

1982

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Conciliation and Arbitration  
(Management of Organisations) Amendment Bill 1982

EXPLANATORY MEMORANDUM

(Circulated by authority of  
the Minister for Employment and Industrial Relations  
the Hon Ian Macphee MP)

OUTLINECONCILIATION AND ARBITRATION(MANAGEMENT OF ORGANIZATIONS) AMENDMENT BILL 1982

This Bill seeks to amend the Conciliation and Arbitration Act 1904 to:

- (i) disqualify a person from holding office or being eligible to become a candidate for election or appointment to an office within any organization unless a period of 5 years has elapsed since he was convicted of a prescribed offence or, if he was sentenced to imprisonment for that offence, a disqualification period of 5 years from the date of release from prison is to apply;
- (ii) provide an office holder, a candidate for election or appointment to any office who has been convicted of a prescribed offence with the right to seek leave from the Federal Court of Australia to continue to hold office or be eligible for election or appointment. If the Court grants the application, the applicant will not be disqualified under the legislation. Where the Court refuses the application, the disqualification will continue to operate but it may, if the Court thinks fit, be reduced to a period less than 5 years;
- (iii) enable the disqualification provisions to be enforced in the Court on application by the organization, a member of the organization or the Industrial Relations Bureau;
- (iv) make provision for certain financial assistance and for costs and expenses to be reimbursed to some individuals concerned in leave and enforcement proceedings before the Court;
- (v) provide that the rules of the organizations shall provide that the committee of management must approve all loans, grants or donations exceeding \$1,000 and satisfy itself in relation to the security given and repayment arrangements for loans;
- (vi) make provision for an organization to notify particulars of loans, grants and donations exceeding \$1,000 to the Registrar after the end of each financial year.



NOTES ON CLAUSESCOMMENCEMENT

Clause 2 - The proposed Act is to come into operation on a date to be fixed by proclamation.

DECLARED BODIES

Clause 3 - This provision is designed to ensure that the requirements of the Bill relating to fitness for office apply to declared bodies under Part IIIA, "The Flight Crew Officers Industrial Tribunal".

DISQUALIFICATION FROM HOLDING OFFICE EXCEPT BY LEAVE OF THE COURT

Clause 4 - Under this provision the insertion of new sections 132B, 132C, 132D, 132E, 132F, 132G, 132H and 132J in the Act is proposed. These provisions are designed to disqualify persons convicted of certain offences from eligibility for office or from holding office in registered organisations of employers and employees for five years from the date of conviction or of release from imprisonment in respect of that conviction unless the Federal Court of Australia grants leave or the period of disqualification is reduced by leave of the Court. The provisions are to operate notwithstanding anything to the contrary in the rules of a registered organization. Provision is also made for the enforcement of the disqualification provisions and for financial assistance and the reimbursement of costs in respect of certain proceedings before the Court.

Proposed Section 132B - Deals with the eligibility of persons for office and with the holding of office in registered organizations.

Under proposed sub-section 132B(1), a person who has, whether before or after the commencement of the section, been convicted of a prescribed offence may not seek or be appointed to an office in any organisation unless:

- a period of five years has elapsed since the conviction or from release from imprisonment in respect of that conviction; or
- he has been granted leave by the Federal Court under sections 132C or 132D, or, where he has been refused such leave but disqualified for less than five years, the shorter period of disqualification has elapsed.



Proposed sub-section 132B(2) provides that an office holder convicted of a prescribed offence ceases to hold that office after 28 days from the date of the conviction, unless he applies to the Federal Court of Australia for leave under proposed sections 132C or 132D within that period. This provision only operates in respect of convictions occurring after the commencement of the Act.

Under proposed sub-section 132B(3), where an application for leave under proposed section 132C or 132D is made by an office holder but not determined by the Federal Court within three months, or such extended period as the Court determines, the applicant ceases to hold office.

Proposed sub-section 132B(4) deals with applications for such extensions.

Under proposed sub-section 132B(5), the organization, a member of the organization or the Industrial Relations Bureau will be able to apply to the Court for a declaration whether or not a person is disqualified from contesting, being appointed to or holding an office.

Proposed sub-section 132B(6) provides that the granting of leave by the Court under an application in respect of a conviction of a prescribed offence does not affect the operation of the proposed legislation in relation to any other conviction of the applicant of a prescribed offence.

