



## ANALYSIS

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1985, No. 107

**An Act to amend the Coal Mines Act 1979**

[18 June 1985]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Coal Mines Amendment Act 1985, and shall be

read together with and deemed part of the Coal Mines Act 1979 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of July 1985.

**2. Interpretation**—(1) Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term “agent”, the following definition:

“ ‘Authorised representative’, in relation to any industrial union of workers, means a person authorised in accordance with the rules of the union, or by its committee of management, to act on its behalf:”.

(2) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term “society of workers” (as inserted by section 2 of the Coal Mines Amendment Act (No. 2) 1983).

(3) Section 2 (1) of the principal Act is hereby further amended by inserting, before the definition of the term “ventilating district”, the following definitions:

“ ‘Union membership clause’, in relation to any industrial agreement entered into under section 118 of this Act, means a clause which is included, or is deemed to be included, in the agreement and which provides as follows:

“ ‘If any adult person (other than a person who holds a certificate of exemption from union membership issued under section 1120 of the Industrial Relations Act 1973) who is not a member of an industrial union of workers is engaged or employed by any employer, in any position or employment that is subject to the agreement, the person shall become a member of the industrial union of workers within 14 days after that person’s engagement or, as the case may require, after this clause comes into force, and shall remain a member of the industrial union of workers so long as that person continues in the position or employment.’:

“ ‘Union Membership Exemption Tribunal’ means the Union Membership Exemption Tribunal established by section 105 of the Industrial Relations Act 1973:”.

(4) Section 2 of the principal Act is hereby amended by inserting, after subsection (1), the following subsections:

“(1A) For the purposes of both the definition of ‘union membership clause’ in subsection (1) of this section and sections 118A to 118s of this Act, ‘adult person’ means—

“(a) Any person of the age of 18 years or upwards:

“(b) Any person of any age who for the time being is in receipt of not less than the minimum rate of wages or salary payable to a person of the age of 18 years or upwards—

and ‘adult worker’ has a corresponding meaning.

“(1B) In relation to any ballot provided for in the rules set out in section 118B (1) of this Act, ‘appropriate financial members of the union’ means the financial members of the union who are bound by an industrial agreement entered into under section 118 of this Act (being an agreement by which members of the union are bound).”

**3. Industrial matters in State coal mines**—Section 118 of the principal Act is hereby amended by repealing subsection (6) (as added by section 3 of the Coal Mines Amendment Act (No. 2) 1983), and substituting the following subsection:

“(6) In this section, ‘industrial dispute’ does not include a dispute between any union of workers employed in a State coal mine, being a union registered under the Industrial Relations Act 1973, and the Minister about—

“(a) Any matter relating to the compulsory membership of an industrial union of workers by any person; or

“(b) Any matter relating to the conferring on any person, by reason of that person’s membership or non-membership of an industrial union of workers, of—

“(i) Any preference in obtaining or retaining employment; or

“(ii) Any preference in relation to terms of employment or conditions of employment or fringe benefits or opportunities for training, promotion, or transfer; or

“(iii) Any preference in relation to the formula that will be used to assess compensation for redundancy.”

**4. New sections substituted**—The principal Act is hereby amended by repealing sections 118A to 118L (as inserted by section 4 of the Coal Mines Amendment Act (No. 2) 1983), and substituting the following sections:

“118A. **Preference to be obtained only by virtue of union membership clause**—(1) A union membership clause may be inserted in an industrial agreement entered into under section 118 of this Act only in accordance with the provisions of this Act.

“(2) Where a union membership clause is inserted in accordance with the provisions of this Act in an industrial agreement entered into under section 118 of this Act, that clause shall have effect according to its tenor.

“(3) Except for the preference conferred by a union membership clause that is inserted in accordance with the provisions of this Act in an industrial agreement entered into under section 118 of this Act, no person who is a member of a union shall be entitled to preference in obtaining or retaining employment for any work in a State coal mine by virtue of that person’s membership of that union.

“(4) No industrial agreement entered into under section 118 of this Act shall contain a provision (other than a union membership clause inserted in accordance with the provisions of this Act) requiring any person to join a union.

