

# **Employment Relations (Workers’ Secret Ballot for Strikes) Amendment Bill**

Member’s Bill

As reported from the Transport and  
Industrial Relations Committee

## **Commentary**

### **Recommendation**

The Transport and Industrial Relations Committee has examined the Employment Relations (Workers’ Secret Ballot for Strikes) Amendment Bill and recommends by majority that it be passed with the amendments shown.

### **Requirement for union to hold secret ballot before strike**

This bill would amend the Employment Relations Act 2000 to require unions to hold a secret ballot before taking strike action. The majority of us recommend inserting new section 82A (clause 7) to clarify the intent of the bill and set out the process relating to the requirement for a union to hold a secret ballot before a strike may proceed. Proposed new section 82A would also ensure that the proposed requirement for a secret ballot was consistent with other provisions relating to secret ballots in the principal Act.

Proposed new section 82A(1) would apply to a union that was bound by a collective agreement or would be bound by a collective agreement, and to members of that union who were employees who were bound or would be bound by that collective agreement. This would make the bill consistent with section 83(b) of the principal Act.

Proposed new section 82A(2) outlines the requirements before a strike may proceed under Part 8 of the principal Act and provides that the results of the secret ballot must be in favour of the strike. This would make the bill consistent with section 45(2) and (5) of the principal Act.

Proposed new section 82A(3) provides that the results of a secret ballot are determined by a simple majority. This threshold is relatively straightforward and would make it easy to calculate and determine the outcome of the ballot. This provision is consistent with guidance on secret ballots in section 45(4) of the principal Act, and would clarify what compliance with the requirements would entail.

In the bill as introduced there is no requirement that the union notify its members of the outcome of the secret ballot. Proposed new section 82A(4) provides that as soon as reasonably practicable after the conclusion of the secret ballot, the union must notify the result of the ballot to the members of the union who were entitled to vote.

### **Terms of question for secret ballot**

The majority of us recommend inserting new section 82B to provide that the question to be voted on in a secret ballot is whether the members of the union are in favour of the strike. This provision is consistent with section 46 of the principal Act.

### **When requirement for secret ballot does not apply**

We recommend inserting new section 82C to provide that proposed sections 82A and 82B do not apply if the proposed strike is lawful under section 84 of the principal Act. Section 84 provides for participation in a lawful strike on grounds of safety or health. A collective response through the use of a secret ballot to an issue of potential serious harm would not be appropriate or practical. Proposed new section 82C would ensure that the right to strike on the grounds of safety or health would not be affected.

### **Unlawful strikes or lockouts**

The majority of us recommend inserting new clause 8 to provide that a strike that takes place in contravention of proposed new section 82A is unlawful.

The bill as introduced is unclear whether strike action without a secret ballot would be unlawful, or whether an employer could obtain an injunction to prevent the strike action going ahead. For example, the bill as introduced could be interpreted as allowing industrial action to go ahead so long as a secret ballot had been conducted, no matter what the result. This could lead to the possibility of the ballot process being subject to court challenges.

### **Other amendments**

The majority of us recommend that the word “workers” be removed from the title of the bill (clause 1) as this term is not used in the principal Act, and the bill seeks to require unions and not workers to hold secret ballots of their members before undertaking strike action. The majority of us also recommend that clause 5 be removed, as there is no corresponding provision in the principal Act. The majority of us further recommend that clause 6 be amended to reflect the changes in proposed new clauses 7 and 8.

### **New Zealand Labour Party minority view**

The Labour Party is supportive of secret ballots for strike action, because it largely reflects current practice among unions. However, in New Zealand, union membership is voluntary and unions should be free to run their organisations according to the rules democratically agreed to by their members.

In order to be consistent with international conventions, there should be no interference in the free and democratic decision-making between unions and their members, but the Labour members believe this bill would create a situation where employers would be able to challenge secret ballot results of unions in the Employment Court.

The Labour members believe there is no balance in the bill where there is a corresponding accountability for employers to hold secret ballots of their shareholders before a decision to lock out union members is made.

We believe the provisions of the bill will impose unfair compliance costs on unions and could lead to unnecessary litigation.

We heard no evidence of problems or complaints about decision-making in relation to strikes that would justify a bill of this nature.

Labour would support a much simpler approach that required unions to have a provision in their rules governing secret ballots for strikes.

We intend to propose this by way of SOP during the Committee stages of the bill.

### **Green Party minority view**

The Green Party is opposed to this bill.

First, the Green Party believe that the bill is unnecessary. The Green Party believes there is no demonstrated pattern of unions engaging in strike action without a democratic mandate. The Green Party believes there are already two major constraints on unions acting in this manner: a strike which does not have the support of its members is unlikely to be successful, and the union concerned would lose members. Also, as incorporated societies, unions are already legally required to act in a democratic manner.

