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Workplace Relations (Registered Organisations)
(Consequential Provisions) Bill 2001

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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Workplace Relations (Registered Organisations)
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18 June 2001

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Workplace Relations (Registered Organisations) (Consequential Provisions) Bill 2001

Date Introduced: 23 May 2001

House: House of Representatives

Portfolio: Employment, Workplace Relations and Small Business

Commencement: The major provisions outlined in the Digest come into operation on the day to be fixed by proclamation. However, if those provisions do not commence within a period of six months from the day on which the Bill receives Royal Assent they will be taken to have commenced on the day after the end of that period.

Purpose

The purpose of the Workplace Relations (Registered Organisations) (Consequential Provisions) Bill (the Consequential Provisions Bill) is to facilitate the transfer of registered organisations from the *Workplace Relations Act 1996* (WR Act) to the **proposed Workplace Relations (Registered Organisations) Act 2001** (the proposed RO Act). The Bill also repeals provisions of the WR Act which are to be addressed in the proposed RO Act. As at 30 June 2000, there were 115 registered organisations under the WR Act.¹

The Consequential Provisions Bill ensures ongoing registration of organisations as these were at the time that the relevant WR Act registration provisions are to be repealed, as well as performing a bridging role in respect of many other issues and provisions. The Consequential Provisions Bill gives effect to matters and proceedings extant under WR Act provisions proposed for repeal. Such matters may include (but not be limited) to: applications to conduct amalgamations, disamalgamations and elections; applications concerning representation orders; applications to register or vary rules and to meet obligations imposed by the relevant provisions of the WR Act, such as the obligation to report on finances. Thus, where a union has applied for the conduct of an election under the provisions of the WR Act for example and those provisions are repealed while the election is under way, this Bill will allow that election to continue under the WR Act as if

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the relevant provisions had not been repealed. In future, the legislative provisions governing these matters will be addressed under the proposed RO Act.

The matters to be addressed in the proposed RO Act will cover the ground substantially addressed under Parts IX and X of the WR Act. As well as effecting the transfer of registered organisations from the WR Act to the proposed RO Act, this Bill repeals Parts IX and X of the WR Act, as well as certain other provisions, for example sec. 118A of the WR Act (re demarcation disputes).

Matters which have commenced under WR Act provisions proposed for repeal, can be continued under this Bill, although in areas where the proposed RO Act adds provisions, this Bill generally prevents those new provisions being relied under proceedings commenced under provisions proposed for repeal of the WR Act. The Bill also amends other Acts which contain a reference to those provisions proposed for repeal in the WR Act and replaces these with a reference to the relevant provision under the proposed RO Act.

Background

The background to the Consequential Provisions Bill is substantially provided in [Bills Digest No. 130 2000-01](#) which deals with provisions of the Workplace Relations (Registered Organisations) Bill 2001 (the RO Bill). This Bill was introduced into the House of Representatives on 4 April 2001.

The Senate Employment, Workplace Relations, Small Business and Education Committee commenced an inquiry into the RO Bill. Submissions on the Bill were invited and hearings were held on 18 May 2001 and 24 May 2001.

The purpose of the RO Bill is to effect a streamlining of the WR Act by removing provisions in that Act which deal with the registration of organisations, (unions or employer associations) as well as broadening the criteria for deregistration. The grounds for deregistration include the current WR Act provisions pertaining to industrial lawlessness), but will be will widened to include:

- breaches of the WR Act's freedom of association provisions
- breaches of sec 127 orders under the WR Act (to cease industrial action), and
- action brought in pursuit of 'strike pay'.

As noted, this Bill also effects the transfer of provisions governing the resolution of demarcation disputes by the Australian Industrial Relations Commission (the AIRC) from of the WR Act to the proposed RO Act.

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The AIRC resolves demarcation disputes by, inter alia, making representation orders of the organisations in dispute.² Such orders may 'carve out' a section of an organisation's membership and award the coverage of those employees to another organisation, in which case a re-write of the eligibility rules of each organisation will be required (at the least).

These dispute resolution processes have not been usually associated with the registration of organisations. They are to be included in the proposed RO Act so that the WR Act will in future be confined to employment matters. After commencement of the RO Act, the WR Act will deal with the residual issues such as termination of employment, awards and agreement-making after the WR Act provisions dealing with the registration of organisations and related provisions are repealed.