“118B. **Obligatory rules concerning union membership clauses**—(1) The rules of every industrial union of workers employed in a State coal mine, being a union registered under the Industrial Relations Act 1973, shall include, or, in the case of the rules of an industrial union of workers employed in a State coal mine, being a union registered under that Act at the commencement of this section, shall be deemed to include, the following rules (which shall not be amended by the union and which shall prevail over any other provision of the rules):

“ **Retention ballots**—(1) Where the union intends, in relation to the insertion of a union membership clause in each of the industrial agreements entered into under section 118 of this Act by which members of the union are bound from time to time, to conduct, for the purposes of the Coal Mines Act 1979 (and other than in the circumstances set out in the following rule, which relates to restoration ballots and initial ballots), a ballot of the appropriate financial members of the union, the committee of management of the union shall ensure that—

“(a) Written notice of the intention to seek the insertion of a union membership clause in each of the industrial agreements entered into under section 118 of the Coal Mines Act 1979 by which members of the union are bound from time to time is given or posted to each of the appropriate financial members of the union; and

“(b) The intention is discussed at a special meeting, or at a series of special meetings, of appropriate financial members of the union, called for the purpose; and

“(c) A secret ballot of the appropriate financial members of the union present at the special meeting or special meetings (being a ballot conducted under the supervision of the Registrar of Industrial Unions or by some person, being an officer of the Department of Labour, designated by the Registrar of Industrial Unions in that behalf) is held for the purpose of determining whether a majority of the appropriate financial members of the union present at the special meeting or special meetings is in favour of the insertion of a union membership clause in each of the industrial agreements entered into under section 118 of the Coal Mines Act 1979 by which members of the union are bound from time to time.

“(2) For the purposes of this rule, the term “special meeting” includes any meeting of the appropriate financial members of the union residing or working in any particular locality, being a meeting called expressly for the purpose of considering whether a union membership clause should be included in each of the industrial agreements entered into under section 118 of the Coal Mines Act 1979 by which members of the union are bound from time to time.

“(3) For the purposes of subclause (1)(c) of this rule, the view of the majority of the appropriate financial members of the union present at the special meeting or special meetings of the union shall be represented by the majority of the valid votes cast in the secret ballot held at that meeting or those meetings and every special vote cast under these rules shall be as valid as it would have been if the voter had been present at the special meeting in respect of which the voter’s application for a special vote was made.

“**Restoration ballots and initial ballots**—(1) Where—

“(a) The union intends, in relation to the insertion of a union membership clause in each of the industrial agreements entered into under section 118 of the Coal Mines Act 1979 by which members of the union are bound from time to time, to conduct, for the purposes of the Coal Mines Act 1979, a ballot of the workers who will, if the clause is inserted or continues to be inserted in each of those agreements, be bound to become members of the union; and

“(b) At the time when that intention is announced, a union membership clause is not contained or deemed to be contained in each of the industrial agreements

entered into under section 118 of the Coal Mines Act 1979 by which members of the union are bound; and

“(c) Either—

“(i) A union membership clause has been contained previously in each of the industrial agreements entered into under section 118 of the Coal Mines Act 1979 by which members of the union were then bound; or

“(ii) The union was first registered under the Industrial Relations Act 1973 after the commencement of the Coal Mines Amendment Act 1985 and the intended ballot is the first ballot held under these rules by the union,—

the following provisions shall apply—

“(d) The committee of management of the union shall ensure that—

“(i) Written notice of the intention to seek the insertion of a union membership clause in each of the industrial agreements entered into under section 118 of the Coal Mines Act 1979 by which members of the union are bound from time to time is given or posted to each of the appropriate financial members of the union; and

“(ii) The intention is discussed at a special meeting, or at a series of special meetings, called for the purpose:

“(e) The persons eligible to attend any special meeting referred to in paragraph (d) (ii) of this rule shall be—

“(i) The appropriate financial members of the union; and

“(ii) Those workers who are not members of the union but who will, if a union membership clause is inserted in each of the industrial agreements entered into under section 118 of the Coal Mines Act 1979 by which members of the union are bound from time to time, be bound to become members of the union:

“(f) The committee of management of the union shall ensure that a secret ballot of the persons described in paragraph (e) of this subclause who are present at the special meeting or special meetings (being a ballot conducted under the supervision of the Registrar of Industrial Unions or by some person,

being an officer of the Department of Labour, designated by the Registrar of Industrial Unions in that behalf) is held for the purpose of determining whether a majority of the persons so described who are present at the special meeting or special meetings is in favour of the insertion of a union membership clause in each of the industrial agreements entered into under section 118 of the Coal Mines Act 1979 by which members of the union are bound from time to time:

