



INFORMATION, ANALYSIS
AND ADVICE FOR THE PARLIAMENT

INFORMATION AND RESEARCH SERVICES

Bills Digest
No. 7 2002–03

Workplace Relations (Registration and
Accountability of Organisations)
(Consequential Provisions) Bill 2002

ISSN 1328-8091

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Workplace Relations (Registration and Accountability of
Organisations) (Consequential Provisions) Bill 2002

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13 August 2002

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Workplace Relations (Registration and Accountability of Organisations) (Consequential Provisions) Bill 2002

Date Introduced: 21 March 2002

House: House of Representatives

Portfolio: Employment and Workplace Relations

Commencement: The three principal clauses of this Bill specifying its title, commencement and schedules come into effect on the day the Act receives Royal Assent. The substantive provisions of the Act contained in Schedules 1 and 2 come into effect on a day to be fixed by Proclamation. If a provision of the Act subject to commencement on proclamation has not commenced within 6 months of the date the Act receives Royal Assent, it commences on the first day thereafter.

Purpose

The Workplace Relations (Registration and Accountability of Organisations) (Consequential Provisions) Bill 2002 (the Bill) ensures the continued registration of organisations (employer associations and trade unions) as a transitional measure pending the proposed Workplace Relations (Registration and Accountability of Organisations) Act (the proposed RAO Act) coming into effect.

The Bill deletes the registration of organisation provisions from the *Workplace Relations Act 1996* (WR Act), while the proposed RAO Act will incorporate these provisions for the registration of organisations and will become the principal legislation for the registration and administration of industrial organisations. Such areas include, for example, dealing with the democratic control of organisation, the conduct of elections for officers and outlining an accounting reporting framework for financial management of organisations as well as other functions.

The Bill also provides transitional measures to ensure, for example, that officers of organisations continue to hold office over the transitional period, existing rules of organisations to continue in effect and provides time for organisations' rules to be updated as required by the proposed RAO Act. The Bill also makes amendments to other Acts so as to make reference to the proposed RAO Act. The Bill also makes some amendments to

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the WR Act itself, for example, by restricting access under the Act's 'right of entry' provisions.

Background

Background to the policy grounds for reviewing the registration of organisations, their rules, obligations and accounting requirements can be found in *Bills Digest 171 2001–02*¹ which reports on the proposed RAO Act.

The overall effect of this Bill in respect of the proposed RAO Act was outlined by Minister Tony Abbott MP in his *Second Reading Speech* to this Bill on 21 March 2002. There he stated:

Orders, injunctions, declarations, decisions, determinations, exemptions or permissions that are operating before the commencement of the proposed Registration and Accountability of Organisations Act will continue in force as if they had been made under the corresponding provisions of the new act. An organisation that was registered under the *Workplace Relations Act* would be taken to be registered under the proposed new act.

Existing rules of organisations would be preserved, and continue in force as if they had been certified under the new act. Organisations would have six months from the commencement of the new act to update their rules (if necessary) to bring them into conformity with the new legislative requirements, with the Industrial Registrar able to grant extensions of time in appropriate cases. Organisations would have up to 12 months from the commencement of the new Act to remove from their register of members persons who had been unfinancial for more than 24 months. In general, amended financial and reporting obligations would apply from the first full financial year after the commencement of the new act or the gazettal of new reporting requirements. The consequential provisions bill also provides that the Federal Court would have the jurisdiction to hear and determine issues that may arise in the application of the new Act to particular transitional matters.

The Consequential Provisions Bill is a necessary technical measure that complements the objectives of the Principal Bill. In conjunction with that Bill, it will provide the legal framework around which registered organisations can update and upgrade their administrative and reporting practices in order to become more accountable, more competitive and better equipped to deal with the demands of their membership and the workplace relations system.²

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Main Provisions

Clause 1 provides the citation to the proposed Act, as the *Workplace Relations (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002*.

Clause 2 sets out the commencement of the various provisions of the proposed Act.

Clause 3 introduces **four schedules** containing the substantive provisions and consequential amendments.

Schedule 1 – Transitional Provisions

Part 1 – General

Item 2 provides that an authorisation, certificate, decision, declaration, determination, direction, exemption, injunction order, notice or permission made under the repealed provisions of the WR Act continue, as if made under the corresponding provision of the proposed RAO Act.

Item 3 provides that obligations imposed on a person or body under repealed provisions of the WR Act continue.

Item 4 provides that a person elected office under a repealed provision of the WR Act continues to hold that office for the remainder of its term under the proposed RAO Act.

Item 5 provides that in any proceedings or matters before a court, the Australian Industrial Relations Commission (the Commission) or the Australian Industrial Registrar (the Registrar) commenced under repealed provisions of the WR Act, that Act will continue to operate. However, **Sub-item 4** notes that any order made as a result of such proceedings is taken to have been made under the corresponding provisions of the proposed RAO Act (see item 2). **Sub-item (5)** specifies that any penalty to be applied, as a result of such proceeding will be the relevant penalty under the WR Act, and not the penalty under the proposed RAO Act.

