 244. Application for exemption from ballot
- 245. Application for ballot not conducted under section 253J
- 246. Lodging “yes” case

Subdivision D—Role of Australian Electoral Commission

- 247. Ballots to be conducted by Australian Electoral Commission
- 248. Notification of Australian Electoral Commission
- 249. Officer of organisation to provide information for ballot etc.

Subdivision E—Procedure for approval of amalgamation

- 250. Fixing hearing in relation to amalgamation etc.
- 251. Submissions at amalgamation hearings
- 252. Approval for submission to ballot of amalgamation not involving extension of eligibility rules etc.
- 253. Objections in relation to amalgamation involving extension of eligibility rules etc.
- 253A. Approval for submission to ballot of amalgamation involving extension of eligibility rules etc.
- 253B. Fixing commencing and closing days of ballot
- 253C. Roll of voters for ballot
- 253D. “Yes” case and “no” case for amalgamation
- 253E. Alteration and amendment of scheme
- 253F. Outline of scheme for amalgamation
- 253G. Exemption from ballot
- 253H. Approval for ballot not conducted under section 253J
- 253J. Secret postal ballot of members
- 253K. Determination of approval of amalgamation by members
- 253L. Further ballot if amalgamation not approved
- 253M. Inquiries into irregularities
- 253N. Approval of amalgamation
- 253P. Expenses of ballot

Subdivision F—Amalgamation taking effect

- 253Q. Action to be taken after ballot
- 253R. Assets and liabilities of de-registered organisation become assets and liabilities of amalgamated organisation
- 253S. Resignation from membership

TABLE OF PROVISIONS—*continued*

Section

- 253T. Effect of amalgamation on awards and orders
- 253U. Instruments
- 253V. Pending proceedings
- 253W. Subdivision applies despite laws and agreements prohibiting transfer etc.
- 253X. Amalgamated organisation to take steps necessary to carry out amalgamation
- 253Y. Certificates in relation to land and interests in land
- 253Z. Certificates in relation to charges
- 253ZA. Certificates in relation to shares etc.
- 253ZB. Certificates in relation to other assets
- 253ZC. Court may resolve difficulties

Subdivision G—Validation

- 253ZD. Validation of certain acts done in good faith
 - 253ZE. Validation of certain acts after 4 years
 - 253ZF. Orders affecting application of section 253ZD or 253ZE
 - 253ZG. Court may make orders in relation to consequences of invalidity
- 16. Offences in relation to ballot
 - 17. Failure to comply with requirement made in relation to an organisation
 - 18. Transitional provisions in relation to amalgamations

**PART 3—AMENDMENT OF THE INDUSTRIAL RELATIONS
(CONSEQUENTIAL PROVISIONS) ACT 1988**

- 19. Principal Act
- 20. Certain proceedings to be dealt with under Industrial Relations Act



Industrial Relations Legislation Amendment Act 1990

No. 19 of 1991

**An Act to amend the *Industrial Relations Act 1988* and
the *Industrial Relations (Consequential Provisions) Act
1988*, and for related purposes**

[Assented to 23 January 1991]

BE IT ENACTED by the Queen, and the Senate and the House of
Representatives of the Commonwealth of Australia, as follows:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Industrial Relations Legislation
Amendment Act 1990*.

Commencement

2. (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.

(2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which it receives the Royal Assent, it commences on the first day after the end of that period.

PART 2—AMENDMENTS OF THE INDUSTRIAL RELATIONS ACT 1988

Principal Act

3. In this Part, “Principal Act” means the *Industrial Relations Act 1988*¹.

Objects of Act

4. Section 3 of the Principal Act is amended:

(a) by adding at the end of paragraphs (a) to (f) (inclusive) “and”;

(b) by adding at the end the following word and paragraphs:

“; and (j) to encourage and facilitate the amalgamation of organisations; and

(k) to encourage and facilitate the development of organisations, particularly by reducing the number of organisations that are in an industry or enterprise.”.

Interpretation

5. Section 4 of the Principal Act is amended:

(a) by omitting “means” from the definition of “demarcation dispute” in subsection (1) and substituting “includes”;

(b) by adding at the end of the definition of “demarcation dispute” in subsection (1) the following word and paragraph:

“or (c) a dispute about the representation under this Act of the industrial interests of employees by an organisation of employees;”;

(c) by inserting “(whether or not, in the case of a demarcation dispute involving an organisation or the members of an organisation in that capacity, the dispute extends beyond the limits of any one State)” after “demarcation dispute” in the definition of “industrial dispute” in subsection (1).

Additional operation of Act

6. Section 5 of the Principal Act is amended by omitting from subparagraph (3) (c) (i) “the Australian National Airlines Commission” (wherever occurring) and substituting “Australian Airlines Limited”.

Appeals to Full Bench

7. Section 45 of the Principal Act is amended by omitting subsection (4) and substituting the following subsection:

“(4) Where an appeal has been instituted under this section, a Full Bench or Presidential Member may, on such terms and conditions as the Full Bench or Presidential Member considers appropriate, order that the operation of the whole or a part of the decision or act concerned be stayed pending the determination of the appeal or until further order of a Full Bench or Presidential Member.”.

Limitation on appeals to Full Court

8. Section 55 of the Principal Act is amended by omitting “247” and substituting “253M”.

Acting Deputy Industrial Registrars

9. Section 77 of the Principal Act is amended by omitting from subsection (1) “The Minister” and substituting “The Industrial Registrar”.

10. (1) Section 118 of the Principal Act is repealed and the following sections are substituted:

Demarcation disputes

“118. In exercising its powers in relation to a demarcation dispute, the Commission:

- (a) must consider whether it should consult with appropriate peak councils that are representative of organisations representing employees or organisations representing employers; and
- (b) may consult with appropriate peak councils and, where it does so, must inform the parties to the dispute of any views expressed by those peak councils.

Organisation coverage

“118A. (1) Subject to this section and subsection 202 (3), the Commission may, on the application of an organisation, an employer or the Minister, make the following orders:

- (a) an order that an organisation of employees is to have the right, to the exclusion of another organisation or other organisations, to represent under this Act the industrial interests of a particular class or group of employees who are eligible for membership of the organisation;
- (b) an order that an organisation of employees that does not have the right to represent under this Act the industrial interests of a particular class or group of employees is to have that right;
- (c) an order that an organisation of employees is not to have the right to represent under this Act the industrial interests of a

Industrial Relations Legislation Amendment No. 19, 1991

particular class or group of employees who are eligible for membership of the organisation.

“(2) In considering whether to make an order under subsection (1), the Commission:

- (a) must consider whether it should consult with appropriate peak councils that are representative of organisations representing employees or organisations representing employers; and
- (b) may consult with appropriate peak councils and, where it does so, must inform the parties to the proceedings under this section relating to the order of any views expressed by those peak councils; and
- (c) must have regard to any agreement or understanding of which the Commission becomes aware that deals with the right of an organisation of employees to represent under this Act the industrial interests of a particular class or group of employees.

“(3) An order under subsection (1) may be subject to conditions or limitations.

“(4) The powers of the Commission under this section are exercisable only by a Full Bench or Presidential Member.

“(5) Where the Commission makes an order under subsection (1), the Commission must refer the matter to a designated Presidential Member unless the Commission is satisfied that the rules of the organisations concerned do not need to be altered.

“(6) Where a matter is referred to a designated Presidential Member under subsection (5), the Presidential Member must, after giving each organisation concerned an opportunity, as prescribed, to be heard, determine such alterations (if any) of the rules of any organisation concerned as are, in the Presidential Member’s opinion, necessary to reflect the Commission’s order.

“(7) An alteration of the rules of an organisation determined under subsection (6) takes effect on the day on which the determination is made.”.

(2) An order in force under subsection 118 (3) of the Principal Act immediately before the commencement of this section has effect, after the commencement of this section, as if it had been made under subsection 118A (1) of the Principal Act as amended by this Act.

(3) Where a matter is, immediately before the commencement of this section, being dealt with by the Commission under section 118 of the Principal Act, the matter is to be dealt with, after that commencement, under section 118A of the Principal Act as amended by this Act as if the matter were being dealt with by the Commission on an application made under that last-mentioned section.

Power to grant preference to members of organisations etc.

