

Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024

Statement of Compatibility

For

Amendments to be moved during consideration in detail by the Honourable Grace Grace MP, Minister for State Development and Infrastructure, Minister for Industrial Relations and Minister for Racing

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019* (HR Act), I, Grace Grace MP, Minister for State Development and Infrastructure, Minister for Industrial Relations and Minister for Racing, make this statement of compatibility with respect to amendments to be moved during consideration in detail of the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2024 (Bill).

Overview of the amendments

The amendments to be moved during consideration in detail of the Bill are considered in this document in two parts.

One set of amendments include clauses proposing to:

- amend the list of specified diseases presumed to be work-related for firefighters in schedule 4A of the *Workers' Compensation and Rehabilitation Act 2003* (WCR Act) to also include primary site uterine cancer;
- amend to omit the clauses in the Bill relating to changes to appeal provisions under the *Industrial Relations Act 2016* (IR Act). The appeal pathways within the IR Act will remain as currently in force; and
- make minor and technical corrections to the Bill to address typographical and cross-referencing issues.

Further amendments to the *Industrial Relations Act 2016* provide for the administration of the Construction and General Division (C & G Division) of the Construction, Forestry, Mining & Energy Industrial Union of Employees, Queensland (CFMEUQ), including the establishment of an administration scheme and the appointment of an administrator. These provisions will only apply if the C & G Division of the federally registered Construction, Forestry and Maritime Employees Union (federal CFMEU) and its branches is placed under administration under the *Fair Work (Registered Organisations) Act 2009* (Cth).

In particular, the administration provisions:

- provide an ability to place the C & G Division of the CFMEUQ into administration if the federal CFMEU is placed under administration for a period of at least three years. The provisions will sunset after a period of five years;
- give the Minister power to establish a scheme for the administration of the C & G Division of the CFMEUQ by statutory instrument if the Minister is satisfied the administration scheme is in the public interest;
- give the Minister power to provide for various things in the administration scheme, including the suspension or removal of existing officers of the C & G Division of the CFMEUQ, the taking of disciplinary action, the termination of employees of the C & G Division of the CFMEUQ, and the alteration of the CFMEUQ rules;
- provide that the Minister is not required to provide procedural fairness in making an administration notice;
- provide that the administration notice or administration scheme may override provisions of chapter 12 of the *Industrial Relations Act* or the CFMEUQ rules;
- confer various functions and powers on the administrator, including the power to control and manage the property of the C & G Division of the CFMEUQ;
- require particular people to provide assistance to the administrator unless they have a reasonable excuse;
- protect the administrator from being sued for things done honestly and without negligence, with civil liability attaching instead to the State;
- provide for actions of the administrator to have effect despite any provision of chapter 12 of the *Industrial Relations Act* or the CFMEUQ rules;
- proscribe engaging in conduct that prevents another person or body from taking action under an administration scheme, or prevents the administrator from effectively administering the scheme;
- authorise the registrar and industrial inspectors to disclose information to the administrator; and
- require the C & G Division of the CFMEUQ to pay the costs of administration.

Since July 2024, serious allegations have been raised about the conduct of some officials and associates of the C & G Division of the federal CFMEU. These have included allegations of corruption, criminal conduct and other serious misconduct including bullying and harassment and general disregard for workplace laws.

The Commonwealth has responded by introducing the Fair Work (Registered Organisations) Amendment (Administration) Bill 2024 (Cth), which will place the C & G Division of the federal CFMEU and its branches under administration for up to five years after the relevant Minister determines an administration scheme and the General Manager appoints an administrator.

The federal government has requested that Queensland and New South Wales take complementary action to ensure that any federal intervention and appointment of an administrator to the federal CFMEU is replicated for the State registered unions.

The C & G Division of the CFMEUQ shares common officeholders with the federal CFMEU State C & G Division, due to their rules and exemptions for holding elections under the IR Act.

These amendments to the IR Act are considered necessary:

- to protect the public interest;
- to ensure the C&G division of the CFMEUQ operates lawfully and appropriately and in the interests of its members;
- to ensure the effective and efficient operation of any administration scheme across all entities operating in the C & G Division of the CFMEU;
- to remove the prospect of avoidance of an administration scheme, including the transferring of money, resources, assets or documentary records; and
- because the existing provisions of the IR Act are not effective to achieve those policy objectives.

New South Wales has passed similar amendments in the *Industrial Relations Amendment (Administrator) Bill 2024* (NSW).

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The amendment to schedule 4A of the Bill promotes the right to health services by expanding the list of specified diseases presumed to be work-related, enabling eligible firefighters diagnosed with primary site uterine cancer to access compensation quicker. The amendment does not limit human rights.

The amendment to the IR Act appeals structures does not limit human rights.

The minor and technical amendments do not limit human rights.

