2002

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

WORKPLACE RELATIONS LEGISLATION AMENDMENT
(REGISTRATION AND ACCOUNTABILITY OF ORGANISATIONS)
(CONSEQUENTIAL PROVISIONS) BILL 2002

REVISED EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Employment and Workplace Relations,
the Honourable Tony Abbott MP)
The Workplace Relations Amendment (Registration and Accountability of Organisations) Act 2002 (the RAO Act) would establish a ‘Registration and Accountability of Organisations Schedule’ (the RAO Schedule) within the Workplace Relations Act 1996 (the WR Act) pertaining to registered organisations. The RAO Schedule would be Schedule 1B to the WR Act.

In doing so, the RAO Act will make amendments to the operation of those provisions to reflect modern standards and practices, particularly in relation to financial accountability, transparency and democratic control. The substantive provisions of the RAO Act will operate from the date fixed by proclamation (section 2 of that Act).

The Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Bill 2002 (the Bill) has two main purposes:

- to make consequential amendments arising from provisions of the RAO Act, including repealing provisions of the WR Act that are to be replicated by the RAO Schedule, and making technical amendments to other Acts (generally to replace references to the WR Act with references to the RAO Schedule); and
- to provide transitional and saving provisions concerning the operation of the RAO Schedule.

The Bill contains four schedules:

- Schedule 1 – transitional and savings provisions;
- Schedule 2 – amendments to the WR Act;
- Schedule 3 – amendments to other Acts; and
- Schedule 4 – amendments about entry to premises.

Schedule 1
Schedule 1 contains a number of transitional and saving provisions designed to provide for a smooth transition from the WR Act to the RAO Schedule. An overview of Schedule 1 is briefly set out below. [Throughout this schedule, ‘commencement’ means commencement of Item 1 of this Schedule].

Part 1 includes general provisions to ensure the ongoing effect of orders, injunctions, declarations decisions, obligations and the like that are in force at the time of commencement, and to allow for the continuation (under the relevant provisions of the WR Act) of any proceedings or matters (subject to specific clauses of this Bill) that have commenced under provisions of the WR Act.

The Federal Court will be given the power to resolve any difficulties arising from the application of this Act, or the operation of the RAO Schedule as result of the application of this Act.

Part 2 deals with registration and de-registration of organisations, and amalgamation and withdrawal from amalgamation by organisations.
Parts 3 and 4 set out transitional provisions concerning rules of organisations and membership of organisations.

Part 5 sets out transitional arrangements for the conduct of elections and inquiries into elections, and disqualifications from holding office.

Part 6 contains transitional provisions concerning the financial accountability of registered organisations.

Part 8 deals with technical issues.

Some specific transitional provisions are contained in the RAO Schedule itself, for example, validating provisions which operate in respect of acts occurring before the commencement of that Schedule (subsection 320(3)).

**Schedule 2**
Schedule 2 contains provisions that either repeal provisions of the WR Act or make other consequential amendments to that Act in order to accommodate the changes made by the RAO Act. It also corrects errors and omissions and removes obsolete references.

**Schedule 3**
Schedule 3 amends a number of other Commonwealth Acts to take account of changes made by the RAO Act and the repeal of certain provisions of the WR Act.

**Schedule 4**
Schedule 4 amends the right of entry provisions of the WR Act to provide a limited exemption from right of entry under section 285C of the WR Act (ie entry for discussion purposes) in cases of conscientious objection.

**FINANCIAL IMPACT STATEMENT**

The proposals in this Bill are budget neutral.
NOTES ON CLAUSES

The following abbreviations are used throughout these notes.

* Commission: Australian Industrial Relations Commission;
* WR Act: Workplace Relations Act 1996;
* RAO Act: Workplace Relations Amendment (Registration and Accountability of Organisations) Act 2002; and
* RAO Schedule: Registration and Accountability of Organisations Schedule (Schedule 1B of the WR Act).

Clause 1 – Short Title

This clause provides that this Act may be cited as the Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002.

Clause 2 – Commencement

Subclause (2) sets out a table which specifies when the various provisions of the Bill are to commence.

Clauses 1, 2 and 3 will come into effect on the day this Act receives the Royal Assent. The substantive provisions of the Act will come into operation on a day to be fixed by Proclamation. Other provisions will have been taken to have commenced at other times, eg immediately after the commencement of item 1 of Schedule 19 to the Workplace Relations and Other Legislation Amendment Act 1996. (These latter provisions would rectify incorrect references to Acts or provisions in Acts.)

Subclause (3) provides a default commencement date, whereby if a provision of the Act (subject to commencement on proclamation) has not commenced within 6 months of the date that it receives the Royal Assent, it will commence on the first day after that period.

Subclause (4) provides that items 48 and 49 of Schedule 3 (which propose amendments to the Federal Court of Australia Act 1976) will, if they do not commence before Schedule 2 to the Jurisdiction of Courts Legislation Amendment Act 2002, not commence at all.

