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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**WORKPLACE RELATIONS AMENDMENT (COMPLIANCE WITH COURT AND
TRIBUNAL ORDERS) BILL 2003**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Employment and Workplace Relations, the
Honourable Tony Abbott MP)

WORKPLACE RELATIONS AMENDMENT (COMPLIANCE WITH COURT AND TRIBUNAL ORDERS) BILL 2003

OUTLINE

The Bill proposes to:

- (a) specify general duties of officers and employees of registered employer and employee organisations in relation to orders or directions of the Federal Court or the Australian Industrial Relations Commission;
- (b) provide for the disqualification from holding office in registered organisations of persons on whom certain prescribed pecuniary penalty orders have been imposed;
- (c) provide that the Federal Court can order that a registered organisation recover compensation from an officer or employee as a consequence of a breach of a civil penalty provision by that person, where the organisation took reasonable steps to prevent the action; and
- (d) make various consequential amendments.

The Bill amends the Registration and Accountability of Organisations Schedule to the *Workplace Relations Act 1996* (Schedule 1B).

FINANCIAL IMPACT STATEMENT

The proposals in this Bill are Budget neutral.

NOTES ON CLAUSES

Clause 1 – Short Title

1.1 This clause is a formal provision specifying the short title of the Act as the *Workplace Relations Amendment (Compliance with Court and Tribunal Orders) Act 2003*.

Clause 2 – Commencement

2.1 This clause sets out a table that specifies when the various provisions of the Bill are to commence. The effect of this clause is that:

- Schedule 1 to the Act will come into operation immediately after the commencement of Schedule 1B to the *Workplace Relations Act 1996* (which has been proclaimed to commence on 12 May 2002), or 28 days after the date of Royal Assent, whichever is the later; and
- clauses 1 to 3 will commence on the day on which the Act receives Royal Assent.

Clause 3 – Schedule(s)

3.1 This clause provides that each Act specified in a Schedule to this Bill is amended or repealed as set out in the relevant items in that Schedule, and that any other item in a Schedule operates according to its terms.

SCHEDULE 1 – AMENDMENT OF THE WORKPLACE RELATIONS ACT 1996

Part 1 – Amendments

Part 1 of Schedule 1 of the Bill amends Schedule 1B to the *Workplace Relations Act 1996* (WR Act) to:

- provide general duties of officers and employees of registered organisations in relation to orders or directions of the Federal Court or the Australian Industrial Relations Commission (the Commission);
- ensure the disqualification from holding office in registered organisations of persons on whom certain prescribed pecuniary penalty orders have been imposed;
- allow the Federal Court to order that a registered organisation recover compensation from an officer or employee as a consequence of a breach of a civil penalty provision by that person, where the organisation took reasonable steps to prevent the action; and
- make various consequential amendments.

Item 1 - Section 210 of Schedule 1B

1.1 Section 210 of Schedule 1B to the WR Act provides a simplified outline of Part 4 of Chapter 7 of Schedule 1B. The amendments in **item 1** would make consequential amendments to section 210 to add a general description of the provisions in new Division 3 of Part 4 of Chapter 7 of Schedule 1B, which is inserted by **item 2** of the Bill. That general description includes a cross-reference to Part 3 of Chapter 9, which is inserted by **item 4** of the Bill.

Item 2 – At the end of Part 4 of Chapter 7 of Schedule 1B

2.1 **Item 2** would insert new Division 3 of Part 4 of Chapter 7 into Schedule 1B to the WR Act, as follows:

Division 3 – Persons who are the subject of a prescribed order

Clause 221 – Simplified outline of Division

2.2 New clause 221 provides a simplified outline of Division 3 of Part 4. This Division concerns the disqualification from office of persons on whom certain prescribed pecuniary penalty orders have been imposed.

Clause 222 – Meaning of *prescribed order*

2.3 This clause defines the term ‘prescribed order’.

Clause 223 – Certificate of registrar etc. is evidence of facts

2.4 This clause provides that for the purpose of applications under this Division, certificates issued by court registrars are evidence of the making of a prescribed order or of a finding that a person has not contravened a provision of Part 3 of Chapter 9.

