

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 26 October 1982

(Minister for Employment and Industrial Relations)

A BILL

FOR

An Act to amend the *Conciliation and Arbitration Act 1904*

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title, &c.

5 **1. (1)** This Act may be cited as the *Conciliation and Arbitration (Management of Organizations) Amendment Act 1982*.

(2) The *Conciliation and Arbitration Act 1904*¹ is in this Act referred to as the Principal Act.

Commencement

2. This Act shall come into operation on a date to be fixed by Proclamation.

10 **Declared bodies**

3. Section 88Z of the Principal Act is amended by inserting in sub-section (2) “132B, 132C, 132D, 132E, 132F, 132G, 132H, 132J,” after “119,”.

4. After section 132A of the Principal Act the following sections are inserted:

Certain persons disqualified from holding office in organizations

“132B. (1) A person who has, whether before or after the commencement of this section, been convicted of a prescribed offence is not eligible to become, or to continue to be, a candidate for election, or to be elected or appointed, to an office within any organization unless— 5

(a) on an application made under section 132C or 132D in relation to the conviction of the person of that prescribed offence—

(i) the person was granted leave to become, or to continue to be, a candidate for election, or to be appointed, to an office within an organization or to continue to hold an office within an organization; or 10

(ii) the person was refused leave to become, or to continue to be, a candidate for election, or to be appointed, to an office within an organization or to continue to hold an office within an organization but, pursuant to paragraph 132C (2) (b) or 132D (2) (b), the Court specified a period for the purposes of this sub-section, and a period of the same duration as the specified period has elapsed since the person was convicted of the prescribed offence or, if the person served a term of imprisonment in respect of the prescribed offence, since he was released from prison; or 15
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(b) in any other case—a period of 5 years has elapsed since the person was convicted of the prescribed offence or, if the person served a term of imprisonment in respect of the prescribed offence, since he was released from prison. 25

“(2) Where a person who holds an office within an organization is convicted of a prescribed offence, then, unless within the period of 28 days after he is so convicted he makes an application to the Court under section 132C or 132D, the person ceases to hold that office at the expiration of that period of 28 days. 30

“(3) If a person who holds an office within an organization makes an application to the Court under section 132C or 132D and the application is not determined— 35

(a) except in a case to which paragraph (b) applies—within the period of 3 months after the date of the application; or

(b) if the Court, on application by the person, has extended that period—within that period as so extended,

the person ceases to hold that office at the expiration of that period of 3 months or of that period as so extended, as the case may be. 40

“(4) The Court shall not, under paragraph (3) (b), extend a period for the purposes of sub-section (3) unless—

- (a) the application for the extension is made before the expiration of the period of 3 months referred to in paragraph (3) (a); or
- (b) if the Court has previously extended the period under paragraph (3) (b)—the application for the further extension is made before the expiration of the period as so extended,

as the case may be.

“(5) The organization, a member of the organization or the Bureau may apply to the Court for a declaration whether, by reason of the operation of this section or of section 132C or 132D—

- (a) a person is not, or was not, eligible to become, or to continue to be, a candidate for election, or to be elected or appointed, to an office within an organization; or
- (b) a person has ceased to hold an office within an organization.

“(6) The granting to a person, on an application made under section 132C or 132D in relation to a conviction of the person of a prescribed offence, of leave to become, or to continue to be, a candidate for election, or to be appointed, to an office within an organization or to continue to hold an office within an organization does not affect the operation of this section or of section 132C or 132D in relation to any other conviction of the person of a prescribed offence.

Application for leave to be elected or appointed

“132C. (1) A person who—

- (a) desires to become, or to continue to be, a candidate for election, or to be appointed, to an office within an organization; and
- (b) has been, within the immediately preceding period of 5 years, convicted of a prescribed offence, or released from prison after serving a term of imprisonment in respect of his conviction of a prescribed offence,

may, subject to sub-section (4), apply to the Court for leave to become, or to continue to be, a candidate for election, or to be appointed, as the case may be, to that office.

“(2) Where a person makes an application under sub-section (1) for leave to become, or to continue to be, a candidate for election, or to be appointed, to an office within an organization, the Court may—

- (a) grant the person leave to become, or to continue to be, a candidate for election, or to be appointed, as the case may be, to that office;
- (b) refuse the person leave to become, or to continue to be, a candidate for election, or to be appointed, as the case may be, to that office and specify, for the purposes of sub-section 132B (1), a period of less than 5 years; or

- (c) refuse the person leave to become, or to continue to be, a candidate for election, or to be appointed, as the case may be, to that office.