Subclause (5) provides that the proposed amendment to the definition of ‘registered union’ in subsection 5(1) of the Occupational Health and Safety (Commonwealth Employment) Act 1991 to substitute a reference to the RAO Act for the Industrial Relations Act 1988 does not commence at all if it does not commence before item 10 of Schedule 1 to the Occupational Health and Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Act 2002.

Clause 3 – Schedule(s)

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 operates according to its terms.
SCHEDULE 1 – TRANSITIONAL PROVISIONS

1.1 Schedule 1 is divided into Parts 1 to 8. Part 1 sets out general transitional and saving rules, with Parts 2 to 6 dealing with exceptions to those general rules. Part 8 deals with technical issues.

Part 1 – General

1.2 Part 1 contains general transitional provisions.

Item 1 – Definitions

1.3 Item 1 defines a number of terms used in the Act including:

- ‘repealed provision’ to mean a reference to a provision of the WR Act repealed by this Act;
- ‘corresponding provision’ to mean a provision of the RAO Schedule which has substantially the same effect as a provision of the WR Act which operated before it is amended by this Act, and vice versa;
- ‘RAO Schedule’ means Schedule 1B of the WR Act;
- ‘WR Act’ means the Workplace Relations Act 1996 (apart from Schedule 1B of that Act); and
- ‘commencement’ is defined as commencement of Item 1 of this Schedule.

1.4 Item 1 also provides that an expression used in this Schedule has the same meaning as it has in the RAO Schedule.

Item 2 - Orders etc. continue in force

1.5 Item 2 would preserve the continuity of an authorisation, certificate, decision, declaration, determination, direction, exemption, injunction, order or permission made under the repealed provisions of the WR Act prior to commencement. Any such order etc, continues in force on and after commencement as if it was made under the RAO Schedule, for example:

- a permission to keep records at specified premises granted under subsection 268(7) of the WR Act is treated as a permission granted under subclause 234(3) of the RAO Schedule.

Item 3 – Certain obligations to continue

1.6 Item 3 is intended to ensure the continuity of obligations imposed on a person or body under repealed provisions of the WR Act. It provides that where an obligation is imposed for a specified period under a repealed provision of the WR Act, and that period has not expired immediately prior to commencement, the provision and resulting obligation continues to operate as if the provision had not been repealed.
Item 4 – Terms of office continue

1.7 Item 4 is intended to ensure that the proposed repeal of certain provisions of the WR Act will not affect the continuity of tenure of a person elected to an office under the WR Act, by providing that the person continues to hold office for the remainder of the specified term.

Item 5 – Proceedings etc. commenced under WR Act continue under WR Act

1.8 Item 5 deals with proceedings or matters commenced under a repealed provision of the WR Act. Sub-items (1), (2) and (3) would provide that in relation to any proceeding or a matter pending before a court, the Commission or the Industrial Registrar immediately prior to commencement, the WR Act will continue to operate.

1.9 Sub-item (4) is a deeming provision. It would provide that in relation to any proceeding or matter under sub-items (1), (2) and (3), any resulting order made after commencement is taken to have been made under the corresponding provision of the RAO Schedule and not the WR Act (this reflects the rule in item 2).

1.10 However, sub-item (5) stipulates that in relation to any penalty imposed as a result of such an order, the penalty is the penalty applicable under the WR Act as in force immediately before commencement and not the penalty applicable under the RAO Schedule.

1.11 Under sub-item 6, the word ‘order’ is defined to include ‘authorisation, certificate, decision, declaration, determination, direction, exemption, injunction, notice or permission’, and the word ‘make’ to include ‘give or grant’.

Item 6 – Pre-commencement WR Act continues for transitional purposes

1.12 Item 6 would provide that if a repealed provision of the WR Act is saved by this Act, any provisions of the WR Act, or regulations made under such provisions, that are necessary for the effective operation of the repealed provision would also continue to operate.

Item 7 – RAO Schedule regulations may extend to transitional applications etc.

1.13 Section 359 of the RAO Schedule would give the Governor-General power to make regulations for the purposes of that Schedule. Subsection 359(2) would set out a list of matters in relation to which regulations may be made, including the manner in which applications under the RAO Schedule may be made and dealt with.

1.14 Item 7 would extend the reference in section 359 to applications and proceedings under the RAO Schedule to include references to any applications and proceedings which are subject to the RAO Schedule, by virtue of this Act.

Item 8 – Power of President of the Commission to resolve difficulties

1.15 Item 8 would empower the President of the Commission to give directions to resolve any difficulty that may arise in the application of the Act to a particular proceeding or matter before the Commission. However, such directions should not be inconsistent with the provisions of the RAO Schedule and are subject to any order of the Federal Court made under item 9.
Item 9 – Power of Federal Court of Australia to resolve difficulties

1.16 Item 9 would provide the Federal Court with power to make an order to resolve any difficulty that may arise in the application of this Act (or the application of the RAO Schedule by operation of this Act) in relation to a particular matter upon application by a person with an interest in the matter.