Proposed section 132C deals with applications to the Court for leave to be elected to or appointed to an office within an organization.

Under proposed sub-section 132C(1), persons who wish to become candidates for election or to be appointed to an office but who have been convicted of a prescribed offence or released from imprisonment in respect of that conviction within the preceding 5 years and are disqualified under proposed sub-section 132B(1), may apply to the Court for leave to become such a candidate or to be appointed.

Under proposed sub-section 132C(2), where an application is made under sub-section 132C(1), the Court may grant or refuse leave, and where it refuses such leave it may specify a shorter period of disqualification.



Proposed sub-section 132C(3) deals with the holder of an office who has been convicted of a prescribed offence after the commencement of section 132C and who applies for leave to become a candidate for election, or to be appointed, to an office in an organization. If leave is refused, the applicant will thereupon cease to hold office.

Under proposed sub-section 132C(4), an application to the Court may only be made where the applicant has not previously applied under this section or proposed section 132D.

Proposed section 132D makes provision for applications to the Court for leave to continue to hold office.

Under proposed sub-section 132D(1), the holder of an office who is convicted of a prescribed offence may, within twenty-eight days of the conviction, apply to the Court for leave to continue to hold that office.

Proposed sub-section 132D(2) allows the Court either to grant such leave to an applicant, or to refuse leave and, if it thinks fit, specify a shorter period of disqualification.

An applicant under proposed section 132D who is refused leave thereupon ceases, under proposed sub-section 132D(3), to hold the office in question.

Under proposed sub-section 132D(4), an application to the Court may only be made where the applicant has not previously applied under this section or proposed section 132C.

Proposed section 132E sets out the matters to which the Court must have regard when hearing an application under proposed sections 132C and 132D.

Proposed section 132F sets out in sub-sections (1) and (2) what is a "prescribed offence" for the purposes of proposed sections 132B, 132C, 132D and 132E.

Proposed sub-sections 132F(3), (4) and (5) deal with proof of conviction or acquittal and release from imprisonment for a prescribed offence.

Proposed section 132G relates to the jurisdiction of the Federal Court of Australia with respect to matters arising under sections 132B, 132C and 132D.



Under proposed sub-section 132G(1), the Court is given jurisdiction in this area. It is also empowered, notwithstanding anything in the rules of the organization concerned, to make such order to give effect to a declaration under proposed section 132B as it thinks appropriate.

Proposed sub-section 132G(2) prohibits contravening or failing to comply with such an order. Such conduct is subject to a \$500 penalty.

Provision is made in proposed sub-section 132G(3) for a person whose eligibility or whose holding of office is the subject of an application to the Court for a declaration under proposed sub-section 132B(5) to be given an opportunity to be heard by the Court. Such an opportunity is also to be afforded to the organization concerned where the application was not made by that organization.

Under proposed sub-section 132G(4), where an application for leave is made under section 132C or 132D, the organization concerned is to be given an opportunity to be heard by the Court.

Proposed section 132H makes provision for payment in certain circumstances by the Commonwealth of the costs of an application to the Court for a declaration under proposed sub-section 132B(5).

Under proposed sub-section 132H(1), where such an application by a member of the organization concerned results in the Court finding that a person is disqualified from office under the proposed legislation, the Attorney-General may, if he considers the circumstances to justify it, authorise the payment of the whole or a part of the applicant's costs and expenses.

Under proposed sub-section 132H(2), the Attorney-General may authorise such a payment in respect of an application by a member of an organization even though the Court does not declare that a person is so disqualified provided that the Court certifies that the applicant acted reasonably in applying.

Proposed sub-section 132H(3) deals with the circumstances in which the Attorney-General may authorise payment in respect of proceedings under proposed sub-section 132B(5) of the whole or part of the costs and expenses of a person other than an applicant.



Proposed sub-section 132H(4) makes provision in relation to the Court's power to make orders about costs and expenses of proceedings before it under proposed sub-section 132B(5).

Proposed section 132J makes provision for financial assistance in certain circumstances by the Commonwealth in respect of proceedings under proposed sections 132C and 132D.