11. Section 122 of the Principal Act is amended:

- (a) by omitting from subsection (1) “to particular organisations or members of organisations” and substituting “to particular organisations, members of particular organisations or persons who have applied to become members of particular organisations”;
- (b) by inserting after subsection (1) the following subsection:
 - “(1A) The following matters are examples of the matters in relation to which it may be directed under subsection (1) that preference is to be given:
 - (a) engagement in employment;
 - (b) promotion;
 - (c) regrading;
 - (d) transfer;
 - (e) retention in employment;
 - (f) taking annual leave;
 - (g) overtime;
 - (h) vocational training.”;
- (c) by inserting in subsection (2) “or persons who have applied to become members of organisations” after “organisations”;
- (d) by inserting in subsection (3) “or persons who have applied to become members of an organisation of employees” after “employees”;
- (e) by omitting from subsection (3) “to members of the organisation”.

Criteria for registration

12. (1) Section 189 of the Principal Act is amended by omitting from subparagraph (1) (c) (i) “1,000” and substituting “10,000”.

(2) An application by an association of employees for registration as an organisation that was made before the commencement of this section, but had not been finally dealt with before that commencement, is to be dealt with, after that commencement, as if the Principal Act had not been amended by this Act.

Registration

13. Section 191 of the Principal Act is amended:

- (a) by omitting from subsection (1) “the name and eligibility rules of the association,” and substituting “such particulars in relation to the association as are prescribed”;
- (b) by omitting from subsection (2) “name and eligibility rules of the association,” and substituting “prescribed particulars”.

14. Section 193 of the Principal Act is repealed and the following sections are substituted:

Designated Presidential Member to review registration of small organisations—stage 1

“193. (1) A designated Presidential Member is empowered to consider, in relation to a small organisation (stage 1), whether special circumstances exist that justify the continued registration of the organisation in the public interest.

“(2) The power conferred by subsection (1):

- (a) is to be exercised, in relation to each organisation that is a small organisation (stage 1) at the beginning of stage 1, as provided by subsection (3); and
- (b) subject to subsection (6), may be exercised, after the end of stage 1, whenever a designated Presidential Member considers appropriate.

“(3) If an organisation is a small organisation (stage 1) at the beginning of stage 1, a designated Presidential Member must:

- (a) during stage 1, start considering in relation to the organisation the matter mentioned in subsection (1); and
- (b) finish considering the matter as soon as practicable.

“(4) A designated Presidential Member is not required to comply with subsection (3) if, when the Presidential Member proposes to start considering the matter mentioned in subsection (1), the organisation is no longer a small organisation (stage 1).

“(5) Where a designated Presidential Member proposes to consider the matter mentioned in subsection (1) in relation to a small organisation (stage 1), the Presidential Member:

- (a) must fix a time and place for hearing submissions from the organisation about that matter; and
- (b) must ensure that all organisations are promptly notified of the time and place of the hearing; and
- (c) may inform any other person likely to be interested of the time and place of the hearing.

“(6) The power conferred by subsection (1) is not to be exercised more than once in any period of 3 years.

“(7) If, on exercising the power conferred by subsection (1), a Presidential Member is not satisfied that special circumstances exist that justify the continued registration of a small organisation (stage 1) in the public interest, the Presidential Member must cancel the registration of the organisation.

“(8) In this section:

'small organisation (stage 1)' means an organisation of employees that has fewer than 1,000 members who are employees;

'stage 1' means the period:

- (a) beginning on 1 March 1992; and
- (b) ending on 28 February 1993.

Designated Presidential Member to review registration of small organisations—stage 2

“193A. (1) A designated Presidential Member is empowered to consider, in relation to a small organisation (stage 2), whether special circumstances exist that justify the continued registration of the organisation in the public interest.

“(2) The power conferred by subsection (1):

- (a) is to be exercised, in relation to each organisation that is a small organisation (stage 2) at the beginning of stage 2, as provided by subsection (3); and
- (b) subject to subsection (6), may be exercised, after the end of stage 2, whenever a designated Presidential Member considers appropriate.

“(3) If an organisation is a small organisation (stage 2) at the beginning of stage 2, a designated Presidential Member must:

- (a) during stage 2, start considering in relation to the organisation the matter mentioned in subsection (1); and
- (b) finish considering the matter as soon as practicable.

“(4) A designated Presidential Member is not required to comply with subsection (3) if, when the Presidential Member proposes to start considering the matter mentioned in subsection (1):

- (a) the organisation is no longer a small organisation (stage 2); or
- (b) the Presidential Member has started, but not finished, considering in relation to the organisation the matter mentioned in subsection 193 (1).

“(5) Where a designated Presidential Member proposes to consider the matter mentioned in subsection (1) in relation to a small organisation (stage 2), the Presidential Member:

- (a) must fix a time and place for hearing submissions from the organisation about that matter; and
- (b) must ensure that all organisations are promptly notified of the time and place of the hearing; and
- (c) may inform any other person likely to be interested of the time and place of the hearing.

“(6) The power conferred by subsection (1) is not to be exercised more than once in any period of 3 years.

“(7) If, on exercising the power conferred by subsection (1), a Presidential Member is not satisfied that special circumstances exist that justify the continued registration of a small organisation (stage 2) in the public interest, the Presidential Member must cancel the registration of the organisation.

“(8) In this section:

‘small organisation (stage 2)’ means an organisation of employees that has fewer than 10,000 members who are employees;

‘stage 2’ means the period:

- (a) beginning on 1 March 1993; and
- (b) ending on 28 February 1994.”.

15. Division 7 of Part IX of the Principal Act is repealed and the following Division is substituted:

“Division 7—Amalgamation of organisations

“Subdivision A—General

Application of objects to Division etc.

“233. It is the intention of the Parliament:

- (a) that, in the application to this Division of the objects of this Act, particular regard should be had to the attainment of the objects mentioned in paragraphs 3 (h), (j) and (k) (Efficient management of organisations and their amalgamation and development); and
- (b) that this Act should be applied in relation to the amalgamation of organisations in a way that, to the greatest extent that is consistent with the attainment of the object mentioned in paragraph 3 (g) (Democratic control of, and membership participation in affairs of, organisations), is fair, practical, quick and non-legalistic.

Interpretation

“234. In this Division:

‘alternative provision’ means a provision of the kind mentioned in subsection 239 (1);

‘amalgamated organisation’, in relation to a completed amalgamation, means the organisation of which members of the de-registered organisations have become members under paragraph 253Q (3) (d);

‘amalgamation day’, in relation to a completed amalgamation, means the day fixed under subsection 253Q (2) in relation to the amalgamation;

‘asset’ means property of any kind, and includes:

- (a) any legal or equitable estate or interest (whether present or future, vested or contingent, tangible or intangible) in real or personal property of any description; and

Industrial Relations Legislation Amendment No. 19, 1991

- (b) any chose in action; and
- (c) any right, interest or claim of any kind in or in relation to property (whether arising under an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing);

'authorised person', in relation to a completed amalgamation, means the secretary of the amalgamated organisation or a person authorised, in writing, by the committee of management of the amalgamated organisation;

'charge' means a charge created in any way, and includes a mortgage and an agreement to give or execute a charge or mortgage (whether on demand or otherwise);

'closing day', in relation to a ballot for a proposed amalgamation, means the day, from time to time, fixed under section 253B as the closing day of the ballot;

'commencing day', in relation to a ballot for a proposed amalgamation, means the day, from time to time, fixed under section 253B as the commencing day of the ballot;

'completed amalgamation' means a proposed amalgamation that has taken effect;

'debenture' has the same meaning as in Division 7 of Part IV of the *Companies Act 1981*;

'defect' includes a nullity, omission, error or irregularity;

'de-registered organisation', in relation to a completed amalgamation, means an organisation that has been de-registered under this Division;

'de-registration', in relation to an organisation, means the cancellation of its registration;

'holder', in relation to a charge, includes a person in whose favour a charge is to be given or executed (whether on demand or otherwise) under an agreement;

'instrument' means an instrument of any kind, and includes:

- (a) any contract, deed, undertaking or agreement; and
- (b) any mandate, instruction, notice, authority or order; and
- (c) any lease, licence, transfer, conveyance or other assurance; and
- (d) any guarantee, bond, power of attorney, bill of lading, negotiable instrument or order for the payment of money; and
- (e) any mortgage, charge, lien or security;

whether express or implied and whether made or given orally or in writing;

'instrument to which this Division applies', in relation to a completed amalgamation, means an instrument:

- (a) to which a de-registered organisation is a party; or
 - (b) that was given to, by or in favour of a de-registered organisation;
- or

Industrial Relations Legislation Amendment No. 19, 1991

- (c) in which a reference is made to a de-registered organisation; or
- (d) under which any money is or may become payable, or any other property is to be, or may become liable to be, transferred, conveyed or assigned, to or by a de-registered organisation;

'interest':

- (a) in relation to a company—includes a prescribed interest made available by the company within the meaning of the *Companies Act 1981*; and
- (b) in relation to land—means:
 - (i) a legal or equitable estate or interest in the land; or
 - (ii) a right, power or privilege over, or in relation to, the land;