1.17 Sub-item (2) would provide that any such order has effect despite the Act or the RAO Schedule or any other Act in force immediately before commencement.

Item 10 – General rules are subject to specific rules

1.18 This item would provide that any general rule in Part 1 is subject to specific rules in the following parts of this Schedule.

Part 2 – Registered Organisations

1.19 Part 2 contains specific transitional rules about registration, cancellation of registration, amalgamation, withdrawal from amalgamation, and representation orders.

Item 11 – Register of organisations

1.20 Under paragraph 63(1)(a) of the WR Act, the Industrial Registrar is required to keep a register of organisations. Item 11 would deem the register as it stood immediately before commencement to be the register of organisations required to be kept under paragraph 13(1)(a) of the RAO Schedule.

Item 12 – Applications for registration

1.21 Where an application by an organisation for registration has been made but not determined prior to commencement, this item would provide that the application is to be determined under the WR Act as if the amendments made by this Act had not been made.

Item 13 – Acts or omissions relevant to prohibited conduct

1.22 Sections 21 and 22 of the RAO Schedule would prohibit certain discriminatory conduct by employers and organisations designed to impede the formation and registration of an employee association.

1.23 Where an application for registration is to be determined under the WR Act by virtue of item 12, item 13 would extend the operation of sections 21 and 22 of the RAO Schedule to discriminatory conduct aimed at impeding the formation or registration of an employee association under the WR Act. However, those provisions would not apply to conduct that occurred before commencement.

Item 14 – Correction of errors in rules of association applying for registration

1.24 Where an application for registration is to be determined under the WR Act by virtue of item 12, item 14 would enable the Commission to grant leave to an organisation under paragraph
25(1)(c) of the RAO Schedule (not the corresponding provision of the WR Act) to correct a formal error in its rules.

**Item 15 – Registration as an organisation continues**

1.25 Item 15 is a deeming provision.

1.26 Subitem (1) would deem an organisation registered under the WR Act to have been registered under the RAO Schedule. This would not otherwise affect the operation of the WR Act in relation to the organisation (subitem (2)).

1.27 Similarly, under subitem (3), an undertaking given by an organisation to the Commission to avoid a demarcation dispute under subsection 189(2) of the WR Act would be deemed to be an undertaking given under subsection 19(2) of the RAO Schedule. As a result, an undertaking given under the WR Act would be enforceable under the RAO Schedule.

1.28 Subitem (4) would ensure that a certificate of registration or a replacement certificate issued before commencement continues to be recognised under the RAO Schedule.

**Item 16 – Representation orders**

1.29 Item 16 provides for the continuing operation of representation orders.

**Item 17 – Applications for amalgamation**

1.30 Section 242 of the WR Act enables existing organisations (and any relevant associations) that propose to amalgamate to apply to the Commission for approval to submit the proposed amalgamation to a ballot of members.

1.31 This item would provide that if the application was commenced under section 242 of the WR Act but not determined before commencement, the application is to be determined under the WR Act as if the amendments proposed by this Act had not been made. The note to this item alerts readers to the fact that there are exceptions to this general rule in relation to particular aspects of the amalgamation process.

**Item 18 – Applications for recognition as a federation**

**Item 19 – Applications for community of interest declaration**

1.32 Items 18 and 19 make provision for dealing with applications made as part of the amalgamation process before commencement.

**Item 20 – Amalgamation ballots approved after commencement**

1.33 Where an application for submission of an amalgamation to ballot is approved by the Commission, and by virtue of item 17 the ballot is to be conducted under the WR Act, item 20 would require subsection 65(6) of the RAO Schedule to also apply. Subsection 65(6) requires each completed ballot paper to be returned in the declaration envelope provided, and the declaration envelope to be returned inside another envelope.
1.34 To ensure clarity of operation, paragraph (b) would provide that a reference in subsection 65(6) to a ballot conducted under that section is taken to include a reference to the ballot approved by the Commission.

Item 21 – Withdrawal from amalgamation – application made before commencement etc.

1.35 Section 253ZJ of the WR Act enables applications to be made to the Federal Court for a disamalgamation ballot. This item would provide that if the application was commenced under section 253ZJ of the WR Act but not determined before commencement, Subdivision B of Division 7A of Part IX of the WR Act continues to apply to the application and any ballot ordered as a result, as if the amendments proposed by this Act had not been made. However, subitem 21(2) would require certain provisions of the RAO Schedule to also apply.

Item 22 – Organisation not to penalise members in relation to withdrawal from amalgamation

1.36 Section 131 of the RAO Schedule would prohibit certain conduct designed to impede the pursuit of a withdrawal from amalgamation (reflecting section 253ZX of the WR Act). Item 22 would extend the operation of section 131 of the RAO Schedule to conduct occurring on or after commencement (subitem 22(1)).