Clause 224 – Certain persons disqualified from holding office in organisations

2.5 This clause deals with the eligibility of a person against whom a prescribed order has been made to stand for election to an office or to hold an office in an organisation.

2.6 Subclause (1) provides that a person against whom a prescribed order has been made may not seek election to, or be elected or appointed to, an office unless:

- a period of 5 years has elapsed since the order was made; or
- the person has been granted leave to hold office in organisations by the Federal Court under this Division; or
- in a case where the person has been refused such leave, but made subject to a period of disqualification less than 5 years, the shorter period of disqualification has elapsed since the order was made.

2.7 Subclause (2) provides that an office holder against whom a prescribed order has been made ceases to hold office 28 days from the date of the order, unless the person applies to the Court under this Division within that 28 day period.

2.8 Subclause (3) provides that:

- where an application for leave to hold office is made to the Court by an office holder; and
- the application is not determined by the Court within 3 months, or such extended period as allowed by the Court,

the office holder shall cease to hold office.

2.9 Subclause (4) sets out the conditions applying to extensions of time to enable an office holder to continue to hold office while the Court deals with an application.

2.10 Subclause (5) gives an organisation, a member of an organisation, and the Industrial Registrar the right to apply to the Court for a declaration as to whether or not a person is disqualified from being a candidate for election, being elected or appointed to office or from continuing in office.

2.11 Subclause (6) makes it clear that the granting of leave under this Division does not affect the person's disqualification as a result of the making of another prescribed order against that person in respect of which order no application has been made to the Court for leave or, where an application has been made, leave has been refused.

Clause 225 – Application for leave to hold office in organisations by prospective candidate for office

2.12 This clause deals with applications to the Federal Court by persons against whom a prescribed order has been made for leave to stand for election, or to be appointed, to an office in an organisation.

2.13 Under subclause (1), a person who wants to be a candidate for election or to be appointed to an office but against whom a prescribed order has been made within the preceding 5 years, may apply to the Court for leave to hold office in organisations.

2.14 Subclause (2) empowers the Court to grant an application, to refuse it, or, in the case of a refusal, to specify a shorter period of disqualification.

2.15 Subclause (3) provides that the holder of an office against whom a prescribed order has been made and who has been refused leave to continue to hold office shall thereupon cease to hold office.

2.16 Subclause (4) provides that an application to the Court may only be made where the applicant has not, in relation to that prescribed order, already applied for leave to hold office in organisations.

Clause 226 – Application for leave to hold office in organisations by office holder

2.17 This clause provides for applications to be made to the Federal Court for leave to continue in office by office holders against whom a prescribed order has been made.

2.18 The holder of an office against whom a prescribed order has been made and who has been refused leave to continue to hold office shall thereupon cease to hold office. Moreover, an application to the Court may only be made where the applicant has not, in relation to that prescribed order, already applied for leave to hold office in organisations.

Clause 227 – Federal Court to have regard to certain matters

2.19 This clause sets out the matters which the Federal Court must have regard to for the purposes of exercising its power to grant leave to stand for office or continue to hold office.

Clause 228 – Action by Federal Court

2.20 The Federal Court may make such orders as it considers appropriate to give effect to declarations made under clause 224 (subclause (1) refers). Subclauses (2) and (3) deal with the right of persons and organisations to be heard in proceedings under this Division.

Item 3 – At the end of section 281 of Schedule 1B

3.1 Section 281 provides an outline for Chapter 9 of Schedule 1B to the WR Act. **Item 3** adds to this outline a general description of the provisions in new Part 3, to be inserted in Chapter 9 by **item 4** of the Bill.

Item 4 – At the end of Chapter 9 of Schedule 1B

4.1 **Item 4** will insert new Part 3 of Chapter 9 (which lays down general duties of officers and employees in relation to orders and directions) into Schedule 1B to the WR Act, as follows:

Part 3 – General duties in relation to orders and directions

Division 1 – Preliminary

Clause 294 – Simplified outline

4.2 This clause provides a simplified outline of the Part.

Clause 295 – Meaning of *involved*

4.3 This clause provides a definition of the term ‘involved’, which is relevant to the operation of the duties to be established within the Part.

