

*Department of the  
Parliamentary Library*



INFORMATION AND RESEARCH SERVICES

Bills Digest

No. 130 2000–01

Workplace Relations (Registered Organisations)  
Bill 2001

ISSN 1328-8091

© Copyright Commonwealth of Australia 2001

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of the Parliamentary Library, other than by Senators and Members of the Australian Parliament in the course of their official duties.

This paper has been prepared for general distribution to Senators and Members of the Australian Parliament. While great care is taken to ensure that the paper is accurate and balanced, the paper is written using information publicly available at the time of production. The views expressed are those of the author and should not be attributed to the Information and Research Services (IRS). Advice on legislation or legal policy issues contained in this paper is provided for use in parliamentary debate and for related parliamentary purposes. This paper is not professional legal opinion. Readers are reminded that the paper is not an official parliamentary or Australian government document. IRS staff are available to discuss the paper's contents with Senators and Members and their staff but not with members of the public.

## Inquiries

Members, Senators and Parliamentary staff can obtain further information from the Information and Research Services on (02) 6277 2646.

A full list of current Information and Research Services publications is available on the ISR of the Parliamentary database. On the Internet the Information and Research Services can be found at <http://www.aph.gov.au/library/>

A list of IRS publications may be obtained from the

IRS Publications Office  
Telephone: (02) 6277 2760

Published by the Department of the Parliamentary Library, 2001

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

Bills Digest  
No. 130 2000–01

Workplace Relations (Registered Organisations) Bill 2001

Steve O'Neill  
Economics, Commerce and Industrial Relations Group  
4 June 2001

# Contents

Purpose . . . . .	1
Background . . . . .	2
Accountability: Royal Commissions and the Hancock Report . . . . .	4
Financial Accounts: Ernst and Whinney Review. . . . .	5
Policy: Better Pay for Better Work. . . . .	6
The WROLA Act and registered organisations . . . . .	7
Internal administration: the existing provisions. . . . .	8
Policy: More Jobs Better Pay. . . . .	10
Discussion Papers, JSCEM and the Exposure Bill. . . . .	11
Main Provisions . . . . .	14
Chapter 1 – Preliminary. . . . .	14
Chapter 2 – Registered Organisations. . . . .	14
Chapter 3 – Amalgamation and Withdrawal from Amalgamation. . . . .	15
Chapter 4 – Representation Orders . . . . .	16
Chapter 5 – Rules of organisations. . . . .	17
Chapter 6 – Membership of Organisations . . . . .	17
Chapter 7 – Democratic Control. . . . .	17
Chapter 8 – Records, Accounts and Conduct of Officers . . . . .	18
Chapter 9 – Civil Penalties . . . . .	19
Chapter 10 – Miscellaneous. . . . .	20
Concluding Comments . . . . .	21
Endnotes. . . . .	22

# Workplace Relations (Registered Organisations) Bill 2001

**Date Introduced:** 4 April 2001

**House:** House of Representatives

**Portfolio:** Employment, Workplace Relations and Small Business

**Commencement:** The Bill provides that other than for Clauses 1 and 2, the provisions of the Bill will commence on or within 6 months of the Act receiving Royal Assent

## Purpose

According to Minister Abbott's Second Reading Speech for the Workplace Relations (Registered Organisations) Bill (House of Representatives, 4 April 2001), the Bill:

- a) transposes into separate legislation those provisions of the *Workplace Relations Act 1996* (referred to as the WR Act) which concern the registration and internal administration of Registered Organisations and,
- b) makes amendments in relation to financial accountability, disclosure and democratic control of Registered Organisations.

In particular, the provisions of the Workplace Relations (Registered Organisations) Bill (referred to as the RO Bill in the rest of this text) intend to:

- allow newly registered organisations to gain representational rights in certain workplaces
- allow the easier disamalgamation of 'amalgamated' organisations
- allow the easier registration of new organisations, and
- broaden the criteria for deregistering an organisation.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

The Government believes that the regulation concerning the registration, reporting and accountability of these organisations should be modernised to reflect contemporary standards of governance.

## Background

Trade unions and employer associations can be registered under the WR Act.

Under the pre-1994 compulsory arbitration system, the registration of organisations was viewed as central to the arbitration system. As the second president of the Commonwealth Court of Conciliation and Arbitration, Justice Higgins, explained:

The system of arbitration adopted by the Act is based on unionism. Indeed, without unions, it is hard to conceive how arbitration could be worked ... no party can file a plaint for the settlement of a dispute except an "organization," that is to say, a union of employers or employees registered under the Act. One of the 'chief objects' of the Act is to "facilitate and encourage the organization of representative bodies of employers and employees and the submission of industrial disputes to the Court by organizations" ; and it follows that the Court will not assist an employer in devices to stamp out unionism.<sup>1</sup>

Where associations apply for registration and it is granted, they are referred to thereafter as registered organisations (s.191 WR Act). As at 30 June 2000 there were 115 registered organisations and the bulk of these were employer organisations (70 of 115).<sup>2</sup> Bargaining rights for employees, as distinct from unions and union members, were formally provided for under federal legislation operative from 1994.<sup>3</sup>

Registration conveys certain rights and obligations, especially to unions. Firstly, registration is the precondition for a union obtaining a federal award. Consequentially, the cancellation of registration removes the particular organisation as a respondent to the particular award and may result in cancellation of the award or certified agreement.

As well, registration grants a union a coverage over the occupations or industry which its members work in via its registered eligibility rule. Under s 189(1)(j) of the WR Act (the 'more conveniently belong and more effectively represent' rule), it is difficult for other organisations to gain representation rights for these classifications or the industry. Also it is crucial for formal bargaining under the WR Act that a union be able to substantiate that it legitimately covers (under its eligibility rule) the class of employees it seeks to represent. This was borne out recently in a case involving the Seven Network and the Communications, Electrical and Plumbing Union in Victoria.<sup>4</sup>

Registration confers corporate status on a body which would otherwise be recognised legally as an association. Equally on the obligation side, registration imposes detailed requirements and procedures on organisations in respect of their internal administration, particularly financial administration. Violation of these may result in the cancellation of

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

registration. Compliance with these obligations has traditionally been regarded as the price paid for trade union security. For example, the issue of democratic control of organisations was given importance by an amendment to the former *Conciliation and Arbitration Act* (C&A Act) by making the encouragement of democratic control an object of the Act.<sup>5</sup> The RO Bill introduces instead objects of encouraging registered organisations to be efficient, accountable and democratic so that they may effectively operate in the workplace relations system

Trade union security has taken some well known forms. For example, the bargaining position of registered unions has been enhanced through their ability to serve logs of claims on behalf of their members on employers and have the Australian Industrial Relations Commission (AIRC) make a finding of an industrial dispute, and then make an industrial award.<sup>6</sup>

It also was the case that awards could contain preference of employment provisions making union membership attractive to individuals. One industrial relations academic, Anthony Forsyth<sup>7</sup> has reviewed this traditional view of the costs and benefits for unions registering in the federal jurisdiction. He considers that the benefits of registration for unions have been markedly reduced under the WR Act; for example, preference has been removed from awards and the legislation under the WR Act. Also, employees can choose bargaining agents and not necessarily select a union as an agent. The finding of an industrial dispute will not necessarily lead to an award being made, and the AIRC's arbitration role has been circumscribed to deal with 'allowable award matters' and awards have been 'simplified' accordingly. Employers can file Australian Workplace Agreements for new employees and require agreement to an AWA as a condition of a new employee starting employment.

