



# **Workplace Relations Amendment (Codifying Contempt Offences) Act 2004**

**No. 112, 2004**

**An Act to amend laws relating to workplace  
relations, and for related purposes**

Note: An electronic version of this Act is available in SCALEplus  
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)



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**No. 112, 2004**

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## **An Act to amend laws relating to workplace relations, and for related purposes**

*[Assented to 13 July 2004]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Workplace Relations Amendment  
(Codifying Contempt Offences) Act 2004*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
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	13 July 2004
2. Schedule 1	The 28th day after the day on which this Act receives the Royal Assent	10 August 2004
2A. Schedule 1A	A single day to be fixed by Proclamation However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period	13 January 2005
2B. Schedule 2	The 28th day after the day on which this Act receives the Royal Assent	10 August 2004
3. Schedule 3	The 28th day after the day on which this Act receives the Royal Assent	10 August 2004
4. Schedule 4	A single day to be fixed by Proclamation However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period	13 January 2005
5. Schedule 5	The day on which this Act receives the Royal Assent	13 July 2004

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

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

### **3 Schedule(s)**

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

## Schedule 1—Contempt offences

### *Workplace Relations Act 1996*

#### 5 At the end of section 303

Add:

##### *Giving false evidence*

- (3) A person (the *witness*) is guilty of an offence if:
- (a) the witness gives false sworn or affirmed evidence touching any matter material to that proceeding; and
  - (b) either:
    - (i) the evidence is given in a proceeding before the Commission; or
    - (ii) the evidence is given before a person taking evidence on behalf of the Commission either in a proceeding that has been instituted in the Commission by anyone or for use in a proceeding that will be instituted in the Commission by the witness.

Penalty: Imprisonment for 12 months.

Note: Section 10.2 of the *Criminal Code Act 1995* states that a person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence under duress.

##### *Inducing or coercing another person to give false evidence*

- (4) A person (the *offender*) is guilty of an offence if:
- (a) another person (the *witness*) has been called or is to be called as a witness in a proceeding before the Commission (whether the person is to appear before the Commission or before someone taking evidence on behalf of the Commission in the proceeding); and
  - (b) the offender induces, threatens or intimidates the witness to give false evidence in the proceeding.

Penalty: Imprisonment for 12 months.

Note 1: The heading to section 303 is altered by omitting “by” and substituting “relating to”.



Note 2: The following heading to subsection 303(1) is inserted “*Contravention of requirement by witness*”.

## **6 Application of new offences in section 303**

- (1) Subsection 303(3) of the *Workplace Relations Act 1996* (as amended by this Act) applies to the giving of false evidence after the commencement.
- (2) Subsection 303(4) of the *Workplace Relations Act 1996* (as amended by this Act) applies to the inducement after the commencement.

## Schedule 1A—Whistleblowers

### *Workplace Relations Act 1996*

#### 1 Section 317 of Schedule 1B

After:

Part 4 provides for a Registrar to make inquiries as to compliance with financial accountability requirements and civil penalty provisions. The Registrar may also conduct investigations.

insert:

Part 4A provides protection for officers, employees and members of organisations who disclose information about contraventions of this Schedule or this Act.

#### 2 After Part 4 of Chapter 11 of Schedule 1B

Insert:

### Part 4A—Protection for whistleblowers

#### 337A Disclosures qualifying for protection under this Part

A disclosure of information by a person (the *discloser*) qualifies for protection under this Part if:

- (a) the discloser is one of the following:
  - (i) an officer of an organisation, or of a branch of an organisation;
  - (ii) an employee of an organisation, or of a branch of an organisation;
  - (iii) a member of an organisation, or of a branch of an organisation; and
- (b) the disclosure is made to one of the following:
  - (i) a Registrar;
  - (ii) the Employment Advocate;

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- (iii) the person occupying the position in the Department known as the director of the Building Industry Taskforce;
  - (iv) an inspector;
  - (v) an authorised officer; and
- (c) the discloser informs the person to whom the disclosure is made of the discloser's name before making the disclosure; and
- (d) the discloser has reasonable grounds to suspect that the information indicates that:
- (i) the organisation, or a branch of the organisation, has, or may have, contravened a provision of this Schedule or this Act; or
  - (ii) an officer or employee of the organisation, or of a branch of the organisation, has, or may have, contravened a provision of this Schedule or this Act; and
- (e) the discloser makes the disclosure in good faith.