Clause 296 – Application to officers and employees of branches

4.4 This clause ensures that any references within the Part to officers or employees of organisations applies equally to officers and employees of the branches of such organisations.

Division 2 – General duties in relation to orders and directions

Clause 297 – Order or direction applying to organisation – civil obligation

4.5 This clause sets out the civil obligation of officers and employees of an organisation with respect to orders or directions of the Federal Court or the Commission that apply to that organisation.

4.6 Subclause (2) establishes a duty on officers and employees of the relevant organisation and its branches not to act in a manner that would result in their organisation contravening any such order or direction. To contravene this section the officer or employee must know, or be reckless as to whether, that act would result in the organisation contravening the order.

4.7 Subclause (3) extends contravention of the duty to any officer or employee involved in a contravention of an order or direction made against their organisation or involved in a contravention of subclause (2). What constitutes being ‘involved’ is set out in clause 295.

4.8 Both subclause (2) and subclause (3) are civil penalty provisions.

Clause 298 – Prohibition order or direction applying to organisation – civil obligation

4.9 This clause sets out the civil obligation of officers and employees of an organisation with respect to orders or directions of the Federal Court or the Commission that apply to that organisation and which prohibit the organisation from doing something. That is, an officer or employee must not do what his or her organisation has been ordered or directed not to do.

4.10 Subclause (2) establishes a duty on officers and employees of the relevant organisation and its branches to not do anything that would contravene the order. This obligation applies when the order has been expressed to apply to the organisation, as opposed to the individual officer or employee. That is, an officer or employee must not do what his or her organisation has been ordered or directed not to do. To contravene this section the officer or employee must know, or be reckless as to whether, that act would result in a contravention.

4.11 Subclause (3) extends contravention of the duty to any officer or employee involved in a contravention of subclause (2). What constitutes being ‘involved’ is set out in clause 295.

4.12 Both subclause (2) and subclause (3) are civil penalty provisions.

Clause 299 – Order or direction applying to officer – civil obligation

4.13 This clause sets out the civil obligation of an officer of an organisation with respect to orders or directions of the Federal Court or the Commission that apply to that officer.

4.14 Subclause (2) requires an officer not to knowingly or recklessly contravene any order or direction that applies to him or her.

4.15 Subclause (3) extends contravention of the duty to any officer or employee of the organisation involved in a contravention of subclause (2). What constitutes being ‘involved’ is set out in clause 295.

4.16 Both subclause (2) and subclause (3) are civil penalty provisions.

Clause 300 – Prohibition order or direction applying to officer – civil obligation

4.17 This clause sets out the civil obligation of officers and employees of an organisation with respect to orders or directions of the Federal Court or the Commission that apply to an officer of that organisation and which prohibit the officer from doing something.

4.18 Clause 300 applies where the Federal Court or the Commission has made an order that applies to an officer of an organisation. Subclause (2) establishes a duty on all employees and officers of the relevant organisations and its branches, requiring them not to act in a manner that would result in a contravention of the order or direction. That is, an officer or employee of an organisation must not do what any officer of that organisation has been ordered or directed not to do. To contravene this section the employee or officer must know, or be reckless as to whether, that act would result in a contravention.

4.19 Subclause (3) extends contravention of the duty to any officer or employee involved in the contravention of subclause (2). What constitutes being ‘involved’ is set out in clause 295.

4.20 Both subclause (2) and subclause (3) are civil penalty provisions.

Clause 301 – Order or direction applying to employee – civil obligation

4.21 This clause sets out the civil obligation of an employee of an organisation with respect to orders or directions of the Federal Court or the Commission that apply to the employee.

4.22 Subclause (2) provides that the employee to whom the order or direction applies must not knowingly or recklessly contravene the order or direction.

4.23 Subclause (3) extends contravention of the duty to any officer or employee of the organisation who is involved in a contravention of subclause (2). What constitutes being ‘involved’ is set out in clause 295.