'invalidity' includes a defect;

'irregularity' includes a breach of the rules of an organisation, but in Subdivision G does not include an irregularity in relation to a ballot;

'liability' means a liability of any kind, and includes an obligation of any kind (whether arising under an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing);

'proceeding to which this Division applies', in relation to a completed amalgamation, means a proceeding to which a de-registered organisation was a party immediately before the amalgamation day;

'proposed alternative amalgamation', in relation to a proposed amalgamation, means an amalgamation proposed to be made under an alternative provision;

'proposed amalgamated organisation', in relation to a proposed amalgamation, means the organisation or proposed organisation of which members of the proposed de-registering organisations are proposed to become members under this Division;

'proposed amalgamation' means the proposed carrying out of arrangements in relation to 2 or more organisations under which:

- (a) an organisation is, or 2 or more organisations are, to be de-registered under this Division; and
- (b) members of the organisation or organisations to be de-registered are to become members of another organisation (whether existing or proposed);

'proposed de-registering organisation', in relation to a proposed amalgamation, means an organisation that is to be de-registered under this Division;

'proposed principal amalgamation', in relation to a proposed amalgamation, means:

- (a) if the scheme for the amalgamation contains an alternative provision—the amalgamation proposed to be made under the scheme otherwise than under an alternative provision; or
- (b) in any other case—the proposed amalgamation.

Procedure to be followed for proposed amalgamation etc.

“235. (1) For the purpose of implementing the scheme for a proposed amalgamation, the procedure provided by this Division is to be followed.

“(2) Where it appears to a Presidential Member that the performance of an act, including:

- (a) the de-registration of an organisation; and
- (b) the registration of an organisation; and
- (c) the giving of consent to:

- (i) a change in the name of an organisation; or
- (ii) an alteration of the eligibility rules of an organisation;

is sought for the purposes of a proposed amalgamation, the Presidential Member may perform the act only in accordance with this Division.

“(3) If any difficulty arises, or appears likely to arise, in the application of this Act for the purpose of implementing the scheme for a proposed amalgamation, a designated Presidential Member may give directions and make orders to resolve the difficulty.

“(4) Directions and orders under subsection (3):

- (a) have effect subject to any order of the Court; and
- (b) have effect despite anything in:
 - (i) the regulations or the Rules of the Commission; or
 - (ii) the rules of an organisation or any association proposed to be registered as an organisation.

“Subdivision B—Preliminary matters

Federations

“236. (1) The existing organisations concerned in a proposed amalgamation may jointly lodge in the Industrial Registry an application for recognition as a federation.

“(2) The application must:

- (a) be lodged before an application is lodged under section 242 in relation to the amalgamation; and
- (b) include such particulars as are prescribed.

“(3) If a designated Presidential Member is satisfied that the organisations intend to lodge an application under section 242 in relation to the amalgamation within the prescribed period, the designated Presidential Member must grant the application for recognition as a federation.

“(4) If the application is granted, the Industrial Registrar must enter in the register kept under paragraph 63 (1) (a) such details in relation to the federation as are prescribed.

“(5) On registration, the federation may, subject to subsection (6) and the regulations, represent its constituent members for all of the purposes of this Act.

“(6) Subsection (5) does not authorise the federation to become a party to an award.

“(7) After the federation is recognised, it may vary its composition by:

- (a) including, with the approval of a designated Presidential Member, another organisation within the federation if the other organisation intends to become concerned in the amalgamation; or
- (b) releasing, with the approval of a designated Presidential Member, an organisation from the federation.

“(8) The federation ceases to exist:

- (a) on the day on which the amalgamation takes effect; or
- (b) if an application under section 242 is not lodged in relation to the amalgamation within the prescribed period—on the day after the end of the period; or
- (c) if it appears to a Full Bench, on an application by a prescribed person, that the industrial conduct of the federation, or an organisation belonging to the federation, is preventing or hindering the attainment of an object of this Act—on the day the Full Bench so determines.

“(9) Nothing in this section limits the right of an organisation belonging to a federation to represent itself or its members.

Use of resources to support proposed amalgamation

“237. (1) An existing organisation concerned in a proposed amalgamation may, at any time before the closing day of the ballot for the amalgamation, use its financial and other resources in support of the proposed principal amalgamation and any proposed alternative amalgamation if:

- (a) the committee of management of the organisation has resolved that the organisation should so use its resources; and
- (b) the committee of management has given reasonable notice of its resolution to the members of the organisation.

“(2) Subsection (1) does not limit by implication any power that the existing organisation has, apart from that subsection, to use its financial and other resources in support of, or otherwise in relation to, the amalgamation.

“Subdivision C—Commencement of amalgamation procedure

Scheme for amalgamation

“238. (1) There is to be a scheme for every proposed amalgamation.

“(2) The scheme must contain the following matters:

- (a) a general statement of the nature of the amalgamation, identifying the existing organisations concerned and indicating:
 - (i) if one of the existing organisations is the proposed amalgamated organisation—that fact; and
 - (ii) if an association proposed to be registered as an organisation is the proposed amalgamated organisation—that fact and the name of the association; and
 - (iii) the proposed de-registering organisations;
- (b) if it is proposed to change the name of an existing organisation—particulars of the proposed change;
- (c) if it is proposed to alter the eligibility rules of an existing organisation—particulars of the proposed alterations;
- (d) if it is proposed to alter any other rules of an existing organisation—particulars of the proposed alterations;
- (e) if an association is proposed to be registered as an organisation—the eligibility and other rules of the association;
- (f) such other matters as are prescribed.

“(3) Subsection (2) does not limit by implication the matters that the scheme may contain.

Alternative scheme for amalgamation

“239. (1) Where 3 or more existing organisations are concerned in a proposed amalgamation, the scheme for the amalgamation may contain a provision to the effect that, if:

- (a) the members of one or more of the organisations do not approve the amalgamation; and
- (b) the members of 2 or more of the organisations (in this subsection called the ‘**approving organisations**’) approve, in the alternative, the amalgamation so far as it involves:
 - (i) the other of the approving organisations; or
 - (ii) 2 or more of the other approving organisations; and
- (c) where one of the existing organisations is the proposed amalgamated organisation—that organisation is one of the approving organisations;

there is to be an amalgamation involving the approving organisations.

“(2) If the scheme for a proposed amalgamation contains an alternative provision, the scheme must also contain particulars of:

- (a) the differences between the proposed principal amalgamation and each proposed alternative amalgamation; and

- (b) the differences between the rules of any association proposed to be registered as an organisation, and any proposed alterations of the rules of the existing organisations, under the proposed principal amalgamation and each proposed alternative amalgamation.

Approval by committee of management

“240. (1) The scheme for a proposed amalgamation, and each alteration of the scheme, must be approved, by resolution, by the committee of management of each existing organisation concerned in the amalgamation.

“(2) Despite anything in the rules of an existing organisation, approval, by resolution, by the committee of management of the scheme, or an alteration of the scheme, is taken to be sufficient compliance with the rules, and any proposed alteration of the rules contained in the scheme, or the scheme as altered, is taken to have been properly made under the rules.

Community of interest declaration

“241. (1) The existing organisations concerned in a proposed amalgamation may jointly lodge in the Industrial Registry an application for a declaration under this section in relation to the amalgamation.

“(2) The application must be lodged:

- (a) before an application has been lodged under section 242 in relation to the amalgamation; or
- (b) with the application that is lodged under section 242 in relation to the amalgamation.

“(3) If the application is lodged before an application has been lodged under section 242 in relation to the amalgamation, a designated Presidential Member:

- (a) must immediately fix a time and place for hearing submissions in relation to the making of the declaration; and
- (b) must ensure that all organisations are promptly notified of the time and place of the hearing; and
- (c) may inform any other person who is likely to be interested of the time and place of the hearing.

“(4) If, at the conclusion of the hearing arranged under subsection (3) or section 250 in relation to the proposed amalgamation, a designated Presidential Member is satisfied that there is a community of interest between the existing organisations in relation to their industrial interests, the Presidential Member must declare that he or she is so satisfied.

“(5) The Presidential Member must be satisfied, for the purposes of subsection (4), that there is a community of interest between organisations of employees in relation to their industrial interests if the

Presidential Member is satisfied that a substantial number of members of one of the organisations are:

- (a) eligible to become members of the other organisation or each of the other organisations; or
- (b) engaged in the same work or in aspects of the same or similar work as members of the other organisation or each of the other organisations; or
- (c) bound by the same awards as members of the other organisation or each of the other organisations; or
- (d) employed in the same or similar work by employers engaged in the same industry as members of the other organisation or each of the other organisations; or
- (e) engaged in work, or in industries, in relation to which there is a community of interest with members of the other organisation or each of the other organisations.

