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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

WORKPLACE RELATIONS (REGISTERED ORGANISATIONS) BILL 2001

SUPPLEMENTARY EXPLANATORY MEMORANDUM

(Amendments to be moved on behalf of the Government)

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

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OUTLINE

These amendments alter clauses 61, 112, 113, 180, 197, 200, 261, 262, 263 and 338 of the Bill (contained in Chapters 3,5,7,8 and 10). The principal amendments are as follows:

Chapter 3 – Withdrawal from amalgamations

An amendment is proposed to clarify that the Commonwealth bears the costs of disamalgamation ballots. (This is consistent with current practice.)

Two amendments are proposed to insert reasonable excuse defences in relation to strict liability offence provisions. These amendments follow a review of the offence provisions as part of the Criminal Code harmonisation process and reflect equivalent defences in other strict liability offence provisions in the Bill (eg cl. 247 and 316).

Chapter 5 – Rules of organisations

An amendment is proposed to clarify that the prohibition on organisations having discriminatory rules is not taken to prevent organisations setting membership dues by reference to salary level, even where the salary is set by reference to a person's age (for example, junior rates of pay).

Chapter 7 – Conduct of elections for office and other positions

An amendment is proposed to clarify that the Commonwealth bears the costs of elections for office within an organisation or branch of an organisation, in line with existing arrangements under the *Workplace Relations Act 1996*.

Several amendments are proposed to insert reasonable excuse defences in relation to strict liability offence provisions. These amendments follow a review of the offence provisions as part of the Criminal Code harmonisation process and reflect equivalent defences in other strict liability offence provisions in the Bill (eg cl. 247 and 316).

Chapter 8 – Members' access to financial records

Several amendments are proposed to clarify the intended operation of Division 7 of Part 3 of Chapter 8 which provides for access by members to the financial records of reporting units.

Chapter 10 – Regulations

An amendment is proposed to allow civil penalty provisions to be included in the regulations. The maximum penalty for breach of such a provision is set at a lower level than for breach of civil penalty provisions in the statute.

FINANCIAL IMPACT STATEMENT

The proposed amendments are not expected to have any impact on Commonwealth expenditure.

NOTES ON AMENDMENTS

Amendment No. 1 – clause 61, page 64 (after line 4)

Amendment No. 1 would insert a new subclause 61(2B) to provide that the strict liability offence in subclause 61(2) (which concerns a failure of an officer or employee of an organisation or a branch to comply with a requirement issued by an electoral official to provide information or documents for the purpose of an amalgamation ballot) is subject to a reasonable excuse defence.

In accordance with drafting practice, a legislative note would make it clear that the defendant bears the evidentiary burden with respect to the defence.

Amendment No. 2 – clause 112, page 107 (line 3)

Amendment No. 2 would amend subclause 112(1) to provide that the Commonwealth will bear the cost of conducting a disamalgamation ballot. This reflects current practice. However, the Bill, as currently drafted, does not address who bears the cost of expenses incurred in the conduct of a disamalgamation ballot.

Amendment No. 3 – clause 113, page 108 (after line 6)

Amendment No. 3 would insert a new subclause 113(2B) to provide that the strict liability offence in subclause 113(2) (which concerns a failure of an officer or employee of an organisation or a branch to comply with a requirement issued by an electoral official to provide information or documents for the purpose of an disamalgamation ballot) is subject to a reasonable excuse defence.

In accordance with drafting practice, a legislative note would make it clear that the defendant bears the evidentiary burden with respect to the defence.

Amendment No. 4 – clause 140, page 131 (after line 7)

Amendment No. 4 would insert a new a new subclause 140(2) that provides that the rules of an organisation are not taken to discriminate on the basis of age if the rules do not prevent an organisation from setting its membership dues by reference to rates of pay, even where the rates of pay are set by reference to a person's age (eg. junior rates of pay).

Amendment No. 5 – clause 180, page 171 (line 8)

Amendment No. 5 would amend subclause 180(1) to provide that the Commonwealth will bear the cost of conducting each election for office in an organisation or a branch of an organisation. The Bill, as currently drafted, does not address who bears the cost of expenses incurred in the conduct of elections of office. The amendment reflects subsection 215(4) of the *Workplace Relations Act 1996*.

Amendment No. 6 – clause 191, page 177 (after line 24)

Amendment No. 6 would insert a new subclause 191(2C) to provide that the strict liability offence in subclause 191(2) (which concerns a failure of an officer or employee of an organisation or a branch to comply with a direction by an electoral official conducting an election) is subject to a reasonable excuse defence.

In accordance with drafting practice, a legislative note would make it clear that the defendant bears the evidentiary burden with respect to the defence.

Amendment No. 7 – clause 197, page 184 (after line 30)

Amendment No. 7 would insert a new subclause 197(3A) to provide that the strict liability offence in subclause 197(3) (which concerns a failure of an organisation or a branch to ensure that ballot papers and other documents relevant to an election are preserved) is subject to a reasonable excuse defence.

In accordance with drafting practice, a legislative note would make it clear that the defendant bears the evidentiary burden with respect to the defence.

Amendment No. 8 – clause 197, page 184 (after line 33)

Amendment No. 8 would insert a new subclause 197(4A) to provide that the strict liability offence in subclause 197(4) (which concerns a failure of an officer or employee of an organisation or a branch to ensure that ballot papers and other documents relevant to an election are preserved) is subject to a reasonable excuse defence.

In accordance with drafting practice, a legislative note would make it clear that the defendant bears the evidentiary burden with respect to the defence.

Amendment No. 9 – clause 200, page 187 (after line 10)

Amendment No. 9 would insert a new subclause 200(5B) to provide that the strict liability offence in paragraph 200(5)(a) (which concerns a failure of a person to comply with a requirement issued by a designated Registry official involved in an inquiry into an election for office to deliver any election documents in possession or under the control of the person) is subject to a reasonable excuse defence.

In accordance with drafting practice, a legislative note would make it clear that the defendant bears the evidentiary burden with respect to the defence.

Amendment No. 10 – clause 261, page 238 (line 29)

Amendment No. 10 would amend subclause 261(6) to correct a technical deficiency.

Clause 261 allows either a member or a Registrar on behalf of the member to apply to a reporting unit for specified prescribed information concerning its financial affairs. This is not reflected in clause 261(6) (which refers only to an application by a member). Amendment No. 10 would correct this defect.

Amendment No. 11 – clause 262, page 239 (line 8)

Amendment No. 12 – clause 262, page 239 (line 18)

Clause 262 enables a member of a reporting unit to apply for an order from the Australian Industrial Relations Commission allowing inspection of a reporting unit's financial records where there are reasonable grounds for suspecting a breach of financial requirements by the reporting unit.

Amendment No. 11 would make a minor technical amendment to subsection 262(1) consequential upon the change proposed by Amendment No. 12.

Amendment No. 12 would insert a new subclause 262(2A) to provide that the Commission may only order access to the financial records of a reporting unit in respect of those records that relate to the suspected breach.

Amendment No. 13 – clause 263, page 239 (line 29)

Amendment No. 13 would omit the legislative note after clause 263.

Amendment No. 14 – clause 338, page 291 (line 16)

Amendment No. 14 would insert a new paragraph 338(2)(g) to provide that matters in relation to which regulations may be made include civil penalty provisions, the contravention of which are subject of a pecuniary penalty not exceeding 25 penalty units for a body corporate and 5 penalty units in any other case. (The maximum pecuniary penalty attached to breach of a civil penalty provision in the Bill is 20 penalty units for an individual and 100 penalty units for a body corporate.)