- “(g) Subject to the provisions of these rules, all of the persons described in paragraph (e) of this subclause (including those that are not members of the union) shall be eligible to vote in the ballot:
- “(h) The committee of management of the union shall take all reasonably practicable steps (which steps shall include newspaper advertising) to ensure that all of the workers described in paragraph (e) (ii) of this subclause are made aware of—
  - “(i) The ballot; and
  - “(ii) The procedure by which they may obtain an entitlement to vote in the ballot:
- “(i) The committee of management of the union shall ensure that the steps taken under paragraph (h) of this subclause are taken in such a way as to give every worker described in paragraph (e) (ii) of this subclause who wishes to vote in the ballot a reasonable time within which to submit to the union an application in form 1 in Schedule 1B to the Industrial Relations Act 1973:
- “(j) Every worker described in paragraph (e) (ii) of this subclause who wishes to vote in the ballot shall submit to the union an application in form 1 in Schedule 1B to the Industrial Relations Act 1973, which declaration shall specify:
  - “(i) The worker’s name and full address; and
  - “(ii) The full name and address of the worker’s employer; and
  - “(iii) The work the worker performs for the worker’s employer; and
  - “(iv) The activity carried on by the worker’s employer:
- “(k) Where the union receives before the ballot an application in form 1 in Schedule 1B to the Industrial

Relations Act 1973, it shall inform the applicant, before the ballot, whether or not in its opinion the applicant is entitled to vote in the ballot:

“(l) Where the union informs any applicant that in its opinion the applicant is not entitled to vote in the ballot, the union shall at the same time inform the applicant of the reasons for the opinion of the union:

“(m) Where the union informs any applicant that in its opinion the applicant is entitled to vote in the ballot, the applicant shall be entitled—

    “(i) To vote in the ballot as if the applicant were one of the appropriate financial members of the union; and

    “(ii) To be treated for the purposes of that ballot as if the applicant were one of the appropriate financial members of the union.

“(2) For the purposes of this rule, the term “special meeting” includes any meeting of the persons described in subclause (1) (e) of this rule who reside or work in any particular locality, being a meeting called expressly for the purpose of considering whether a union membership clause should be included in each of the industrial agreements entered into under section 118 of the Coal Mines Act 1979 by which members of the union are bound from time to time.

“(3) For the purposes of subclause (1) (f) of this rule, the view of the majority of the persons described in subclause (1) (e) of this rule who are present at the special meeting or special meetings of the union shall be represented by the majority of the valid votes cast in the secret ballot held at that meeting or those meetings and every special vote cast under these rules shall be as valid as it would have been if the voter had been present at the special meeting in respect of which the voter’s application for a special vote was made.

“(4) For the purposes of subclause (1) of this rule, form 1 in Schedule 1B to the Industrial Relations Act 1973 shall, subject to subclause (5) of this rule, apply with all necessary modifications.

“(5) Notwithstanding anything in subclause (1) or subclause (4) of this rule, regulations made under section 266 of the Coal Mines Act 1979 may prescribe a form (based on form 1 in Schedule 1B to the Industrial Relations Act 1973) that shall apply for the purposes of subclause (1) of this rule in the place of that form.



“ **Restrictions on frequency of ballots**—The union shall not conduct a ballot pursuant to these rules if, during the 2 years preceding the date on which the ballot is to be conducted, a certificate showing the result of an earlier ballot conducted by that union pursuant to these rules has been issued by the Registrar of Industrial Unions.

“ **Returning Officers and other officials**—(1) The union shall from time to time appoint as many Returning Officers and other officials as are required for the purposes of any retention ballot or restoration ballot or initial ballot.

“ (2) Those Returning Officers and other officials shall comply with any directions given to them by the Registrar of Industrial Unions or the person, being an officer of the Department of Labour, designated by the Registrar of Industrial Unions to supervise the ballot.

“ **Special voting**—(1) Any person who is eligible to cast a vote in a secret ballot held under these rules may apply to the Returning Officer for a special vote.

“ (2) The application shall be made at least 10 clear days before the day of the special meeting at which the ballot is to be held.

“ (3) Where there is to be more than one special meeting and the application relates to a special meeting to be held during the applicant's normal working hours, the application shall not be valid if any other special meeting is to be held during the applicant's normal working hours at a place that is nearer, by the most practicable route, to the applicant's usual place of work.

“ (4) Where there is to be more than one special meeting and the application relates to a special meeting held outside the applicant's normal working hours, the application shall not be valid if any other special meeting is to be held outside the applicant's normal working hours at a place that is nearer, by the most practicable route, to the applicant's place of residence.

“ **Form of application for special vote**—(1) Every application for a special vote shall be in form 2 in Schedule 1B to the Industrial Relations Act 1973, which form shall set out the grounds on which the applicant requests a special vote.

“ (2) For the purposes of this rule, form 2 in Schedule 1B to the Industrial Relations Act 1973 shall, subject to subclause (3) of this rule, apply with all necessary modifications.

“(3) Notwithstanding anything in subclause (1) or subclause (2) of this rule, regulations made under section 266 of the Coal Mines Act 1979 may prescribe a form (based on form 2 in Schedule 1B to the Industrial Relations Act 1973) that shall apply for the purposes of subclause (1) of this rule in the place of that form.