“(6) The Presidential Member must be satisfied, for the purposes of subsection (4), that there is a community of interest between organisations of employers in relation to their industrial interests if the Presidential Member is satisfied that a substantial number of members of one of the organisations are:

- (a) eligible to become members of the other organisation or each of the other organisations; or
- (b) engaged in the same industry or in aspects of the same industry or similar industries as members of the other organisation or each of the other organisations; or
- (c) bound by the same awards as members of the other organisation or each of the other organisations; or
- (d) engaged in industries in relation to which there is a community of interest with members of the other organisation or each of the other organisations.

“(7) Subsections (5) and (6) do not limit by implication the circumstances in which a designated Presidential Member may be satisfied, for the purposes of subsection (4), that there is a community of interest between organisations in relation to their industrial interests.

“(8) If:

- (a) an application for a declaration under this section in relation to a proposed amalgamation is lodged before an application has been lodged under section 242 in relation to the amalgamation; and
- (b) a declaration is made under this section in relation to the amalgamation; and
- (c) an application is not lodged under section 242 in relation to the amalgamation within 6 months after the declaration is made;

the declaration ceases to be in force.

“(9) A designated Presidential Member may revoke a declaration under this section if the Presidential Member is satisfied that there is no longer a community of interest between the organisations concerned in relation to their industrial interests.

Application for approval for submission of amalgamation to ballot

“242. (1) The existing organisations concerned in a proposed amalgamation, and any association proposed to be registered as an organisation under the amalgamation, must jointly lodge in the Industrial Registry an application for approval for the submission of the amalgamation to ballot.

“(2) The application must be accompanied by:

- (a) a copy of the scheme for the amalgamation; and
- (b) a written outline of the scheme.

“(3) Subject to section 253F, the outline must, in no more than 3,000 words, provide sufficient information on the scheme to enable members of the existing organisations to make informed decisions in relation to the scheme.

Holding office after amalgamation

“243. (1) The rules of:

- (a) an association proposed to be registered as an organisation that is the proposed amalgamated organisation under a proposed amalgamation; or
- (b) an existing organisation that is the proposed amalgamated organisation under a proposed amalgamation;

may, despite section 197, make provision in relation to:

- (c) the holding of office in the proposed amalgamated organisation by persons holding office in any of the proposed de-registering organisations immediately before the amalgamation takes effect; and
- (d) in a case to which paragraph (b) applies—the continuation of the holding of office by persons holding office in the proposed amalgamated organisation immediately before the amalgamation takes effect;

but the rules may not permit an office to be held under paragraph (1) (c) or (1) (d) for longer than:

- (e) the period that equals the unexpired part of the term of the office held by the person immediately before the day on which the amalgamation takes effect; or
- (f) the period that ends 2 years after that day;

whichever ends last, without an ordinary election being held in relation to the office.

“(2) Where:

- (a) a person holds an office in an organisation, being an office held under rules made under subsection (1); and
- (b) that organisation is involved in a proposed amalgamation;

the rules of the proposed amalgamated organisation must not permit the person to hold an office in the proposed amalgamated organisation after the amalgamation takes effect, without an ordinary election being held in relation to the office, for longer than the period that equals the unexpired part of the term of the office mentioned in paragraph (a) immediately before the day on which the amalgamation takes effect.

“(3) The rules of an organisation that is the proposed amalgamated organisation under a proposed amalgamation must, subject to this section, make reasonable provision for the purpose of synchronising elections for offices in the organisation held under paragraph (1) (c) with elections for other offices in the organisation.

“(4) Section 199 does not apply to an office held under rules made under subsection (1).

“(5) Section 200 applies to an office held under rules made under paragraph (1) (c).

“(6) In this section:

‘ordinary election’ means an election held under rules that comply with section 197.

Application for exemption from ballot

“244. (1) The proposed amalgamated organisation under a proposed amalgamation may lodge in the Industrial Registry an application for exemption from the requirement that a ballot of its members be held in relation to the amalgamation.

“(2) The application must be lodged with the application that is lodged under section 242 in relation to the amalgamation.

Application for ballot not conducted under section 253J

“245. (1) An existing organisation concerned in a proposed amalgamation may lodge in the Industrial Registry an application for approval of a proposal for the submission of the amalgamation to a ballot of its members that is not conducted under section 253J.

“(2) The application must be lodged with the application that is lodged under section 242 in relation to the amalgamation.

Lodging “yes” case

“246. (1) Subject to section 253D, an existing organisation concerned in a proposed amalgamation may lodge a written statement of not more than 2,000 words in support of the proposed principal amalgamation and each proposed alternative amalgamation.

“(2) The statement must be lodged with the application that is lodged under section 242 in relation to the amalgamation.

“Subdivision D—Role of Australian Electoral Commission

Ballots to be conducted by Australian Electoral Commission

“247. All ballots under this Division are to be conducted by the Australian Electoral Commission.

Notification of Australian Electoral Commission

“248. (1) Where an application is lodged under section 242 in relation to a proposed amalgamation, the Industrial Registrar must immediately notify the Australian Electoral Commission of the application.

“(2) On being notified of the application, the Australian Electoral Commission must immediately take such action as it considers necessary or desirable to enable it to conduct as quickly as possible any ballots that may be required in relation to the amalgamation.

Officer of organisation to provide information for ballot etc.

“249. An electoral official who is authorised, in writing, by the Australian Electoral Commission for the purposes of a proposed amalgamation may, where it is reasonably necessary for the purposes of any ballot that may be required or is required in relation to the amalgamation, by written notice, require an officer or employee of the organisation concerned or a branch of the organisation concerned:

- (a) to give to the electoral official, within a reasonable period (being a period of not less than 7 days), and in a reasonable manner, specified in the notice, any information within the knowledge or in the possession of the person; and
- (b) to produce or make available to the electoral official, at a reasonable time and place specified in the notice, any documents:
 - (i) in the custody or under the control of the person; or
 - (ii) to which the person has access.

“Subdivision E—Procedure for approval of amalgamation

Fixing hearing in relation to amalgamation etc.

“250. Where an application is lodged under section 242 in relation to a proposed amalgamation, a designated Presidential Member:

- (a) must immediately fix a time and place for hearing submissions in relation to:
 - (i) the granting of an approval for the submission of the amalgamation to ballot; and
 - (ii) if an application for a declaration under section 241 was

- lodged with the application—the making of a declaration under section 241 in relation to the amalgamation; and
- (iii) if an application was lodged under section 244 for exemption from the requirement that a ballot be held in relation to the amalgamation—the granting of the exemption; and
 - (iv) if an application was lodged under section 245 for approval of a proposal for the submission of the amalgamation to a ballot that is not conducted under section 253J—the granting of the approval; and
- (b) must ensure that all organisations are promptly notified of the time and place of the hearing; and
 - (c) may inform any other person who is likely to be interested of the time and place of the hearing.

Submissions at amalgamation hearings

“251. (1) Submissions at a hearing arranged under subsection 241 (3) or section 250 may only be made under this section.

“(2) Submissions may be made by the applicants.

“(3) Submissions may be made by another person only with the leave of a designated Presidential Member and may be made by the person only in relation to a prescribed matter.

Approval for submission to ballot of amalgamation not involving extension of eligibility rules etc.

“252. (1) If, at the conclusion of the hearing arranged under section 250 in relation to a proposed amalgamation, a designated Presidential Member is satisfied:

- (a) that the amalgamation does not involve the registration of an association as an organisation; and
- (b) that a person who is not eligible for membership of an existing organisation concerned in the amalgamation would not be eligible for membership of the proposed amalgamated organisation immediately after the amalgamation takes effect; and
- (c) that any proposed alteration of the name of an existing organisation concerned in the amalgamation will not result in the organisation having a name that is the same as the name of another organisation or is so similar to the name of another organisation as to be likely to cause confusion; and
- (d) that any proposed alterations of the rules of an existing organisation comply with, and are not contrary to, this Act and awards and are not contrary to law; and
- (e) that any proposed de-registration of an existing organisation complies with this Act and is not otherwise contrary to law;

the Presidential Member must approve the submission of the amalgamation to ballot.

“(2) If the Presidential Member is not satisfied, the Presidential Member must, subject to subsections (3) and (7), refuse to approve, under this section, the submission of the amalgamation to ballot.