### **337B Disclosure that qualifies for protection not actionable etc.**

- (1) If a person makes a disclosure that qualifies for protection under this Part:
- (a) the person is not subject to any civil or criminal liability for making the disclosure; and
  - (b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the person on the basis of the disclosure.

Note: This subsection does not provide that the person is not subject to any civil or criminal liability for conduct of the person that is revealed by the disclosure.

- (2) Without limiting subsection (1):
- (a) the person has qualified privilege (see subsection (3)) in respect of the disclosure; and
  - (b) a contract to which the person is a party may not be terminated on the basis that the disclosure constitutes a breach of the contract.
- (3) For the purpose of paragraph (2)(a), *qualified privilege*, in respect of the disclosure, means that the person:

- (a) has qualified privilege in proceedings for defamation; and
  - (b) is not, in the absence of malice on the person's part, liable to an action for defamation at the suit of a person;
- in respect of the disclosure.
- (4) For the purpose of paragraph (3)(b), *malice* includes ill will to the person concerned or any other improper motive.
  - (5) This section does not limit or affect any right, privilege or immunity that a person has, apart from this section, as a defendant in proceedings, or an action, for defamation.

### 337C Victimisation prohibited

#### *Actually causing detriment to another person*

- (1) A person (the *first person*) contravenes this subsection if:
  - (a) the first person engages in conduct; and
  - (b) the first person's conduct causes any detriment to another person (the *second person*); and
  - (c) the first person intends that his or her conduct cause detriment to the second person; and
  - (d) the first person engages in his or her conduct because the second person or a third person made a disclosure that qualifies for protection under this Part.

#### *Threatening to cause detriment to another person*

- (2) A person (the *first person*) contravenes this subsection if:
  - (a) the first person makes to another person (the *second person*) a threat to cause any detriment to the second person or to a third person; and
  - (b) the first person:
    - (i) intends the second person to fear that the threat will be carried out; or
    - (ii) is reckless as to causing the second person to fear that the threat will be carried out; and
  - (c) the first person makes the threat because a person:
    - (i) makes a disclosure that qualifies for protection under this Part; or

- (ii) may make a disclosure that would qualify for protection under this Part.

*Officers and employees involved in contravention*

- (3) If an organisation, or a branch of an organisation, contravenes subsection (1) or (2), any officer or employee of the organisation, or a branch of the organisation, who is involved in that contravention contravenes this subsection.

*Threats*

- (4) For the purpose of subsection (2), a threat may be:
- (a) express or implied; or
  - (b) conditional or unconditional.

*Involvement in a contravention*

- (5) For the purpose of subsection (3), a person is **involved** in a contravention if, and only if, the person:
- (a) has aided, abetted, counselled or procured the contravention; or
  - (b) has induced, whether by threats or promises, the contravention; or
  - (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention; or
  - (d) has conspired with others to effect the contravention.

*Offence for contravening subsection (1), (2) or (3)*

- (6) A person commits an offence if the person contravenes subsection (1), (2) or (3).

Maximum penalty: 25 penalty units or imprisonment for 6 months, or both.

- (7) In a prosecution for an offence that relates to a contravention of subsection (2), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

### **337D Right to compensation**

If:

- (a) a person (the *person in contravention*) contravenes subsection 337C(1), (2) or (3); and
- (b) a person (the *victim*) suffers damage because of the contravention;

the person in contravention is liable to compensate the victim for the damage.

## **Schedule 2—Other amendments relating to offences**

### ***Workplace Relations Act 1996***

#### **1 At the end of subsection 83BH(5)**

Add:

Note: Contravening a requirement under paragraph (4)(d) or subsection (5) of this section may be an offence under section 305A.

#### **2 At the end of subsection 86(2)**

Add:

Note: Contravening a requirement under this section to produce a document may be an offence under section 305.