Just as these bargaining alternatives provide employers and employees with new bargaining options, the organisational security of trade unions is reduced by them. In his commentary of the exposure draft of the RO Bill, Forsyth raised the possibility that with fiduciary duties associated with commercial practice to apply to officials, candidates may become reluctant to stand for office, (although the RO Bill limits fiduciary duties to financial management: see Chapter 8 under Main Provisions).<sup>8</sup>

In any case, the costs of registration are likely to increase under this Bill, while the benefits of registration have been contracting.

The administration of registered organisations is currently governed extensively under 13 Divisions of Part IX of the WR Act, while Part X, in less prescriptive terms, deals with the cancellation of registration (see below for key provisions). These Parts would, ultimately, be removed from the WR Act, under the Workplace Relations (Registered Organisations) (Consequential Provisions) Bill 2001.<sup>9</sup>

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

## **Accountability: Royal Commissions and the Hancock Report**

Chapter 8 of the RO Bill deals with financial accounts and records which organisation are required to maintain and the form that these will take, and introduces new accounting standards. It therefore helps to recount the steady tightening of the financial responsibilities of registered organisations which occurred over the 1970s/80s.

Additional requirements of financial reporting and other procedures followed in the wake of inquiries, an important inquiry being the Royal Commission into Alleged Payments to Maritime Unions.<sup>10</sup> The Royal Commission's report resulted in significant consequences, leading to amendments to the financial reporting provisions of the (then) C&A Act:

The Royal Commissioner (Sweeney J.) considered that the provisions of the Conciliation and Arbitration Act as it then stood failed to achieve this (public accountability) result. The Act, he said, was deficient in that it did not specify in sufficient detail the records to be kept and filed by organisations in order to ensure that financial records present a full and accurate picture of the financial activities of an organisation. He further concluded that the Act neither specified the activities of auditors in any detail nor required the filing of auditors reports, nor did it specifically direct the Industrial Registrar to examine and evaluate any records filed.<sup>11</sup>

The Royal Commissioner's concerns and recommendations were picked up in legislation in 1977 and 1980 forming an expanded Part VIII A of the C&A Act dealing with accounts, audit and reporting, and the standard of detail to which these accounts needed to be presented.

These accounting standards are currently not the same as the Australian Accounting Standards applicable to companies as organisations are not commercial entities trading to make profits and to distribute these to shareholders. However the detail which accounts must provide is stipulated in regulations to the WR Act.<sup>12</sup> Broadly, the provisions require that organisations keep proper accounting records; ensure that these are audited every financial year; that members have access to certain prescribed information regarding the accounts; that copies of the auditor's report and the audited accounts are presented to the annual general meeting of the organisation or committee of management or be supplied to members or published in the journal and that accounts and auditor's reports be filed with the Registrar.

Further amendments concerning donations, including donations to political parties, were enacted in 1982 arising from the Royal Commission into the Builders Labourers Federation (the Winneke Royal Commission).<sup>13</sup> These recommendations proposed that such donations be authorised by the organisation's membership. The view of the Winneke Royal Commission that such donations be authorised from a ballot of the membership was considered too unwieldy by the (former) Department of Employment and Industrial Relations. Rather, it considered such expenditures could be authorised by a resolution of the Committee of Management, which is the current arrangement under the WR Act.<sup>14</sup>

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*



Organisations considered the combined weight of this new package of financial obligations onerous (for example committee approval for donations greater than \$1000). These sentiments were reflected subsequently in the section of the report inquiring into Australia's industrial relations system (the Hancock Report) which dealt with registered organisations. The Hancock Report observed:

9.111 The (financial administration) requirements were criticised in submissions as being too detailed, unnecessary, complex and intrusive. There was, however, a general recognition that some form of legislative prescriptions relating to financial accounting and reporting was justified. The question is one of degree ... It was put to us that we should recommend a review of the accounting and financial reporting provisions of the legislation. The ACTU would see any review being made in full consultation with the union movement.<sup>15</sup>

The Hancock Report suggested three areas which needed to be considered in any review of financial reporting. These were:

- the 'appropriateness' of imposing on industrial organisations requirements that are essentially transposed from corporate law
- the complexity of the reporting procedures and the difficulties met by organisations complying precisely with the detailed requirements, and
- the time involved and the expense incurred in organisations properly meeting the requirements.<sup>16</sup>

## Financial Accounts: Ernst and Whinney Review

In due course, the former ALP Government commissioned the accounting firm Ernst and Whinney to advise on any legislative responses to the Hancock Report's concern on financial administration suitable for incorporation into the *Industrial Relations Act 1988*. Ernst and Whinney agreed with the three principles outlined above to govern the review but added four more of their own financial management principles:

- Let the management manage: *In line with current trends it is appropriate that an organisation should be permitted to manage its own affairs ... The extent of external regulation should only be of a level to ensure the ability of the organisation to adhere to the principles*
- Sufficient and relevant financial information: *... members have to be provided with sufficient and relevant financial data. This should be provided regularly on an annual basis, direct to each member*
- Opportunity to question management: *the membership need to be given an opportunity to question the management on the organisation's financial affairs*

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

- Reduction of administrative burden: *Most organisations have competing priorities for their time and funds and it is recognised that such a provision of membership service should be their primary aim. Regulation and procedures which impede this objective and do not add to overall accountability should be reduced.*<sup>17</sup>

The Ernst and Whinney report made eleven recommendations most of which were not directly incorporated in the subsequent legislation. Thus the level above which donations had to be formally authorised remained at \$1000. It has been fixed at this level now for almost 20 years. Ernst and Whinney recommended it be raised to \$2000<sup>18</sup>, but the recommendation was ignored. In 2001, a \$2500 cap would restore the early 1980s relativity while complying with the Ernst and Whinney principle of ‘letting the managers manage’. However, it may well be the consensus of the officials of organisations that the current cap provides a reasonable authorisation and reporting discipline.

