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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Workplace Relations Amendment
(Compliance with Court and Tribunal
Orders) Bill 2003**

No. , 2003

(Employment and Workplace Relations)

**A Bill for an Act to amend the *Workplace Relations
Act 1996*, and for related purposes**

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Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	
2. Schedule 1	The later of: (a) the start of the 28th day after the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of Schedule 1B to the <i>Workplace Relations Act 1996</i>	

1 Note: This table relates only to the provisions of this Act as originally
2 passed by the Parliament and assented to. It will not be expanded to
3 deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table is for additional information that is not part
5 of this Act. This information may be included in any published
6 version of this Act.

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

1
2 **Schedule 1—Amendment of the Workplace**
3 **Relations Act 1996**

4 **Part 1—Amendments**

5 **1 Section 210 of Schedule 1B**

6 After “(see Division 2)”, insert “or on whom the Federal Court has
7 imposed a pecuniary penalty by order under subsection 306(1) for
8 contravening a provision of Part 3 of Chapter 9 (see Division 3)”.

9 **2 At the end of Part 4 of Chapter 7 of Schedule 1B**

10 Add:

11 **Division 3—Persons who are the subject of a prescribed**
12 **order**

13 **221 Simplified outline of Division**

14 This Division imposes certain limitations and requirements on
15 people who hold, or wish to hold, office in an organisation and on
16 whom the Federal Court has imposed a pecuniary penalty by order
17 under subsection 306(1) for contravening a provision of Part 3 of
18 Chapter 9.

19 Section 224 sets out the basic limitation for a person on whom a
20 pecuniary penalty has been imposed for contravening a provision
21 of Part 3 of Chapter 9. The remaining sections in this Division deal
22 with the ways the rule in section 224 operates and may be
23 modified.

24 **222 Meaning of *prescribed order***

25 In this Division, *prescribed order*, in relation to a person, means an
26 order made by the Federal Court under subsection 306(1) imposing
27 a pecuniary penalty on the person for contravening a provision of
28 Part 3 of Chapter 9.

1 **223 Certificate of registrar etc. is evidence of facts**

2 (1) A certificate purporting to be signed by the registrar or other
3 proper officer of the Federal Court, stating that the Federal Court
4 made an order under subsection 306(1) on a specified day
5 imposing a pecuniary penalty on a person for contravening a
6 provision of Part 3 of Chapter 9 is, for the purpose of an
7 application made under section 224, 225 or 226, evidence that the
8 order was made on that day.

9 (2) A certificate purporting to be signed by the registrar or other
10 proper officer of the Federal Court, stating that a person was found
11 not to have contravened a provision of Part 3 of Chapter 9 is, for
12 the purpose of an application made under section 224, 225 or 226,
13 evidence of the facts stated in the certificate.

14 **224 Certain persons disqualified from holding office in**
15 **organisations**

16 (1) A person in relation to whom a prescribed order has been made is
17 not eligible to be a candidate for an election, or to be elected or
18 appointed, to an office in an organisation unless:

19 (a) on an application made under section 225 or 226 in relation
20 to the order:

21 (i) the person was granted leave to hold office in
22 organisations; or

23 (ii) the person was refused leave to hold office in
24 organisations but, under paragraph 225(2)(b) or
25 226(2)(b), the Federal Court specified a period for the
26 purposes of this subsection, and the period has elapsed
27 since the day on which the order was made; or

28 (b) in any other case—a period of 5 years has elapsed since the
29 day on which the order was made.

30 (2) If the Federal Court makes a prescribed order in relation to a
31 person who holds an office in an organisation, the person ceases to
32 hold the office at the end of the period of 28 days after the day on
33 which the order is made unless, within the period, the person
34 makes an application to the Federal Court under section 225 or
35 226.