#### **3 At the end of subsection 119(1)**

Add:

Note: Contravening a direction may be an offence under section 300.

#### **4 At the end of subsection 138(1)**

Add:

Note: Contravening a direction (except a direction to the Industrial Registrar) may be an offence under section 308.

#### **5 Subsection 299(1) (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 12 months.

#### **6 Section 300 (penalty)**

Repeal the penalty, substitute:

Penalty: 20 penalty units.

#### **7 Section 301**

Omit “by:”, substitute “by imprisonment for not more than 12 months.”.

#### **8 Paragraphs 301(f) and (g)**

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Repeal the paragraphs.

**9 Section 302 (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 6 months.

**10 Subsection 303(1) (penalty)**

Repeal the penalty, substitute:

Penalty: Imprisonment for 6 months.

**11 Subsection 307(1) (penalty)**

Repeal the penalty, substitute:

Penalty: 30 penalty units.

**12 Subsection 308(1) (penalty)**

Repeal the penalty, substitute:

Penalty: 30 penalty units.

**13 At the end of subsections 317(1), (2) and (3)**

Add:

Penalty: 30 penalty units.

**14 Subsection 317(4) (penalty)**

Repeal the penalty, substitute:

Penalty: 30 penalty units.

**15 Section 338 (penalty)**

Repeal the penalty, substitute:

Penalty: 20 penalty units.

**16 Subsection 339(1) (penalty)**

Repeal the penalty, substitute:

Penalty: 20 penalty units.



**17 At the end of subsection 355(5)**

Add:

Note: Giving information as evidence, or publishing information, in contravention of this section or a direction under this section may be an offence under section 339.

## Schedule 3—Increasing civil penalties

### *Workplace Relations Act 1996*

#### **1 Subsection 4(1)**

Insert:

*penalty unit* has the same meaning as in the *Crimes Act 1914*.

#### **2 Subsection 170NF(2)**

Omit “\$10,000”, substitute “300 penalty units”.

#### **3 Subsection 170NF(2)**

Omit “\$2,000”, substitute “60 penalty units”.

#### **4 Subsection 170VV(2)**

Omit “\$10,000”, substitute “300 penalty units”.

#### **5 Subsection 170VV(2)**

Omit “\$2,000”, substitute “60 penalty units”.

#### **6 Subparagraph 178(4)(a)(i)**

Omit “\$5,000”, substitute “150 penalty units”.

#### **7 Subparagraph 178(4)(a)(i)**

Omit “\$1,000”, substitute “30 penalty units”.

#### **8 Sub-subparagraph 178(4)(a)(iia)(A)**

Omit “\$10,000”, substitute “300 penalty units”.

#### **9 Sub-subparagraph 178(4)(a)(iia)(A)**

Omit “\$2,000”, substitute “60 penalty units”.

#### **10 Sub-subparagraph 178(4)(a)(iia)(B)**

Omit “\$5,000”, substitute “150 penalty units”.

#### **11 Sub-subparagraph 178(4)(a)(iia)(B)**

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Omit "\$1,000", substitute "30 penalty units".

**12 Subparagraph 178(4)(a)(iib)**

Omit "\$10,000", substitute "300 penalty units".

**13 Subparagraph 178(4)(a)(iib)**

Omit "\$2,000", substitute "60 penalty units".

**14 Subparagraph 178(4)(a)(ii)**

Omit "\$10,000", substitute "300 penalty units".

**15 Subparagraph 178(4)(a)(ii)**

Omit "\$2,000", substitute "60 penalty units".

**16 Paragraph 178(4)(b)**

Omit "\$10,000", substitute "300 penalty units".

**17 Paragraph 178(4)(b)**

Omit "\$2,000", substitute "60 penalty units".

**18 Subsection 178(4A)**

Omit "\$5,000", substitute "150 penalty units".

**19 Subsection 178(4A)**

Omit "\$1,000", substitute "30 penalty units".

**20 Paragraph 187AD(1)(a)**

Omit "\$10,000", substitute "300 penalty units".

**21 Subsection 285F(3)**

Omit "\$10,000", substitute "300 penalty units".