1.37 Subitem (2) would provide that a reference in section 131 of the RAO Schedule to section 130 of that Act is taken to include a reference to the corresponding provision in section 253ZX of the WR Act. This has the effect of ensuring the prohibition in section 131 extends to conduct under the WR Act.

Item 23 – Withdrawal from amalgamation – application made after commencement

1.38 Item 23 proposes to apply Part 3 of Chapter 3 of the RAO Schedule (which relates to withdrawal from amalgamations) to organisations that became amalgamated under the WR Act. References in that Part to provisions in the RAO Schedule are, by operation of item 23, taken to include references to corresponding provisions of the WR Act.

Item 24 - Grounds for deregistration

1.39 Part 3 of Chapter 2 of the RAO Schedule sets out grounds on which an application for deregistration of an organisation may be made. Item 24 would deal with the application of these sections to conduct by an organisation occurring before commencement.

Part 3 – Rules of organisations

1.40 Part 3 proposes transitional provisions relevant to rules of an organisation.

Item 25 – Existing rules

1.41 Item 25 would provide for the continuity in operation of rules of an organisation that were in force immediately before commencement and that these rules may be altered under the RAO Schedule. A note to this clause refers to item 5 as applying to rule changes that were in the process of being certified at commencement.
Item 26 – New rule requirements

1.42 Section 156 of the RAO Schedule enables the Industrial Registrar to make alterations to the rules of an organisation to bring them into conformity with the requirements of that Schedule.

1.43 Item 26 would prevent the Industrial Registrar from exercising power under section 156 of the RAO Schedule in relation to any new requirements imposed by the RAO Schedule during an ‘interim period’ (subitem 2). This is to give organisations sufficient time to amend their rules to ensure compliance with the RAO Schedule.

1.44 The interim period would be 6 months after commencement or as extended by the Industrial Registrar upon application by an organisation (subitem (3)). The Industrial Registrar may extend the interim period in relation to an organisation for up to 6 months (sub-item (4)). In deciding whether to grant an extension, the Registrar would be required to take into account the ability of the organisation to change its rules within the initial 6-month period and any other matter the Registrar considers relevant (subitem 26(5)).

1.45 Subitem (1) would clarify that this item does not prevent the Industrial Registrar from exercising power under section 156 of the RAO Schedule to ensure compliance with requirements of the WR Act as it stood immediately before commencement.

Item 27 – Review of rules by Industrial Registrar

1.46 Item 27 would require the Industrial Registrar to review the rules of an organisation as soon as practicable after the end of the interim period applying to that organisation under item 26. A note to this clause reminds readers that under section 156 of the RAO Schedule, the Industrial Registrar may alter the rules of an organisation to bring them in conformity with the requirements of the Schedule.

Item 28 – Rules relating to retirement age of office-holders

1.47 Paragraph 199(1)(b) of the WR Act enables the rules of an organisation to allow a full-time officer to remain in office beyond the end of his or her term until retirement age, where that age is to be attained within 12 months after the end of that term. There is no equivalent provision in the RAO Schedule. Item 28 would enable any such rules to continue in operation if the nominations for the election to the full-time office in question closed before the commencement. If the nominations closed after commencement, those rules cannot apply.

1.48 A note to this item would clarify that despite the continued operation of the rules as to retirement age under this item, those rules must be removed during the applicable interim period under item 26 to ensure compliance with section 145 of the RAO Schedule (which prohibit the extension of terms of office other than to allow for the synchronisation of elections).

Item 29 – Membership agreements between organisation and State union

1.49 Section 202 of the WR Act permits a federally registered union to enter into an agreement with a counterpart State registered union so as to enable the members of the State union who would otherwise be ineligible for membership of the federally registered union, to join that federal union as members.
1.50 Subitem (1) would enable an agreement made under section 202 of the WR Act that was in force immediately before commencement to continue in operation as if it were made under the RAO Schedule. However, if an agreement was lodged with the Industrial Registrar but had not come into force before commencement, the WR Act would continue to apply (subitem (2)).

1.51 Where both the federal and the State organisations agree to terminate the agreement made under this section, subsection 202(11) of the WR Act requires a copy of that termination agreement to be lodged with the Industrial Registrar. If a termination agreement was lodged but had not yet taken effect before commencement, the WR Act would continue to apply to it (subitem (3)).

**Item 30 – Certain alterations of rules to be recorded**

1.52 Section 206 of the WR Act requires the Industrial Registrar to enter in the register of organisations details of changes in the name or an organisation or alterations of the eligibility rules, and the date and effect of the change or alteration. If, before commencement, such a change or alteration was made under the WR Act but the Industrial Registrar had not yet entered the requisite details in the register, section 160 of the RAO Schedule would apply in relation to the change or alteration.