“(3) A person who—

- (a) holds an office within an organization;

- (b) was convicted of a prescribed offence after the commencement of this section; and

- (c) on an application made under sub-section (1) in relation to his conviction of that prescribed offence, is, under paragraph (2) (b) or (c), refused leave to become, or to continue to be, a candidate for election, or to be appointed, to an office within an organization,

thereupon ceases to hold the office referred to in paragraph (a).

“(4) A person is not entitled to make an application under this section in relation to the conviction of the person of a prescribed offence if he has previously made an application under this section or under section 132D in relation to that conviction.

Application for leave to continue to hold office

“132D. (1) Where a person who holds an office within an organization is convicted of a prescribed offence, he may, subject to sub-section (4), within 28 days after he is so convicted, apply to the Court for leave to continue to hold that office.

“(2) Where a person makes an application under sub-section (1) for leave to continue to hold an office within an organization, the Court may—

- (a) grant the person leave to continue to hold that office;
- (b) refuse the person leave to continue to hold that office and specify, for the purposes of sub-section 132B (1), a period of less than 5 years; or
- (c) refuse the person leave to continue to hold that office.

“(3) A person who, on an application made under sub-section (1), is, under paragraph (2) (b) or (c), refused leave to continue to hold an office within an organization thereupon ceases to hold that office .

“(4) A person is not entitled to make an application under this section in relation to the conviction of the person of a prescribed offence if he has previously made an application under this section or under section 132C in relation to that conviction.

Court to have regard to certain matters

“132E. For the purposes of exercising the power under section 132C or 132D to grant or refuse leave to a person who has been convicted of a prescribed offence to become, or to continue to be, a candidate for election, or to be appointed, to an office within an organization or to continue to hold an office within an organization, the Court shall have regard to—

- (a) the nature of the prescribed offence;

- (b) the circumstances of, and the nature of the person's involvement in, the commission of the prescribed offence;
- (c) the general character of the person;
- (d) the fitness of the person to be involved in the management of organizations, having regard to his conviction of the prescribed offence; and
- (e) any other matter that, in the opinion of the Court, is relevant.

Prescribed offences

“132F. (1) In sections 132B, 132C, 132D and 132E, ‘prescribed offence’ means—

- (a) an offence under a law of the Commonwealth, of a State, of a Territory or of another country involving fraud or dishonesty punishable on conviction by imprisonment for a period of not less than 3 months;
- (b) an offence under section 46, 132G, 141, 143, 153A, 153B, 158, 158AE, 158AF, 158AG, 158AH, 158AL, 158M, 160, 166, 169, 169A, 170A, 171 or 185 or an offence under regulation 140, 146, 146AQ, 146AS or 170 of the Conciliation and Arbitration Regulations as amended and in force from time to time under this Act;
- (c) any other offence in connection with the formation, registration or management of an association or organization; or
- (d) any other offence under a law of the Commonwealth, of a State, of a Territory or of another country, being an offence involving the intentional or reckless use of violence towards another person, the intentional or reckless causing of death or injury to another person or the intentional or reckless damaging or destruction of property.

“(2) A reference in section 132B, 132C, 132D or 132E to a person being convicted of a prescribed offence does not include a reference to a person being convicted, otherwise than on indictment, of an offence referred to in paragraph (1) (c).

“(3) A certificate purporting to be signed by the registrar or other proper officer of a federal court, a court of a State or Territory or a court of another country stating that a person was convicted by that court of a specified offence on a specified date is, for the purposes of an application made under section 132B, 132C or 132D, evidence that the person was convicted of that offence on that date.

“(4) A certificate purporting to be signed by the registrar or other proper officer of a federal court, a court of a State or Territory or a court of another country stating that a person was acquitted by that court of a specified offence, or that a specified charge against that person was dismissed by that court, is, for the purposes of an application made under section 132B, 132C or 132D, evidence of the facts stated in the certificate.

“(5) A certificate purporting to be signed by a prescribed authority stating that a person was released from prison on a specified date is, for the purposes of an application made under section 132B, 132C or 132D, evidence that the person was released from prison on that date.

Jurisdiction of Court

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“132G. (1) Subject to sub-sections (3) and (4), the Court has jurisdiction with respect to matters arising under sections 132B, 132C and 132D and may, notwithstanding anything in the rules of any organization in relation to which a matter arises, make such order to give effect to a declaration made under section 132B as it thinks appropriate.

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“(2) A person shall not contravene or fail to comply with an order made by the Court under sub-section (1).