“**Issue of ballot papers for special votes**—(1) The Returning Officer shall, upon the application of a person who is eligible to vote in a secret ballot, issue a ballot paper to that person if the application is made in accordance with these rules and that person—

“(a) Is wholly or partially blind; or

“(b) Is unable to read or write (whether because of physical handicap or otherwise); or

“(c) Has severe difficulty in reading or writing; or

“(d) Is ill or infirm, and by reason of that illness or infirmity will be precluded from attending to vote at the special meeting; or

“(e) In the case of a woman, she will by reason of pregnancy or recent childbirth be precluded from attending to vote at the special meeting; or

“(f) Has a religious objection to voting on the day of the week on which the special meeting is to be held; or

“(g) Satisfies the Returning Officer that on any other ground it will not be possible for that person to vote at the special meeting without incurring hardship or undue inconvenience; or

“(h) In the case of a special meeting held during that person’s normal working hours, the employer of that person requires that person to work during those hours.

“(2) Every ballot paper issued under this rule shall be issued at least 5 clear days before the day of the special meeting.

“(3) Where the Returning Officer issues a ballot paper under this rule, the Returning Officer shall, at the same time, give to the person to whom the ballot paper is issued a notice in writing stating both the time within which and the place at which the ballot paper must be returned.

“(4) The notice required by subclause (3) of this rule shall not be included on the ballot paper.

“**Blind, disabled, or illiterate voters**—(1) Any person who is eligible to vote in a secret ballot held under these rules but who is wholly or partially blind, or (whether because of physical

handicap or otherwise) is unable to read or write or has severe difficulty in reading or writing, may vote in accordance with the provisions of this rule.

“(2) Where any such voter has received a ballot paper, it may be marked by the voter with the assistance of a person nominated by the voter, or, if no person is so nominated, the Returning Officer, or may be marked by the person nominated or, as the case may be, the Returning Officer in accordance with the instructions of the voter.

“**Delivery of special votes**—(1) Every special vote shall be delivered to a place specified by the Returning Officer.

“(2) Delivery shall take place not later than noon on the day of the special meeting or, where there is a series of special meetings, not later than noon on the day of the last special meeting.

“**Disallowance of special votes received late**—If any special vote or any envelope appearing to contain a special vote is received by the Returning Officer later than noon on the day of the special meeting or, where there is a series of special meetings, later than noon on the day of the last special meeting, the Returning Officer shall disallow the vote.’

“(2) The rules included, or deemed to be included, by subsection (1) of this section in the rules of any industrial union of workers shall be included in or supplied with every copy of those rules delivered or supplied pursuant to section 180 of the Industrial Relations Act 1973.

“(3) Where subsection (1) of this section applies in respect of the rules of any union of workers, section 99 of the Industrial Relations Act 1973 shall not apply in respect of the rules of that union of workers.

“**118C. Implementation of ballot where industrial agreements entered into under section 118 of this Act contain union membership clause**—(1) Where—

“(a) The Registrar of Industrial Unions certifies that not less than 50 percent of the valid votes recorded in any ballot conducted pursuant to the rules included, or deemed to be included, by section 118B of this Act in the rules of the industrial union of workers are in favour of the insertion of a union membership clause in each of the industrial agreements entered into under section 118 of this Act by which members of the union are bound from time to time; and

“(b) At the time of the issue of the certificate a union membership clause is inserted or deemed to be inserted in each of the industrial agreements entered into under section 118 of this Act by which members of the union are then bound,—

such a clause shall, throughout the period of 3 years beginning with the date of the certificate, continue to be inserted or to be deemed to be inserted in each of those agreements.

“(2) Where—

“(a) The Registrar of Industrial Unions certifies that more than 50 percent of the valid votes recorded in any ballot conducted pursuant to the rules included, or deemed to be included, by section 118B of this Act in the rules of the industrial union of workers are not in favour of the insertion of a union membership clause in each of the industrial agreements entered into under section 118 of this Act by which members of the union are bound from time to time; and

“(b) At the date of the certificate a union membership clause is inserted in each of the industrial agreements entered into under section 118 of this Act by which members of the union are then bound,—

the clause shall not, at any time in the period of 3 years beginning with the date of the certificate, be inserted in the industrial agreements entered into under section 118 of this Act by which members of the union are bound (or in any industrial agreements entered into under section 118 of this Act made in substitution for those agreements) and the clause inserted, or deemed to be inserted, at the date of the certificate, in each of the industrial agreements entered into under section 118 of this Act by which members of the union are bound shall cease to have effect on the day following the date of the certificate and the Minister shall amend the agreement by deleting the clause from it.

