



## ANALYSIS

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1985, No. 105

**An Act to amend the New Zealand Railways Corporation Act 1981**

[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 New Zealand Railways Corporation Amendment Act 1985, and shall be read together with and deemed part

of the New Zealand Railways Corporation Act 1981 (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 of the principal Act is hereby amended by inserting, after the definition of the term “approved urban transport scheme”, the following definition:

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

(2) Section 2 of the principal Act is hereby further amended by inserting, after the definition of the term “charges”, the following definition:

“‘Conditions of employment’—

“(a) Includes rates of remuneration; and

“(b) Includes—

“(i) All matters affecting the privileges, rights, and duties of service organisations or the officers of any service organisation; and

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

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

“(i) Any preference on 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.”

(3) Section 2 of the principal Act is hereby further amended by inserting, after the definition of the term “service organisation”, the following definition:

“ ‘Service organisation membership clause’, in relation to any determination, means a clause which is included or is deemed to be included in the determination and which provides as follows:

“ ‘If any person (other than an officer or an apprentice or a person who holds a certificate of exemption from union membership issued under section 112O of the Industrial Relations Act 1973) who is not a member of a service organisation bound by this determination is engaged or employed by the Corporation, in any position or employment that is subject to the determination, the person shall become a member of a service organisation 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 a service organisation so long as that person continues in the position or employment.’ ”

(4) Section 2 of the principal Act is hereby further amended by repealing the definition of the term “society of workers” (as inserted by section 2 of the New Zealand Railways Corporation Amendment Act 1983).

(5) Section 2 of the principal Act is hereby further amended by adding the following definition:

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

(6) Section 2 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

“(2) In relation to any ballot provided for in the rules set out in section 74B (1) of this Act, ‘appropriate financial members of the service organisation’ means the financial members of the service organisation who are bound by a determination made under the State Services Conditions of Employment Act 1977 (as applied by Part VII of this Act) or any other Act (being a determination by which members of the service organisation are bound).”

**3. New sections substituted**—The principal Act is hereby amended by repealing sections 74A to 74L (as inserted by section 3 of the New Zealand Railways Corporation Amendment Act 1983), and substituting the following sections:

**“74A. Preference to be obtained only by virtue of service organisation membership clause**—(1) A service organisation

membership clause may be inserted in a determination only in accordance with the provisions of this Act.

“(2) Where a service organisation membership clause is inserted in a determination in accordance with the provisions of this Act, that clause shall have effect according to its tenor.

“(3) Except for the preference conferred by a service organisation membership clause that is inserted in a determination in accordance with the provisions of this Act, no person who is a member of a service organisation shall be entitled to preference in obtaining or retaining employment by virtue of that person’s membership of that service organisation.

“(4) No determination shall contain a provision (other than a service organisation membership clause inserted in accordance with the provisions of this Act) requiring any person to join a service organisation.

“**74B. Obligatory rules concerning service organisation membership clauses**—(1) The rules of every service organisation shall be deemed to include the following rules (which shall not be amended by the service organisation and which shall prevail over any other provision of the rules):

“**Retention ballots**—(1) Where the service organisation intends, in relation to the insertion of a service organisation membership clause in each of the determinations by which members of the service organisation are bound from time to time to conduct, for the purposes of the New Zealand Railways Corporation Act 1981 (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 service organisation, the committee of management of the service organisation shall ensure that—

“(a) Written notice of the intention to seek the insertion of a service organisation membership clause in each of the determinations by which members of the service organisation are bound from time to time is given or posted to each of the appropriate financial members of the service organisation; and

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

“(c) A secret ballot of the appropriate financial members of the service organisation 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 service organisation present at the special meeting or special meetings is in favour of the insertion of a service organisation membership clause in each of the determinations by which members of the service organisation 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 service organisation residing or working in any particular locality, being a meeting called expressly for the purpose of considering whether a service organisation membership clause should be included in each of the determinations by which members of the service organisation 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 service organisation present at the special meeting or special meetings of the service organisation 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 service organisation intends, in relation to the insertion of a service organisation membership clause in each of the determinations by which members of the service organisation are bound from time to time, to conduct, for the purposes of the New Zealand Railways Corporation Act 1981, a ballot of the employees who will, if the clause is inserted or continues to be inserted in each of those determinations, be bound to become members of the service organisation; and

“(b) At the time when that intention is announced, a service organisation membership clause is not contained or deemed to be contained in each of the determinations by which members of the service organisation are bound; and

“(c) Either—

“(i) A service organisation membership clause has been contained previously in each of the determinations by which members of the service organisation were then bound; or