The key finding of the Ernst and Whinney report was that organisations which had initially found the financial reporting obligations of 1977-82 onerous had by now (1989) made adjustments. Secondly, there was no longer the level of antagonism to the more onerous financial administration procedures highlighted in the Hancock Committee report. As noted in the Ministerial Discussion Paper<sup>19</sup> the Ernst and Whinney report was the last legislative review into financial administration of organisations until the Blake Dawson Waldron report discussed below.

## Policy: Better Pay for Better Work

The proposals contained in this RO Bill refer in part to the industrial relations policy *Better Pay for Better Work* released for the 1996 Federal Election.<sup>20</sup> Some key policy commitments and principles included:

- *... employees should be free to join a union, so they should be free not to join a union. Employees should also have the choice of which union they join (p.3)*

The Coalition will:

- *encourage the establishment of enterprise unions. The program of union amalgamation has failed, producing top heavy unresponsive union bureaucracies.(p.4)*
- *repeal the “conveniently belong” rule and ensure that super unions may, at the request of their members, provide for autonomous branches at the enterprise level or be disamalgamated in an equitable manner for all members.(p.4)*
- *take steps to prevent monies collected on a tax deductible basis from being channelled in whole or in part through a union or employer organisation to a political party (p.13)*

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

- *conduct a thorough examination of the operation of those sections of the Industrial Relations Act which deal with the accounts and auditing practices of registered organisations and will amend them if necessary to ensure that organisations keep proper and audited accounts which are readily available to members (p.13)*
- *amend the Industrial Relations Act to ensure that the accounting, auditing and other financial obligations are as nearly as practicable the same as those of companies (p.13)*

## The WROLA Act and registered organisations

While a number of the *Better Pay for Better Work* policy commitments were implemented through the Workplace Relations and Other Legislation Amendment Act 1996 (WROLA Act), compromise on some points was needed to gain passage of the Bill through the Senate. For example, the commitment to require unions to have autonomous enterprise branches was dropped in the agreement with the Australian Democrats.<sup>21</sup> Other commitments were not followed up in the first piece of legislation, such as the commitment to a thorough review of auditing and accounting practices. (This issue is now picked up in Chapter 8 of the RO Bill).

Important amendments which were agreed to in the WROLA Act included new provisions (Division 7A of Part 1X) to disamalgamate organisations which had been formed through amalgamation since 1991, but disamalgamations were subject to a sunset clause (ie 31 December 1999: WR Act s.253ZJ).

The Explanatory Memorandum to the RO Bill reports of two (only) successful disamalgamations involving employee organisations. The disamalgamation provisions were amended in 1997 to 'correct an unintended limitation on the circumstances in which a constituent unit of a registered organisation can apply to withdraw from an amalgamation' and clarify how such applications can be made.<sup>22</sup> The disamalgamation proposals in the RO Bill therefore make up the Government's third attempt to disamalgamate so-called 'super unions'. While these unions have been subject to criticism for the alleged size of their bureaucracies<sup>23</sup> one study of the unions and their respective official structures has suggested no lessening of internal democratic procedures as a result of amalgamation.<sup>24</sup>

Also, enterprise unions could be formed and registered as a result of the WROLA Act, although Anthony Forsyth has observed that only five applications to register enterprise unions had been lodged after almost three years since the amendments, a result described as 'hardly overwhelming'.<sup>25</sup>

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

## Internal administration: the existing provisions

The WROLA Act 1996 did not extensively restructure the existing administrative and reporting requirements. However, it did amend certain key provisions, most notably those dealing with increased powers for the Australian Industrial Registrar to conduct investigations into alleged financial maladministration of organisations (section 280 of the WR Act). The *CCH Australian Labour Law Reporter* refers to these current powers in the following account:

The powers of the Registrar when conducting an investigation under sec. 280 , 280A or 280B(1) are quite extensive. These powers certainly reflect a policy which perceives organisations' financial administration as of public, as well as private, concern. The powers of the Registrar include the following:

- the Registrar may, by notice in writing, require an officer or employee of an organisation to supply him with such information relevant to his investigation as the Registrar may require; and
- the Registrar may, by notice in writing, require an officer or employee of an organisation to attend before him so that (i) questions (relevant to the Registrar's investigation) may be put to that employee or officer, and (ii) books, documents and papers in the custody of that officer or employee (being relevant to the Registrar's investigation) may be produced.

Section 329 provides that a failure to attend or produce documents carries a penalty of \$500. The making of a statement or the provision of information to the Registrar that is false or misleading in a material particular also carries a penalty of \$500, if the false or misleading statement or information was knowingly made or provided. (Note: Refusal or failure to answer a question does not, of itself, constitute an offence under the section.)<sup>26</sup>

Financial reporting provisions under the WR Act now impose certain obligations on registered organisations in respect of their financial administration, which are not imposed on corporations under the corporations legislation. For example, the duty to disclose donations or gifts including donations to political parties in financial returns, where the donation is more than \$1000 (WR Act s.269) has no comparable provision in the corporation legislation. There is also a requirement that rules of an organisation specify a procedure and authorisation for the making of gifts, donations and loans (WR Act s.201), again without parallel for companies.

Other key provisions of the WR Act which registered organisations are subject to include:

- Rules must conform to the requirements of the WR Act for an organisation to be registered (s.189).
- An organisation must have rules (s.194).

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

- Rules cannot be contrary to law, nor oppressive or unjust (s.196).
- A registered organisation must have an eligibility rule under s.195 (ie specifying who can become a member). This provision also specifies a number of rule requirements including (but not limited to):
  - the conditions for spending funds,
  - the audit of those accounts
  - the maintenance of the membership list, and
  - the organisation of branches and other matters.
- Elections for office are specified (s.197).
- Where rules provide for direct elections, they must be conducted by secret ballot (s.198).
- Terms of office must be specified (s.199)
- The rules must authorise the making of grants, donations and loans (s.201)
- The Industrial Registrar may alter rules of organisations to bring them into conformity with the requirements of the WR Act. (s.203)
- A member of an organisation may make an application to the Federal Court for the performance of the rules (s.209).
- Elections must be conducted by the Australian Electoral Commission unless an exemption has been granted (s.210)
- An allegation of an election irregularity may be pursued by a member (s.218)
- The Federal Court may declare a finding of an irregularity in the conduct of an election after conducting a hearing (s.222)
- The membership register can be inspected by a person authorised by the Industrial Registrar and details of the membership must be forwarded in an annual return to the Registrar (s.268)
- Details of any loans (including the beneficiary), grants or donations must be recorded annually with the Industrial Registrar (s.269)
- Entitlement to membership of an organisation is provided for under s.261 subject to the person paying membership fees and that the person is eligible to become a member under the organisation's eligibility rules

***Warning:***

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

- Rules addressing an organisation's accounts and related requirements are found in s.272. (note Regulations 107 and 108 re presentation of accounts)
- The role of the auditor is outlined in ss282 – 284, and
- Disputes within organisations must be resolved through the organisation's rules (s.290)

## Policy: More Jobs Better Pay

The Coalition's 1998 workplace relations policy *More Jobs Better Pay* made further commitments on reforms to the legislation governing registered organisations.