Penalty: \$500.

“(3) Where an application is made to the Court under sub-section 132B (5)—

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(a) the person whose eligibility, or whose holding of office, is in question or in dispute shall be given an opportunity of being heard by the Court; and

(b) if the application is made otherwise than by the organization concerned—the organization concerned shall be given an opportunity of being heard by the Court.

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“(4) Where an application is made to the Court under section 132C or 132D, the organization concerned shall be given an opportunity of being heard by the Court.

Costs

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“132H. (1) Where, on an application made under sub-section 132B (5) by a member of an organization, the Court finds that a person is not, or was not, eligible to become, or to continue to be, a candidate for election, or to be elected or appointed, to an office within the organization, or that a person has ceased to hold an office within the organization, the Attorney-General may, if he considers the circumstances to justify him in so doing, authorize payment by the Commonwealth to the person who made the application of the whole or a part of his costs and expenses (including expenses of witnesses).

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“(2) Where, on an application made under sub-section 132B (5) by a member of an organization, the Court does not find that a person is not, or was not, eligible to become, or to continue to be, a candidate for election, or to be elected or appointed, to an office within the organization, or that a person has ceased to hold an office within the organization, but certifies that the person who made the application acted reasonably in so applying, the Attorney-General may authorize payment by the Commonwealth to that person of the whole or a part of his costs and expenses (including expenses of witnesses).

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5 “(3) Where the Attorney-General is satisfied that, having regard to the findings of the Court on an application made under sub-section 132B (5), it is not just that a person (not being the person who made the application or an organization) should be required to bear, or to bear in full, any costs or expenses (including expenses of witnesses) incurred by him in connection with the proceedings, the Attorney-General may authorize payment by the Commonwealth of the whole or a part of those costs or expenses.

10 “(4) Nothing in this section limits the power of the Court to make an order as to the costs and expenses (including expenses of witnesses) of proceedings before the Court under sub-section 132B (5).

Financial assistance to certain parties

“132J. (1) Where—

15 (a) a person who has made an application to the Court under section 132C or 132D has paid, or become liable to pay, costs or expenses in connection with the application; and

(b) on the application, the Court—

20 (i) granted the person leave under paragraph 132C (2) (a) or 132D (2) (a); or

(ii) refused the person leave under paragraph 132C (2) (b) or 132D (2) (b),

the person may apply to the Attorney-General for financial assistance by the Commonwealth in respect of those costs or expenses.

25 “(2) Where a person applies for financial assistance in accordance with sub-section (1), the Attorney-General may, if he is satisfied that it would involve hardship to that person to refuse the application and that, in all the circumstances, it is reasonable that the application should be granted, authorize payment by the Commonwealth to or on behalf of that person in respect of the costs and expenses referred to in sub-section (1) of such amount as he determines or of such amounts as he, from time to time, determines.

30 “(3) Nothing in this section authorizes a payment in respect of fees of more than one counsel appearing for the person to whom assistance is granted unless 2 or more counsel appeared for any other person at the hearing of the application.”.

5. After section 133A of the Principal Act the following section is inserted:

35 **Rules to provide conditions for loans, grants and donations by organizations**

40 “133B. (1) In addition to the other conditions referred to in this Act, the conditions to be complied with by associations applying for registration as organizations and by organizations include a condition that the rules of the association or organization, and the rules of any branch of the association or organization, shall provide that a loan, grant or donation of an amount exceeding \$1,000 shall not be made by the association or organization, or by the

branch, as the case may be, unless the committee of management of the association or organization, or of the branch, as the case may be—

(a) has satisfied itself—

- (i) that the making of the loan, grant or donation would be in accordance with the other rules of the association or organization, or of the branch, as the case may be; and 5
- (ii) in relation to a loan—that, in the circumstances, the security proposed to be given for the repayment of the loan is adequate and the proposed arrangements for the repayment of the loan are satisfactory; and 10

(b) has approved the making of the loan, grant or donation.

