

## HOUSE OF REPRESENTATIVES

## Supplementary Order Paper

Tuesday, 3 October 1989

LAW REFORM (MISCELLANEOUS PROVISIONS) BILL  
*Proposed Amendments*

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

*Labour Relations*

*Clause 115:* To omit from lines 22 and 23 on page 73 the words "embarking on the registration process set out in", and substitute the words "proceeding to consider the proposed award under".

*New clauses 116 and 116A:* To omit *clause 116*, and substitute the following clauses:

**116. Agreements**—(1) Section 164 of the principal Act is hereby amended by repealing subsections (5) to (7), and substituting the following subsection:

"(5) Every voluntary settlement of a dispute of interest arrived at under this section—

"(a) Shall be recorded in writing; and

"(b) Shall be forwarded by the parties to the Commission; and

"(c) Subject to sections 164A to 164G of this Act, shall be registered by a Commissioner as an agreement."

(2) Section 4 (5) of the Labour Relations Amendment Act 1988 is hereby consequentially repealed.

**116A. New sections inserted**—The principal Act is hereby amended by inserting, after section 164, the following sections:

**"164A. Commission's duty to examine proposed agreement**—(1) When a voluntary settlement of a dispute of interest has been received by the Commission under section 164 (5) of this Act, the Commission shall examine the terms of settlement received by it.

"(2) The purpose of the examination shall be to enable the Commission to determine—

"(a) Whether or not to register an agreement; and

"(b) Whether the agreement, if registered, will contain any matter that is contrary to an enactment.

"(3) This section shall apply whether the terms of settlement are received before or after the commencement of this Act.

"(4) For the purposes of this section and sections 164B to 164G of this Act, the Commission shall consist of only 3 Commissioners.

**"164B. Right to representation and refusal to register agreement**—(1) Subject to subsection (2) of this section, the Commission shall refuse to register an agreement if it is satisfied that the parties or any of them do not have the right to

represent the employers or workers or some of the employers or workers whom the agreement would purport to cover if the voluntary settlement of the dispute of interest were registered by the Commission as an agreement.

“(2) Where, in relation to a proposed agreement, the only areas of representation that are not supported by the facts are, in the opinion of the Commission, insignificant when compared to the total number of employers or workers represented by the party concerned and properly covered by the proposed agreement, the party concerned shall, for the purposes of subsection (1) of this section, but for no other purpose, be regarded as having the right to represent all the relevant employers or all the relevant workers, as the case may require.

“164c. **Coverage clause and refusal to register agreement**—(1) Subject to subsection (2) of this section, the Commission shall refuse to register an agreement if it is satisfied that the proposed agreement’s coverage clause overlaps with that of a current award or agreement—

“(a) Which is binding on an employer party to the agreement; and

“(b) Which covers the workers the agreement proposes to cover, or some of those workers.

“(2) Where, in relation to a proposed agreement, the only areas of overlapping coverage with a current award or agreement are, in the opinion of the Commission, insignificant when compared to the total proper coverage of the proposed agreement, the proposed agreement’s coverage shall, for the purpose of subsection (1) of this section, but for no other purpose, be regarded as not overlapping with that of the current award or agreement.

“164d. **Exemption from award and refusal to register agreement**—The Commission shall refuse to register an agreement if it is satisfied that an employer party to the agreement has obtained an exemption from the current award under section 154 of this Act in respect of the workers the agreement proposes to cover or some of those workers.

“164e. **Other enactments and refusal to register an agreement**—(1) The Commission shall, in addition to considering—

“(a) Questions of representation under section 164b of this Act; and

“(b) Questions of coverage under section 164c of this Act; and

“(c) The question of an exemption from an award under section 164d of this Act—

consider, before registering an agreement, whether any other matter contained in the proposed agreement is contrary to an enactment.

“(2) Where the Commission considers that section 164b (2) or section 164c (2) of this Act applies in respect of the proposed agreement, that proposed agreement shall be deemed, for the purposes of sections 164f and 164g of this Act, to contain matter that is contrary to an enactment.

“164f. **Notice to parties of grounds for refusing registration**—(1) Where the Commission is satisfied that there are grounds under section 164b or section 164c or section 164d of this Act for refusing to register an agreement or that, under

section 164E of this Act, there are grounds for considering that any matter contained in an agreement is contrary to an enactment, the Commission shall—

“(a) Inform the parties of the reasons for its views; and

“(b) Give the parties at least 14 days within which—

“(i) To overcome the barrier to registration; or

“(ii) To amend the proposed agreement to ensure it is not contrary to an enactment; or

“(iii) To do both.