“(3) If, apart from this subsection, the Presidential Member would be required to refuse to approve the submission of the amalgamation to ballot, the Presidential Member may:

- (a) permit the applicants to alter the scheme for the amalgamation, including any proposed alterations of the rules of the existing organisations concerned in the amalgamation; or
- (b) accept an undertaking by the applicants to alter the scheme for the amalgamation, including any proposed alterations of the rules of the existing organisations concerned in the amalgamation;

and, if the Presidential Member is satisfied that the matters mentioned in subsection (1) will be met, the Presidential Member must approve the submission of the amalgamation to ballot.

“(4) A permission under paragraph (3) (a):

- (a) may, despite anything in the rules of an existing organisation concerned in the proposed amalgamation, authorise the organisation to alter the scheme (including any proposed alterations of the rules of the organisation) by resolution of its committee of management; and
- (b) may make provision in relation to the procedure that, despite anything in those rules, may be followed, or is to be followed, by the committee of management in that regard; and
- (c) may be given subject to conditions.

“(5) If:

- (a) a designated Presidential Member:
 - (i) gives a permission under paragraph (3) (a) subject to conditions; or
 - (ii) accepts an undertaking under paragraph (3) (b); and
- (b) the conditions are breached or the undertaking is not fulfilled within the period allowed by the Presidential Member;

the Presidential Member may:

- (c) amend the scheme for the amalgamation, including any proposed alterations of the rules of the existing organisations concerned in the proposed amalgamation; or
- (d) give directions and orders:
 - (i) in relation to the conduct of the ballot for the amalgamation; or

(ii) otherwise in relation to the procedure to be followed in relation to the amalgamation.

“(6) Subsection (5) does not limit by implication the powers that the Presidential Member has apart from that subsection.

“(7) If, apart from this subsection, the Presidential Member would be required to refuse to approve the submission of the amalgamation to ballot, the Presidential Member may adjourn the proceeding.

“(8) Subsection (7) does not limit by implication the power of the Presidential Member to adjourn the proceeding at any stage.

Objections in relation to amalgamation involving extension of eligibility rules etc.

“253. (1) Objection to a matter involved in a proposed amalgamation may only be made to the Commission under this section.

“(2) Objection may be made to the Commission in relation to the amalgamation only if a designated Presidential Member has refused to approve, under section 252, the submission of the amalgamation to ballot.

“(3) Objection may be made by a prescribed person on a prescribed ground.

“(4) A designated Presidential Member is to hear, as prescribed, all objections duly made to the amalgamation.

Approval for submission to ballot of amalgamation involving extension of eligibility rules etc.

“253A. (1) If, after the prescribed time allowed for making objections under section 253 in relation to a proposed amalgamation and after hearing any objections duly made to the amalgamation, a designated Presidential Member:

(a) finds that no duly made objection is justified; and

(b) is satisfied that, so far as the amalgamation involves:

(i) the registration of an association; or

(ii) a change in the name of an organisation; or

(iii) an alteration of the rules of an organisation; or

(iv) the de-registration of an organisation under this Division;

it complies with, and is not contrary to, this Act and awards and is not otherwise contrary to law;

the Presidential Member must approve the submission of the amalgamation to ballot.

“(2) If the Presidential Member is not satisfied, the Presidential Member must, subject to subsections (3) and (8), refuse to approve, under this section, the submission of the amalgamation to ballot.

Industrial Relations Legislation Amendment No. 19, 1991

“(3) If, apart from this subsection, the Presidential Member would be required to refuse to approve the submission of the amalgamation to ballot, the Presidential Member may:

- (a) permit the applicants to alter the scheme for the amalgamation, including:
 - (i) the rules of any association proposed to be registered as an organisation in relation to the amalgamation; or
 - (ii) any proposed alterations of the rules of the existing organisations concerned in the amalgamation; or
- (b) accept an undertaking by the applicants to alter the scheme for the amalgamation, including:
 - (i) the rules of any association proposed to be registered as an organisation in relation to the amalgamation; or
 - (ii) any proposed alterations of the rules of the existing organisations concerned in the amalgamation;

and, if the Presidential Member is satisfied that the matters mentioned in subsection (1) will be met, the Presidential Member must approve the submission of the amalgamation to ballot.

“(4) A permission under subparagraph (3) (a) (i):

- (a) may, despite anything in the rules of any association proposed to be registered as an organisation in relation to the proposed amalgamation, authorise the existing organisations concerned in the amalgamation to alter the scheme so far as it affects that association (including any of its rules) by resolution of their committees of management; and
- (b) may make provision in relation to the procedure that, despite anything in the rules of the existing organisations or the rules of the association, may be followed, or is to be followed, by the committees of management in that regard; and
- (c) may be given subject to conditions.

“(5) A permission under subparagraph (3) (a) (ii):

- (a) may, despite anything in the rules of an existing organisation concerned in the proposed amalgamation, authorise the organisation to alter the scheme (including any proposed alterations of the rules of the organisation, but not including the scheme so far as it affects any association proposed to be registered as an organisation in relation to the proposed amalgamation) by resolution of its committee of management; and
- (b) may make provision in relation to the procedure that, despite anything in those rules, may be followed, or is to be followed, by the committee of management in that regard; and
- (c) may be given subject to conditions.

“(6) If:

- (a) a designated Presidential Member:
 - (i) gives a permission under paragraph (3) (a) subject to conditions; or
 - (ii) accepts an undertaking under paragraph (3) (b); and
 - (b) the conditions are breached or the undertaking is not fulfilled within the period allowed by the Presidential Member;
- the Presidential Member may:
- (c) amend the scheme for the amalgamation, including:
 - (i) the rules of any association proposed to be registered as an organisation in relation to the amalgamation; or
 - (ii) any proposed alterations of the rules of the existing organisations concerned in the amalgamation; or
 - (d) give directions and orders:
 - (i) in relation to the conduct of the ballot for the amalgamation; or
 - (ii) otherwise in relation to the procedure to be followed in relation to the amalgamation.

“(7) Subsection (6) does not limit by implication the powers that the Presidential Member has apart from that subsection.

“(8) If, apart from this subsection, the Presidential Member would be required to refuse to approve the submission of the amalgamation to ballot, the Presidential Member may adjourn the proceeding.

“(9) Subsection (8) does not limit by implication the power of the Presidential Member to adjourn the proceeding at any stage.

Fixing commencing and closing days of ballot

“253B. (1) If a designated Presidential Member approves, under section 252 or 253A, the submission of a proposed amalgamation to ballot, the Presidential Member must, after consulting with the Electoral Commissioner, fix a day as the commencing day of the ballot and a day as the closing day of the ballot.

“(2) The commencing day must be a day not later than 28 days after the day on which the approval is given unless:

- (a) the Presidential Member is satisfied that the Australian Electoral Commission requires a longer period to make the arrangements necessary to enable it to conduct the ballot; or
- (b) the existing organisations concerned in the amalgamation request the Presidential Member to fix a later day.

“(3) If the scheme for the amalgamation contains a proposed alternative provision, a single day is to be fixed as the commencing day, and a single day is to be fixed as the closing day, for all ballots in relation to the proposed amalgamation.

“(4) A designated Presidential Member may, after consulting with the Electoral Commissioner, vary the commencing day or the closing day.

“(5) Subsection (4) does not limit by implication the powers of the person conducting a ballot under this Division.

Roll of voters for ballot

“253C. The roll of voters for a ballot for a proposed amalgamation is the roll of persons who, on the day on which the designated Presidential Member fixes the commencing day and closing day of the ballot or 28 days before the commencing day of the ballot (whichever is the later):

- (a) have the right under the rules of the existing organisation concerned to vote at such a ballot; or
- (b) if the rules of the existing organisation concerned do not then provide for the right to vote at such a ballot—have the right under the rules of the organisation to vote at a ballot for an election for an office in the organisation that is conducted by a direct voting system.

“Yes” case and “no” case for amalgamation

“253D. (1) If an existing organisation concerned in a proposed amalgamation lodges a statement under section 246 in relation to the amalgamation, a designated Presidential Member may permit the organisation to alter the statement.

“(2) Not later than 7 days before the day fixed under section 250 for hearing submissions in relation to the amalgamation, members of the organisation (being members whose number is at least the required minimum number) may lodge in the Industrial Registry a written statement of not more than 2,000 words in opposition to the proposed principal amalgamation and any proposed alternative amalgamation.

“(3) A designated Presidential Member may permit a statement lodged under subsection (2) to be altered.

“(4) Subject to subsections (5), (6) and (7), a copy of the statements mentioned in subsections (1) and (2), or, if those statements have been altered or amended, those statements as altered or amended, must accompany the ballot paper sent to the persons entitled to vote at a ballot for the amalgamation.