Items 8 and 9 respectively confer power to the President of the Commission and to the Federal Court to resolve any difficulties arising from the provisions of this Bill. An 'interested person' may make an application to the Federal Court.

Part 2 – Registered Organisations

Item 11 deems the register of organisations kept by the Registrar under paragraph 63 (1)(a) of the WR Act to be the register under paragraph 13(1)(a) of the proposed RAO Act.

Item 12 allows an application by an association for registration under the WR Act, to be determined under the WR Act.

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Item 15 deems that an organisation registered under the WR Act to be registered under the proposed RAO Act.

Item 17 allows an application for an amalgamation made under the WR Act (section 242) to be determined under the WR Act, subject to some exceptions in relation to amalgamation proceedings.

Items 19 and 20 allow amalgamation processes commenced under the WR Act to continue, although the respective ballot provisions of the proposed RAO Act will also apply.

Item 21 allows an application made to the Federal Court for a disamalgamation ballot to be conducted (if the Court so determines) under the relevant provisions of the WR Act. However certain provisions of the proposed RAO Act, in respect of the criteria for making the application and eligibility to vote considerations, will also apply. **Items 22 and 23** also address the processes of withdrawal from an amalgamation.

Item 24 allows an application for deregistration (of a registered organisation) to proceed before commencement of the proposed RAO Act. Grounds for deregistration are set out in this item, which parallel those in the proposed RAO Act and include conduct hindering an object of the WR Act, an action interfering with trade or affecting community health and safety and failure to comply with injunctions to cease industrial action and demands for payment during industrial action.

Part 3 – Rules of Organisations

Item 25 specifies that rules of a registered organisation which were in force immediately before commencement of the proposed RAO Act continue in force after commencement (but may be altered).

Item 26 specifies new rule requirements pertaining to the proposed RAO Act. **Sub-item 2** restrains the Registrar from altering an organisation's rules to bring them into conformity with the proposed RAO Act during the interim period. **Sub-item 3** defines the *interim period* and allows organisations a period of 6 months immediately after commencement to address their rules. The period can be extended at the discretion of the Registrar to a maximum of a further 6 months (**sub-item 4**).

Item 27 requires the Registrar to review the rules of organisations as soon as practicable after expiry of the interim period. If the rules do not meet requirements, the registrar may alter them under section 156 of the proposed RAO Act.

Item 28 allows a full-time office-holder to remain in office beyond the end of his/her term in order to reach retirement age if nominations for the election closed before commencement of the proposed RAO Act.

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Item 29 allows membership agreements between State-registered unions and federally registered organisation to continue to have effect. This includes any agreement to terminate such an arrangement.

Item 30 allows organisation changes such as changes to eligibility rules, the name of the organisation and so-on, to be entered into the register under the relevant provisions of the proposed RAO Act, where such changes have begun prior to commencement.

Part 4 – Membership of Organisations

Item 32 allows a resignation from an organisation, whereby notice had been provided before commencement, to be effected under the resignation provisions of the WR Act.

Item 33 allows the recovery of membership arrears (for up to 12 months) to be processed under either the WR Act or the proposed RAO Act depending on when the arrears become payable.

Part 5 – Democratic control

Item 34 allows steps in the process of election to office initiated under the relevant provisions of the WR Act to continue to apply, but the election process may be completed under provisions of the proposed RAO Act.

Item 35 allows the WR Act to continue to apply in respect of elections completed before commencement of the proposed RAO Act, and to apply to any post-election inquiry (by the Australian Election Commission).

Item 37 specifies that should any inquiry result in a Federal Court order for a new election, this election shall be conducted under the proposed RAO Act.

Items 39 to 41 address matters to do with holding of office where the office holder or applicant has previous convictions. The provisions allow applications made under the relevant provisions of the WR Act (sections 227 and 228) to continue as if those provisions continue.

Part 6 – Records and accounts

Item 42 is a deeming provision under which an organisation's register of members and list offices active under the WR Act are taken to be the membership register and offices under the relevant provisions of the RAO Act.

Items 44 to 47 deal with the maintenance of accounting records, audit and the rights of members to access accounting records during the period until the provisions of the RAO Act come into effect (until the first financial year), starting after commencement of the reporting guidelines.

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Items 48 and 49 set up a scheme to allow inquiries and investigations conducted by the Registrar over allegations of financial malfeasance commenced under the WR Act to continue in relation to conduct that occurs before the first financial year commences.