**“118D. Implementation of ballot where industrial agreements entered into under section 118 of this Act do not contain union membership clause—(1) Where—**

“(a) The Registrar of Industrial Unions certifies that not less than 50 percent of the valid votes recorded in any ballot conducted pursuant to the rules included, or deemed to be included, by section 118B of this Act in the rules of the industrial union of workers are in favour of the insertion of a union membership

clause in each of the industrial agreements entered into under section 118 of this Act by which members of the union are bound from time to time; and

“(b) At the time of the issue of that certificate a union membership clause is not inserted or deemed to be inserted in each of the industrial agreements entered into under section 118 of this Act by which members of the union are then bound,—

such a clause shall, as from the beginning of the 14th day after the date of that certificate and throughout the balance of the period of 3 years beginning with the date of the certificate, be inserted by the Minister in each of the industrial agreements entered into under section 118 of this Act by which members of the union are bound from time to time.

“(2) Where—

“(a) The Registrar of Industrial Unions certifies that more than 50 percent of the valid votes recorded in any ballot conducted pursuant to the rules included, or deemed to be included, by section 118B of this Act, in the rules of the industrial union of workers are not in favour of the insertion of a union membership clause in each of the industrial agreements entered into under section 118 of this Act by which members of the union are bound from time to time; and

“(b) At the date of the certificate a union membership clause is not inserted or deemed to be inserted in each of the industrial agreements entered into under section 118 of this Act by which members of the union are then bound,—

a union membership clause shall not, at any time in the period of 3 years beginning with the date of the certificate, be inserted in the industrial agreements entered into under section 118 of this Act by which members of the union are bound (or in any industrial agreements entered into under section 118 of this Act and made in substitution for those agreements).

**“118E. Power to make consequential amendments to industrial agreement, entered into under section 118 of this Act—**(1) Where, as the result of any ballot conducted pursuant to the rules included, or deemed to be included, by section 118B of this Act in the rules of the industrial union of workers, a union membership clause is required to be inserted in any industrial agreement entered into under section 118 of this Act, the Minister shall, where necessary, amend the agreement by inserting in it a union membership clause.

“(2) Where the Minister is satisfied that there is no authority for the continued insertion of a union membership clause in any industrial agreement entered into under section 118 of this Act, the Minister shall amend that agreement by deleting that clause from it.

“118F. **Explanatory note in relation to expiry of union membership clause**—Where a union membership clause is inserted, or deemed to be inserted, in an industrial agreement entered into under section 118 of this Act, the Minister shall ensure that the agreement contains an explanatory note stating the date on which the clause will expire unless in a ballot, which is conducted after the insertion or deemed insertion of that clause and which is so conducted pursuant to the rules included, or deemed to be included, by section 118B of this Act in the rules of the industrial union of workers, not less than 50 percent of the valid votes recorded are in favour of the union membership clause.

“118G. **Insertion of union membership clause in industrial agreement entered into under section 118 of this Act to which 2 or more unions of workers are parties**—Where 2 or more unions of workers are parties to an industrial agreement entered into under section 118 of this Act and not all of those unions are entitled to have a union membership clause inserted in the agreement, the explanatory note required by section 118F of this Act shall state, in addition to the matters required by that section, the names of the unions excluded from the union membership clause.

“118H. **Notice to Registrar**—(1) Where an industrial union intends to conduct a ballot pursuant to the rules included, or deemed to be included, by section 118B of this Act in its rules, the committee of management of the union shall, at least 30 days before the day on which the special meeting or the first of the series of special meetings required is held, give or post to the Registrar of Industrial Unions written notice of that intention in form 3 in Schedule 1B to the Industrial Relations Act 1973 which notice shall state, among other things, the date, time, and place of each special meeting.

“(2) For the purposes of this section, form 3 in Schedule 1B to the Industrial Relations Act 1973 shall, subject to subsection (3) of this section, apply with all necessary modifications.

“(3) Notwithstanding anything in subsection (1) or subsection (2) of this section, regulations made under section 266 of this Act may prescribe a form (based on form 3 in Schedule 1B to

the Industrial Relations Act 1973) that shall apply for the purposes of subsection (1) of this section in the place of that form.

“118I. **Conduct of ballot**—(1) Every ballot conducted pursuant to the rules included, or deemed to be included, by section 118B of this Act in the rules of any industrial union shall be conducted by the union under the supervision of the Registrar of Industrial Unions, or of some person, being an officer of the Department of Labour, designated by the Registrar of Industrial Unions to supervise that ballot.

“(2) The ballot paper shall be in form 4 in Schedule 1B to the Industrial Relations Act 1973.

“(3) The Returning Officer shall, at the conclusion of the special meeting or, where there is a series of special meetings, at the conclusion of that series, prepare, and make available to the Registrar and to any voter or other interested person, a record showing—

“(a) The number of votes in favour of the union membership clause:

“(b) The number of votes against the union membership clause:

“(c) The number of informal votes.