“(5) If 2 or more statements in opposition to the amalgamation are duly lodged in the Industrial Registry under subsection (2):

- (a) a designated Presidential Member must prepare, or cause to be prepared, in consultation, if practicable, with representatives of the persons who lodged each of the statements, a written statement of not more than 2,000 words in opposition to the amalgamation based on both or all the statements and, as far

as practicable, presenting fairly the substance of the arguments against the amalgamation contained in both or all the statements; and

- (b) the statement prepared by the Presidential Member must accompany the ballot paper for the amalgamation as if it had been the sole statement lodged under subsection (2).

“(6) A designated Presidential Member may amend a statement mentioned in subsection (1) or (2) to correct factual errors or to ensure that the statement complies with this Act.

“(7) A statement mentioned in subsection (1) or (2) may, if a designated Presidential Member approves, include matter that is not in the form of words, including, for example, diagrams, drawings, illustrations, photographs and symbols.

“(8) A statement prepared under subsection (5) may include matter that is not in the form of words, including, for example, diagrams, drawings, illustrations, photographs and symbols.

“(9) Subsection (4) and paragraph (5) (b) do not apply to a ballot that is not conducted under section 253J.

“(10) In this section:

‘required minimum number’, in relation to an organisation, means:

- (a) 5% of the total number of members of the organisation on the day on which the application was lodged under section 242 in relation to the proposed amalgamation concerned; or
- (b) 1,000;

whichever is the lesser.

Alteration and amendment of scheme

“253E. (1) A designated Presidential Member may, at any time before the commencing day of the ballot for a proposed amalgamation, permit the existing organisations concerned in the amalgamation to alter the scheme for the amalgamation, including:

- (a) the rules of any association proposed to be registered as an organisation in relation to the amalgamation; or
- (b) any proposed alterations of the rules of the existing organisations concerned in the amalgamation.

“(2) A permission under paragraph (1) (a):

- (a) may, despite anything in the rules of any association proposed to be registered as an organisation in relation to the proposed amalgamation, authorise the existing organisations concerned in the amalgamation to alter the scheme so far as it affects that association (including any of its rules) by resolution of their committees of management; and
- (b) may make provision in relation to the procedure that, despite

anything in the rules of the existing organisations or the rules of the association, may be followed, or is to be followed, by the committees of management in that regard; and

(c) may be given subject to conditions.

“(3) A permission under paragraph (1) (b):

(a) may, despite anything in the rules of an existing organisation concerned in a proposed amalgamation, authorise the organisation to amend the scheme (including any proposed alterations of the rules of the organisation, but not including the scheme so far as it affects any association proposed to be registered as an organisation in relation to the proposed amalgamation) by resolution of its committee of management; and

(b) may make provision in relation to the procedure that, despite anything in those rules, may be followed, or is to be followed, by the committee of management in that regard; and

(c) may be given subject to conditions.

“(4) If:

(a) a designated Presidential Member gives a permission under subsection (1) subject to conditions; and

(b) the conditions are breached;

the Presidential Member may:

(c) amend the scheme for the amalgamation, including:

(i) the rules of any association proposed to be registered as an organisation in relation to the amalgamation; or

(ii) any proposed alterations of the rules of the existing organisations concerned in the amalgamation; or

(d) give directions and orders:

(i) in relation to the conduct of the ballot for the amalgamation; or

(ii) otherwise in relation to the procedure to be followed in relation to the amalgamation.

“(5) Subsection (4) does not limit by implication the powers that the Presidential Member has apart from that subsection.

“(6) If the scheme for the amalgamation is altered or amended (whether under this section or otherwise), the outline of the scheme must be altered or amended to the extent necessary to reflect the alterations or amendments.

Outline of scheme for amalgamation

“253F. (1) The outline of the scheme for a proposed amalgamation may, if a designated Presidential Member approves, consist of more than 3,000 words.

“(2) The outline may, if a designated Presidential Member approves, include matter that is not in the form of words, including, for example, diagrams, drawings, illustrations, photographs and symbols.

“(3) A designated Presidential Member:

- (a) may, at any time before the commencing day of the ballot for the amalgamation, permit the existing organisations concerned in the amalgamation to alter the outline; and
- (b) may amend the outline to correct factual errors or otherwise to ensure that it complies with this Act.

Exemption from ballot

“253G. (1) If:

- (a) an application was lodged under section 244 for exemption from the requirement that a ballot be held in relation to a proposed amalgamation; and
- (b) the total number of members that could be admitted to membership of the proposed amalgamated organisation on, and because of, the amalgamation does not exceed 25% of the number of members of the applicant organisation on the day on which the application was lodged;

the designated Presidential Member must, at the conclusion of the hearing arranged under section 250 in relation to the amalgamation, grant the exemption unless the Presidential Member considers that, in the special circumstances of the case, the exemption should be refused.

“(2) If the exemption is granted, the members of the applicant organisation are taken to have approved the proposed principal amalgamation and each proposed alternative amalgamation (if any).

Approval for ballot not conducted under section 253J

“253H. If:

- (a) an application was lodged under section 245 for approval of a proposal for submission of a proposed amalgamation to ballot that is not conducted under section 253J; and
- (b) the proposal provides for:
 - (i) the ballot to be by secret ballot of the members of the organisation; and
 - (ii) the ballot to be held at duly constituted meetings of the members; and
 - (iii) the ballot to be conducted by the Australian Electoral Commission; and
 - (iv) the members to be given at least 21 days' notice of the meetings, the matters to be considered at the meetings and their entitlement to an absent vote; and
 - (v) the distribution or publication of:

Industrial Relations Legislation Amendment No. 19, 1991

- (A) the outline of the scheme for the amalgamation; and
- (B) the statements mentioned in subsections 253D (1) and (2); and
- (vi) absent voting; and
- (vii) the ballot to be otherwise conducted in accordance with the regulations; and
- (c) the designated Presidential Member is satisfied, after consulting with the Electoral Commissioner:
 - (i) that the proposal is practicable; and
 - (ii) that approval of the proposal is likely:
 - (A) to result in participation by members of the organisation that is fuller than the participation that would have been likely to have resulted if the ballot were conducted under section 253J; and
 - (B) to give the members of the organisation an adequate opportunity to vote on the amalgamation without intimidation;

the Presidential Member must, at the conclusion of the hearing arranged under section 250 in relation to the amalgamation, approve the proposal.

Secret postal ballot of members

“253J. (1) If a designated Presidential Member approves, under section 252 or 253A, the submission of a proposed amalgamation to ballot, the Australian Electoral Commission must, in relation to each of the existing organisations concerned in the amalgamation, conduct a secret postal ballot of the members of the organisation on the question whether they approve the proposed principal amalgamation.

“(2) If the scheme for the amalgamation contains a proposed alternative provision, the Australian Electoral Commission must also conduct, at the same time and in the same way as the ballot under subsection (1), a ballot of the members of each of the existing organisations on the question or questions whether, if the proposed principal amalgamation does not take place, they approve the proposed alternative amalgamation or each proposed alternative amalgamation.

“(3) If, under subsection (2), the Australian Electoral Commission is required to conduct 2 or more ballots of the members of an organisation at the same time, the same ballot paper is to be used for both or all the ballots.

“(4) A person conducting a ballot under subsection (2) need not count the votes in the ballot if the person is satisfied that the result of the ballot will not be required to be known for the purposes of this Act.

“(5) A copy of the outline of the scheme for the amalgamation as lodged under this Division, or, if the scheme has been altered or amended, a copy of the outline of the scheme as altered or amended, is to accompany the ballot paper sent to a person entitled to vote at the ballot.

“(6) Subject to this section, a ballot conducted under this section is to be conducted as prescribed.

“(7) This section does not apply to an existing organisation concerned in the amalgamation if:

- (a) a designated Presidential Member has granted the organisation an exemption under section 253G from the requirement that a ballot be held in relation to the proposed amalgamation; or
- (b) a designated Presidential Member has approved under section 253H a proposal by the organisation for the submission of the amalgamation to a ballot that is not conducted under this section.

Determination of approval of amalgamation by members

“253K. Where the question of a proposed amalgamation is submitted to a ballot of the members of an existing organisation concerned in the amalgamation, the members of the organisation approve the amalgamation if, and only if:

- (a) where a declaration under section 241 is in force in relation to the proposed amalgamation—more than 50% of the formal votes cast in the ballot are in favour of the amalgamation; or
- (b) in any other case:
 - (i) at least 25% of the members on the roll of voters cast a vote in the ballot; and
 - (ii) more than 50% of the formal votes cast are in favour of the amalgamation.