**Item 31 – Evidence of rules**

1.53 Section 161 of the RAO Schedule enables the production of a copy of the rules of an organisation certified by the Registrar as evidence of those rules. Item 31 would extend the operation of this provision to copies certified under the WR Act

**Part 4 – Membership of organisations**

**Item 32 – Resignation from membership**

1.54 Section 264 of the WR Act enables a member of an organisation to resign by giving notice in writing and provides for the date on which the resignation is to take effect. This item would provide that if a notice was given but had not taken effect before commencement, section 264 would continue to apply in relation to the resignation and any outstanding dues of the member.

**Item 33 – Recovery of arrears**

1.55 Section 178 of the RAO Schedule imposes a 12-month limitation period on the recovery of arrears of membership dues and extinguishes the debt after that period. Item 33 would provide that section 178 only applies to amounts that become payable after commencement. Sections 264A and 265 of the WR Act would continue to apply to amounts that became payable before commencement.

**Part 5 – Democratic control**
Item 34 – Elections

1.56 Item 34 deals with elections for offices in an organisation or branch required to be conducted by the Australian Electoral Commission. In particular, item 34 sets down the transitional rules that apply following the commencement of the RAO Schedule.

1.57 In short, the RAO Schedule would apply to elections (for both an office in an organisation or a branch of an organisation or a position other than an office) where no steps have been taken in relation to the election prior to the commencement of the provision. If any steps have been taken, then the WR Act applies to any steps taken that were started but not finished before the commencement of the Schedule, and the RAO Schedule would apply to any steps that commenced on or after commencement. However, new section 188 of the RAO Act (which requires the use of declaration envelopes and outer envelopes) would not apply to elections that had been commenced prior to the commencement of the Bill.

Item 35 – Elections completed before commencement

Item 36 – Inquiries into elections

Item 37 – Action after inquiries into elections

1.58 Where an election for office was commenced and completed under the WR Act before commencement, item 35 would preserve the operation of the WR Act in relation both to the election and to any inquiry into it.

1.59 However, if by operation of item 35 an inquiry is conducted under the WR Act, any order of the Federal Court as a consequence of the inquiry, including an order that a new election be held, is taken to be subject to the operation of the RAO Schedule (item 37).

1.60 Item 36 would make it clear that the power of the Electoral Commissioner to apply for an election inquiry under section 200 of the RAO Schedule applies in relation to elections any step of which occurred after commencement.

Item 38 – Post election report by Australian Electoral Commission

1.61 Section 197 of the RAO Schedule requires the Australian Electoral Commission to provide a post-election report detailing certain prescribed matters. This item restricts the operation of section 197 to elections where every step in the election, including the calling of nominations, occurs on or after commencement.

Item 39 – Applications for leave to hold office

1.62 Section 229 of the WR Act enables an application to the Federal Court for leave to hold office to be made by a prospective office holder who, in the preceding 5 years, has either been convicted of a prescribed offence or released from imprisonment for a prescribed offence. Section 230 also enables an application for leave to hold office to be made by an existing officer holder who becomes convicted of a prescribed offence.

1.63 Subitem 39(1) would provide for the continuation of the operation of the WR Act in respect of applications made under section 229 or 230 of the WR Act but not determined at commencement.
1.64 Sections 216 and 217 of the RAO Schedule correspond to sections 229 and 230 of the WR Act, respectively. Subsections 216(4) and 217(4) of the RAO Schedule prevent applications by someone who has already made an application in relation to the same conviction. By operation of subitems 39(2) and (3), this prohibition would extend to past applications made in respect of the same conviction under corresponding provisions of the WR Act.

**Item 40 – Prescribed offences**

1.65 Part 4 of Chapter 7 of the RAO Schedule deals with the eligibility of a person convicted of a prescribed offence to stand for, or hold, office in an organisation.

1.66 Section 212 of that Schedule defines ‘prescribed offence’, for which upon conviction a person may be disqualified from holding office in an organisation. Item 40 would ensure that the definition of prescribed offence in section 212 includes offences specified in section 227 of the WR Act as in force at commencement.

**Item 41 – Certain persons disqualified from holding office in organisations**

1.67 Section 215 of the RAO Schedule prohibits a person who has been convicted of a prescribed offence from seeking election or from being elected or appointed to an office unless certain conditions are satisfied. This item would ensure that decisions of the Court under section 228 of the WR Act (which is equivalent to section 215 of the RAO Schedule) in respect of disqualification from holding office continue to apply under the RAO Schedule.

**Part 6 – Records and accounts**

**Item 42 – Records to be kept and lodged by organisations**

1.68 Item 42 is a deeming provision which is designed to ensure continuity in relation to registers of membership and other lists required to be kept by organisations. Subitem (1) would provide that the register of members required to be kept under the WR Act is taken to be the register of members required to be kept under section 230 of the RAO Schedule.