- 1 (3) If a person who holds an office in an organisation makes an
2 application to the Federal Court under section 225 or 226 and the
3 application is not determined:
4 (a) except in a case to which paragraph (b) applies—within the
5 period of 3 months after the date of the application; or
6 (b) if the Court, on application by the person, has extended the
7 period—within that period as extended;
8 the person ceases to hold the office at the end of the period of 3
9 months or the period as extended, as the case may be.
- 10 (4) The Court must not, under paragraph (3)(b), extend a period for the
11 purposes of subsection (3) unless:
12 (a) the application for the extension is made before the end of
13 the period of 3 months referred to in paragraph (3)(a); or
14 (b) if the Court has previously extended the period under
15 paragraph (3)(b)—the application for the further extension is
16 made before the end of the period as extended.
- 17 (5) An organisation, a member of an organisation or the Industrial
18 Registrar may apply to the Federal Court for a declaration whether,
19 because of the operation of this section or section 225 or 226:
20 (a) a person is not, or was not, eligible to be a candidate for
21 election, or to be elected or appointed, to an office in the
22 organisation; or
23 (b) a person has ceased to hold an office in the organisation.
- 24 (6) The granting to a person, on an application made under section 225
25 or 226 in relation to a prescribed order, of leave to hold offices in
26 organisations does not affect the operation of this section or
27 section 225 or 226 in relation to another order imposed on the
28 person.

29 **225 Application for leave to hold office in organisations by**
30 **prospective candidate for office**

- 31 (1) A person who:
32 (a) wants to be a candidate for election, or to be appointed, to an
33 office in an organisation; and
34 (b) within the immediately preceding period of 5 years, is a
35 person in relation to whom a prescribed order has been made;
-

1 may, subject to subsection (4), apply to the Federal Court for leave
2 to hold office in organisations.

3 (2) Where a person makes an application under subsection (1), the
4 Court may:

- 5 (a) grant the person leave to hold office in organisations; or
6 (b) refuse the person leave to hold office in organisations and
7 specify, for the purposes of subsection 224(1), a period of
8 less than 5 years; or
9 (c) refuse a person leave to hold office in organisations.

10 (3) A person who:

- 11 (a) holds an office in an organisation; and
12 (b) is a person in relation to whom a prescribed order has been
13 made; and
14 (c) on an application made under subsection (1) in relation to the
15 order, is, under paragraph (2)(b) or (c), refused leave to hold
16 office in organisations;
17 ceases to hold the office in the organisation.

18 (4) A person is not entitled to make an application under this section in
19 relation to a prescribed order if the person has previously made an
20 application under this section or under section 226 in relation to the
21 order.

22 **226 Application for leave to hold office in organisations by office**
23 **holder**

24 (1) If a prescribed order is made in relation to a person who holds an
25 office in an organisation, the person may, subject to subsection (4),
26 within 28 days after the order is made, apply to the Federal Court
27 for leave to hold office in organisations.

28 (2) If a person makes an application under subsection (1) for leave to
29 hold office in organisations, the Court may:

- 30 (a) grant the person leave to hold office in organisations; or
31 (b) refuse the person leave to hold office in organisations and
32 specify, for the purposes of subsection 224(1), a period of
33 less than 5 years; or
34 (c) refuse the person leave to hold office in organisations.
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- 1 (3) A person who, on an application made under subsection (1), is,
2 under paragraph (2)(b) or (c), refused leave to hold office in
3 organisations ceases to hold the office concerned.
- 4 (4) A person is not entitled to make an application under this section in
5 relation to a prescribed order if the person has previously made an
6 application under this section or section 225 in relation to it.

7 **227 Federal Court to have regard to certain matters**

8 For the purposes of exercising the power under section 225 or 226
9 to grant or refuse leave to hold office in organisations to a person
10 in relation to whom a prescribed order has been made, the Federal
11 Court must have regard to:

- 12 (a) the nature of the contravention; and
13 (b) the circumstances of, and the nature of the person's
14 involvement in, the contravention; and
15 (c) the general character of the person; and
16 (d) the fitness of the person to be involved in the management of
17 organisations, having regard to the contravention; and
18 (e) any other matter that, in the Court's opinion, is relevant.