The human rights that are relevant to the administration provisions are:

- the right to freedom of association in section 22(2) of the *Human Rights Act*, because the Bill affects the organisational autonomy of the C & G Division of the CFMEUQ;
- the right to freedom of expression and the right to take part in public life in sections 21(2) and 23(1) of the *Human Rights Act*, to the extent the administration impacts the ability of members to engage in public debate through the C & G Division of the CFMEUQ;
- the right to privacy in section 25(a) of the *Human Rights Act* because some of the proposed provisions would allow personal information to be given to the administrator or disclosed by the administrator to others;
- rights related to employment in sections 24(2) and 25(a) of the *Human Rights Act*, because the Bill allows for officeholders and employees to be removed from their positions; and
- the right not to testify against oneself or confess guilt in section 32(2)(k) of the *Human Rights Act*, because the administrator will be given a power to compel information and documents to be provided.

As explained below, some of these human rights are engaged but not limited, while others are limited, but in a way that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

Freedom of association

Section 22(2) of the *Human Rights Act* provides that '[e]very person has the right to freedom of association with others, including the right to form and join trade unions'. That right is based on article 22 of the *International Covenant on Civil and Political Rights*, which has been interpreted as protecting the activities of unions as well as protection against the dissolution of unions. Equivalent rights to freedom of association in Europe and Canada have also been found to protect against interference with the organisational autonomy of associations.

The conventions of the International Labour Organisation may also be relevant to what freedom of association requires. Article 3 of the *Freedom of Association and Protection of the Right to Organise Convention 1948 (No 87)* (ILO Convention 87) provides that States are to refrain from interfering with the right of unions 'to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes'. However, that right comes with responsibilities. Article 8 provides that in exercising their rights to organisational autonomy, workers and their organisations are to 'respect the law of the land'. The right appropriately recognises that organisations and officials respect the law of the land and that it may be restricted if necessary to protect public order and the rights and freedoms of others.

The Bill would affect the organisational independence of the C & G Division of the CFMEUQ. For example, under an administration scheme the administrator may have power to discipline members or change the union's rules. The CFMEUQ itself does not have human rights, as it is not a natural person. However, its members do have human rights, including freedom of association, which may include protection of their association from interference with its organisational independence.

In assessing limits on the right to freedom of association and protection from interference with the organisational independence of the CFMEU, it is considered that these limits must be balanced against the purpose of this legislation which is to: protect the public interest; to ensure the C & G division acts lawfully and appropriate and in the interests of its members; and complement any corresponding scheme of administration that is in effect. Relevantly any limits to the right to freedom of association in terms of its organisational independence may be offset given that the proposed scheme of administration would ensure that members and the public will have renewed confidence in the CFMEUQ's ability to represent members interests appropriately and lawfully both during and after the scheme of administration.

I will proceed on the basis that the Bill limits the right to freedom of association.

Freedom of expression and right to take part in public life

Unions are an important way that people engage in political debate, for example by making statements about government policies. It is possible that placing a union into administration may affect the ability of the members of that union to engage in political debate through their union.

Section 21(2) of the *Human Rights Act* provides that '[e]very person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Queensland'. That right overlaps with the right in s 23(1) of the *Human Rights Act* to 'participate in the conduct of public affairs'.

However, it is not clear that placing the C & G Division of the CFMEUQ into administration would have any impact on the ability of the union or its members to engage in political debate. New section 876J(4) would require the administrator to perform their functions and exercise their powers having regard to the objectives of the CFMEUQ as stated in its rules in effect on commencement and to the extent the rules are lawful. The administrator would also need to have regard to the purposes of chapter 12, part 15A of the IR Act, which are to protect the public interest, to ensure the C & G Division acts lawfully and appropriately in the interests of its members, and to ensure the effectiveness of any corresponding administration scheme (new section 876B).

In assessing whether any less restrictive options may be available, it was considered that de-registration was inappropriate given that it would reduce the ability of the C & G Division to represent its members and to be regulated in accordance with the IR Act. It is in the public interest and in the interests of members that the rank-and-file members of the C & G Division of the CFMEUQ and delegates and Health and Safety Representatives in workplaces be able to continue their usual roles including advocating for and supporting members. The administrator is expected to carry out their functions taking this into account.

If there is any impact on freedom of expression and the right to take part in public life, it will be time limited and incidental to the objective of helping to return the C & G Division of the CFMEUQ to a position where it is democratically controlled by those who promote and act in accordance with Australian laws. Members will also remain free to engage in political debate as individuals.

In case there is a limit on these rights, I will consider whether any limit on those rights is justified below.

The right to take part in public life in s 23 of the *Human Rights Act* protects the right of citizens to engage in the conduct of public affairs, such as voting in elections for State and local government. It does not protect any right to vote for officeholders in a private association that is not an organ of the State.

Right to privacy

New section 876E provides that the administration scheme may set out requirements in relation to reporting about the administration as well as requirements to inform law enforcement agencies of certain things. New section 876K gives the administrator the power to require the production of documents or the provision of further information or assistance from certain people unless the person has a reasonable excuse. New section 876Q also allows the registrar and inspectors appointed under the IR Act to disclose information to the administrator, and the administrator is then authorised to use that information for the purposes of the administration scheme. An additional new section 876L provides a requirement for the Administrator to report to the Minister on a six-monthly basis and for these reports to be tabled in the Legislative Assembly.