“(2) If at the end of the period allowed by the Commission under subsection (1) of this section any barrier to registration remains, the Commission shall refuse to register the agreement.

“(3) Notwithstanding anything in subsection (2) of this section, where any barrier to the registration of an agreement is overcome after the end of the period allowed by the Commission under subsection (1) of this section, the parties to that agreement may, at any time during the currency of the agreement, resubmit it for registration.

“(4) If at the end of the period allowed by the Commission under subsection (1) of this section, there is no barrier to registration in terms of section 164B or section 164C or section 164D of this Act but there remains any matter that the Commission considers is contrary to an enactment, the Commission—

“(a) Shall nevertheless register the agreement; but

“(b) Shall append to it a memorandum identifying those matters which the Commission considers are contrary to an enactment and giving the Commission’s reasons for that view.

“164G. **Effect of memorandum that agreement contrary to enactment**—(1) Where a memorandum is appended to an agreement pursuant to section 164F(4)(b) of this Act and a proposed agreement subsequent to that agreement is submitted for registration, the Commission shall, before proceeding to consider the proposed agreement under sections 164A to 164E of this Act, determine whether any of the matters identified by the Commission in that memorandum are still contrary to an enactment.

“(2) If, after giving the parties an opportunity to make submissions to it, the Commission still considers that any matter contained in the proposed subsequent agreement remains contrary to an enactment, the Commission shall not register the agreement.

“(3) Where the Commission considers that the matters identified in its memorandum have been satisfactorily dealt with by the parties, it shall proceed to consider the proposed agreement under sections 164A to 164E of this Act and, if it subsequently registers an agreement, shall append a memorandum to that agreement explaining how the parties resolved those matters referred to in the previous memorandum appended pursuant to section 164F(4)(b) of this Act.

“164H. **Copy of registered agreement to be deposited with Commission**—A copy of every agreement registered under sections 164 to 164G of this Act shall be deposited in the office of the Commission and a copy shall be forwarded by the

Commission to each of the central organisations, to the representatives of the parties, and to the Secretary of Labour.

“164i. **Powers of Court**—Nothing in sections 164A to 164H of this Act affects the application of section 193 (2) of this Act to any agreement registered by the Commission.”

*New clauses 117 and 117A:* To omit clause 117, and substitute the following clauses:

**117. Composite agreements**—(1) Section 166 of the principal Act is hereby amended by repealing subsections (5) and (6), and substituting the following subsection:

“(5) Every voluntary settlement of a dispute of interest arrived at under this section shall be recorded in writing, shall be forwarded by the parties to the Commission, and, subject to sections 166A to 166E of this Act, shall be registered by a Commissioner as a composite agreement.”

(2) Section 166 of the principal Act is hereby amended by omitting from subsection (7), and also from subsection (9), the words “under this section”, and substituting in each case the words “in accordance with this section”.

(3) Section 4 (6) of the Labour Relations Amendment Act 1988 is hereby consequentially repealed.

**117A. New sections inserted**—The principal Act is hereby amended by inserting, after section 166, the following sections:

“166A. **Commission’s duty to examine proposed composite agreement**—(1) When a voluntary settlement of a dispute of interest has been received by the Commission under section 166 (5) of this Act, the Commission shall examine the terms of the settlement.

“(2) The purpose of the examination shall be to enable the Commission to determine—

“(a) Whether or not to register a composite agreement; and

“(b) Whether the composite agreement, if registered, will be contrary to an enactment.

“(3) This section shall apply whether the terms of settlement are received before or after the commencement of this Act.

“(4) For the purposes of this section and sections 166B to 166E of this Act, the Commission shall consist only of 3 Commissioners.

“166B. **Right to representation and refusal to register composite agreement**—(1) Subject to subsection (2) of this section, the Commission shall refuse to register a composite agreement if it is satisfied that the parties or any of them do not have the right to represent the employers or workers or some of the employers or workers whom the composite agreement would purport to cover if the voluntary settlement of the dispute of interest were registered by the Commission as a composite agreement.

