

Dissenting Report by Labor and Greens members¹

1.1 Australian Labor Party and Australian Greens members (dissenting members) of the Parliamentary Joint Committee on Human Rights (the committee) seek to issue dissenting remarks in relation to the Fair Work (Registered Organisations) Amendment (Ensuring Integrity No. 2) Bill 2019, on which the committee has concluded.

1.2 The dissenting members consider it regrettable that it has again become necessary to prepare yet another dissenting report for this previously non-partisan committee.

Fair Work (Registered Organisations) Amendment (Ensuring Integrity No. 2) Bill 2019

1.3 This bill seeks to amend the *Fair Work (Registered Organisations) Act 2009* to expand the grounds on which: a person can be disqualified from holding office in a union; the registration of unions may be cancelled; and a union may be placed into administration, and also sets out a public interest test for amalgamations of unions.

Disqualification of individuals from holding office in a union

1.4 The bill seeks to expand the grounds on which a person can be disqualified from office in a union. In doing so, the bill engages and limits the right to freedom of association and, in particular, the right of unions to elect their own leadership freely. Conduct that could result in disqualification includes contraventions of industrial relations law, including taking unprotected industrial action. The dissenting members note that Australia's existing restrictions on taking unprotected industrial action have been found by international bodies to constrain the right to strike. In adding another sanction or disincentive for taking unprotected industrial action this measure further limits the right to strike. It therefore remains unclear how the breadth and impact of this measure is effective to achieve the stated objective of protecting the interests of members, where members may be of the view that taking particular forms of industrial action is in their best interests. Given the breadth of the proposed powers for disqualification, the measure does not appear to be the least rights restrictive way of achieving the stated objective.

1.5 As a matter of international human rights law, a generally broad scope should be afforded to unions to choose their leadership freely. Expanding the grounds on which a person can be disqualified from office in a union, including when they have taken unprotected industrial strike action, creates an additional sanction or disincentive for taking such action. As such, the dissenting members

1 This section can be cited as Parliamentary Joint Committee on Human Rights, Dissenting Report by Labor and Greens members, *Report 4 of 2020*; [2020] AUPJCHR 61.

consider the measure is likely to be incompatible with the right to freedom of association, in particular the right of unions to elect their own leadership freely.

Cancellation of registration of registered organisations

1.6 By expanding the grounds on which unions can be de-registered or suspended, the measure engages and limits the right to freedom of association. The dissenting members consider that it has not been demonstrated that further sanctioning non-compliance with particular laws meets the stated objectives of protecting the interests of members or guaranteeing the democratic functioning of organisations. The dissenting members are also concerned that the role of the court may not be sufficient to ensure that the limitation is the least rights restrictive way to achieve the stated objective. This is particularly so given the breadth of the grounds on which union registration may be cancelled, which could include two or more relatively minor breaches of industrial law.

1.7 The dissenting members note that the bill seeks to expand the grounds for the cancellation of the registration of unions. Noting the importance under international human rights law of registration as an essential facet of the rights to organise, the dissenting members consider there is a significant risk that this measure may result in the cancellation of a union's registration in circumstances that may be incompatible with the right to freedom of association.

Placing unions into administration

1.8 The bill seeks to expand the grounds on which organisations may be placed under administration. The dissenting members consider that some of the grounds on which a declaration may be made to place a union into administration do not necessarily capture conduct that would always run contrary to the interests of members. As such, the dissenting members consider it has not been established in relation to all of the grounds on which a declaration may be made, that the measure is rationally connected to the stated objective of protecting the interests of members. In addition, the breadth of the grounds on which a declaration may be made raises questions as to whether the measure is the least rights restrictive means of achieving the stated objective.

1.9 Noting the broad grounds on which a declaration may be made to place a union into administration, the dissenting members consider there is a significant risk that the measure may result in a registered organisation being placed into administration in circumstances which may be incompatible with the right to freedom of association.

1.10 In order to improve the human rights compatibility of this measure, the dissenting members consider it would be appropriate for the bill to be amended to provide that prior to placing a registered organisation into administration the court must be satisfied that it is in the best interests of its members to do so.

Introduction of a public interest test for amalgamations of unions

1.11 By inserting a public interest test before unions can amalgamate, the measure engages and limits the rights to freedom of association, in particular the right to form associations of one's own choosing. The dissenting members consider that it has not been demonstrated that each aspect of the 'public interest test' is rationally connected to the stated objectives, noting that the Commissioner is required to consider issues such as the impact of the union amalgamation on employers. In addition, the measure does not appear to be the least rights restrictive approach to protecting the interests of members. While members may still be able to be represented by their existing union, the measure limits choices as to the form of representation, including by joining together with another union. The effect of this on members' rights is exacerbated by the fact that, while the likely benefit to members of amalgamation is to be taken into account, other factors including the 'impact on employers' are also to be taken into account. This may run contrary to the interests of members, given it may be in the interests of members, but not necessarily for employers, for unions to amalgamate to ensure greater campaigning capacity.

1.12 The dissenting members note that the bill seeks to insert a public interest test before organisations can amalgamate. The scope of the measures would potentially operate to prevent unions amalgamating on the basis of concerns that they could have too much bargaining or campaigning power against employers. As the public interest test includes a broad range of considerations, as a matter of international human rights law, the dissenting members consider the measure is likely to be incompatible with the right to freedom of association.

1.13 The dissenting members draw the above human rights concerns to the attention of the minister and the Parliament.

**Graham Perrett MP
Deputy Chair
Member for Moreton**

**Steve Georganas MP
Member for Adelaide**

**Senator Nita Green
Senator for Queensland**

**Senator Pat Dodson
Senator for Western Australia**

Senator Nick McKim
Senator for Tasmania