*A Coalition Government will:*

- *Maintain the principles of freedom of association (voluntary unionism) and strengthen their operation in the Workplace Relations Act 1996, particularly to avoid loopholes where the laws may not fully protect independent contractors or their employees from coercion;*
- *Legislate to make it unlawful for any person or group of persons (whether employers, union bosses or workers) to plan to establish or maintain, directly or indirectly, a closed union shop;*
- *Legislate to remove all forms of preference to unionists against non-unionists, whether by employees, employers or contractors, including the removal of provisions granting indirect preference in awards or agreements (such as existing requirements that employers actively encourage unionisation of their workforce);*
- *Amend the Workplace Relations Act 1996 to increase the accountability of unions to their members in financial and other matters, and foster the creation of greater democratic control of union decision making;*
- *Support (by further legislation, if necessary) the formation of enterprise unions, the disamalgamation of super unions and the creation of formal or informal workplace consultation structures;*
- *Amend the right of entry provisions of the Workplace Relations Act 1996 to ensure that the proper role of unions is as a service provider to its members, not as an uninvited quasi-inspector at the workplace;*
- *Amend the existing registration provisions of the Workplace Relations Act 1996 to make them more workable and overcome technical and procedural impediments never rectified by Labor governments.<sup>27</sup>*

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

The “More Jobs Better Pay’ policy on registered organisations was given impetus by a report on the financial administration of the Australian Workers Union (AWU) by the (then) Australian Industrial Registrar, Mr Michael Kelly. The report was delivered to the Minister, the AWU and the Director of Public Prosecutions (DPP) in Christmas 1998. The Hon. Peter Reith MP made reference to the Registrar’s report and signalled reforms to provisions governing internal administration of registered organisations.<sup>28</sup> The report highlighted a shortfall of operational finances for the AWU’s Head Office of \$11 million from 1995-1997. Mr Kelly found that the union failed to keep proper accounting records during 1995-96 and failed to retain records for a number of its branches. Auditors (Coopers and Lybrand) raised concerns over:

- writs for \$70 million for industrial action in 1993
- disputes over ownership of property
- double counting of union assets between the branches and, and
- back taxes owed by the NSW Branch.

In its defence, the former National Secretary of the AWU, Mr Terry Muscat, said that the Registrar’s report had only found a failure to report on time and ‘had praised the union for taking the advice of the auditors’.<sup>29</sup> The DPP has not prosecuted this matter but has advised the AWU of his concerns.<sup>30</sup> The financial difficulties of the AWU have been well reported since the AWU’s amalgamation with the Federation of Industrial, Manufacturing and Engineering Employees in 1994 and have been the source of questions about its ongoing viability. However the former Secretary of the ACTU, Mr Kelty, came out in strong support for an ongoing role of the AWU in the labour movement in 1998.<sup>31</sup>

## **Discussion Papers, JSCEM and the Exposure Bill**

The Government commissioned the legal firm Blake, Dawson and Waldron to review the financial and administrative requirements of registered organisations in 1997-98. Submissions were invited from interested parties. The report was published in August 1998.<sup>32</sup> This report is important because the Government subsequently announced that it would introduce separate legislation to implement the BDW recommendations, based in part on the notion that provisions dealing with registration, industrial elections and financial reporting had no relevance to many users of the workplace relations system.<sup>33</sup>

Few if any of the registered organisations which made submissions to the BDW review agreed with the suggestion, couched in the review’s terms of reference, that there was a need to align accounting and reporting standards to those of companies.<sup>34</sup> In his critique of the BDW report, Mark Mourell<sup>35</sup> commented:

### ***Warning:***

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

It appears that none of the organisations which made submissions to the review (including the Metal Trades Industry Association, the Australian Council of Trade Unions and the Finance Sector Union) considered it appropriate to adopt business standards in accounting, auditing and reporting to members of their organisations. They also submitted that for the purposes of the WR Act they should not have to rely on external professional accounting advice to make judgments about administration or their own financial stability. Despite these submissions the authors of the report fundamentally followed Australian Society of Certified Practising Accountants and the Institute of Chartered Accountants and urged that financial and auditing provisions be tightened but modelled on those of non-profit organisations.<sup>36</sup>

Also according to Mourell, the key question not answered in the BDW report was: what was the appropriate accountability for industrial organisations? As he put it:

... the fact remains that unions do not raise money from the public in order to make a profit; do not enjoy the benefits of limited liability and 'it may be argued' are not in contractual relationship with their members. Consequently, they ought to be spared the detailed accounting requirements of businesses particularly as their officers are accountable to their members through periodic elections.<sup>37</sup>

The over-riding reason for organisations supporting the current regulatory regime was that they viewed the current provisions as already adequate, if not onerous. The former Workplace Relations Minister, the Hon Peter Reith MP released an Implementation Discussion Paper for the *More Jobs Better Pay* policy in May 1999.<sup>38</sup> This was followed by a Ministerial Discussion Paper released in October 1999<sup>39</sup>, which in addition to addressing financial practices and accountability issues included the Government's response to a report of the Joint Standing Committee on Electoral Matters concerning industrial elections.<sup>40</sup>

The JSCEM report was generally satisfied with the current arrangements for industrial elections including the current public funding arrangements of industrial elections at about \$3.6 million or \$6000 per election (\$1997). It nevertheless made a number of recommendations for amendment to the provisions governing elections for example in respect of: ballot returns, cut-off rolls, applications for inquiries into election outcomes by the Electoral Commissioner and model rules. The JSCEM report also provides a concise history of industrial election provisions from the C&A Act onwards. The Ministerial Discussion Paper picked up most of the election issues proposed for reform and some others.

Another important proposal of the Ministerial Discussion Paper was the proposition to impose fiduciary standards of conduct ('directors' duties') on officials of registered organisations (borrowed from company law).

In his excellent review of trade union regulation, Anthony Forsyth observes that the federal proposal concerning fiduciary duties on union officials has followed similar legislation regulating trade unions introduced by conservative State governments. In certain cases, following a change of government, ALP administrations have been reluctant

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*



to reverse these (higher) standards.<sup>41</sup> There thus arises the assumption according to Forsyth that the community may regard such standards as a reasonable imposition on union office holders.

A draft Registered Organisations Bill incorporating these and other principles was released for discussion and comment in December 1999. However the RO Bill tabled on 4 April 2001 differs from the exposure draft in a number of areas. Gone is the proposal of the earlier Bill for registered organisations to seek approval from the membership for setting up 'political funds', from which donations to political parties would (only) be made. The proposal to reduce the minimum membership number to 20 is also abandoned. On the other hand, the proposal establishing fiduciary duties on office holders is retained.