**22 Subsection 285F(3)**

Omit "\$2,000", substitute "60 penalty units".

**23 Subparagraph 298U(a)(i)**

Omit "\$10,000", substitute "300 penalty units".

**24 Subparagraph 298U(a)(ii)**

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Omit “\$2,000”, substitute “60 penalty units”.

**25 Application of amendments**

The amendments made by this Schedule apply in relation to contraventions occurring after the commencement of the amendments.

## **Schedule 4—Compliance etc. powers**

### *Workplace Relations Act 1996*

#### **1 After Part V**

Insert:

### **Part VA—Compliance etc. powers**

#### **88AA Secretary’s powers to obtain information etc.**

*Secretary may require information, documents etc.*

- (1) Subject to subsections (2) and (3), if the Secretary of the Department believes on reasonable grounds that a person (the **relevant person**):
  - (a) has information or documents relevant to a building industry investigation; or
  - (b) is capable of giving evidence that is relevant to a building industry investigation;the Secretary may, by written notice given within 3 years of the commencement of this Part to the relevant person, require the relevant person:
  - (c) to give the information to the Secretary, or to an assistant, by the time, and in the manner and form, specified in the notice; or
  - (d) to produce the documents to the Secretary, or to an assistant, by the time, and in the manner, specified in the notice; or
  - (e) to attend before the Secretary, or an assistant, at the time and place specified in the notice, and answer questions relevant to the investigation.
- (2) The time specified under paragraph (1)(c), (d) or (e) must be at least 14 days after the notice is given.
- (3) The power given by subsection (1) must not be used for the purposes of an investigation that is minor or petty.

*Exercise of powers or functions by assistants*

- (3A) An assistant cannot exercise or perform powers or functions as mentioned in paragraph (1)(c), (d) or (e) unless guidelines that have been made and tabled as required by section 88AGA are in force.
- (3B) In exercising or performing powers or functions as mentioned in paragraph (1)(c), (d) or (e), an assistant must comply with the guidelines.

*Legal representation*

- (4) A person attending before the Secretary of the Department, or before an assistant, as mentioned in paragraph (1)(e) may, if the person so chooses, be represented by a person who, under the *Judiciary Act 1903*, is entitled to practise as a barrister or solicitor, or both, in a federal court.

*Oath or affirmation*

- (5) The Secretary of the Department, or an assistant, may require the information or answers to be verified by, or given on, oath or affirmation, and either orally or in writing. For that purpose, the Secretary, or an assistant, may administer the oath or affirmation.
- (6) The oath or affirmation is an oath or affirmation that the information or answers are or will be true.

*Offence*

- (7) A person commits an offence if:
  - (a) the person has been given a notice under subsection (1); and
  - (b) the person fails:
    - (i) to give the required information by the time, and in the manner and form, specified in the notice; or
    - (ii) to produce the required documents by the time, and in the manner, specified in the notice; or
    - (iii) to attend to answer questions at the time and place specified in the notice; or
    - (iv) to take an oath or make an affirmation, when required to do so under subsection (5); or

- (v) to answer questions relevant to the investigation while attending as required by the notice.

Penalty:

- (c) for a first offence—30 penalty units; or  
(d) for a second or subsequent offence—imprisonment for 6 months or a fine of 60 penalty units.

*Effect of secrecy provisions*

- (8) The operation of this section is not limited by any secrecy provision of any other law (whether enacted before or after the commencement of this section), except to the extent that the secrecy provision expressly excludes the operation of this section. For this purpose, **secrecy provision** means a provision that prohibits the communication or divulging of information.

*Definitions*

- (9) In this section:

**assistant** means:

- (a) the person occupying the position in the Department known as the director of the Building Industry Taskforce; or  
(b) a building industry authorised officer; or  
(c) a building industry inspector.

**building industry authorised officer** means an authorised officer exercising or performing powers or functions as part of, or for the purpose of assisting, the Building Industry Taskforce.

**building industry inspector** means an inspector exercising or performing powers or functions as part of, or for the purpose of assisting, the Building Industry Taskforce.