Under proposed sub-section 132J(1), an application may be made to the Attorney-General for such financial assistance. The applicant must have paid or become liable to pay costs or expenses in connection with an application under proposed section 132C or 132D. Such an application may only be made where the Court has granted leave or refused leave but specified a shorter period of disqualification.

Proposed sub-section 132J(2) provides that where the Attorney-General is satisfied that it would involve hardship to the applicant to refuse the application for financial assistance and that in all the circumstances it is reasonable to grant the application, he may authorise financial assistance of such amounts as he determines.

Proposed sub-section 132J(3) deals with payments by the Commonwealth in respect of counsel's fees.

RULES OF ORGANIZATIONS TO PROVIDE FOR CONSIDERATION AND APPROVAL OF CERTAIN LOANS, GRANTS AND DONATIONS

Clause 5 - This clause proposes the insertion of a new section 133B under which an organization will be required to provide in its rules for its committee of management or that of a branch to consider and approve loans, grants and donations by the organization or branch of more than \$1,000.

Proposed sub-section 133B(1) makes it a condition of registration of an organization or an association applying for registration that its rules provide that such loans, grants or donations only be made where the committee of management of that organization or association or of a branch of either has satisfied itself about certain matters and approved the loan, grant or donation concerned.

The matters about which the relevant committee of management must be satisfied are that the making of the loan, grant or donation would accord with the rules of the organization or association or of the branch, and, in the case of a loan, that the security is adequate and repayment arrangements are satisfactory.



Proposed sub-section 133B(2) excludes from the operation of proposed sub-section 133B(1) payments made in anticipation of or reimbursement for out-of-pocket expenses incurred by persons for the benefit of the organization, association or branch concerned.

Under proposed sub-section 133B(3), an organization which was registered before the date of the commencement of proposed section 133B is allowed a period of 12 months after that date, or such longer period as the Industrial Registrar determines, within which to bring its rules into conformity with the requirements of sub-section 133B(1).

If, at the expiration of that period, the rules do not, in the opinion of the Industrial Registrar, conform with the requirements of proposed sub-section 133B(1), the Industrial Registrar is able, pursuant to proposed sub-section 133B(4), after inviting the organization to consult with him on the matter, to alter the rules to conform, in his opinion, with those requirements.

Proposed sub-section 133B(5) requires the Industrial Registrar to register the alterations determined by him under proposed sub-section 133B(4) and the rules are thereupon deemed to be altered accordingly.

#### NOTIFICATION OF PARTICULARS OF LOANS, GRANTS AND DONATIONS

Clause 6 - This provision proposes the insertion of section 153B which will require the preparation of an annual statement relating to loans, grants and donations coming within proposed section 133B and its lodging with the Industrial Registrar.

Under proposed sub-section 153B(1), such a statement must be prepared and lodged by an organization or a branch with the Industrial Registrar as soon as practicable after the end of each financial year. The statement must show relevant particulars in relation to each loan, grant or donation in excess of \$1,000 made by the organization or the branch during that financial year. Failure to comply with this provision is subject to a penalty of \$200.

Proposed sub-section 153B(2) requires the annual statement to be signed by an officer of the organization.



It is an offence under proposed sub-section 153B(3) for an organization or branch to lodge with the Registrar a false or misleading statement and for an officer to sign knowingly a false or misleading statement. Breaches are subject to a \$200 penalty.

Proposed sub-section 153B(4) provides that the annual statement may be inspected at the office of the Registrar by a member of the organization.

Proposed sub-section 153B(5) sets out the relevant particulars in relation to each loan which must be shown in the annual statement.

The relevant particulars in relation to each grant or donation to be shown in the annual statement are set out in proposed sub-section 153B(6).

Where loans, grants or donations are made to members to relieve them or their dependants from severe financial hardship, provision is made in proposed sub-sections 153B(5) and (6) for the exclusion of certain particulars relating to them from the annual statement.

Proposed sub-section 153B(7) defines "financial year" for the purposes of the section.

Under proposed sub-sections 153B(8) and (9), branches of organizations come under the requirements of the section.

#### APPLICATION OF VALIDATING PROVISIONS

Clause 7 - Under this clause, the provisions of Part IXA - "Validating Provisions for Organizations" - are applied to organizations in respect of which invalidities may have occurred through persons purporting to hold office who are in fact disqualified under proposed section 132B from holding office.