Part 7 – Conduct of officers and employees

Item 50 is to enforce the conduct code prescribed in Chapter 9 of the RAO Act, and is designed, it appears, to enforce officials to comply with directions of the Commission and Federal Court to cease industrial action. The Minister alerted to these new duties (and consequences) in the Second Reading Speech, noted in *Bills Digest 171 2001–02*:

The Bill establishes duties on (sic) officers and employees of organisations to comply with orders and directions of the Australian Industrial Relations Commission and the Federal Court. Breach of these duties would result in financial penalties, and in the case of officers of organisations, disqualification from holding or seeking office. These provisions which did not form part of the 2001 Bill, have been included in recognition of the fact that such breaches pose a threat to the integrity of the federal workplace relations system.³

Part 8 – Miscellaneous

The Explanatory Memorandum to the Bill notes that items under this Part are mainly of a technical nature.

Item 55 enables regulations to be made about matters of a transitional, application or saving nature.

Schedule 2 – Amendment of the *Workplace Relations Act 1996*

Provisions under this Schedule make amendments repealing most provisions under Part IX and Part X of the WR Act which deal with the registration of organisations and the cancellation of registration (see **items 92 to 95**). **Item 83 inserts new clause 170LKA** into the WR Act mirroring the provisions of current section 291A of the WR Act which will be repealed under **item 94**. The provisions allow the Registrar to issue a certificate concerning a request by a member of an organisation (for an organisation's representative to meet with the employer about a proposed certified agreement). The certificate states that under certain circumstances, the employer's obligation will have been discharged.

Two further substantive amendments to be made to the WR Act include **proposed section 45A** (item 43) and **proposed section 174A** (item 86). **Proposed section 45A** concerns appeals to a Full Bench of the Commission arising from a decision/order of a member about an issue arising under the proposed RAO Act. **Proposed section 174A** duplicates current section 174 (of the WR Act) allowing **demarkation** disputes to be referred to State industrial tribunals (when necessary).

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Schedule 3 – Amendment of other Acts

Provisions under this Schedule amend other Commonwealth Acts consequential to the enactment of the RAO Act and repeal of provisions of the WR Act. The following Acts are to be amended:

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

Commonwealth Authorities and Companies Act 1997

Commonwealth Electoral Act 1918

Crimes Act 1914

Disability Discrimination Act 1992

Equal Opportunity for Women in the Workplace Act 1999

Human Rights and Equal Opportunity Commission Act 1986

Income Tax Assessment Act 1936

Insurance Act 1973

Life Insurance Act 1995

Long Service Leave (Commonwealth Employees) Act 1976

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

Schedule 4 – Amendments about entry to premises

Item 2 inserts **new subsections 285C(3)-(7)** into the WR Act. The Government currently seeks to exempt 'small business' from the unfair dismissal laws of the WR Act (see [Bills Digest 79, 2001–02](#) for an explanation the current and previous proposals). These new provisions of item 2 make a similar but smaller concession to small business employers (defined as employers of 20 employees or less) in respect of 'right of entry' to an employer's workplace. The WR Act's 'right of entry' provisions can be found in Part 1X under Division 11A. The intention of the new provisions is to prevent access by permit

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holders (often union officers) for the purposes of holding discussions with employees, who are not union members (but who may be eligible to become members).

The denial of this right hinges on the conscientious beliefs of the employer, and the employer obtaining a certificate from the Australian Industrial Registrar to that effect (as required by section 267 of the WR Act). The circumstances require:

- the Registrar to issue a certificate to the employer confirming his/her objection to organisation membership on the grounds of his/her religious beliefs under the WR Act's conscientious objection provisions. It is helpful to recall that the conscientious objection provisions ordinarily allow a person to remain a non-member (typically of a union) and has not normally extended to an employer obtaining a certificate confirming his own beliefs in order to restrict the right of entry of permit holders to visit the employer's employees.
- the employer who holds such a certificate employs 20 or fewer employees, none of whom are members of the particular employee organisation. **New subsection 285C(5)** requires that all of the employees have agreed that the employer's application should be endorsed, (which does not appear as the employees actually having endorsed the application).

Concluding Comments

The combined affect of this Bill and the Workplace Relations (Registration and Accountability of Organisations) Bill 2002 is to significantly streamline the contents and scope of the WR Act.

However, *Bills Digest 171 2001–02*⁴ made reference to an article in the *Australian Financial Review*⁵ which reported on political agreement to pass the contents of the proposed RAO Act but not in the form of a new statute. Rather, the current WR Act's registration provisions would be amended and moved to become a schedule to the WR Act. It would be prudent to reserve comments about the new arrangements until amendments to the Bills (or indeed any new Bills) are presented to Parliament.

Endnotes

- 1 Workplace Relations (Registration and Accountability of Organisations) Bill 2002, *Bills Digest 171, 2001–02*.
- 2 The Hon. Tony Abbott MP, House of Representatives, *Debates*, 21 March 2002, p. 1835.
- 3 *ibid.*

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- 4 Cited at Endnote 1.
- 5 'Labor gives union bill the green light', 29 May 2002.

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