“(2) Nothing in sub-section (1) requires the rules of an association or organization, or of a branch of an association or organization, to make a provision of the kind referred to in that sub-section in relation to payments made by the association or organization, or by the branch, as the case may be, by way of provision for, or reimbursement of, out-of-pocket expenses incurred by persons for the benefit of the association or organization, or of the branch, as the case may be. 15

“(3) An organization that became registered before the date of commencement of this section is allowed a period of 12 months after that date, or such longer period as the Industrial Registrar determines, within which to bring its rules, and the rules of any branch of the organization, into conformity with the requirements of sub-section (1). 20

“(4) If, at the expiration of the period allowed by sub-section (3), the rules of an organization or of a branch of an organization, being an organization to which that sub-section applies, do not, in the opinion of the Industrial Registrar, conform with the requirements of sub-section (1), the Industrial Registrar may, after inviting the organization to consult with him on the matter, determine such alterations of the rules as will, in his opinion, bring them into conformity with those requirements. 25 30

“(5) The Industrial Registrar shall register the alterations determined by him in accordance with sub-section (4) and thereupon the rules shall be deemed to be altered accordingly.”.

6. After section 153A of the Principal Act the following section is inserted:

Organizations to notify particulars of loans, grants and donations 35

“153B. (1) An organization shall, as soon as practicable after the end of each financial year, lodge with the Registrar a statement showing the relevant particulars in relation to each loan, grant or donation of an amount exceeding \$1,000 made by the organization during that financial year.

Penalty: \$200. 40

“(2) A statement lodged with the Registrar in accordance with sub-section (1) shall be signed by an officer of the organization.

5 “(3) An organization shall not lodge with the Registrar, for the purposes of this section, a statement that is false or misleading, and an officer of an organization shall not knowingly sign a statement for lodgment with the Registrar in accordance with this section that is, to his knowledge, false or misleading.

Penalty: \$200.

10 “(4) A statement lodged with the Registrar by an organization in accordance with sub-section (1) may be inspected at the office of the Registrar, during office hours, by a member of that organization.

“(5) The relevant particulars, in relation to a loan made by an organization, are—

15 (a) the amount of the loan;

(b) the purpose for which the loan was required;

(c) the security given in respect of the loan; and

20 (d) except where the loan was made to relieve a member of the organization, or a dependant of a member of the organization, from severe financial hardship—the name and address of the person to whom the loan was made and the arrangements made for the repayment of the loan.

“(6) The relevant particulars, in relation to a grant or donation made by an organization, are—

25 (a) the amount of the grant or donation;

(b) the purpose for which the grant or donation was made; and

(c) except where the grant or donation was made to relieve a member of the organization, or a dependant of a member of the organization, from severe financial hardship—the name and address of the person to whom the grant or donation was made.

30 “(7) In this section, ‘financial year’, in relation to an organization, means—

(a) the period of 12 months commencing on 1 July in any year and ending on 30 June in the following year; or

(b) such other period of 12 months as is provided by the rules of the organization.

35 “(8) Where an organization is divided into branches—

(a) this section applies to, and in relation to, the organization as if loans, grants or donations made by a branch of the organization were not made by the organization; and

40 (b) this section applies to, and in relation to, each of the branches as if the branch were itself an organization.

“(9) For the purposes of the application of this section in accordance with sub-section (8) to or in relation to a branch of an organization, the members of the organization constituting the branch shall be deemed to be members of the branch.”.

Definitions

7. Section 171A of the Principal Act is amended by inserting “or to hold office” after “appointed” in sub-paragraph (a) (iii) of the definition of “invalidity”.

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NOTE

1. No. 13, 1904, as amended. For previous amendments, see No. 28, 1909; No. 7, 1910; No. 6, 1911; Nos. 5 and 18, 1914; No. 35, 1915; No. 39, 1918; No. 31, 1920; No. 29, 1921; No. 22, 1926; No. 8, 1927; No. 18, 1928; No. 43, 1930; Nos. 45 and 54, 1934; Nos. 14 and 30, 1946; No. 10, 1947 (as amended by No. 39, 1947); No. 52, 1947; Nos. 65 and 77, 1948; Nos. 28 and 86, 1949; Nos. 51 and 80, 1950; Nos. 18 and 58, 1951; No. 34, 1952; Nos. 17, 18 and 54, 1955; Nos. 44 and 103, 1956; No. 30, 1958; No. 40, 1959; Nos. 15, 17 and 110, 1960; No. 40, 1961; Nos. 99 and 115, 1964; Nos. 22 and 92, 1965; Nos. 64 and 93, 1966; No. 101, 1967; No. 38, 1968; Nos. 12, 15 and 40, 1969; No. 53, 1970; No. 37, 1972 (as amended by No. 80, 1982); No. 138, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 89, 1974; No. 64, 1975; Nos. 3, 64, 91, 117 and 160, 1976; Nos. 64, 108, 111 and 124, 1977; No. 53, 1978; No. 110, 1979; Nos. 35, 36 and 90, 1980; and Nos. 61 and 71, 1981.