**building industry investigation** means an investigation in relation to which the following paragraphs are satisfied:

- (a) the investigation is:  
(i) by a building industry authorised officer for a purpose referred to in subsection 83BH(1) (which is about authorised officers ascertaining whether the terms of an AWA, or certain provisions of this Act, are being, or have been, complied with); or

- (ii) by a building industry inspector for a purpose referred to in subsection 86(1) (which is about inspectors ascertaining whether the terms of an award or certified agreement, or certain provisions of this Act, are being, or have been, complied with); and
- (b) the subject matter of the investigation involves, or is related to, the building and construction industry.

***Building Industry Taskforce*** means the Taskforce of that name established within the Department.

### **88AB Certain excuses not available in relation to section 88AA requirements**

*Excuses that are not available*

- (1) A person is not excused from giving information, producing a document, or answering a question, under section 88AA on the ground that to do so:
  - (a) would contravene any other law; or
  - (b) might tend to incriminate the person or otherwise expose the person to a penalty or other liability; or
  - (c) would be otherwise contrary to the public interest.

*Use/derivative use indemnity*

- (2) However, neither:
  - (a) the information or answer given or the document produced; nor
  - (b) any information, document or thing obtained as a direct or indirect consequence of giving the information or answer or producing the document;is admissible in evidence against the person in proceedings, other than:
  - (c) proceedings for an offence against subsection 88AA(7); or
  - (d) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Act; or
  - (e) proceedings for an offence against section 149.1 of the *Criminal Code* that relates to this Act.



### **88AC Protection from liability**

A person who, in good faith:

- (a) gives information; or
- (b) produces a document; or
- (c) answers a question;

when requested or required to do so under section 88AA is not liable to:

- (d) any proceedings for contravening any other law because of that conduct; or
- (e) civil proceedings for loss, damage or injury of any kind suffered by another person because of that conduct.

### **88AD Retention and copying etc. of documents**

*Secretary or assistant may keep documents*

- (1) The Secretary of the Department, or an assistant, may take possession of a document produced under section 88AA and keep it for as long as is necessary for the purposes of the conduct of the investigation to which the document is relevant.

*Certified copy to be supplied to person entitled to document*

- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy that is certified, by one of the following persons, to be a true copy:
  - (a) the Secretary of the Department;
  - (b) an assistant.

*Certified copy to be treated as original*

- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.

*Right to inspect and copy the original*

- (4) Until a certified copy is supplied, the Secretary of the Department, or an assistant, must, at such times and places as the Secretary or assistant considers appropriate, permit the person otherwise entitled to possession of the document (or a person authorised by

that person) to inspect and make copies of all or part of the document.

*Definition*

(5) In this section:

*assistant* has the same meaning as in section 88AA.

**88AE Secretary or assistant may make and keep copies of documents**

(1) The Secretary of the Department, or an assistant, may make and keep copies of all or part of any documents produced under section 88AA.

(2) In this section:

*assistant* has the same meaning as in section 88AA.

**88AF Protection of confidentiality of information**

(1) This section restricts what a person (the *entrusted person*) may do with protected information that the person has obtained in the course of official employment.

Note: Although this section applies only to information that a person obtained in the course of official employment, the obligations under this section continue to apply after the person ceases to be in official employment.

*Recording or disclosing*

(2) The entrusted person must not:  
(a) make a record of protected information; or  
(b) disclose protected information.

Penalty: Imprisonment for 12 months.

*Permitted recording or disclosure by designated officials*

(3) If the entrusted person is a designated official at the time of the recording or disclosure, then each of the following is an exception to the offence in subsection (2):

(a) the recording or disclosure is for the purposes of this Act;

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- (b) the recording or disclosure happens in the course of the performance of the duties of the entrusted person's official employment;
- (c) in the case of a disclosure—the disclosure is to a person appointed or employed by:
  - (i) the Commonwealth, a State or Territory; or
  - (ii) an authority of the Commonwealth, a State or Territory; for the purpose of assisting in relevant law enforcement;
- (d) the recording or disclosure is in accordance with regulations made for the purposes of this paragraph.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