“(4) The Registrar of Industrial Unions shall issue a certificate showing the result of the ballot, which certificate shall be in form 5 in Schedule 1B to the Industrial Relations Act 1973, and shall supply one copy of that certificate to the Minister and another to the union. Every such certificate shall be conclusive evidence of the result of the ballot.

“(5) The expenses incurred by the Registrar of Industrial Unions or designated person in connection with the conduct of every such ballot shall be paid out of money to be appropriated by Parliament for the purpose.

“(6) Notwithstanding anything in the rules of the industrial union, the Registrar of Industrial Unions or designated person may take such action and give such directions as the Registrar of Industrial Unions or designated person considers necessary to prevent the occurrence of any irregularity in or in connection with the ballot.

“(7) In this section the term ‘designated person’ means any person designated under subsection (1) of this section to supervise the ballot on behalf of the Registrar of Industrial Unions.

“(8) For the purposes of this section, forms 4 and 5 in Schedule 1B to the Industrial Relations Act 1973 shall, subject to subsection (9) of this section, apply with all necessary modifications.

“(9) Notwithstanding anything in subsections (2), (4), and (8) of this section, regulations made under section 266 of this Act may prescribe forms (based on forms 4 and 5 in Schedule 1B to the Industrial Relations Act 1973) that shall apply for the purposes of subsections (2) and (4) of this section respectively in the place of those forms.

“118j. **Restriction on issue of certificates**—(1) The Registrar of Industrial Unions shall not issue a certificate showing the result of a ballot conducted under the rules included, or deemed to be included, by section 118B of this Act in the rules of an industrial union of workers if, during the 3 years preceding the date on which it was conducted, a certificate showing the result of an earlier ballot of the financial members of that union, being a ballot conducted pursuant to those rules, was issued by the Registrar of Industrial Unions.

“(2) Where—

“(a) An industrial union conducts a ballot pursuant to the rules included, or deemed to be included, in its rules by section 118B of this Act; and

“(b) A period of more than 2 years but less than 3 years has elapsed since the date on which a certificate was last issued by the Registrar of Industrial Unions in respect of a ballot conducted by that industrial union pursuant to the rules so included or deemed to be included,—

the Registrar of Industrial Unions shall postpone the issue of the certificate in respect of the latest ballot until immediately after the expiration of the period of 3 years specified in subsection (1) of this section.

“118k. **Offences in relation to ballots**—(1) Every person commits an offence who, without lawful authority or excuse, in or in connection with a ballot conducted pursuant to the rules included, or deemed to be included, by section 118B of this Act in the rules of any industrial union,—

“(a) Personates another person to secure a ballot paper to which the personator is not entitled, or personates another person for the purpose of voting;

“(b) Destroys, defaces, alters, takes, or otherwise interferes with a ballot paper or envelope:



“(c) Puts a ballot paper or other paper into a ballot box or other ballot receptacle or into the post:

“(d) Records a vote which that person is not entitled to record.

“(2) Every person commits an offence who—

“(a) Gives any money or other valuable consideration to any person entitled to vote in the ballot in order to induce any such person to vote or refrain from voting; or

“(b) Refuses or fails to comply with a direction of the Registrar of Industrial Unions or the designated person under section 118i of this Act; or

“(c) Obstructs or hinders the Registrar of Industrial Unions or the designated person in the taking of any action under section 118i of this Act or any person in the carrying out of a direction given by the Registrar of Industrial Unions or the designated person under that section; or

“(d) Intimidates or attempts to intimidate any worker with intent to influence the worker’s voting in the ballot.

“(3) Every person who commits an offence against this section shall be liable on summary conviction to fine not exceeding \$500.

“118L. **Applications for inquiries**—(1) Where, in the case of a ballot conducted under the rules included, or deemed to be included, by section 118B of this Act in the rules of any industrial union of workers, not less than 10 percent or 50 of the persons eligible to vote in that ballot (whichever is the smaller number) claim—

“(a) That the rules so included or deemed to have been so included have not been complied with by the union; or

“(b) That, notwithstanding the rules so included, or deemed to be so included, the special meeting or special meetings of the union did not constitute an adequate opportunity for the persons eligible to vote in that ballot to attend the meeting or meetings and to vote; or

“(c) That there has been an irregularity in or in connection with the conduct of the ballot,—

they may apply to the Registrar of Industrial Unions for an inquiry into the matter.

“(2) An application under this section shall—

“(a) Be in writing in form 6 in Schedule 1B to the Industrial Relations Act 1973:

“(b) Be lodged with the Registrar of Industrial Unions during the period of 30 days beginning with the date on which the Registrar certifies the result of the ballot.