Forsyth concluded that the combined weight of the administrative burdens proposed in the Ministerial Discussion Paper and incorporated in the RO Bill seem designed to keep unions in 'ever increasing layers of bureaucratic red tape'.<sup>42</sup> A contrary view, that the proposed reforms meet the higher educational standards of the modern workforce, was reported in *Industrial Relations and Management Newsletter*:

With employees becoming more independent, better educated and more individual in their approach, both unions and employer associations are discovering that they need to find new ways to maintain their relevance with their membership.

The government says that the proposed legislation will assist organisations in this, because the new Bill is all about ensuring that members will have an enhanced scope to know how the organisation works, where its money goes, how they can get involved in its policy decisions and what value they get for their subscription

... The policy changes will primarily be aimed at modernising financial accounting and reporting requirements. It will also establish new statutory duties for officers and employees of organisations – modelled in part on those in the Corporations Law.

Improved disclosure to members regarding expenditure of fundings (sic), including political donations and professional (legal) fees will be required. The government is concerned that some organisations are spending huge amounts of members money in internal disputes between officials, potential officials and in feuds between branches.<sup>43</sup>

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

## Main Provisions

The Bill is divided into 10 Chapters,

### Chapter 1 – Preliminary.

Chapter 1 of the Bill contains its principal objects and definitions. The principal objects of the Act are contained in **Clause 5** which include the facilitation of the registration of a diverse range of organisations that are representative of their members and able to operate effectively in the federal workplace relations system; to encourage the efficient management of organisations and high standards of accountability of organisations to their members; and to provide for the democratic functioning and control of organisations.

**Clause 6** is a definitions clause, although particular issues are defined separately, eg *industrial action* in **Clause 7** and *industrial dispute* in **Clause 8**. **Clause 11** establishes functions of the Industrial Registry, although this office is currently established under s.67 of the WR Act.

### Chapter 2 – Registered Organisations.

**Clause 16** identifies the types of organisations which may apply for registration which include the three current categories: employer associations, industrial unions, ie those capable of engaging in an interstate industrial dispute and enterprise unions. **Clause 17** sets out the criteria for registration which replicates the current s.189 of the WR Act. The minimum membership number for a union is retained at 50.

**Clauses 19 and 20** prohibit discriminatory conduct by either employers, eg through dismissal of an employee or the termination of a contractor's services, or unions through industrial action against an individual where the individual's action (or omission) is in relation to forming an association seeking registration under the Bill. **Clause 21** details the power of the Federal Court to make orders for the contravention of clauses 19 and 20.

**Clause 26** confers corporate status on an organisation.

Part 3 of Chapter 2 deals with the cancellation of registration of an organisation. Cancellation of registration is currently dealt with under Part X of the WR Act. Grounds for deregistration include a continued breach of an award or certified agreement; interference with interstate trade or international trade; endangering the safety health or welfare of the Australian community (WR Act s.294).

The RO Bill retains the same criteria for deregistration but adds to these: failure to comply with an order about industrial action or lockout (**clause 31**). **Clause 32** adds to the grounds for deregistration: failure to comply with Court orders concerning: non-compliance with

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

s.127 (orders of the AIRC to stop industrial action); industrial action to seek strike pay (s.187AA) and breaches of the freedom of association provisions (Part XA of the WR Act). These new provisions beg the question as to whether the penalty (deregistration) is appropriate to the offence. For example, a freedom of association breach by a union may involve a small number of individuals, whereas cancellation of the registration of the organisation may result in more than one hundred thousand members (and more non members as well) losing award or certified agreement coverage.

**Clause 34** specifies that failure to comply with a Federal Court order concerning financial administration is a ground for cancellation of registration. **Clause 38** requires the Federal Court to cancel the registration of an organisation after finding that a ground for the application has been established. As an alternative the Court can exclude from membership a particular class of the membership. Under **Clause 39** the Court may give alternative orders to deregistration for example placing restrictions on the use of funds or property. **Clause 40** allows the cancellation of registration for technical reasons, eg the organisation is defunct, or no longer effectively representing its members.

## Chapter 3 – Amalgamation and Withdrawal from Amalgamation.

### Amalgamation

The provisions for amalgamation are similar to those currently in the WR Act. **Clause 46** outlines the duty of the AIRC concerning the steps toward amalgamation necessary to comply with this Part (Part 2) of the Bill. **Clause 47** specifies that powers under this part is to be exercised by a Presidential Member. **Clause 48** allows organisations which are intending to amalgamate to make an application to be recognised as a federation. **Clause 53** allows the organisations to apply through the Industrial Registry for a community of interest declaration. **Clause 55** provides for transitional rules and their provisions, ie holding of office. **Clause 67** provides for the AIRC approving a submission of the amalgamation to a ballot. **Clause 73** allows an exemption from the ballot where the smaller organisation has 33% or less of the membership of the larger organisation. A ballot of members is successful where a single majority approves the amalgamation, providing a community of interest declaration is in force, otherwise, where 25% of the members on the roll vote and more than 50% approve. An Amalgamation day is fixed by the AIRC (**Clause 83**). **Clause 84** allows for the assets and liabilities to be transferred to the new organisation.

### Part 3: Withdrawal from Amalgamation

**Clause 103** allows an application to be made to the Federal Court for a secret ballot to decide whether a constituent part of an organisation should withdraw from that amalgamation. Interestingly, **Clause 103** provides for a two year trial period for the

#### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

amalgamation to work during which an application for a disamalgamation cannot be approved. Where an amalgamation takes place after 31 December 1996 constituent members have a maximum 5 year period to make an application. Where the amalgamation took place prior to 31 December 1996, regulations can prescribe the later date (ie after the first anniversary of the clause). **Clause 103** also specifies that a prescribed number of constituent persons (or a person so authorised by this group, or a committee of management) may make application.

(Note: The current scheme for disamalgamation [WR Act: s.253ZJ(1) in Division 7A of Part 1X] requires that the amalgamation occurred no less than 2 years before the date of the application; and the application is made no more than 3 years after the commencement of Div 7A. The application to the Federal Court may be made by the prescribed number of constituent members, which according to Regulation 98I of the Workplace Relations Regulations is the lesser of:

- (a) 5 per cent of the constituent members; or
- (b) 2,000 members).

**Clause 105** enables the Federal Court to allow specified persons to amend the application for withdrawal. **Clause 111** specifies that only financial members of the constituent organisation are eligible to vote. **Clause 123** allows a constituent organisation of an amalgamated organisation to become party to a certified agreement of the amalgamated organisation after disamalgamation.