Further ballot if amalgamation not approved

“253L. (1) If:

- (a) the question of a proposed amalgamation is submitted to a ballot of the members of an existing organisation; and
- (b) the members of the organisation do not approve the amalgamation;

the existing organisations concerned in the amalgamation may jointly lodge in the Industrial Registry a further application under section 242 for approval for the submission of the amalgamation to ballot.

“(2) If the application is lodged within 12 months after the result of the ballot is declared, a designated Presidential Member may order:

- (a) that any step in the procedure provided by this Division be dispensed with in relation to the proposed amalgamation; or

(b) that a fresh ballot be conducted in place of an earlier ballot in the amalgamation;

and the Presidential Member may give such directions and make such further orders as the Presidential Member considers necessary or desirable.

“(3) Subsection (2) does not by implication require a further application under section 242 to be lodged within the 12 months period mentioned in that subsection.

Inquiries into irregularities

“253M. (1) Not later than 30 days after the result of a ballot under this Division is declared, application may be made to the Court, as prescribed, for an inquiry by the Court into alleged irregularities in relation to the ballot.

“(2) If the Court finds that there has been an irregularity that may affect, or may have affected, the result of the ballot, the Court may:

- (a) if the ballot has not been completed—order that a step in relation to the ballot be taken again; or
- (b) in any other case—order that a fresh ballot be conducted in place of the ballot in which the irregularity happened;

and may make such further orders as it considers necessary or desirable.

“(3) The regulations may make provision with respect to the procedure for inquiries by the Court into alleged irregularities in relation to ballots under this Division, and for matters relating to, or arising out of, inquiries.

Approval of amalgamation

“253N. (1) If the members of each of the existing organisations concerned in a proposed amalgamation approve the proposed principal amalgamation, the proposed principal amalgamation is approved for the purposes of this Division.

“(2) If:

- (a) the scheme for a proposed amalgamation contains an alternative provision; and
- (b) the members of one or more of the existing organisations concerned in the amalgamation do not approve the proposed principal amalgamation; and
- (c) the members of 2 or more of the organisations (in paragraph (d) called the ‘**approving organisations**’) approve a proposed alternative amalgamation; and
- (d) where one of the existing organisations is the proposed amalgamated organisation—that organisation is one of the approving organisations;

the proposed alternative amalgamation is approved for the purposes of this Division.

Expenses of ballot

“253P. The expenses of a ballot under this Division are to be borne by the Commonwealth.

“Subdivision F—Amalgamation taking effect

Action to be taken after ballot

“253Q. (1) The scheme of a proposed amalgamation that is approved for the purposes of this Division takes effect in accordance with this section.

“(2) If a designated Presidential Member is satisfied:

- (a) that the period, or the latest of the periods, within which application may be made to the Court under section 253M in relation to the amalgamation has ended; and
- (b) that any application to the Court under section 253M has been disposed of, and the result of any fresh ballot ordered by the Court has been declared; and
- (c) that there are no proceedings (other than civil proceedings) pending against any of the existing organisations concerned in the amalgamation in relation to:
 - (i) contraventions of this Act, the previous Act or other Commonwealth laws; or
 - (ii) breaches of:
 - (A) awards; or
 - (B) orders made under this Act, the previous Act or other Commonwealth laws;

the Presidential Member must, after consultation with the existing organisations, by notice published as prescribed, fix a day (in this Subdivision called the ‘**amalgamation day**’) as the day on which the amalgamation is to take effect.

“(3) On the amalgamation day:

- (a) if the proposed amalgamated organisation is not already registered—the Industrial Registrar must enter, in the register kept under paragraph 63 (1) (a), such particulars in relation to the organisation as are prescribed, and the date of the entry; and
- (b) any proposed alteration of the rules of an existing organisation concerned in the amalgamation takes effect; and
- (c) the Presidential Member must de-register the proposed de-registering organisations; and
- (d) the persons who, immediately before that day, were members of a proposed de-registering organisation become, by force of

this section and without payment of entrance fee, members of the proposed amalgamated organisation.

Assets and liabilities of de-registered organisation become assets and liabilities of amalgamated organisation

“253R. (1) On the amalgamation day, all assets and liabilities of a de-registered organisation cease to be assets and liabilities of that organisation and become assets and liabilities of the amalgamated organisation.

“(2) For all purposes and in all proceedings, an asset or liability of a de-registered organisation existing immediately before the amalgamation day is taken to have become an asset or liability of the amalgamated organisation on that day.

Resignation from membership

“253S. When the day on which the proposed amalgamation is to take effect is fixed, section 264 has effect in relation to resignation from membership of a proposed de-registering organisation as if the reference in subsection (2) to 3 months were a reference to one month or such lesser period as a designated Presidential Member directs.

Effect of amalgamation on awards and orders

“253T. On and from the amalgamation day:

- (a) an award or an order of the Commission that was, immediately before that day, binding on a proposed de-registering organisation and its members becomes, by force of this section, binding on the proposed amalgamated organisation and its members; and
- (b) the award or order has effect for all purposes (including the obligations of employers and organisations of employers) as if references in the award or order to a de-registered organisation included references to the amalgamated organisation.

Instruments

“253U. (1) On and after the amalgamation day, an instrument to which this Division applies continues, subject to subsection (2), in full force and effect.

“(2) The instrument has effect, in relation to acts, omissions, transactions and matters done, entered into or occurring on or after that day as if a reference in the instrument to a de-registered organisation were a reference to the amalgamated organisation.

Pending proceedings

“253V. Where, immediately before the amalgamation day, a proceeding to which this Division applies was pending in a court or before the Commission:

- (a) the amalgamated organisation is, on that day, substituted for each de-registered organisation as a party; and
- (b) the proceeding is to continue as if the amalgamated organisation were, and had always been, the de-registered organisation.

Subdivision applies despite laws and agreements prohibiting transfer etc.

“253W. (1) This Subdivision applies, and must be given effect to, despite anything in:

- (a) any other Commonwealth, State or Territory law; or
- (b) any contract, deed, undertaking, agreement or other instrument.

“(2) Nothing done by this Subdivision, and nothing done by a person because of, or for a purpose connected with or arising out of this Subdivision:

- (a) is to be regarded as:
 - (i) placing an organisation or other person in breach of contract or confidence; or
 - (ii) otherwise making an organisation or other person guilty of a civil wrong; or
- (b) is to be regarded as placing an organisation or other person in breach of:
 - (i) any Commonwealth, State or Territory law; or
 - (ii) any contractual provision prohibiting, restricting or regulating the assignment or transfer of any asset or liability or the disclosure of any information; or
- (c) is taken to release any surety, wholly or in part, from all or any of the surety’s obligations.

“(3) Without limiting subsection (1), where, but for this section, the consent of a person would be necessary in order to give effect to this Subdivision in a particular respect, the consent is taken to have been given.

Amalgamated organisation to take steps necessary to carry out amalgamation

“253X. (1) The amalgamated organisation must take such steps as are necessary to ensure that the amalgamation, and the operation of this Subdivision in relation to the amalgamation, are fully effective.

“(2) The Court may, on the application of an interested person, make such orders as it considers appropriate to ensure that subsection (1) is given effect to.

Certificates in relation to land and interests in land

“253Y. Where:

- (a) land or an interest in land becomes, under this Subdivision,

Industrial Relations Legislation Amendment No. 19, 1991

land or an interest in land of the amalgamated organisation;
and

(b) a certificate that:

- (i) is signed by an authorised person; and
- (ii) identifies the land or interest, whether by reference to a map or otherwise; and
- (iii) states that the land or interest has, under this Subdivision, become land or an interest in land of the amalgamated organisation;

is lodged with the Registrar-General, Registrar of Titles or other proper officer of the State or Territory in which the land is situated;

the officer with whom the certificate is lodged may:

- (c) register the matter in the same way as dealings in land or interests in land of that kind are registered; and
- (d) deal with, and give effect to, the certificate;

as if it were a grant, conveyance, memorandum or instrument of transfer of the land (including all rights, title and interest in the land) or the interest in the land, as the case may be, to the amalgamated organisation that had been properly executed under the law of the State or Territory.

Certificates in relation to charges

“253Z. Where:

(a) the amalgamated organisation under an amalgamation becomes, under this Subdivision, the holder of a charge; and

(b) a certificate that:

- (i) is signed by an authorised person; and
- (ii) identifies the charge; and
- (iii) states that the amalgamated organisation has, under this Subdivision, become the holder of the charge;

is lodged with the National Companies and Securities Commission;

that Commission may:

- (c) register the matter in the same way as assignments of charges are registered; and
- (d) deal with, and give effect to, the certificate;

as if it were a notice of assignment of the charge that had been properly lodged with that Commission.