“(ii) The service organisation first became a service organisation after the commencement of the New Zealand Railways Corporation Amendment Act 1985 and the intended ballot is the first ballot held under these rules by the service organisation,—

the following provisions shall apply—

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

“(i) Written notice of the intention to seek the insertion of a service organisation membership clause in each of the determinations by which members of the service organisation are bound from time to time is given or posted to each of the appropriate financial members of the service organisation; and

“(ii) The intention is discussed at a special meeting, or 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 service organisation; and

“(ii) Those employees who are not members of the service organisation but who will, if a service organisation membership clause is inserted in each of the determinations by which members of the service organisation are bound from time to time, be bound to become members of the service organisation:

“(f) The committee of management of the service organisation 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 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 service organisation membership clause in each of the determinations by which members of the service organisation 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 service organisation) shall be eligible to vote in the ballot:
- “ (h) The committee of management of the service organisation shall take all reasonably practicable steps (which steps shall include newspaper advertising) to ensure that all of the employees 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 service organisation shall ensure that the steps taken under paragraph (h) of this subclause are taken in such a way as to give every employee described in paragraph (e) (ii) of this subclause who wishes to vote in the ballot a reasonable time within which to submit to the service organisation an application in form 1 in Schedule 1B to the Industrial Relations Act 1973:
- “ (j) Every employee described in paragraph (e) (ii) of this subclause who wishes to vote in the ballot shall submit to the service organisation an application in form 1 in Schedule 1B to the Industrial Relations Act 1973, which declaration shall specify:
  - “ (i) The employee’s name and full address; and
  - “ (ii) The work the employee performs for the Corporation:
- “ (k) Where the service organisation 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 service organisation informs any applicant that in its opinion the applicant is not entitled to

vote in the ballot, the service organisation shall at the same time inform the applicant of the reasons for the opinion of the service organisation:

“(m) Where the service organisation 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 service organisation; and

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

“(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 service organisation membership clause should be included in each of the determinations by which members of the service organisation 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 service organisation 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 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 110 (1A) of the New Zealand Railways Corporation Act 1981 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 service organisation 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 service organisation pursuant to these rules has been issued by the Registrar of Industrial Unions.



“ **Returning Officers and other officials**—(1) The service organisation 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 110 (1A) of this Act 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 service organisation shall be included in or supplied with every copy of those rules delivered or supplied to a member of the service organisation.

“**74C. Implementation of ballot where determinations contain service organisation 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 74B of this Act in the rules of the service organisation are in favour of the insertion of a service organisation membership clause in each of the determinations by which members of the service organisation are bound from time to time; and

“(b) At the time of issue of the certificate a service organisation membership clause is inserted or deemed to be inserted in each of the determinations by which members of the service organisation 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 determinations.

“(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 74B of this Act in the rules of the service organisation are not in favour of the insertion of a service organisation

membership clause in each of the determinations by which members of the service organisation are bound from time to time; and

“(b) At the date of the certificate a service organisation membership clause is inserted in each of the determinations by which members of the service organisation 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 determinations by which members of the service organisation are bound (or in any determinations made in substitution for those determinations) and the clause inserted or deemed to be inserted, at the date of the certificate, in each of the determinations by which members of the service organisation are bound shall cease to have effect on the day following the date of the certificate and the Corporation shall amend the determination by deleting that clause from it.

**“74D. Implementation of ballot where determinations do not contain service organisation 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 74B of this Act in the rules of a service organisation are in favour of the insertion of a service organisation membership clause in each of the determinations by which members of the service organisation are bound from time to time; and

“(b) At the time of the issue of that certificate a service organisation membership clause is not inserted or deemed to be inserted in each of the determinations by which members of the service organisation 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 Corporation in each of the determinations by which members of the service organisation 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 74B of this Act, in the rules of the service organisation are not in favour of the insertion of a service organisation membership clause in each of the determinations by which members of the service organisation are bound from time to time; and

“(b) At the date of the certificate a service organisation membership clause is not inserted or deemed to be inserted in each of the determinations by which members of the service organisation are then bound—

a service organisation membership clause shall not, at any time in the period of 3 years beginning with the date of the certificate, be inserted in each of the determinations by which members of the service organisation are bound.

“74E. **Power to make consequential amendments to determination**—(1) Where, as the result of any ballot conducted pursuant to the rules included, or deemed to be included, by section 74B of this Act in the rules of the service organisation, a service organisation membership clause is required to be inserted in any determination, the Corporation shall, where necessary, amend the determination by inserting in it a service organisation membership clause.

“(2) Where the Corporation is satisfied that there is no authority for the continued insertion of a service organisation membership clause in any determination, the Corporation shall amend that determination by deleting that clause from it.