4.24 Both subclause (2) and subclause (3) are civil penalty provisions.

Clause 302 – Prohibition order or direction applying to employee – civil obligation

4.25 This clause sets out the civil obligation of officers and employees of an organisation with respect to orders or directions of the Federal Court or the Commission that apply to an employee of that organisation and which prohibit the employee from doing something.

4.26 Subclause (2) establishes a duty on all officers and employees of the relevant organisation and its branches not to act in a manner that would result in a contravention of the order or direction. That is, an officer or employee of an organisation must not do what any officer or employee of that organisation has been ordered or directed not to do. To contravene this section the employee or officer must know, or be reckless as to whether, that act would result in a contravention.

4.27 Subclause (3) extends contravention of the duty to any officer or employee involved in the contravention of subclause (2). What constitutes being ‘involved’ is set out in clause 295.

4.28 Both subclause (2) and subclause (3) are civil penalty provisions.

Clause 303 – Order or direction applying to member of organisation– civil obligation

4.29 This clause sets out the civil obligation of officers and employees of an organisation with respect to orders or directions of the Federal Court or the Commission that apply to a member of that organisation.

4.30 Subclause (2) establishes a duty on officers and employees of the organisation and its branches not to be involved in a contravention of such an order. What constitutes being ‘involved’ is set out in clause 295.

4.31 Subclause (2) is a civil penalty provision.

Item 5 – After paragraph 305(2)(zj) of Schedule 1B

5.1 Section 305 lists the civil penalty provisions contained in Schedule 1B to the WR Act, and provides that application may be made to the Federal Court for orders in relation to contravention of a civil penalty provision.

5.2 **Item 5** would insert new paragraph (zk) into subsection 305(2), to make reference to the provisions that will be inserted by **item 4** (ie new Part 3 of Chapter 9).

Item 6 – After subsection 307(1) of Schedule 1B

6.1 Section 307 enables the Federal Court to order that a person who has contravened a civil penalty provision relating to the duties of officers and employees of registered organisations to compensate the organisation for damage it has suffered as a result of the contravention.

6.2 New subsection 307(1A) will be inserted in section 307 immediately after subsection 307(1) by **item 6**. The new provision will allow the Court to order a person to pay compensation to an organisation if the person contravened a civil penalty provision in new Part 3 of Chapter 9 (inserted by **item 4**), despite the organisation taking reasonable steps to prevent the contravention, and the contravention resulted in the organisation suffering damage.

6.3 A note to **item 6** alters the heading to subsection 307(1) to ensure it more accurately describes the operation of that provision.

Item 7 – At the end of subsection 310(1) of Schedule 1B

7.1 Section 310 sets out who may make an application for an order relating to a contravention of a civil penalty provision. Currently, the section states that the Industrial Registrar, or a person authorised in writing by the Industrial Registrar, may apply for an order under Part 2 of Chapter 10.

7.2 **Item 7** will amend subsection 310(1) to provide that the Industrial Registrar (or the person authorised by the Industrial Registrar under the subsection) cannot make an application in relation to a contravention of a provision covered by paragraph 305(2)(zk), which will be inserted by **item 5** of this Bill. That is, the Industrial Registrar (or the person authorised by the Industrial Registrar under the subsection) cannot make an application in relation to a contravention of the general duties in relation to orders and directions of the Federal Court and the Commission. Applications in relation to the contravention of those general duties are dealt with in **item 8**.

Item 8 – After subsection 310(1) of Schedule 1B

8.1 **Item 8** also amends section 310. **Item 8** inserts new subsection 310(2) to make it clear that only the Minister, or some other person authorised in writing by the Minister, may apply for an order under this Part in relation to a contravention of a provision covered by paragraph 305(2)(zk) (which it to be inserted into Schedule 1B to the WR Act by **item 5**). All other applications may continue to be made by the Industrial Registrar, or a person authorised by the Industrial Registrar.

Part 2 – Application of amendment

Item 9 – Orders and directions of the Federal Court or Commission

9.1 **Item 9** would provide that the new prohibitions on conduct in contravention of orders and directions of the Commission and the Federal Court (inserted by **item 4**) apply to orders and directions made by those bodies before, on or after commencement of those provisions, but only to acts done or omissions made on or after commencement.