Secondly, the Green Party believes that the law should not intrude on the functioning of voluntary associations more than necessary, and indeed one of the aims of the Employment Relations Act 2000 (Section 3) is “reducing the need for judicial intervention”. The Green Party believes that the bill is likely to lead to more legal challenges from employers that unions haven’t conducted ballots according to the law, in order to frustrate industrial action by unions, and this could worsen industrial relations. The Green Party believes that it should also be noted that there is no countervailing legal requirement for companies to conduct secret ballots of their shareholders before locking out workers in an industrial dispute.

Thirdly, the Green Party believes that the application of the law will sometimes be impractical and we agree with the Unite Union’s submission that secret ballots are not always practical in dispersed casualised workplaces with a high turnover of personnel (like fast-food chains). It is also important for industrial action to be taken without delay when health and safety issues arise, and the workplace is unsafe.

## **Appendix**

### **Committee process**

The Employment Relations (Workers' Secret Ballot for Strikes) Amendment Bill was referred to the committee on 21 April 2010. The closing date for submissions was 27 May 2010. We received and considered 12 submissions from interested groups and individuals. We heard five submissions.

We received advice from the Department of Labour.

### **Committee membership**

David Bennett (Chairperson)

Dr Jackie Blue

Carol Beaumont

Darien Fenton

Hon Tau Henare

Gareth Hughes

Moana Mackey

Allan Peachey

Michael Woodhouse

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~

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*Hon Tau Henare*

**Employment Relations (~~Workers~~<sup>2</sup>  
Secret Ballot for Strikes)  
Amendment Bill**

Member's Bill

**Contents**

|   |   | Page |
|---|---|------|
| 1 | Title   | 1    |
| 2 | Commencement  | 2    |
| 3 | Principal Act amended   | 2    |
| 4 | Purpose   | 2    |
| 6 | Meaning of strike   | 2    |
| 7 | New sections 82A to 82C inserted                              | 2    |
|   | 82A Requirement for union to hold secret ballot before strike | 2    |
|   | 82B Terms of question for secret ballot                       | 3    |
|   | 82C When requirement for secret ballot does not apply         | 3    |
| 8 | Unlawful strike or lockouts                                   | 3    |

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**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Employment Relations (~~Workers~~<sup>2</sup> Secret Ballot for Strikes) Amendment Act **2010**.

- 2 Commencement**  
This Act comes into force 1 year after the date on which it receives the Royal assent.
- 3 Principal Act amended**  
This Act amends the Employment Relations Act 2000. 5
- 4 Purpose**  
The purpose of this Act is to require unions to hold a secret ballot vote of their members to approve a strike before undertaking any strike action.
- 5 Act binds the Crown** 10  
This Act binds the Crown:
- 6 Meaning of strike**  
Section 81 is amended by adding the following subsection:  
“(4) A strike may not proceed under this Act, unless the question has been submitted to a secret ballot of those employees who are members of the union that would become parties to the strike if it proceeded.” 15
- 6 Meaning of strike**  
Section 81(1)(b) is amended by inserting “, as the case requires,” after “express or”. 20
- 7 New sections 82A to 82C inserted**  
The following sections are inserted before section 83:
- “82A Requirement for union to hold secret ballot before strike**  
“(1) This section applies to— 25  
    “(a) a union that—  
        “(i) is bound by a current collective agreement; or  
        “(ii) will be bound by a proposed collective agreement; and  
    “(b) members of that union who are employees who are or have been in the employment of the same employer or of different employers and who— 30

- “(i) are or were bound (as the case may be) by the current collective agreement referred to in **paragraph (a)(i)**; or  
“(ii) will be bound (as the case may be) by the proposed collective agreement referred to in **paragraph (a)(ii)**. 5
- “(2) Before a strike may proceed under this Part,—  
“(a) the union must hold, in accordance with its rules, a secret ballot of its members who are employed by the same or different employers (as the case may be) and who would become a party to the strike; and 10  
“(b) the result of the secret ballot must be in favour of the strike.
- “(3) For the purposes of **subsection (2)(b)**, the result of a secret ballot is determined by a simple majority of the members of the union who are entitled to vote and who do vote. 15
- “(4) As soon as is reasonably practicable after the conclusion of the secret ballot under **subsection (2)**, the union must notify the result of the ballot to the members of the union who were entitled to vote. 20
- “**82B Terms of question for secret ballot**  
The question to be voted on in a secret ballot for the purposes of **section 82A** is whether the member of the union is in favour of the strike.
- “**82C When requirement for secret ballot does not apply** 25  
**Sections 82A and 82B** do not apply if the proposed strike is lawful under section 84 (which relates to lawful strikes on the grounds of safety or health).”
- 8 Unlawful strike or lockouts**  
Section 86(1) is amended by inserting the following paragraph before paragraph (a): 30  
“(aa) in the case of a strike, takes place in contravention of **section 82A**; or”
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**Legislative history**

23 February 2010  
21 April 2010

Introduction (Bill 121-1)  
First reading and referral to Transport and Industrial  
Relations Committee

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