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HOUSE OF REPRESENTATIVES

# Supplementary Order Paper

Tuesday, 12 September 1989

LAW REFORM (MISCELLANEOUS PROVISIONS) BILL  
*Further Proposed Amendments*

Hon. W. P. Jeffries, in Committee, to move the following amendments:

*Clauses 95A to 95D:* To insert, after clause 95 on page 63, the following clauses:

**95A. Cancellation of 1989 triennial general election of Marlborough Harbour Board**—Notwithstanding anything in the principal Act, no election of the representatives on the Marlborough Harbour Board of any constituent district shall be held in the period commencing with the date of the passing of this Act and ending with the close of the 30th day of September 1990.

**95B. Nominations of candidates for Marlborough Harbour Board declared void**—Notwithstanding anything in the principal Act or the Local Elections and Polls Act 1976, where, before the passing of this Act, any person has been nominated as a candidate for election (at the triennial general election of members of the Marlborough Harbour Board to be held on the 14th day of October 1989) as a representative on the Marlborough Harbour Board of any constituent district,—

- (a) The nomination of that person as such a candidate is hereby declared to be void; and
- (b) The deposit paid under section 14 of the Local Elections and Polls Act 1976 in respect of the nomination of that person as such a candidate shall, within 28 days after the date of the passing of this Act, be returned to the person who paid it or, as the case may require, to that person's personal representatives; and
- (c) Any declaration under section 18 of the Local Elections and Polls Act 1976 that any person nominated as such a candidate has been duly elected to the office of representative on the Marlborough Harbour Board of a constituent district (being an office to be filled at that triennial general election) is hereby declared to be void.

**95c. Continuation in office of existing members of Marlborough Harbour Board**—Notwithstanding anything in the principal Act or the Local Elections and Polls Act 1976, but subject to section 32 of the principal Act,—

- (a) Every person who is holding office on the date of the passing of this Act as a representative on the Marlborough Harbour Board of any constituent district shall, unless he or she sooner vacates office under section 32 of the principal Act, continue to hold office until the close of the 30th day of September 1990; and
- (b) The term of office of any member continued in office by paragraph (a) of this subsection shall, subject to section 32 of the principal Act, be deemed to expire with the close of the 30th day of September 1990.

**95d. Appointment to fill casual vacancies**—

(1) Notwithstanding anything in subsection (1) of section 33 of the principal Act, where a representative of any constituent district vacates his or her office on the Marlborough Harbour Board at any time in the period commencing on the 1st day of April 1990 and ending with the close of the 30th day of September 1990, the vacancy shall not be filled if the Board so resolves.

(2) Section 33 of the principal Act shall apply, in relation to any vacancy in the office of a member continued in office by section 95c of this Act, as if, for subsection (1), there were substituted the following subsection:

“(1) When a representative of any constituent district vacates his or her office on the Board through the operation of section 32 of this Act, the Board shall forthwith appoint some qualified person in his or her place as a representative of that district and shall forthwith give public notice of that appointment.”

*New clauses 130A to 130C:* To insert, after clause 130, the following heading and clauses:

*Local Government*

**130A. Sections to be read with Local Government Act 1974**—This section and the next 4 succeeding sections shall be read together with and deemed part of the Local Government Act 1974\* (in those sections referred to as the principal Act).

**130b. Interpretation**—Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term “local authority” (as substituted by section 2 (8) of the Local Government Amendment Act (No. 2) 1989), and substituting the following definition:

“ ‘Local authority’—

“(a) Means—

- “(i) A local authority named in Part I or Part II or Part III of the First Schedule to this Act;
- (ii) A local authority of any of the classes specified in Part I or Part II or Part III of the First Schedule to this Act; and

“(b) Includes the Chatham Islands County Council.”

\*R.S. Vol. 20, p.1

Amendments: 1988, No. 71; 1988, No. 104; 1988, No. 109; 1989, No. 1; 1989, No. 29

**130c. Matters that may be included in reorganisation proposal**—Section 37ZP (1) (c) of the principal Act (as inserted by section 10 (1) of the Local Government Amendment Act (No. 2) 1989) is hereby amended by inserting, after the word “region”, the words “(including the dissolution or abolition of the local authority for that district or region):”.