Certificates in relation to shares etc.

“253ZA. Where:

(a) the amalgamated organisation becomes, under this Subdivision, the holder of a share, debenture or interest in a company; and

(b) a certificate that:

- (i) is signed by an authorised person; and
- (ii) identifies the share, debenture or interest; and
- (iii) states that the amalgamated organisation has become, under this Subdivision, the holder of the share, debenture or interest;

is delivered to the company;

the company must:

- (c) register the matter in the same way as transfers of shares, debentures or interests, as the case may be, in the company are registered; and
- (d) complete all the appropriate certificates, debentures or other documents in relation to the matter; and
- (e) deliver the completed certificates, debentures or other documents to the amalgamated organisation;

as if the certificate were a proper instrument of transfer.

Certificates in relation to other assets

“253ZB. Where:

- (a) an asset (other than an asset to which section 253Y, 253Z or 253ZA applies) becomes, under this Subdivision, an asset of the amalgamated organisation; and

(b) a certificate that:

- (i) is signed by an authorised person; and
- (ii) identifies the asset; and
- (iii) states that the asset has, under this Subdivision, become an asset of the amalgamated organisation;

is given to the person or authority who has, under Commonwealth, State or Territory law, responsibility for keeping a register in relation to assets of that kind;

the person or authority may:

- (c) register the matter in the same way as transactions in relation to assets of that kind are registered; and
- (d) deal with, and give effect to, the certificate;

as if the certificate were a proper and appropriate instrument for transactions in relation to assets of that kind.

Court may resolve difficulties

“253ZC. (1) Where any difficulty arises in relation to the application of this Subdivision to a particular matter, the Court may, on the application of an interested person, make such order as it considers proper to resolve the difficulty.

“(2) An order made under subsection (1) has effect despite anything contained in this Act or in any other Commonwealth law or any State or Territory law.

“Subdivision G—Validation

Validation of certain acts done in good faith

“253ZD. (1) Subject to this section and to section 253ZF, an act done in good faith for the purposes of a proposed or completed amalgamation by:

- (a) an organisation or association concerned in the amalgamation; or
- (b) the committee of management of such an organisation or association; or
- (c) an officer of such an organisation or association;

is valid despite any invalidity that may later be discovered in or in connection with the act.

“(2) For the purposes of this section:

- (a) an act is treated as done in good faith until the contrary is proved; and
- (b) a person who has purported to be a member of the committee of management, or an officer, is to be treated as having done so in good faith until the contrary is proved; and
- (c) an invalidity in the making or altering of the scheme for the amalgamation is not to be treated as discovered before the earliest time proved to be a time when the existence of the invalidity was known to a majority of members of the committee of management or to a majority of the persons purporting to act as the committee of management; and
- (d) knowledge of facts from which an invalidity arises is not of itself treated as knowledge that the invalidity exists.

“(3) This section applies:

- (a) to an act whenever done (including an act done before the commencement of this section); and
- (b) to an act done to or by an association before it became an organisation.

“(4) Nothing in this section affects:

- (a) the operation of an order of the Court made before the commencement of this section; or
- (b) the operation of section 253M, 253X or 253ZC or Division 8.

Validation of certain acts after 4 years

“253ZE. (1) Subject to subsection (2) and section 253ZF, after the end of 4 years from the day an act is done for the purposes of a proposed or completed amalgamation by:

- (a) an organisation or association concerned in the amalgamation; or
- (b) the committee of management of such an organisation or association; or
- (c) an officer of such an organisation or association;

the act is taken to have complied with this Division and the rules of the organisation or association.

“(2) The operation of this section does not affect the validity or operation of an order, judgment, decree, declaration, direction, verdict, sentence, decision or similar judicial act of the Court or any other court made before the end of that 4 years.

“(3) This section applies:

- (a) to an act whenever done (including an act done before the commencement of this section); or
- (b) to an act done to or by an association before it became an organisation.

Orders affecting application of section 253ZD or 253ZE

“253ZF. (1) Where, on an application for an order under this section, the Court is satisfied that the application of section 253ZD or 253ZE in relation to an act would do substantial injustice, having regard to the interests of:

- (a) the organisation or association concerned; or
- (b) members or creditors of the organisation or association concerned; or
- (c) persons having dealings with the organisation or association concerned;

the Court must, by order, declare accordingly.

“(2) Where a declaration is made, section 253ZD or 253ZE, as the case requires, does not apply, and is taken never to have applied, in relation to the act specified in the declaration.

“(3) The Court may make an order under subsection (1) on the application of the organisation or association concerned, a member of the organisation or association concerned or any other person having a sufficient interest in relation to the organisation or association concerned.

Court may make orders in relation to consequences of invalidity

“253ZG. (1) An organisation or association, a member of an organisation or association or any other person having a sufficient interest in relation to an organisation or association may apply to the

Court for a determination of the question whether an invalidity has occurred in a proposed or completed amalgamation concerning the organisation or association.

“(2) On an application under subsection (1), the Court may make such declaration as it considers proper.

“(3) Where, in a proceeding under subsection (1), the Court finds that an invalidity of the kind mentioned in that subsection has occurred, the Court may make such orders as it considers appropriate:

- (a) to rectify the invalidity or cause it to be rectified; or
- (b) to negative, modify or cause to be modified the consequences in law of the invalidity; or
- (c) to validate any act, matter or thing that is made invalid by or because of the invalidity.

“(4) Where an order is made under subsection (3), the Court may give such ancillary or consequential directions as it considers appropriate.

“(5) The Court must not make an order under subsection (3) without satisfying itself that such an order would not do substantial injustice to:

- (a) the organisation or association concerned; or
- (b) any member or creditor of the organisation or association concerned; or
- (c) any person having dealings with the organisation or association concerned.

“(6) This section applies:

- (a) to an invalidity whenever occurring (including an invalidity occurring before the commencement of this section); and
- (b) to an invalidity occurring in relation to an association before it became an organisation.”.

Offences in relation to ballot

16. Section 317 of the Principal Act is amended:

- (a) by omitting from subsection (1) “a person conducting a ballot” and substituting “an electoral officer”;
- (b) by omitting from subsection (1) “the ballot” and substituting “a ballot”;
- (c) by omitting “section 243” from paragraph (b) of the definition of “ballot” in subsection (5) and substituting “Division 7 of Part IX”.

Failure to comply with requirement made in relation to an organisation

17. Section 318 of the Principal Act is amended by omitting “245” and substituting “249”.

Transitional provisions in relation to amalgamations

18. (1) Where the scheme for a proposed amalgamation was submitted to ballot under the Principal Act before the commencement, but, before the commencement, the amalgamation had neither taken effect nor been rejected by the members of the organisations concerned, then, subject to subsections (2) and (4), the proposed amalgamation is to continue to be dealt with, and may take effect, as if this Act had not been enacted.

(2) Where, immediately before the commencement, none of the ballots in relation to a proposed amalgamation had been started, Division 7 of Part IX of the Principal Act as amended by this Act applies to the proposed amalgamation as if:

- (a)** the submission of the proposed amalgamation to ballot had been approved by a designated Presidential Member under that Division; and
- (b)** the reference in paragraph 253K (1) (a) to a declaration having been made under section 241 included a reference to a declaration having been made under section 239 of the Principal Act; and
- (c)** anything else done under the Principal Act in relation to the proposed amalgamation had been done under the corresponding provision of the Principal Act as amended by this Act.

(3) For the purposes of subsection (2), a ballot is taken to have started when notice of the ballot was published in the *Gazette* under subsection 244 (1) of the Principal Act.

(4) A proposed amalgamation in relation to which an application was lodged in the Industrial Registry under section 235 of the Principal Act, and that has not taken effect before the commencement, may be withdrawn by the bodies that submitted the application at any time before the amalgamation takes effect.

(5) In this section:
“commencement” means the commencement of this section.

**PART 3—AMENDMENT OF THE INDUSTRIAL RELATIONS
(CONSEQUENTIAL PROVISIONS) ACT 1988**

Principal Act

19. In this Part, “Principal Act” means the *Industrial Relations (Consequential Provisions) Act 1988*.

Certain proceedings to be dealt with under Industrial Relations Act

20. Section 8 of the Principal Act is amended by omitting from paragraph (2) (d) “247” and substituting “253M”.

Industrial Relations Legislation Amendment No. 19, 1991

NOTES

1. No. 86, 1988, as amended. For previous amendments, see No. 109, 1988.
 2. No. 87, 1988.
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*[Minister's second reading speech made in—
Senate on 23 August 1990
House of Representatives on 20 December 1990]*