*Permitted recording or disclosure by other persons*

- (4) If the entrusted person is not a designated official at the time of the recording or disclosure, then each of the following is an exception to the offence in subsection (2):
  - (a) the recording or disclosure is for the purposes of this Act;
  - (b) the recording or disclosure happens in the course of the performance of the duties of the entrusted person's official employment, being duties relating to relevant law enforcement;
  - (c) the recording or disclosure is in accordance with regulations made for the purposes of this paragraph.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

*Authorisation for purposes of Privacy Act*

- (5) A disclosure of personal information is taken to be authorised by law for the purposes of paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988* if the information is protected information and the disclosure is made in accordance with subsection (3) or (4) of this section.

*Definitions*

- (6) In this section:
  - designated official*** means any of the following:
    - (a) the Secretary of the Department;

- (b) a Registrar;
- (c) the person occupying the position in the Department known as the director of the Building Industry Taskforce;
- (d) an inspector;
- (e) an authorised officer;
- (f) a person acting under a delegation under this Act from a person covered by any of the above paragraphs.

**disclose** means divulge or communicate.

**industrial association** means:

- (a) an organisation; or
- (b) any other association covered by any of the following subparagraphs:
  - (i) an association of employees and/or independent contractors, or an association of employers, that is registered or recognised as such an association (however described) under an industrial law; or
  - (ii) an association of employees and/or independent contractors a principal purpose of which is the protection and promotion of their interests in matters concerning their employment, or their interests as independent contractors, as the case requires; or
  - (iii) an association of employers a principal purpose of which is the protection and promotion of their interests in matters concerning employment and/or independent contractors;

and includes a branch of an organisation, or of an association referred to in paragraph (b).

**industrial law** means this Act, the Registration and Accountability of Organisations Schedule or a law, however designated, of a State or Territory that regulates the relationships between employers and employees or provides for the prevention or settlement of disputes between employers and employees.

**official employment** means:

- (a) appointment or employment by, or the performance of services for:
  - (i) the Commonwealth, a State or Territory; or

- (ii) an authority of the Commonwealth, a State or Territory;  
or
- (b) appointment as an inspector or an authorised officer.

***protected information*** means information that:

- (a) was disclosed or obtained under this Part; and
- (b) was obtained by the entrusted person, or by any other person, in the course of official employment; and
- (c) relates to a person other than the entrusted person.

***relevant law enforcement*** means enforcement of a law of the Commonwealth, or of a State or Territory, where the enforcement is in respect of conduct by, or in relation to, a person or body in the person's or body's capacity as any of the following:

- (a) an employee;
- (b) an employer;
- (c) an independent contractor;
- (d) the other party to a contract entered into by a person as an independent contractor;
- (e) an industrial association;
- (f) an officer, delegate or other representative of an industrial association;
- (g) an employee of an industrial association.

### **88AG Delegation by Secretary**

- (1) The Secretary of the Department may, in writing, delegate all or any of his or her powers and functions under this Part to the person (the ***director***) occupying the position in the Department known as the director of the Building Industry Taskforce.
- (2) The director cannot exercise or perform powers or functions under a delegation unless guidelines that have been made and tabled as required by section 88AGA are in force.
- (3) In exercising or performing powers or functions under a delegation, the director:
  - (a) must comply with the guidelines; and
  - (b) must comply with any directions of the Secretary of the Department.

**88AGA Guidelines for the exercise or performance of powers or functions**

- (1) The Secretary of the Department must, in writing, determine guidelines relating to:
  - (a) the exercise or performance of powers or functions by the director (within the meaning of section 88AG) under a delegation; and
  - (b) the exercise or performance of powers or functions by an assistant (within the meaning of section 88AA) as mentioned in paragraphs 88AA(1)(c), (d) and (e).
- (2) The Secretary of the Department must cause the guidelines to be tabled in each House of the Parliament.
- (3) Guidelines tabled in accordance with subsection (2) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (4) Guidelines determined in accordance with subsection (1) do not take effect until after the expiration of the time within which the guidelines may be disallowed by either House of the Parliament.