**130D. New sections substituted**—The Local Government Amendment Act 1989 is hereby amended by repealing sections 25A and 25B (as inserted by section 51 of the Local Government Amendment Act (No. 2) 1989), and substituting the following sections:

**“25A. Definitions of ‘former authority’ and ‘successor authority’**—In sections 25b, 25c, 25d, and 25e of this Act, unless the context otherwise requires,—

“‘Former authority’ means a local authority that is a former authority for the purposes of any Order in Council made under section 36 of the Local Government Act 1974 and giving effect to any final reorganisation scheme prepared under section 15B of the principal Act:

“‘Successor authority’ means, in respect of any former authority, a local authority constituted by an Order in Council made under section 36 of the Local Government Act 1974 and giving effect to a final reorganisation scheme prepared under section 15B of the principal Act (being an Order in Council in which the former authority is defined as a former authority).

**“25B. Special provision in relation to transfer of employees to local authorities to be formed**—(1) Subject to any contract of employment, every employee employed by a former authority as at the 31st day of October 1989 shall be transferred, in accordance with this section, to a successor authority.

“(2) Where there is more than one successor authority, the local authority to which an employee is to be transferred pursuant to subsection (1) of this section shall be determined by the principal administrative officers designate of the successor authorities and, in any case where there is no principal administrative officer designate for any such successor authority, the transitional committee of that successor authority shall, for the purposes of this subsection, act in the place of the principal administrative officer designate for that successor authority.

“(3) Where the local authority to which an employee is to be transferred is not determined in accordance with this section before the 1st day of September 1989, the officers or committees charged with determining the matter under subsection (2) of this section shall refer the matter to the Local Government Commission for determination.

“(4) Where a matter is referred to the Commission under subsection (3) of this section, the Commission shall, subject to subsection (5) of this section, determine the matter not later than the 14th day of October 1989.

“(5) Where the Commission, after considering any matter referred to it under subsection (3) of this section, is satisfied that, but for that subsection, the matter could have been determined

under subsection (2) of this section, the Commission may refer the matter back to the persons charged with determining the matter under subsection (2) of this section and those persons shall determine the matter accordingly. If they fail to do so, the matter shall be determined by the Commission.

“(6) Except as provided in section 37A of the principal Act, the determination of the Commission on any matter referred to it under subsection (3) of this section shall be final.

“**25c. Application of Local Authorities (Employment Protection) Act 1963**—(1) Where the provisions of subsections (2) to (6) of section 25B of this Act apply in respect of an employee, the successor authority to which that employee is to be transferred shall be determined in accordance with those subsections and not in accordance with subsections (1) and (2) of section 4 and subsections (1) and (2) of section 5 of the Local Authority Employment Protection Act 1963.

“(2) Subject to subsection (1) of this section, the Local Authorities (Employment Protection) Act 1963, to the extent that it would otherwise apply, shall have effect in relation to a transfer under subsections (2) to (6) of section 25B of this Act as if it were a transfer under the Local Authorities (Employment Protection) Act 1963.

“**25D. Terms and conditions of employment of employees transferred**—The terms and conditions of employment of each employee transferred pursuant to subsections (2) to (6) of section 25B of this Act shall, unless varied by agreement, continue until the close of the 31st day of March 1990:

“Provided that every person so transferred shall perform such duties and hold such office as are directed from time to time by the successor authority.

“**25E. Continuation and negotiation of awards and agreements**—(1) Notwithstanding the provisions of this Act or any other enactment,—

“(a) The principal administrative officer designate of a local authority to be formed under an Order in Council made under section 36 of the principal Act and giving effect to a final reorganisation scheme prepared under section 15B of the principal Act; or

“(b) After the 1st day of November 1989, any officer authorised pursuant to section 119c (2) of the principal Act,—

shall, until the close of the 31st day of March 1990, be authorised pursuant to this section to negotiate on behalf of the local authority, awards or agreements in terms of the Labour Relations Act 1987.