Main Provisions

Schedule 1 of the Bill contains the main transitional provisions ensuring the continued registration of organisations from the WR Act to the proposed RO Act. Also, proceedings commenced under provisions of the WR Act proposed for repeal also continue to have effect, in some cases under the existing provisions of the WR Act (as if they were not repealed).

Items 2 to 5 in Part 1 of Schedule 1 contain the main transitional provisions which allow for orders, certain obligations, terms of office and proceedings commenced under repealed provisions of the WR Act to continue. (**Schedule 2**, below, repeals certain WR Act provisions). **Item 6** provides that where a repealed provision of the WR Act is saved by this Bill, any provisions or regulations made under the repealed provision required for the effective operation of the repealed provision are also saved. **Items 8 and 9** respectively allow the President of the AIRC to give directions and the Federal Court to make orders to resolve any difficulty concerning the transitional arrangements.

Item 11 in Part 2 of the Schedule deems the register of organisations maintained by the Australian Industrial Registry under the WR Act, as in force immediately before commencement of the proposed Workplace Relations (Registered Organisations) Act 2001 to be the register of organisations required under proposed clause 11 of that Act. **Item 15** affirms that an organisation registered under the WR Act immediately before commencement of the RO Act, is taken to be registered under the relevant provision of the proposed RO Act. **Item 16** ensures that proceedings or orders in relation to representational matters of organisations under the WR Act continue under the proposed RO Act, and this will include orders affecting newly registered organisations, ie an organisation registered following a successful disamalgamation application.

Items 17 to 20 deal with transitional provisions for organisations which are amalgamating. **Item 21** allows applications to disamalgamate under the WR Act to continue, but certain additional provisions of the proposed RO Act relating to disamalgamation will apply. **Item**

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22 allows a newly registered organisation to become respondent to future certified agreements of the amalgamated organisation for a period of 5 years after disamalgamation. **Items 23** and **24** also deal with aspects of disamalgamation. **Item 25** addresses cancellation of registration and provides that an application for deregistration made under the WR Act cannot rely on the additional grounds for deregistration (ie freedom of association breaches) available under the proposed RO Act.

Item 27 of **Part 3** prevents the Registrar from varying the rules of an organisation to bring them into conformity with clause 154 of the proposed RO Act over an interim period (6 months). **Item 28** requires the Registrar to review the rules as soon as practicable after the interim period. **Item 29** allows such rules as are in place which allow an extension of a term of office (up to 12 months) so that the incumbent official may reach retiring age, to continue as in force under the WR Act. The review of rules will require such provisions to be removed under the proposed RO Act.

Item 33 of **Part 4** allows a notice of resignation made under the WR Act before commencement of the RO Act, the notice continues under the WR Act. **Item 34** allows an organisation to pursue a recovery of membership arrears for a period of 12 months after commencement of Consequential Provisions Bill; after that time the Bill extinguishes the debt.

Item 35 of **Part 5** provides that where the process for the conduct of an election has commenced under the WR Act, the WR Act provisions in relation to that step apply; however subsequent steps of that election which are taken after commencement of the RO Act are to be conducted under provisions of the proposed RO Act. **Item 37** allow the conduct of an inquiry into an election under the WR Act, where an inquiry has commenced under that Act. However **Item 38** requires that any subsequent Federal Court orders concerning the inquiry be made under the proposed RO Act. **Items 40** to **42** deal with applications to hold office and deal with applicants who have been convicted of prescribed offences, the definition of prescribed offences and certain persons disqualified from holding office as a result of a conviction.

Item 43 under **Part 6** of **Schedule 1** provides that the register of members which organisations are required to keep under the WR Act, shall be the register at the commencement of the proposed RO Act. **Item 45** stipulates that that the accounting requirements which organisations are required to adhere to under Part 3 of Chapter 8 of the proposed RO Act, shall have application from the financial year after commencement of the new reporting guidelines. **Item 46** deems accounts of an organisation or branch become the accounts of the organisation or a reporting unit under the proposed RO Act. **Item 47** ensures that members have access to the financial records of their organisation over the interim period from the commencement of the RO Act to the first financial year which organisations are required to report under. **Item 48** ensures that the provisions of the WR Act dealing with accounts, audit and reports (Division 11 of Part IX) continue to have affect over the transition period. It also allows investigations commenced by the Industrial Registrar under s.280 of the WR Act to continue. **Item 49** ensures that the

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Industrial Registrar is able to monitor compliance with the financial reporting provisions of the WR Act during the transition period and where necessary invoke the civil penalties provided for under the proposed RO Act.