“(2) Where, in relation to a proposed composite agreement, the only areas of representation that are not supported by the facts are, in the opinion of the Commission, insignificant when compared to the total number of employers or workers, as the case may be, represented by the party concerned and properly covered by the proposed agreement, the party concerned shall, for the purposes of subsection (1) of this section, but for no other purpose, be regarded as having the right to represent all the

relevant employers or all the relevant workers, as the case may require.

**“166c. Other enactments and refusal to register composite agreement—**(1) The Commission shall, in addition to considering the question of coverage under section 166b of this Act, consider, before registering a composite agreement, whether any other matter contained in the proposed composite agreement is contrary to an enactment.

“(2) Where the Commission considers that section 166b (2) of this Act applies in respect of the proposed composite agreement, that proposed composite agreement shall be deemed, for the purposes of sections 166d and 166e of this Act, to contain matter that is contrary to an enactment.

**“166d. Notice to parties of grounds for refusing registration—**(1) Where the Commission is satisfied that there are grounds under section 166b of this Act for refusing to register a composite agreement or that, under section 166c of this Act, there are grounds for considering that any matter contained in a composite agreement is contrary to an enactment, the Commission shall—

“(a) Inform the parties of the reasons for its views; and

“(b) Give the parties at least 14 days within which—

“(i) To overcome the barrier to registration; or

“(ii) To amend the proposed composite agreement to ensure it is not contrary to an enactment; or

“(iii) To do both.

“(2) If at the end of the period allowed by the Commission under subsection (1) of this section any barrier to registration remains, the Commission shall refuse to register the composite agreement.

“(3) Notwithstanding anything in subsection (2) of this section, where any barrier to the registration of a composite agreement is overcome after the end of the period allowed by the Commission under subsection (1) of this section, the parties to that composite agreement may, at any time during the currency of the agreement, resubmit it for registration.

“(4) If at the end of the period allowed by the Commission under subsection (1) of this section, there is no barrier to registration in terms of section 166b of this Act but there remains any matter that the Commission considers is contrary to an enactment, the Commission—

“(a) Shall nevertheless register the composite agreement; but

“(b) Shall append to it a memorandum identifying those matters which the Commission considers are contrary to an enactment and giving the Commission’s reasons for that view.

**“166e. Effect of memorandum that composite agreement contrary to enactment—**(1) Where a memorandum is appended to a composite agreement pursuant to section 166d (4) (b) of this Act and a proposed composite agreement subsequent to that composite agreement is submitted for registration, the Commission shall, before embarking on the registration process set out in sections 166a to 166d of this Act, determine whether any of the matters identified by the Commission in that memorandum are still contrary to an enactment.

“(2) If, after giving the parties an opportunity to make submissions to it, the Commission still considers that any matter contained in the proposed subsequent composite agreement remains contrary to an enactment, the Commission shall not register the composite agreement.

“(3) Where the Commission considers that the matters identified in its memorandum have been satisfactorily dealt with by the parties, it shall proceed to consider the proposed agreement under sections 166A to 166D of this Act and, if it subsequently registers a composite agreement, shall append a memorandum to that composite agreement explaining how the parties resolved those matters referred to in the previous memorandum appended pursuant to section 166D (4) (b) of this Act.

“166F. Powers of Court—Nothing in sections 166A to 166E of this Act affects the application of section 193 (2) of this Act to any composite agreement registered by the Commission.”

*Clause 118:* To add, after line 17 on page 74, as subclause (2) of *clause 118*, the following subclause:

(2) Section 183 (2) of the principal Act is hereby amended by omitting the expression “section 164 (6) (c)”, and substituting the expression “section 164c”.

*Clause 121:* To omit from line 30 on page 74 the expression “section 10 (3)”, and substitute the expression “subsections (1) and (2) of section 10”.

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#### EXPLANATORY NOTE

##### *Labour Relations*

The proposed amendments effect additional amendments to the Labour Relations Act 1987.

The proposed amendment to *clause 115* improves the drafting of the new *section 150E (1)*.

The new *clauses 116 and 116A* relate to the registration of agreements and composite agreements. The new clauses have the effect of applying, with all necessary modifications, the registration procedure that, under *clause 115* of the Bill, will apply in relation to awards.

The proposed amendment to *clause 118* effects a consequential amendment.

The proposed amendment to *clause 121* corrects an error in a cross-reference.