“(3) For the purposes of this section, form 6 in Schedule 1B to the Industrial Relations Act 1973 shall, subject to subsection (4) of this section, apply with all necessary modifications.

“(4) Notwithstanding anything in subsection (2) or subsection (3) of this section, regulations made under section 266 of this Act may prescribe a form (based on form 6 in Schedule 1B to the Industrial Relations Act 1973) that shall apply for the purposes of subsection (2) of this section in the place of that form.

“118M. **Action by Registrar of Industrial Unions**—Every application under section 118L of this Act shall be dealt with by the Registrar of Industrial Unions as if it were an application under section 102D of the Industrial Relations Act 1973, and the provisions of sections 102E to 102G of that Act shall, with all necessary modifications, apply accordingly.

“118N. **Ballot papers, etc., to be preserved**—  
 (1) Notwithstanding anything in the rules of the industrial union, every industrial union and every officer of an industrial union or branch of an industrial union who is able to do so shall take all reasonable steps to ensure that all ballot papers, envelopes, lists, and other documents used in connection with, or relevant to, a ballot conducted under the rules included, or deemed to be included, by section 118B of this Act in the rules of the industrial union are preserved and kept at the registered office of the industrial union for a period of one year after the completion of the ballot.

“(2) Every industrial union or officer that fails to comply with subsection (1) of this section commits an offence against this Act.

“118O. **Enforcement of union membership clauses**—  
 (1) Where pursuant to this Act a union membership clause is inserted in an industrial agreement entered into under section 118 of this Act, the following provisions shall apply:

“(a) Every worker to whom the union membership clause applies shall be liable to a penalty not exceeding \$50 if that worker fails to become a member of the

industrial union in accordance with that clause, after having been requested to do so by the officer or authorised representative of the industrial union, or if, having become a member of the industrial union, that worker fails to remain a member in accordance with that clause:

“(b) Every employer who is bound by the agreement shall be liable to a penalty not exceeding \$500 if the employer continues to employ any worker, being a worker to whom that clause applies, after having been notified by any officer or authorised representative of the industrial union that the worker has been so requested to become a member of the industrial union and has failed to become a member in accordance with that clause, or that the worker after having become a member of the industrial union, has failed to remain a member in accordance with that clause.

“(2) The Arbitration Court shall have full and exclusive jurisdiction to deal with all actions for the recovery of penalties under this section.

“(3) For the purposes of this section, every reference to the Arbitration Court shall be read as a reference to a Judge of that Court acting alone.

“(4) A penalty recoverable under this section shall be recovered in the same manner, with all necessary modifications, as a penalty for a breach of an award under the Industrial Relations Act 1973; and sections 151 to 157 of that Act (except subsections (1), (5), and (6) of section 151) shall, with all necessary modifications, apply accordingly.

“(5) An action for the recovery of a penalty under this section may be brought only by the industrial union.

“(6) The Arbitration Court may delegate to any District Court Judge named by it its powers and functions to deal with an action under this section and the provisions of section 49 of the Industrial Relations Act 1973 (except those of subsection (6)) shall, with all necessary modifications, apply accordingly.

“118P. **Application for exemption from union membership**—(1) Any person who is required by a union membership clause to become or to remain a member of an industrial union may apply to the Secretary of the Union Membership Exemption Tribunal for a certificate of exemption from union membership.

“(2) The Union Membership Exemption Tribunal shall have, in addition to its other functions, the function of considering

and determining every application made under subsection (1) of this section and the provisions of sections 111, 112C to 112I, and 112K to 112Q of the Industrial Relations Act 1973 shall, with all necessary modifications, apply accordingly.

**“118Q. Intervention by other unions or central organisation of workers—**(1) Where any other industrial union or the central organisation of workers considers that it has an interest in the hearing of an application under section 118P of this Act, it may apply to the Secretary of the Union Membership Exemption Tribunal for the union’s or central organisation’s secretary or any other person appointed in that behalf to also be present and be heard at the hearing.

“(2) The Secretary of the Union Membership Exemption Tribunal shall refer every application under this section to the Union Membership Exemption Tribunal, which shall determine, before the hearing, whether or not the industrial union or the central organisation of workers has such an interest in the hearing as would justify the industrial union’s or central organisation’s secretary or any other person so appointed being entitled to be present and to be heard.