19 **228 Action by Federal Court**

- 20 (1) The Federal Court may, in spite of anything in the rules of any
21 organisation concerned, make such order to give effect to a
22 declaration made under subsection 224(5) as it considers
23 appropriate.
- 24 (2) If an application is made to the Court under subsection 224(5):
25 (a) the person whose eligibility, or whose holding of office, is in
26 question must be given an opportunity of being heard by the
27 Court; and
28 (b) if the application is made otherwise than by the organisation
29 concerned—the organisation must be given an opportunity of
30 being heard by the Court.
- 31 (3) Where an application is made to the Court under section 225 or
32 226, the organisation concerned must be given an opportunity of
33 being heard by the Court.

1 **3 At the end of section 281 of Schedule 1B**

2 Add:

3 Part 3 sets out the general duties of officers and employees in
4 relation to orders or directions of the Federal Court or the
5 Commission.

6 **4 At the end of Chapter 9 of Schedule 1B**

7 Add:

8 **Part 3—General duties in relation to orders and**
9 **directions**

10 **Division 1—Preliminary**

11 **294 Simplified outline**

12 This Part sets out the general duties of officers and employees in
13 relation to orders or directions of the Federal Court or the
14 Commission.

15 **295 Meaning of *involved***

16 For the purposes of this Part, a person is *involved* in a
17 contravention if, and only if, the person has:

- 18 (a) aided, abetted, counselled or procured the contravention; or
19 (b) induced, whether by threats or promises or otherwise, the
20 contravention; or
21 (c) been in any way, by act or omission, directly or indirectly,
22 knowingly concerned in or party to the contravention; or
23 (d) conspired with others to effect the contravention.

24 **296 Application to officers and employees of branches**

25 In this Part:

- 26 (a) a reference to an officer of an organisation includes a
27 reference to an officer of a branch of an organisation; and
-

- 1 (b) a reference to an employee of an organisation includes a
2 reference to an employee of a branch of an organisation.

3 **Division 2—General duties in relation to orders and**
4 **directions**

5 **297 Order or direction applying to organisation—civil obligation**

- 6 (1) This section applies if:
7 (a) the Federal Court or the Commission has made an order or a
8 direction under this Schedule or the Workplace Relations
9 Act; and
10 (b) the order or direction is in force; and
11 (c) the order or direction applies to an organisation.
- 12 (2) An officer or employee of the organisation must not do anything
13 that would cause the organisation to contravene the order or
14 direction, knowing, or reckless as to whether, the doing of the thing
15 would result in the contravention.

16 Note: This subsection is a civil penalty provision (see section 305).

- 17 (3) An officer or employee of the organisation who is involved in a
18 contravention of the order or direction, or of subsection (2),
19 contravenes this subsection.

20 Note: This subsection is a civil penalty provision (see section 305).

21 **298 Prohibition order or direction applying to organisation—civil**
22 **obligation**

- 23 (1) This section applies if:
24 (a) the Federal Court or the Commission has made an order or a
25 direction under this Schedule or the Workplace Relations
26 Act; and
27 (b) the order or direction is in force; and
28 (c) the order or direction applies to an organisation; and
29 (d) the order or direction prohibits the organisation from doing
30 something.
- 31 (2) An officer or employee of the organisation must not do anything
32 that would contravene the order or direction if the order or

1 direction had applied to him or her, knowing, or reckless as to
2 whether, the doing of the thing would result in such a
3 contravention.

4 Note: This subsection is a civil penalty provision (see section 305).

5 (3) An officer or employee of the organisation who is involved in a
6 contravention of subsection (2) contravenes this subsection.

7 Note: This subsection is a civil penalty provision (see section 305).

8 **299 Order or direction applying to officer—civil obligation**

9 (1) This section applies if:

10 (a) the Federal Court or the Commission has made an order or a
11 direction under this Schedule or the Workplace Relations
12 Act; and

13 (b) the order or direction is in force; and

14 (c) the order or direction applies to an officer of an organisation.

15 (2) The officer must not knowingly or recklessly contravene the order
16 or direction.