## Chapter 4 – Representation Orders

Under the WR Act (s.118A), the AIRC can issue orders in respect of demarcation disputes of employee organisations. This function is to be transferred from the WR Act to the RO Bill. A **Note to Clause 135** refers to the *Workplace Relations (Registered Organisations) (Consequential Provisions) Act 2001* (not enacted). Under this Bill, orders re s.118A of the WR Act will continue in force.

**Clause 130** replicates the current s. 118A (WR Act) allowing the AIRC to: (a) grant exclusive coverage to a union which has constitutional coverage of the relevant employees; (b) give rights of coverage to a union which has no present constitutional coverage of the relevant employees; and/or (c) exclude a union from representing employees over whom it has constitutional coverage.

**Clause 130(2)** is a new provision allowing the Minister, an organisation or an employer to apply for a variation of a demarcation order. Under **Clause 135**, an order made under Clause 130 does not prevent a newly registered organisation which covers ‘relevant’ employees from representing their industrial interests.

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

## Chapter 5 – Rules of organisations

**Subclause 139 (1)(e)** relieves ‘former’ members from paying annual subscriptions, and Clause 139 sets out some specifics which rules must address, eg the notification of an industrial dispute to the AIRC. Interestingly there is no provision requiring the conduct of enterprise bargaining to be addressed within the rules, despite the matter of the ‘authorisation’ of bargaining becoming an issue in enterprise bargaining disputes (eg the initiation of bargaining). **Clause 140** sets out general requirements for rules, ie not contrary to law, not oppressive or unjust. **Clause 141** requires rules to provide for election to office. **Clause 143** requires rules to provide for terms of office (4 year maximum term, the case currently), however extensions to terms for the purpose of synchronising an election with the pending retirement of an incumbent (within 12 months) are not provided for in the Bill. **Clause 145** allows for guidelines for model rules for elections to be issued by the Minister or the AEC. **Clause 146** proposes that model rules be issued concerning the conduct of officials. **Clause 147** requires loans gifts and donations of \$1000 or more to be approved by the committee of management, and permits a loan to a member or dependent of up to \$3000 if it is to relieve personal hardship. **Clause 149** allows members of a State registered union to become members of the federally registered organisation (again, the current case).

**Clause 161** allows a member or an applicant to apply to the Federal Court on an allegation that Clause 140 has been contravened. **Clause 162** allows an application to the Federal Court for the performance of rules.

## Chapter 6 – Membership of Organisations

These provisions largely replicate those Division 9 of Part IX of the WR Act.

**Clause 164** sets out the right of a person to become a member of an organisation providing s/he meets the criteria set out in the relevant eligibility rule. **Clause 170** will require non-financial members (for 2 years) to be removed from the Register within a further 12 months. **Clause 172** provides for resignation from membership where the member ceases to be eligible or after two weeks notice of resignation. **Clause 178** provides for conscientious objection to membership of an organisation (currently s.267 of the WR Act).

## Chapter 7 – Democratic Control

This chapter contains provisions dealing with the conduct of elections and replicates Divisions 4,5 and 6 of Part IX of the WR Act. **Clause 180** requires all elections for office to be conducted by the Australian Electoral Commission (unless an exemption is granted by the Registrar).

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

A new requirement following the 1997 report *Industrial Elections* by the Joint Standing Committee on Electoral Matters, is **Clause 186** that a vote in an election will not be counted unless a declaration envelope in the approved form is used. **Clause 187** requires the Registrar to arrange for the conduct of an election by the AEC after the organisation has lodged the details of the election. **Clause 188** will make it an offence for an organisation to assist one candidate over another. **Clause 189** makes it an offence to comply with a request from the returning officer for a copy of the organisation's membership register. Where such a request is made the organisation's secretary (or other prescribed officer) is to provide a declaration to the Registry that the register has been maintained as prescribed.<sup>44</sup> **Clause 201** will require electoral officers to carry right of entry authorisation.

## Chapter 8 – Records, Accounts and Conduct of Officers

**Clause 219** requires an organisation to keep a register of its members, the list of offices and branches in the organisation and limited personal details of the office holders. **Clause 220** requires a copy of the register as it stood at 31 December to be kept for 7 years. **Clause 225** allows the Registrar to direct an organisation to deliver to the Registrar a certified copy of the register. **Clause 226** requires a statement to be lodged detailing each loan, grant or donation over \$1000.

Part 3 deals with accounts and audit. **Clause 231** provides for organisations to report on the basis of 'reporting units' (only) for the purposes of financial accountability. **Subclause 231(2)** provides that an organisation not divided into branches constitutes a single reporting unit (enterprise union?). **Subclause 231(3)** provides that where an organisation is divided into branches each branch shall constitute a reporting unit. **Subclause 231(4)** allows an alternative reporting structure: the organisation as a whole or a combination of two or more branches. A union's national office is presumably caught under **Subclause 231(5)**.

**Clause 234** allows the Registrar to issue certificates stating that an organisation is divided into reporting units. **Clause 236** allows the Registrar to issue a certificate on his/her own initiative. Where the certificate is withdrawn by the Registrar, the reporting reverts to branch based. **Clause 241** requires reporting units to keep accounts (for 7 years). **Clause 242** requires a reporting unit to prepare a general purpose financial report in accordance with Australian Accounting Standards, and these standards may be modified via regulations. **Clause 244** requires the registrar to produce guidelines as to what financial reports must address. (Low-income organisations are defined to have incomes of less than \$100 000). Disclosure includes the amount an organisation pays to all employers in return for payroll deductions and disclosure of all legal costs and expenses relating to litigation. **Subclause 244(5)** provides that no appeal to the AIRC lies in respect of reporting guidelines.

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

**Clause 245** requires each reporting unit to have auditors. **Clause 246** requires auditors' reports to comply with Australian Auditing Standards. **Clause 250** provides that auditors and certain other persons enjoy a qualified privilege in relation to defamation. **Clause 254** requires a reporting unit to provide either: copies of the auditor's report, the general purpose financial report and the operating report or a concise report within a specified period at the end of the financial year. **Clause 255** requires the full report to be presented at a meeting of members (or series of meetings). **Clause 261** requires that a reporting unit on application by a member or the Registrar, must make available certain prescribed information concerning its financial affairs. Applications for inspections of financial records are to be directed to the AIRC under **Clause 262** and the AIRC must be satisfied that there are reasonable grounds for suspecting a breach of accounting standards. **Clause 266** permits a member to inspect financial records upon a resolution of the reporting unit's committee of management. **Clause 267** requires the Registry to be notified of any alleged breach as a result of inspecting the records. The Commission must refer the matter to the Registrar.