1.69 Similarly, the list of offices in an organisation and the list of names, addresses and occupations of officeholders required to be kept under the WR Act is taken to be the corresponding lists required to be kept under section 230 of the RAO Schedule (subitem (2)).

1.70 Subitem (3) would limit the operation of the civil penalty provisions to contraventions of sections 230 and 231 of the RAO Schedule (certain records to be held for 7 years), to contraventions that occur on or after commencement.

1.71 Subitem (4) would limit the operation of section 232 of the RAO Schedule (which prohibits interference with the register of members or a copy of it) to interference that occurs on or after commencement.

**Item 43 – Loans, grants and donations**

1.72 Section 237 of the RAO Schedule requires an organisation to lodge in the Industrial Registry a statement detailing each loan, grant and donation over $1,000 within 90 days after the end of each financial year. Under item 43, this requirement would not apply to any organisation
until the first financial year that starts on or after commencement. The corresponding requirement in section 269 of the WR Act continues to apply to the financial year of an organisation that had started but not yet ended at commencement.

**Item 44 – Accounts and audit – application of Part 3 of Chapter 8 of RAO Schedule**

1.73 Part 3 of Chapter 8 of the RAO Schedule prescribes the financial accounting and auditing requirements of organisations.

1.74 Other than the provisions of the Schedule dealing with determination by the Industrial Registrar of reporting units and the issuing of reporting guidelines by the Industrial Registrar, which apply from commencement, all provisions of Part 3 would apply from the first financial year of an organisation starting after commencement of the reporting guidelines (subitem 44(1)).

1.75 The operation of Division 2 of Part 3 is designed to enable organisations to put reporting structures in place in advance of the application of the reporting guidelines. Accordingly, subitems 44(3) to (6) would provide that any certificate issued under section 245 or revoked under section 249 of the RAO Schedule and any alteration of rules that is determined or certified under sections 246, 247 or 249 does not take effect until the first financial year of an organisations starting after commencement of the reporting guidelines.

1.76 This item also defines ‘transition period’ – as the period between commencement of Item 1 of Schedule 1 of this Act and the first financial year of an organisation that starts after commencement of the reporting guidelines.

**Item 45 – Accounting records**

1.77 This item is a deeming provision. It is designed to ensuring continuity of accounting records by setting out the basis on which the accounting records of an organisation or branch under the WR Act become the financial records of a reporting unit under the RAO Schedule.

**Item 46 – Members’ access to accounting records**

1.78 Division 7 of Part 3 of Chapter 8 of the RAO Schedule sets out the process and conditions whereby members may access prescribed information concerning the affairs of their reporting unit upon application to the Registrar, or access the financial records of their organisations upon application to the Commission.

1.79 Due to the fact that Part 3 of Chapter 8 of the RAO Schedule does not come into operation until the first financial year after commencement of the reporting guidelines, item 46 would create a substitute Division 7 of Part 3 which would operate during the transition period to enable members to have appropriate access to financial records of their organisation or branch. Substitute Division 7 of Part 3 would operate on the same basis as Division 7 of Part 3 of Chapter 8 of the RAO Schedule except that it refers to:

- ‘accounting records’ as defined in section 4 of the WR Act instead of ‘financial records’;
- ‘organisation’ within the meaning of the WR Act instead of ‘reporting unit’;
- ‘accounts prepared under section 273 of the WR Act’ instead of ‘general purpose financial reports’; and
Item 46 would also insert a substitute subclause 273(3) 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.

1.81 Item 46 would also ensure that the provisions apply to branches of organisations (on the same basis as under the WR Act).

**Item 47 – Accounts and audit – continued application of Division 11 of Part IX of WR Act**

1.82 This item is a saving provision. It would provide that Division 11 of Part IX of the WR Act relating to accounts and audits continues to have effect in relation to a financial year spanning the transition period.

1.83 Subitem 47(2) would provide that section 280 of the WR Act (which relates to investigations by the Industrial Registrar) continues to apply in relation to investigations started under the WR Act but not completed prior to commencement.

**Item 48 – Inquiries and investigations – transitional operation**

1.84 Part 4 of Chapter 10 of the RAO Schedule confers upon the Industrial Registrar or Registry officials certain powers to make inquiries and investigate matters under the RAO Schedule. Due to the fact that Part 4 of Chapter 10 will not apply until the first financial year of an organisation starting after commencement of the reporting guidelines, this item will create a substitute Part 4 of Chapter 10 of the RAO Schedule which will operate during the transition period. This is to enable the Industrial Registrar to make inquiries and investigate matters on or after commencement of the RAO Schedule irrespective of when the conduct being investigated occurred.