17 Note: This subsection is a civil penalty provision (see section 305).

18 (3) An officer or employee of the organisation who is involved in a
19 contravention of subsection (2) contravenes this subsection.

20 Note: This subsection is a civil penalty provision (see section 305).

21 **300 Prohibition order or direction applying to officer—civil
22 obligation**

23 (1) This section applies if:

24 (a) the Federal Court or the Commission has made an order or a
25 direction under this Schedule or the Workplace Relations
26 Act; and

27 (b) the order or direction is in force; and

28 (c) the order or direction applies to an officer of an organisation;
29 and

30 (d) the order or direction prohibits the officer from doing
31 something.

1 (2) An officer or employee of the organisation must not do anything
2 that would contravene the order or direction if the order or
3 direction had applied to him or her, knowing, or reckless as to
4 whether, the doing of the thing would result in such a
5 contravention.

6 Note: This subsection is a civil penalty provision (see section 305).

7 (3) An officer or employee of the organisation who is involved in a
8 contravention of subsection (2) contravenes this subsection.

9 Note: This subsection is a civil penalty provision (see section 305).

10 **301 Order or direction applying to employee—civil obligation**

11 (1) This section applies if:

- 12 (a) the Federal Court or the Commission has made an order or a
13 direction under this Schedule or the Workplace Relations
14 Act; and
15 (b) the order or direction is in force; and
16 (c) the order or direction applies to an employee of an
17 organisation.

18 (2) The employee must not knowingly or recklessly contravene the
19 order or direction.

20 Note: This subsection is a civil penalty provision (see section 305).

21 (3) An officer or employee of the organisation who is involved in a
22 contravention of subsection (2) contravenes this subsection.

23 Note: This subsection is a civil penalty provision (see section 305).

24 **302 Prohibition order or direction applying to employee—civil**
25 **obligation**

26 (1) This section applies if:

- 27 (a) the Federal Court or the Commission has made an order or a
28 direction under this Schedule or the Workplace Relations
29 Act; and
30 (b) the order or direction is in force; and
31 (c) the order or direction applies to an employee of an
32 organisation; and

1 (d) the order or direction prohibits the employee from doing
2 something.

3 (2) An officer or employee of the organisation must not do anything
4 that would contravene the order or direction if the order or
5 direction had applied to him or her, knowing, or reckless as to
6 whether, the doing of the thing would result in such a
7 contravention.

8 Note: This subsection is a civil penalty provision (see section 305).

9 (3) An officer or employee of the organisation who is involved in a
10 contravention of subsection (2) contravenes this subsection.

11 Note: This subsection is a civil penalty provision (see section 305).

12 **303 Order or direction applying to member of organisation—civil**
13 **obligation**

14 (1) This section applies if:

15 (a) the Federal Court or the Commission has made an order or a
16 direction under this Schedule or the Workplace Relations
17 Act; and

18 (b) the order or direction is in force; and

19 (c) the order or direction applies to a member of an organisation.

20 (2) An officer or employee of the organisation who is involved in a
21 contravention of the order or direction contravenes this subsection.

22 Note: This subsection is a civil penalty provision (see section 305).

23 **5 After paragraph 305(2)(zj) of Schedule 1B**

24 Insert:

25 (zk) subsections 297(2) and (3), 298(2) and (3), 299(2) and (3),
26 300(2) and (3), 301(2) and (3), 302(2) and (3), and 303(2)
27 (officers' duties);

28 **6 After subsection 307(1) of Schedule 1B**

29 Insert:

1

2 **Part 2—Application of amendment**

3 **9 Orders and directions of the Federal Court or Commission**

4 Division 2 of Part 3 of Chapter 9 of Schedule 1B to the *Workplace*
5 *Relations Act 1996*, added by item 4 of Schedule 1 to this Act, applies
6 in relation to:

- 7 (a) orders and directions made by the Federal Court or the
8 Commission before, on or after the commencement of
9 Schedule 1 to this Act; and
10 (b) acts done or omissions made on or after that commencement.