Part 4 of the Chapter sets out 'fiduciary duties' of officials. **Clause 270** limits the application of this Part to duties of officers and employees relating to the financial management of the organisation. **Clause 271** defines the meaning of 'involved' concerning a contravention of these duties by more than one person. **Clause 272** sets out care and diligence obligations, particularly the duty of care which arises under common law principles governing liability for negligence. **Clause 273** obliges an officer to discharge his/her duties in good faith in the best interests of the organisation (certain actions done in good faith are later validated and good faith is defined in **Clause 298**). **Clause 274** prevents the use of position for personal gain. **Clause 275** prevents the use of information for personal gain. **Clause 276** allows a Court to determine the effect of ratification of an official's breach of duty by the members. Under circumstances defined in **Clause 277** a breach of the duty of good faith, the use of information or the use of an official's position for personal gain will constitute a criminal offence. **Clause 279** preserves the operation of other laws in relation to breaches by officers and employees. **Clause 281** makes the officer delegating authority liable in the use of that authority. **Clause 282** allows an officer or former officer access to the organisation's books in legal proceedings.

## Chapter 9 – Civil Penalties

**Clause 284** lists the civil penalty provisions contained in the Act and provides that application may be made to the Federal Court for orders re contraventions. **Clause 285** sets out the pecuniary penalties which the Court may order (up to \$11 000 for body corporates and \$2200 for non-corporates). **Clause 286** enables the Federal Court to order a person who has contravened a provision to make compensation to the organisation and the Court is to calculate the value of any profits made by the person in assessing the compensation payable. **Clause 288** preserves the operation of other laws concerning the

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

duties of officers and employees. **Clause 289** allows the Registrar or person authorised by the Registrar amongst others to apply for an order re contravention other than a contravention of Clause 174 which refers to false representation concerning membership. **Clause 290** prevents civil proceedings following criminal proceedings for the same offence. **Clause 292** allows criminal proceedings to follow civil proceedings for the same contravention. **Clause 293** prevents the admission of evidence in criminal proceedings where the evidence was given previously in civil proceedings re the same conduct.

## Chapter 10 – Miscellaneous

Part 2 of the Chapter contains provisions validating certain invalidities in relation to registered organisations. **Clause 297** defines ‘invalidity’. **Clause 298** provides that all acts done in good faith by a collective body of an organisation or an official are valid despite any later finding of an invalidity concerning the election or appointment of a collective body or a person to the collective body, or the making of rules. **Clause 299** validates certain acts after four years have elapsed. **Clause 300** allows the Federal Court to order that Clauses 298 or 299 may not apply in relation to certain acts. **Clause 301** allows an organisation, its members or an interested person to apply to the Court for a ruling on an invalidity. Under Clause 301, the Court may make orders to correct the invalidity. This includes the reconstruction of a defunct branch (**Clause 302**).

Part 3 allows financial assistance from the Commonwealth to meet the costs of legal proceedings to be granted. **Clause 303** authorises the Minister to grant legal assistance in respect of proceedings for suspected contravention of defined provisions. **Clause 304** enables the Federal Court to certify that an unsuccessful applicant for assistance had acted reasonably seeking the assistance. **Clause 305** allows the Minister to refuse assistance in relation to proceedings concerning certain matters (eg relating to rules) where the order sought is substantially the same as that sought in other proceedings. **Clause 306** provides financial assistance is not normally payable for two or more counsel. **Clause 308** provides that costs can only be ordered against a party where the person acted vexatiously or without reasonable cause in commencing the proceedings.

Part 4 gives the Registrar powers to make inquiries into the affairs of organisations. **Clause 309** enables the Registrar or registry staff to make inquiries regarding compliance with Part 3 of Chapter 8 (accounts and audit) reporting guidelines, relevant rules governing reporting and finances. **Clause 310** enables the Registrar to compulsorily conduct an investigation to determine whether there has been a contravention of Chapter 8 Part 3, where satisfied that there are reasonable grounds for doing so. **Clause 311** allows the registrar to investigate an irregularity or deficiency of an organisation’s accounts arising the auditor’s report. **Clause 312** allows that a prescribed number of members of a reporting unit may request its finances to be investigated by the Registrar. **Clause 314** prescribes the assistance to be afforded in the conduct of an investigation. **Clause 315**

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*



requires a reporting unit to remedy the contravention. **Clause 316** makes it an offence to refuse to cooperate with an investigation, if requested to do so by the Registrar.

Part 5 deals with the jurisdiction of the Federal Court. **Clause 317** vests the Federal Court with jurisdiction in relation to matters arising under this Bill or the WR Act. **Clause 318** sets out certain matters in which the Federal Court has exclusive jurisdiction (eg an act for which an organisation is to be sued). **Clause 319** requires the Federal Court's jurisdiction to be exercised by a Full Court in relation to certain matters (eg cancellation of registration).

Part 6 – Other. This Part reproduces provisions currently found in Division 12 of Part 1X of the WR Act. A member's right to participate in organisation ballots is provided in **Clause 324**. A member's request for information concerning elections and/or ballots is provided for in **Clause 325**. A copy of the organisation's rules must be supplied to a member where the request has been put in writing (**Clause 326**).

## Concluding Comments

The Workplace Relations (Registered Organisations) Bill will supplant key provisions dealing with the internal administration of registered employer associations and unions from the WR Act, although the provisions go beyond merely administration matters. They also broach dispute resolution over demarcation matters. The consequences for the WR Act are that it will deal mainly with award and agreement making and freedom of association. In other words, the WR Act will deal more with the relations between employers and employees as a result of this Bill. Far from the centrality of unions and employer associations to the formal employment relations system observed by Justice Higgins, organisations are likely to become marginal players in the main game of employer-employee relations.

Amongst the more significant changes brought by the Bill, and which will impact more on unions than employer associations are:

- the provision allowing the Employment Advocate entry into membership matters of registered organisations where misinformation is alleged
- the conduct of annual membership meeting/s to consider annual accounts reports
- the disclosure of legal costs met by the union in its annual accounts report
- the widening of the grounds for deregistering an organisation, eg non compliance with freedom of association provisions
- the fiduciary duties imposed on the conduct of officials and the requirement to adhere to Australian Accounting Standards, and

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

- the ability to disamalgamate employee organisations by more easily commencing a disamalgamation proceeding.

According to the ACTU, Australian unions have a combined revenue base of about \$500 million per year.<sup>45</sup> Union membership numbers are currently less than 2 million.<sup>46</sup> The costs of membership to the average member is thus around \$300 pa or less. No dividends (as such) are paid; and the annual subscription can be regarded as similar to a fee for service. It is therefore difficult to weigh such interests with the proposed obligations falling on organisations imposing additional costs and creating the potential for division within organisations.