“74F. **Explanatory note in relation to expiry of service organisation membership clause**—Where a service organisation membership clause is inserted, or deemed to be inserted, in a determination, the Corporation shall ensure that the determination 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 74B of this Act in the rules of the service organisation, not less than 50 percent of the valid votes recorded are in favour of the service organisation membership clause.

“74G. **Insertion of service organisation membership clause in determination to which 2 or more service organisations are parties**—Where 2 or more service organisations are parties to a determination and not all of

those service organisations are entitled to have a service organisation membership clause inserted in the determination, the explanatory note required by section 74F of this Act shall state, in addition to the matters required by that section, the names of the service organisations excluded from the service organisation membership clause.

**“74H. Notice to Registrar—**(1) Where a service organisation intends to conduct a ballot pursuant to the rules included, or deemed to be included, by section 74B of this Act in its rules, the committee of management of the service organisation 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 110 (1A) 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.

**“74I. Conduct of ballot—**(1) Every ballot conducted pursuant to the rules included or deemed to be included by section 74B of this Act in the rules of a service organisation shall be conducted by the service organisation 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 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 Corporation and another to the service organisation. Every such certificate shall be conclusive evidence of the result of the ballot.

“(5) The expenses incurred by the Registrar 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 service organisation, the Registrar or designated person may take such action and give such directions as the Registrar 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.

“(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 110 (1A) 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.

“74j. **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 74B of this Act in the rules of a service organisation if, during the 3 years preceding the date on which it was conducted, a certificate showing the result of an earlier ballot conducted under the rules so included or deemed to be included, was issued by the Registrar of Industrial Unions.

“(2) Where—

“(a) A service organisation conducts a ballot pursuant to the rules included, or deemed to be included, in its rules by section 74B 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 service organisation pursuant to the rules so included or deemed to be included,—

the Registrar 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.

**“74K. 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 74B of this Act in the rules of any service organisation—

“(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 or the designated person under section 74I of this Act; or

“(c) Obstructs or hinders the Registrar or the designated person in the taking of any action under section 74I of this Act or any person in the carrying out of a direction given by the Registrar or the designated person under that section; or

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

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

**“74L. Applications for inquiries—**(1) Where, in the case of a ballot conducted under the rules included, or deemed to be included, by section 74B of this Act in the rules of any service organisation not less than 10 percent or 50 of the persons eligible to vote in the 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 service organisation; or
  - “(b) That notwithstanding the rules included or deemed to be so included, the special meeting or special meetings of the service organisation 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:

“(c) Specify—

“(i) The ground or grounds relied on under subsection (1) of this section:

“(ii) The non-compliance (if any) in respect of which the application is made or the irregularity (if any) which is claimed to have occurred:

“(d) State the facts relied on in support of the application:

“(e) Be accompanied by a statutory declaration by one of the applicants declaring that the facts stated in the application are, to the best of the applicant’s knowledge and belief, true:

“(f) Be made during the period of 30 days beginning with the date on which the Registrar of Industrial Unions 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 110 (1A) 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.

“74M. **Action by Registrar of Industrial Unions**—Every application under section 74L 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.

**“74N. Ballot papers, etc., to be preserved—**

(1) Notwithstanding anything in the rules of the service organisation, that service organisation and every officer of that service organisation or of a branch of that service organisation 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 74B of this Act in the rules of the service organisation are preserved and kept at the registered office of the service organisation for a period of one year after the completion of the ballot.

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

**“74O. Enforcement of service organisation membership clauses—**(1) Where pursuant to this Act a service organisation membership clause is inserted in a determination, the following provisions shall apply:

“(a) Every employee to whom the service organisation membership clause applies shall be liable to a penalty not exceeding \$50 if that employee fails to become a member of a service organisation in accordance with that clause, after having been requested to do so by any office holder or authorised representative of the service organisation, or if, having become a member of the service organisation, that employee fails to remain a member in accordance with that clause:

“(b) The Corporation shall be liable to a penalty not exceeding \$500 if the Corporation continues to employ any person, being a person to whom that clause applies, after having been notified by any officer or authorised representative of a service organisation that the person has been so requested to become a member of the service organisation and has failed to become a member in accordance with that clause, or that the person after having become a member of the service organisation, has failed to remain a member in accordance with that clause.

“(2) The Public Sector Tribunal 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 Public Sector Tribunal shall be read as a reference to the Chairman of that Tribunal 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 apply accordingly with all necessary modifications.

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

“(6) The Public Sector Tribunal 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.

“74P. **Application for exemption from membership of service organisation**—(1) Any person who is required by a service organisation membership clause to become or to remain a member of a service organisation 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 apply accordingly with all necessary modifications.