1.85 Substitute Part 4 of Chapter 10 will operate on the same basis as Part 4 of Chapter 10 of the RAO Schedule except that it will make appropriate references to the WR Act rather than to the RAO Schedule, including by substituting references to

- ‘Division 11 of Part IX of the WR Act’ and ‘regulations made for the purposes of that Division’ with references to ‘Part 3 of Chapter 8’, ‘regulations made for the purposes of that Part’ and ‘reporting guidelines’; and
- ‘organisation’ with references to ‘reporting unit’.

1.86 The purpose of substitute Part 4 of Chapter 10 is to ensure that the Industrial Registrar is empowered to monitor compliance with financial requirements of the WR Act during the transition period, and to investigate and, where necessary, enforce those civil penalty provisions that come into operation at commencement of the RAO Schedule.

**Item 49 – Inquiries and investigations – conduct occurring on or after commencement of the reporting guidelines**

1.87 Item 49 would clarify that Part 4 of Chapter 10 of the RAO Schedule only applies in relation to conduct occurring in a financial year of an organisation starting on or after commencement of the reporting guidelines.
Part 8 – Miscellaneous

1.88 Part 8 proposes a number of amendments, which are primarily of a technical nature.

Item 51 – Requests by members under section 288 of the WR Act

1.89 Section 288 of the WR Act permits a financial member of an organisation to request a returning officer conducting an election for office or other position, or a ballot on a matter, in an organisation or branch to supply information to the member for the purpose of ascertaining whether an irregularity has occurred in that election or ballot.

1.90 Item 51 would provide that where a request was made under section 288 of the WR Act but not complied with before commencement, the WR Act continues to apply.

Item 52 – List of officers to be evidence

1.91 Section 292 of the WR Act provides that a list of officers of an organisation or branch lodged on behalf of an organisation in the Industrial Registry or a copy of such a list certified by a Registrar, is evidence that the persons named in the list were officers at the time of lodgement. Item 52 would enable a list lodged, or copy certified, before commencement to continue to be evidence that the persons named in the list were officers at the time of lodgement after commencement.

Item 53 – Authorisation of financial assistance

1.92 This item would ensure that provisions of the WR Act relating to the granting of financial assistance in relation to proceedings under that Act continue to have effect in any proceeding started under that Act before commencement.

Item 54 - Delegations

1.93 Item 54 would enable delegations made under a repealed provision of the WR Act to continue to operate after commencement as if they had been made under the corresponding provision of the RAO Schedule, provided the delegation was in force immediately before commencement and did not end at that time.

Item 55 – Regulations may deal with other transitional matters

1.94 Item 55 would enable regulations to be made about matters of a transitional, application or saving nature relating to amendments made to the WR Act by this Act or to the enactment of the RAO Schedule. A regulation made under this item may have retrospective application except to the extent that the rights of a person are adversely affected or a liability is imposed.
SCHEDULE 2 – AMENDMENT OF THE WORKPLACE RELATIONS ACT 1996

2.1 Schedule 2 proposes amendments to the WR Act consequential upon the commencement of the RAO Schedule and the removal of provisions of relevant provisions from the WR Act.

2.2 A number of amendments would insert references to the RAO Schedule or substitute references to provisions of the WR Act with references to provisions of the RAO Schedule.

2.3 Other amendments would repeal provisions of the WR Act (for example, Divisions 1 to 11 of Part IX of the WR Act).

2.4 Some items would make amendments consequential upon the enactment of the RAO Schedule. For example, item 80 would add a definition of ‘matter’ to include a proceeding arising under the RAO Schedule. Other items would remove obsolete references or correct technical errors.

2.5 The schedule would also insert two substantive provisions in the WR Act:

- Section 45A – which would set out the process and scope for appeals to the Full Bench of the Commission in relation to a decision or order of a member of the Commission relating to a matter arising under the RAO Schedule (item 43);

- Section 174A – which would replicate section 174 in allowing the President of the Commission to refer a demarcation dispute to a State authority to be investigated and dealt with under the WR Act (item 86).
SCHEDULE 3 – AMENDMENT OF OTHER ACTS

3.1 Schedule 3 proposes amendments to other Commonwealth legislation that are consequential to the enactment of the RAO Act and the repeal of provisions of the WR Act.

3.2 Items 2, 22, 26, 28, and 32 each omit references to the ‘Workplace Relations Act’ and substitute references to the ‘Registration and Accountability of Organisations Schedule’, in the Builders Labourers’ Federation (Cancellation of Registration – Consequential Provisions) Act 1986 (the BLF Act).

3.3 Item 3 would insert a definition of ‘Registration and Accountability of Organisations Schedule’ in the BLF Act to mean ‘Schedule 1B to the Workplace Relations Act 1996’.

3.4 Item 3A would amend the definition of ‘Workplace Relations Act’ in the BLF Act to mean ‘the Workplace Relations Act 1996 (other than Schedule 1B to that Act)’.

3.5 Items 4, 5, 8, 10, 11, 12, 15, 16, 19, 21, 24, 25, 27 and 31 would omit references to the ‘Industrial Relations Act’ and substitute references to the ‘Workplace Relations Act’, in the BLF Act.