## Endnotes

---

- 1 H.B Higgins, *A New Province for Law and Order* (Melbourne, Anderson, Gowan 1921) p. 23.
- 2 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](http://www.airc.gov.au/my_html/airc_air_ann_rep_1999_00.html))
- 3 These rights were formalised in the ability of employees to enter into Enterprise Flexibility Agreements with employers under the *Industrial Relations Reform Act 1993*. This Act amended the principal Act, the *Industrial Relations Act 1988*, see Part VIB Division 3.
- 4 *Seven Network (Operations) Ltd v Communications, Electrical, Electronic, Energy Information, Postal, Plumbing and Allied Services Union of Australia* ( FCA 456), 26 April 2001.
- 5 Section 2(f) of the *Conciliation and Arbitration Act 1904* prior to its replacement by the *Industrial Relations Act 1988*.
- 6 The ability of registered unions to force recognition from employers through serving logs of claims is the subject of three volumes *Breaking the Gridlock*, issued by the Hon Peter Reith MP, October 2000. (<http://www.simplerwrsystem.gov.au/discpapers.htm>).
- 7 Lecturer at the Centre for Employment and Labour Relations Law, University of Melbourne.
- 8 Anthony Forsyth, 'Trade Union Regulation and the Accountability of Union Office-Holders: Examining the Corporate Model' *Australian Journal of Labour Law*, v.13, 2000, p. 28.
- 9 This Consequential Provisions Bill is referred to (as an Act) under the definition of organisation in Clause 6 of the Workplace Relations (Registered Organisations) Bill 2001, and was presented to the House of Representatives on 23 May 2001.
- 10 Report of Mr Justice Sweeney: *Royal Commission into Alleged Payments to Maritime Unions* (AGPS, 1976).
- 11 Department of Industrial Relations *Accounting Practices and Financial Reporting Requirements: Guidelines for Organisations Registered under the Commonwealth Conciliation and Arbitration Act 1904*, (AGPS, 1980).

### Warning:

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

- 12 See Regulations 107 and 108 of the Workplace Regulations 1996.
- 13 Report of Commissioner J. Winneke: *Royal Commission into the Activities of the Australian Building Construction Employees and Builders Labourers' Federation* (AGPS, 1982).
- 14 *Report of the Committee of Review into Australia's Industrial Relations Law and Systems* (AGPS, 1985) p. 483.
- 15 Ibid. p. 482.
- 16 Ernst and Whinney (Chartered Accountants) *Review of Financial Accounting and reporting Requirements*, (April 1998), p. 6.
- 17 Ibid p. 7.
- 18 Ibid. p. 25.
- 19 The Hon Peter Reith, *Accountability and Democratic Control of Registered Industrial Organisations*, October 1999, p. 1.
- 20 The Hon Peter Reith MP, *Better Pay for Better Work: the Federal Coalition's Industrial Relations Policy* (February 1996).
- 21 *Agreement between the Commonwealth Government and the Australian Democrats on the Workplace Relations Bill* (October 1996).
- 22 See Schedule 7 of the *Workplace Relations and Other Legislation Amendment Act 1997* and subsections of s.253ZJ of the *Workplace Relations Act*.
- 23 Tom Bramble, 'Deterring Democracy; Australia's New Generation of Trade Union Officials' *Journal of Industrial Relations* v.37(3) 1995. See also Braham Dabscheck, *The Struggle for Australian Industrial Relations* (OUP, 1995) p.134.
- 24 Richard Hall, Bill Harley and Matthew Tomkins 'The bureaucratisation of Australian unions? Evidence from a national survey', *Journal of Sociology*, v. 36, no. 3, November 2000.
- 25 Anthony Forsyth, 'Ministerial Discussion Paper – Accountability and Democratic Control of Registered Industrial Organisations', *Australian Journal of Labour Law*, v.12 (1999) p. 196.
- 26 CCH *Australian Labour Law Reporter* [¶7-817].
- 27 *More Jobs, Better Pay* The Federal Coalition's Workplace Relations Policy, September 1998, p.28. <http://www.dewrsb.gov.au/workplaceRelations/policy/mjbp/default.asp>
- 28 See address to the Australian Institute of Management by the Hon. Peter Reith (Melbourne 22 February 1999).
- 29 'Union finances reviewed by DPP', *The Australian*, (6 January 1999).
- 30 Personal communication with officers of the Australian Industrial Registry.
- 31 'Kelty comes out for AWU life-line', *The Australian*, 27 August 1998.
- 32 Blake, Dawson and Waldron, *Review of Current Arrangements for Governance of Industrial Organisations: Report and Recommendations* (June 1998)  
<http://www.dewrsb.gov.au/workplacerelements/policy/governance/finalrep.htm>.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

- 33 See *The Continuing Reform of Workplace Relations: Implementation of 'More Jobs Better Pay'* Implementation Discussion Paper issued by the Hon. Peter Reith MP, May 1999: 'These provisions – which govern matters such as the financial accounting and auditing and reporting obligations of organisations and regulation of industrial elections – are detailed and complex. They have no relevance to many users of the workplace relations systems' p. 28.
- 34 *Inter alia*, the terms of reference commissioning Blake Dawson Waldron required any recommended changes on standards to be 'consistent with the statutory obligations to be met by corporations and other comparable organisations'.
- 35 Faculty of Commerce, Griffith University.
- 36 Mark Mourell, 'Industrial Organisations and Corporate Accountability', *Australian Journal of Labour Law*, v.12, 1999, p. 137.
- 37 *Ibid.*
- 38 *The Continuing Reform of Workplace Relations: Implementation of 'More Jobs Better Pay'* Implementation Discussion Paper issued by the Hon. Peter Reith MP, May 1999.
- 39 The Hon Peter Reith, *Accountability and Democratic Control of Registered Industrial Organisations*, October 1999.
- 40 Joint Standing Committee on Electoral Matters (Parliament of Australia), *Industrial Elections; report of the inquiry into the role of the Australian Electoral Commission (AEC) in conducting industrial elections*, (AGPS, October 1997).
- 41 Anthony Forsyth, 'Trade Union Regulation and the Accountability of Union Office-Holders: Examining the Corporate Model' *Australian Journal of Labour Law*, v.13, 2000, p.36-37.
- 42 Anthony Forsyth, 'Ministerial Discussion Paper – Accountability and Democratic Control of Registered Industrial Organisations', *Australian Journal of Labour Law*, v.12, 1999, p.197.
- 43 'Beyond the Second Wave – the Government is seeking new ways to develop a 'sensible framework' for workplace relations', *Industrial Relations and Management Newsletter*, May 2000.
- 44 See the Government's Response to the JSCEM report *Industrial Elections* reported as an appendix in the Ministerial Discussion Paper: *Accountability and Democratic Control of Registered Industrial Organisations*, October 1999.
- 45 ACTU [Unions@Work](http://www.actu.asn.au/campaigns/@work/report/growth.htm#action) <http://www.actu.asn.au/campaigns/@work/report/growth.htm#action>.
- 46 ABS, *Employee Earnings, Benefits and Trade Union Membership – August 2000*, (Cat. No. 6310.0, 30 March 2001).

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*