“(2) For the purposes of any negotiations undertaken pursuant to subsection (1) of this section before the 1st day of November 1989, every local authority to be formed, as described in the Order in Council, shall, for all the purposes of the Labour Relations Act 1987, be deemed to be an employer and an employer party in terms of that Act, notwithstanding that the local authority has not yet been formed.

“(3) Where, on or after the 1st day of November 1989, any award that binds as a subsequent party any successor authority is current or in force, the following provisions shall apply:

- “(a) The union party to any such award or the successor authority may at any time before the 31st day of March 1990, notwithstanding that negotiations for a new award have not been initiated under the Labour Relations Act 1987, create a dispute of interest to procure an agreement to cover any employees of the successor authority, and section 164 of the Labour Relations Act 1987 shall apply accordingly:
- “(b) Notice of claims served under section 164 (2) of the Labour Relations Act 1987 (as applied by paragraph (a) of this subsection) may be served by the union party in its own right or in conjunction with another union or unions:
- “(c) Where, in respect of a dispute of interest created pursuant to paragraph (a) of this subsection, a settlement is arrived at and is forwarded to the Arbitration Commission for registration, the Arbitration Commission may register the agreement notwithstanding that section 164 (6) (c) of the Labour Relations Act 1987 would apply in relation to the award which binds the relevant successor authority:
- “(d) Where the Arbitration Commission registers an agreement in accordance with this subsection, the coverage of any award which then overlaps with the coverage of the agreement shall be deemed to be amended accordingly to prevent the overlapping coverage and, when that award is replaced, any subsequent award shall not be registered if it overlaps in coverage with the coverage of that agreement while that agreement remains in force.
- “(4) Notwithstanding any other provisions of this Act or of the Labour Relations Act 1987 or of any other enactment,—
- “(a) Every agreement in terms of the Labour Relations Act 1987 relating to the terms and conditions of employment of employees of any former authority and in force immediately before the 1st day of November 1989, shall, unless sooner replaced pursuant to this section, continue to regulate the terms and conditions of employment of those employees and be enforceable under the Labour Relations Act 1987 in respect of those employees against the successor authority until the close of the 31st day of March 1990; and
- “(b) Any award limited in coverage to the original parties in terms of section 160 (3) of the Labour Relations Act 1987 relating to the terms and conditions of employment of employees of any former authority and in force immediately before the 1st day of November 1989, shall, unless sooner replaced pursuant to this section, continue to regulate the terms and conditions of employment of those employees and be enforceable under the Labour Relations Act 1987 in respect of those employees against the successor authority as if it were an original party until the close of the 31st day of March 1990.”

**130E. Conditions of employment of persons employed after 1 November 1989**—The Local Government Amendment Act 1989 is hereby amended by inserting, after section 26A (as inserted by section 52 of the Local Government Amendment Act (No. 2) 1989), the following section:

“26B. Any person who commences employment on or after the 1st day of November 1989 with a local authority constituted by an Order in Council made under section 36 of the Local Government Act 1974 and giving effect to a final reorganisation scheme prepared under section 15B of the principal Act, shall be deemed, for the purpose of determining which award or agreement for the time being regulates the terms and conditions of employment of that person, to have been an employee of the principal authority designated in the final reorganisation scheme and to have been transferred pursuant to section 25B of this Act.”

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EXPLANATORY NOTE

*Harbours*

The new clauses 95A to 95D extend the term of office of the existing members of the Marlborough Harbour Board until the close of 30 September 1990. There will, accordingly, be no general election in 1989 of members of the Marlborough Harbour Board.

*Local Government*

The new clause 130B repeals the definition of the term “local authority”, and substitutes a new definition. The new definition includes the Chatham Islands County Council.

The new clause 130C makes it clear that a reorganisation proposal may deal not only with the abolition of a district or region but also with the dissolution or abolition of the local authority for that district or region.

The new clauses 130D to 130E amend provisions of the Local Government Amendment Act 1989 relating to transitional industrial relations arrangements.