3.6 Items 6, 17, 23 and 30 would amend the BLF Act to omit references to specific provisions of the ‘Industrial Relations Act’ and the WR Act and substitute references to specific provisions of the RAO Schedule to reflect the repeal of those provisions and their replacement.

3.7 Items 9, 13, and 20 would add references to the RAO to existing references to the WR Act in the BLF Act.

3.8 Item 14 would amend the BLF Act to omit a reference to ‘that Act’ and substitute a reference to the RAO Schedule. Item 22A would amend the BLF Act to omit a reference to ‘under that Act’ and substitute a reference to ‘under that Schedule’.

3.9 Items 18 and 29 would substitute words or change the reference to section numbers in the BLF Act.

3.10 Items 33, 36, 37, 41, 47, 50, 51, 52, 54, 58, and 60 to 64 each omit references to the ‘the Workplace Relations Act 1996’ and substitute references to ‘Schedule 1B to the Workplace Relations Act 1996’, in the following Acts:

- 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
- Income Tax Assessment Act 1936
- Insurance Act 1973
- Life Insurance Act 1995
- Navigation Act 1912
3.11 Item 34 would omit a reference to the *Conciliation and Arbitration Act 1904* in section 5 of the *Commonwealth Electoral Act 1918*.

3.12 Items 38 to 40 propose to repeal certain provisions of the *Criminal Code Act 1995* which refer to ‘Part IX of the *Workplace Relations Act 1996*’ and instead substitute a reference to ‘Part 2 of Chapter 2 of the *Workplace Relations Amendment (Registration and Accountability of Organisations) Act 2002*’. These amendments reflect the fact that the provisions governing the registration of organisations will be contained in Part 2 of Chapter 2 of the RAO Schedule.

3.13 Items 42 to 46 would repeal certain provisions of the *Employment, Workplace Relations and Small Business Legislation Amendment (Criminal Code) Act 2001*. The provisions to be repealed proposed to amend provisions of the ‘*Workplace Relations (Registered Organisations) Act 2001*’ (RO Act). As the Bill that would have created the RO Act was never enacted, the amendments referred to in items 42 to 46 will never commence and therefore are to be repealed.


3.15 Item 59 would amend the *Occupational Health and Safety (Commonwealth Employment) Act 1991* to omit the reference to ‘the *Industrial Relations Act 1988*’ and replace it with a reference to ‘Schedule 1B to the *Workplace Relations Act 1996*’.
SCHEDULE 4 – AMENDMENTS ABOUT ENTRY TO PREMISES

Workplace Relations Act 1996

4.1 This Schedule proposes amendments to the right of entry provisions of the WR Act.

4.2 Division 11A of Part IX of the WR Act establishes a system whereby a registered organisation can apply to an Industrial Registrar for the issue of a permit to an officer or employee. The permit holder has a right, subject to limitations set out in the WR Act, to enter workplaces for the purposes of investigating suspected breaches of the WR Act or awards or certified agreements made under that Act, and for holding discussions with employees.

Item 1 – Subsection 285C(1)

4.3 Item 1 would make a minor technical amendment to existing subsection 285C(1) consequential upon the changes proposed by Item 2.

Item 2 – At the end of section 285C

4.4 Item 2 would amend section 285C of the WR Act. Section 285C allows a permit holder to enter premises in which work is being carried on to which an award applies that is binding on the organisation of which the permit holder is an officer or employee for the purpose of holding discussions with employees who are members, or eligible to become members, of that organisation.

4.5 Item 2 would insert new subsections 285C(3) - (7). These subsections would limit the right of entry under section 285C by providing that the right cannot be exercised if an employer holding an endorsed certificate employs 20 or fewer employees at the premises, none of whom are union members.

4.6 Section 267 of the WR Act enables a Registrar to issue, to an employer or employee whose conscientious beliefs do not allow the person to be a member of an employer association or union (as the case may be), a certificate of conscientious objection to membership of an organisation.

4.7 The amendment in item 2 would enable a Registrar to endorse that certificate if he or she is satisfied that the employer is a practising member of a religious society or order whose doctrines or beliefs preclude membership of an organisation or body other than the religious society or order of which the employer is a member. The Registrar must be satisfied that, at the time the application is made, all of the employees of the applicant have agreed that the endorsement should be made.

Item 3 – Paragraph 285C(3)(b)

Item 4 – Subsection 285C(4)

Item 5 – Subsection 285C(6)

Item 6 – Subsection 285C(7)(note)

4.8 Items 3 to 6 would make consequential amendments to paragraph 285C(3)(b), subsection 285C(4), subsection 285C(6) and subsection 285C(7) of the WR Act on the commencement of
the RAO Act to replace references to section 267 of the WR Act with references to section 180 of the RAO Schedule.