**“118R. Discrimination—**(1) It shall be unlawful for an employer—

“(a) Other than by the lawful insertion in an industrial agreement entered into under section 118 of this Act of a union membership clause, to make membership of an industrial union a condition to be fulfilled by any person who wishes to obtain or retain any position or employment in a State coal mine; or

“(b) To make non-membership of an industrial union a condition to be fulfilled by any person who wishes to obtain or retain any position or employment in a State coal mine; or

“(c) To exert undue influence on any worker with intent to induce that worker—

“(i) To become or remain a member of an industrial union; or

“(ii) To cease to be a member of an industrial union; or

“(iii) Not to become a member of an industrial union; or

“(iv) On account of the fact that that worker is, or, as the case may be, is not, a member of an industrial union, to resign from any position or to leave any employment.

“(2) No industrial union and no industrial association registered under the Industrial Relations Act 1973 and no officer or other person acting on behalf of any such union or association (whether lawfully authorised to do so or not) shall exert undue influence on any person with intent to induce that person—

“(a) To join an industrial union; or

“(b) On account of the fact that that person is not a member of an industrial union, to resign any position or to leave any employment.

“(3) Every person who contravenes subsection (1) or subsection (2) of this section shall be liable,—

“(a) If an officer of an industrial union or of an industrial association registered under the Industrial Relations Act 1973 or a person acting on behalf of such a union or association (whether lawfully authorised to do so or not), to a penalty not exceeding \$500:

“(b) If an industrial union or an industrial association registered under the Industrial Relations Act 1973 or an employer, to a penalty not exceeding \$1,500.

“(4) The Arbitration Court shall have full and exclusive jurisdiction to deal with all actions for the recovery of penalties under this section.

“(5) For the purposes of this section, every reference to the Arbitration Court shall be read as a reference to a Judge of that Court acting alone.

“(6) A penalty recoverable under this section shall be recovered in the same manner, with all necessary modifications, as a penalty for a breach of an award under the Industrial Relations Act 1973; and sections 151 to 157 of that Act (except subsections (1), (5), and (6) of section 151) shall, with all necessary modifications, apply accordingly.

“(7) An action for the recovery of a penalty in respect of an alleged contravention of subsection (1) or subsection (2) of this section may be brought only by the person or worker in relation to whom the contravention is alleged to have taken place.

“(8) The Arbitration Court may delegate to any District Court Judge named by it its powers and functions to deal with an action under this section and the provisions of section 49 of

the Industrial Relations Act 1973 (except those of subsection (6)) shall, with all necessary modifications, apply accordingly.

“(9) Nothing in this section renders unlawful the enforcement of a union membership clause that is included, or deemed to be included, in any industrial agreement entered into under section 118 of this Act.

“118s. **Right of workers to become members of industrial union**—Every person who is obliged by a union membership clause to become a member of an industrial union of workers employed in a State coal mine, and who is not of general bad character, shall be entitled to be admitted to membership of the union; and so far as the rules of any union are inconsistent with the provisions of this section they shall be of no effect.”

**5. Interpretation**—Section 239 of the principal Act is hereby amended by repealing the definition of the term “industrial matters” (as substituted by section 5 of the Coal Mines Amendment Act (No. 2) 1983), and substituting the following definition:

“ ‘Industrial matters’—

“(a) Means all matters affecting or relating to work done or to be done by workers in or about a coal mine, or the privileges, rights, and duties of owners of or workers in or about a coal mine, not involving questions that are or may be the subject of proceedings for an indictable offence; and

“(b) Includes—

“(i) All matters affecting the privileges, rights, and duties of industrial unions of workers employed in or about coal mines or of officers of any such union; and

“(ii) All matters affecting or relating to the preferential employment, or the non-employment, of any person or class of persons; and

“(iii) All matters that by this or any other Act are declared or deemed to be industrial matters; but

“(c) Notwithstanding anything in paragraphs (a) and (b) of this definition, does not include any matter relating to the compulsory membership of a union of workers by any person or any matter relating to the conferring on any person, by reason of that person’s membership or non-membership of an industrial union of workers, of—

- “(i) Any preference in obtaining or retaining employment; or
- “(ii) Any preference in relation to terms of employment or conditions of employment or fringe benefits or opportunities for training, promotion, or transfer; or
- “(iii) Any preference in relation to the formula that will be used to assess compensation for redundancy.”

**6. Repeal**—The Coal Mines Amendment Act (No. 2) 1983 is hereby consequentially repealed.

**7. Transitional provision relating to obligatory rule concerning union membership clauses**—Notwithstanding the provisions of subsection (2) of section 118B of the principal Act (as enacted by section 4 of this Act), where the rules set out in subsection (1) of section 118B of the principal Act are deemed to be included in any rules in force at the commencement of this Act, it shall not be necessary to include the rules deemed to be so included in or to supply the rules deemed to be so included with any copy of those rules delivered or supplied pursuant to section 180 of the Industrial Relations Act 1973 before the 1st day of October 1985.

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This Act is administered in the Ministry of Energy.

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