Item 54 of **Part 7** ensures that delegations made under repealed provisions of the WR Act continue to have effect. **Item 55** allows regulations to be made of a transitional nature relating either to the enactment of the RO Act, or the repeal of certain provisions of the WR Act.

Schedule 2 removes certain provisions (for example, Divisions 1A to 11 of Part IX of the WR Act) from the WR Act and amends the titles of remaining Parts of the WR Act.

Schedule 3 amends other Acts to replace a reference to the *Workplace Relations Act 1996* with a reference to the *Workplace Relations (Registered Organisations) Act 2001* or add a reference in those Acts to the *Workplace Relations (Registered Organisations) Act 2001*. The Acts to be so amended include:

Builders Labourers' Federation (Cancellation of Registration - Consequential Provisions) Act 1986

Commonwealth Authorities and Companies Act 1997

Crimes Act 1914

Disability Discrimination Act 1992

Equal Opportunity for Women in the Workplace Act 1999

Federal Court of Australia Act 1976

Human Rights and Equal Opportunity Commission Act 1986

Insurance Act 1973

Jurisdiction of Courts (Cross-vesting) Act 1987

Life Insurance Act 1995

Navigation Act 1912

Petroleum (Submerged Lands) Act 1967

Sex Discrimination Act 1984

Superannuation Act 1976

Superannuation Industry (Supervision) Act 1993

United States Naval Communication Station (Civilian Employees) Act 1968

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Concluding Comments

The Workplace Relations (Registered Organisations) (Consequential Provisions) Bill 2001 will provide an important role for the smooth transition of the registration of organisations currently registered under the WR Act to the proposed *Workplace Relations (Registered Organisations) Act*. A similar role was performed by the *Industrial Relations (Consequential Provisions) Act 1988* in transferring the registration of organisations from the *Conciliation and Arbitration Act 1904* to the *Industrial Relations Act 1988*.

The broadened grounds for deregistering an organisation under the proposed RO Act have been noted. The aims and purposes of this proposed Act are worth considering. The traditional grounds for deregistration of an organisation (those which might be grouped as under the heading of industrial lawlessness) as well as additional grounds proposed in the RO Bill (the pursuit of strike pay, disregarding orders to cease industrial action and freedom of association breaches) have been noted.

However questions are inevitably raised in respect of the traditional deregistration criteria and the new provisions introduced in the RO Bill. Certain behaviour which once may have invoked deregistration proceedings have been made lawful under both the WR Act and its predecessor. Traditionally, the principal criteria for deregistration have been formulated around acts of industrial lawlessness (protracted and repeated industrial actions), and these criteria have been applied against the behaviour of the Builders Labourers Federation and the Australian Federation of Air Pilots in the 1980s. Under enterprise bargaining, such behaviour is difficult to proscribe, as industrial action under correctly initiated bargaining processes is lawful (since 1994).

Thus, unions may take industrial action when pursuing wage claims. Employers may resort to lock-outs in the course of forcing employees to accept his/her terms – both forms of action considered unacceptable behaviour under the old conciliation and arbitration system, and thus proscribed through the ultimate sanction of deregistration of the offending organisation, although not before other penalties were applied.

The three additional grounds for deregistration raise questions as to whether the penalty of deregistration and the resulting loss of agreement and award coverage fit the offence. For example, a proven freedom of association breach may involve up to 10 individuals and probably less. Yet deregistration of the relevant organisation may result in the cancellation of awards and agreements affecting wage and employment conditions of potentially thousands of individuals.

In light of the proposed additional criteria for deregistration, it may have been appropriate for the RO Bill and this Consequential Provisions Bill to have recognised the changing circumstances pertaining to lawful industrial action and re-defined the deregistration provisions which the RO Bill and this Consequential Provisions Bill address.

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Endnotes

- 1 Australian Industrial Relations Commission/Australian Industrial Registry *Annual Report 1999-2000*, p.85. (http://www.airc.gov.au/my_html/airc_air_ann_rep_1999_00.html)
- 2 In the initial proceedings, the AIRC will more likely request the parties not to recruit members who are not eligible to become members of the particular organisation/s.

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