**88AH Relationship with other provisions about authorised officers and inspectors**

- (1) Subject to this section, nothing in this Part limits, or is limited by:
  - (a) Division 2 of Part IVA (which is about authorised officers); or
  - (b) Part V (which is about inspectors).
- (2) In particular (but without otherwise limiting subsection (1)):
  - (a) an authorised officer or inspector is not subject to directions under subsection 83BG(2) or 84(5) when exercising or performing powers or functions under this Part; and
  - (b) despite subsection 84(4A), an inspector appointed under paragraph 84(2)(b) may exercise or perform powers or functions under this Part whether or not those powers or functions are specified in his or her instrument of appointment.

- (3) However, the requirements of subsections 83BG(6) and 85(2) (relating to the carrying of identity cards) do apply to an authorised officer or inspector when exercising or performing functions or powers under this Part.

**88AI Annual review by Ombudsman of exercise of section 88AA power**

- (1) As soon as practicable after the end of each year to which section 88AA applies, the Ombudsman must conduct a review of the use of the power given by section 88AA in that year.

Note: Under the *Ombudsman Act 1976*, a person may complain to the Commonwealth Ombudsman about activities of the Building Industry Taskforce.

- (2) For the purposes of conducting a review, the Secretary must provide the Ombudsman with such information and access to documents as the Ombudsman requires.
- (3) The Ombudsman must cause a copy of each report to be tabled in each House of the Parliament.
- (4) In this section:

***Ombudsman*** means the Commonwealth Ombudsman.

***year to which section 88AA applies*** means each period of 12 months that starts on the day on which this Part commences, or on an anniversary of that day, and that is wholly or partly within the period during which the power given by subsection 88AA(1) can be used.

## Schedule 5—Disqualification from office of person serving suspended sentence

### Part 1—Amendments

#### *Workplace Relations Act 1996*

##### **1 Paragraph 213(c) of Schedule 1B**

Repeal the paragraph, substitute:

- (c) is not convicted of a prescribed offence referred to in paragraph 212(d) unless the person was sentenced to a term of imprisonment for the offence and either:
  - (i) the person has served, or is serving, a term of imprisonment for the offence; or
  - (ii) the sentence is suspended for a period.

##### **2 After section 213 of Schedule 1B**

Insert:

##### **213A Meaning of *exclusion period* and *reduced exclusion period***

- (1) For the purposes of this Division, the *exclusion period* in relation to a person who has been convicted of a prescribed offence means a period of 5 years beginning on the latest of the following days:
  - (a) the day on which the person was convicted of the prescribed offence;
  - (b) if the person was sentenced to a term of imprisonment for the offence, the sentence was suspended for a period, and the person is not imprisoned for the offence during the period—the day immediately after the end of the period;
  - (c) if the person serves a term of imprisonment for the offence—the day on which the person is released from prison.
- (2) For the purposes of this Division, a *reduced exclusion period* means a period specified by the Federal Court for the purposes of subparagraph 215(1)(a)(ii) under paragraph 216(2)(b) or 217(2)(b).

##### **3 At the end of section 214 of Schedule 1B**

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Add:

- (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 the sentence of a person who was convicted of a specified offence has been suspended for a specified period is, for the purpose of an application made under section 215, 216 or 217, evidence that the sentence was suspended for that period.

#### **4 Subparagraph 215(1)(a)(ii) of Schedule 1B**

Repeal the subparagraph, substitute:

- (ii) the person was refused leave to hold office in organisations but, under paragraph 216(2)(b) or 217(2)(b), the Federal Court specified a reduced exclusion period, and that period has elapsed; or

#### **5 Paragraph 215(1)(b) of Schedule 1B**

Repeal the paragraph, substitute:

- (b) in any other case—the exclusion period has elapsed.

#### **6 Subsection 216(1) of Schedule 1B**

Repeal the subsection, substitute:

- (1) A person who:
  - (a) wants to be a candidate for election, or to be appointed, to an office in an organisation; and
  - (b) within the immediately preceding 5 years:
    - (i) has been convicted of a prescribed offence; or
    - (ii) has been released from prison after serving a term of imprisonment in relation to a conviction for a prescribed offence; or
    - (iii) has completed a suspended sentence in relation to a conviction for a prescribed offence;may, subject to subsection (4), apply to the Federal Court for leave to hold office in organisations.