“74Q. **Intervention by other service organisations or unions or central organisation of workers**—(1) Where any other service organisation or union or the central organisation of workers considers that it has an interest in the hearing of an application under section 74P (1) of this Act, it may apply to the Secretary of the Union Membership Exemption Tribunal for the service organisation’s or 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 service

organisation or union or the central organisation of workers has such an interest in the hearing as would justify the service organisation's or union's or central organisation's secretary or any other person so appointed being entitled to be present and to be heard.

“74R. **Discrimination**—(1) It shall be unlawful for the Corporation—

“(a) Other than by the lawful insertion in any determination of a service organisation membership clause, to make membership of a service organisation a condition to be fulfilled by any person who wishes to obtain or retain any position or employment; or

“(b) To make non-membership of a service organisation a condition to be fulfilled by any person who wishes to obtain or retain any position or employment; or

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

“(i) To become or remain a member of a service organisation; or

“(ii) To cease to be a member of a service organisation; or

“(iii) Not to become a member of a service organisation; or

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

“(2) No service organisation and no office holder or other person acting on behalf of any service organisation (whether lawfully authorised to do so or not) shall exert undue influence on any person with intent to induce that person—

“(a) To join a service organisation; or

“(b) On account of the fact that that person is not a member of a service organisation, 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 office holder of a service organisation or person acting on behalf of a service organisation (whether lawfully authorised to do so or not), to a penalty not exceeding \$500:

“(b) If a service organisation, to a penalty not exceeding \$1,500:

“(c) If the Corporation, to a penalty not exceeding \$1,500.

“(4) The Public Sector Tribunal 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 Public Sector Tribunal shall be read as a reference to the Chairman of that Tribunal 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 apply accordingly with all necessary modifications.

“(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 employee in relation to whom the contravention is alleged to have taken place.

“(8) Nothing in this section renders unlawful the enforcement of a service organisation membership clause that is included or deemed to be included in any determination.

“74s. **Right to become member of service organisation**—Every person who, by virtue of that person’s employment or intended employment, is within the categories of employees of which a service organisation is constituted and who is not of general bad character, shall be entitled to become a member of that service organisation on application made in accordance with its rules; and, so far as the rules of any service organisation are inconsistent with this section, they shall be of no effect.”

**4. Regulations**—Section 110 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) The Governor-General may from time to time, by Order in Council, make regulations prescribing forms for the purposes of this Act.”

**5. Repeal**—The New Zealand Railways Corporation Amendment Act 1983 is hereby repealed.

**6. Transitional provision in respect of service organisation membership clauses**—(1) Every determination (made under the State Services Conditions of Employment Act 1977 or any other Act) which binds persons employed in the service of the Corporation and which is in force on the

commencement of this Act shall, throughout the period of 18 months beginning on the 1st day of July 1985, be deemed to contain, so long as that determination continues in force, a service organisation membership clause.

(2) Every determination (made under the State Services Conditions of Employment Act 1977 or any other Act) which binds persons employed in the service of the Corporation and which comes into force in the period of 18 months beginning on the date of the commencement of this Act shall, throughout the period beginning with the date on which the determination comes into force and ending on the expiry of the period of 18 months beginning on the date of the commencement of this Act, be deemed to contain, so long as that determination continues in force, a service organisation membership clause.

(3) The Corporation may amend any determination to which subsection (1) or subsection (2) of this section applies by inserting in it the service organisation membership clause deemed to be contained in it.

(4) Notwithstanding anything in subsections (1) to (3) of this section, where, at any time in the period specified in subsection (1) of this section, a ballot is conducted pursuant to the rules included, or deemed to be included, by section 74B (1) of the principal Act in the rules of any service organisation,—

(a) Any service organisation membership clause deemed by subsection (1) or subsection (2) of this section to be contained in a determination by which members of the service organisation are bound shall cease to have effect on the day following the date of the certificate by which the Registrar of Industrial Unions certifies, under section 74I of the principal Act, the result of the ballot; and

(b) Subsection (2) of this section shall not have effect in respect of any determination (being a determination which binds members of the service organisation and which comes into force after the date of the certificate by which the Registrar of Industrial Unions certifies, under section 74I of the principal Act, the result of the ballot).

(5) This section shall have effect notwithstanding anything in the principal Act.

**7. Transitional provision relating to obligatory rule concerning service organisation membership clauses—** Notwithstanding the provisions of subsection (2) of section 74B of the principal Act (as enacted by section 3 of this Act), where

the rules set out in subsection (1) of section 74B 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 before the 1st day of October 1985.

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This Act is administered in the New Zealand Railways Corporation.

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