#### **7 Paragraph 216(2)(b) of Schedule 1B**

Repeal the paragraph, substitute:

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- (b) refuse the person leave to hold office in organisations and specify, for the purposes of subsection 215(1), a period of less than 5 years beginning on the latest of the following days:
  - (i) the day on which the person was convicted of the prescribed offence;
  - (ii) if the person was sentenced to a term of imprisonment for the offence, the sentence was suspended for a period, and the person is not imprisoned for the offence during the period—the day immediately after the end of the period;
  - (iii) if the person serves a term of imprisonment for the offence—the day on which the person is released from prison.

### **8 Paragraph 217(2)(b) of Schedule 1B**

Repeal the paragraph, substitute:

- (b) refuse the person leave to hold office in organisations and specify, for the purposes of subsection 215(1), a period of less than 5 years beginning on the latest of the following days:
  - (i) the day on which the person was convicted of the prescribed offence;
  - (ii) if the person was sentenced to a term of imprisonment for the offence, the sentence was suspended for a period, and the person is not imprisoned for the offence during the period—the day immediately after the end of the period;
  - (iii) if the person serves a term of imprisonment for the offence—the day on which the person is released from prison.

## **Part 2—Application, transitional and savings provisions**

### **9 Application**

The amendments made by Part 1 of this Schedule apply to persons convicted of a prescribed offence, whether the person is convicted before or after the commencement of that Part.

### **10 Transitional**

- (1) This item applies where:
  - (a) a person was convicted of a prescribed offence before the commencement of Part 1 of this Schedule; and
  - (b) the person was sentenced to a term of imprisonment for the offence; and
  - (c) the sentence was suspended for a period; and
  - (d) the person holds an office in an organisation when Part 1 of this Schedule commences.
- (2) Despite subsection 215(2) of Schedule 1B to the Principal Act:
  - (a) the person does not cease to hold the office until the end of the period of 28 days after the commencement of Part 1 of this Schedule; and
  - (b) nothing done by the person before the commencement of that Part in fulfilment of that office is affected by the amendments made by that Part.
- (3) Despite subsection 217(1) of Schedule 1B to the Principal Act, the person may, subject to subsection 217(4) of that Schedule, within 28 days after the commencement of Part 1 of this Schedule, apply to the Federal Court under section 217 of that Schedule for leave to hold office in organisations.

### **11 Savings—applications and orders under section 216 of Schedule 1B to the Principal Act**

- (1) If, before the commencement of Part 1 of this Schedule, a person makes an application to the Federal Court under section 216 of Schedule 1B to the Principal Act, that application is to be dealt with as if that Schedule had not been amended by Part 1 of this Schedule.

- (2) If:
- (a) the Federal Court makes an order under section 216 of Schedule 1B to the Principal Act before the commencement of Part 1 of this Schedule; or
  - (b) the Federal Court makes an order in reliance on subitem (1);
- that order has effect after the commencement of Part 1 of this Schedule as if Schedule 1B to the Principal Act had not been amended by that Part.

## **12 Savings—applications and orders under section 217 of Schedule 1B to the Principal Act**

- (1) If, before the commencement of Part 1 of this Schedule, a person makes an application to the Federal Court under section 217 of Schedule 1B to the Principal Act, that application is to be dealt with as if Schedule 1B to the Principal Act had not been amended by that Part.
- (2) If:
- (a) the Federal Court makes an order under section 217 of Schedule 1B to the Principal Act before the commencement of Part 1 of this Schedule; or
  - (b) the Federal Court makes an order in reliance on subitem (1);
- that order has effect after the commencement of Part 1 of this Schedule as if Schedule 1B to the Principal Act had not been amended by that Part.

## **13 Definition**

In this Part:

***Schedule 1B to the Principal Act*** means Schedule 1B to the *Workplace Relations Act 1996*.

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*[Minister's second reading speech made in—  
House of Representatives on 26 June 2003  
Senate on 20 August 2003]*

(118/03)