These provisions engage the right to privacy. Section 25(a) of the *Human Rights Act* provides that '[a] person has the right ... not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with'. These provisions affect privacy because a person may be required to disclose personal information to the administrator and information disclosed by the administrator under the scheme may include personal information.

However, the right to privacy will only be limited if the interference with privacy is 'unlawful' or 'arbitrary'. As the Bill authorises the interference, it will be lawful. An arbitrary interference is one that is capricious, or has resulted from conduct that is unpredictable, unjust or unreasonable in the sense of not being proportionate to the legitimate aim sought.

The legitimate aim of the allowing personal information to be shared in new sections 876E, 876K, 876Q and 876L is to enable the administrator to collect information to ensure the administration is conducted effectively, and for the Minister and others to effectively monitor the implementation, operation and progress of the administration.

The interference with privacy is narrowly tailored to those legitimate aims. The provision of reports from the administrator to others under section 876E(4)(j) is limited to reporting in relation to the administration. The information the administrator may require a person to provide under new section 876K is limited to what they reasonably require to perform their functions. The requirement to provide documents would also be limited to those in possession of relevant documents. The power of the registrar and industrial inspectors to give information under new section 876Q is also confined to information that is in their possession or control and the disclosure must be for the purposes of the administration scheme.

The interference with privacy is necessary and proportionate to the need to allow for the effective administration of the C & G Division, and is not arbitrary. For those reasons, the right to privacy in section 25(a) of the *Human Rights Act* is engaged but not limited.

Rights related to employment

Under new section 876E(4), the Minister will be able to make an administration scheme that allows for the suspension, removal and replacement of officers and employees of the C & G Division of the CFMEUQ.

The *Human Rights Act* does not protect the right to work, but does protect some human rights that are related to employment. The right to property (section 24) may protect a person's profession in some circumstances; and the right to privacy (section 25) protects a person's sphere of autonomy to lead their own lives, possibly including their professional lives.

The right to property will only be limited if property is arbitrarily deprived. The right to privacy will only be limited where the interference with privacy is unlawful or arbitrary. Arbitrary refers to conduct that is capricious, unpredictable or unjust, and also refers to interferences that are unreasonable in the sense of not being proportionate to a legitimate aim sought.

The purpose of s 876E(4) is to allow officeholders and employees of the C & G Division to be removed, ultimately to allow the CFMEUQ to return to a position where it is democratically controlled by those who promote and act in accordance with Australian laws.

The removal powers are proportionate to that legitimate aim. Removing people to ensure the C & G Division is returned to the control of people who act lawfully and appropriately in the interests of the members. There is no less restrictive option available, taking into account that the power is expected to be used appropriately and in accordance with the purposes of the Part. Ultimately, the need to return the C & G Division to a position where it is controlled by people who promote and act in accordance with Australian law outweighs the impact on particular people whose employment may be affected.

As the impacts on employment are necessary and proportionate, the interference with property and privacy is not arbitrary. For those reasons, the rights to property and privacy in sections 24(2) and 25(a) of the *Human Rights Act* are engaged but not limited.

Right not to confess guilt

Under new section 876K, the administrator will have power to compel certain people affiliated with the CFMEUQ to give documents, information or other assistance. Because that could include information that tends to incriminate the person providing the information, that provision engages the right not to incriminate oneself in section 32(2)(k) of the *Human Rights Act*. Section 32(2)(k) provides that a person charged with a criminal offence has the right 'not to be compelled to testify against themselves or to confess guilt'.

However, the obligation to provide the documents, information or other assistance is subject to the person having a 'reasonable excuse'. New section 876K(3) makes clear that a reasonable excuse includes that complying with the request would tend to incriminate the person. As the person will be able to object to providing self-incriminating information and claim a reasonable excuse, the right in s 32(2)(k) is not limited.

Accordingly, new section 876K engages but does not limit the right not to incriminate oneself.

Penalty provisions

Punishment under extremely vague laws that do not clearly proscribe the relevant conduct does not satisfy the equivalent right in article 15(1) of the *International Covenant on Civil and Political Rights*. It is possible that section 35(1), which is modelled on article 15(1), may also prohibit conviction under very vague laws. While the anti-avoidance provision is potentially broad in scope, the conduct proscribed by the anti-avoidance provision is clear and not vague.

The conduct proscribed by new section 876P may be dealt with as a criminal offence or as a civil penalty. However, under new section 876P(3), if a person is convicted of a criminal offence for the conduct, they cannot also be subject to a civil penalty for that conduct. That helps to ensure that the anti-avoidance provision is compatible with the right not to be punished more than once in section 34 of the *Human Rights Act*.

For these reasons, new section 876P does not limit, and is compatible with, the rights in sections 34 and 35(1) of the *Human Rights Act*.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

The Bill limits the right to freedom of association. It may also limit freedom of expression and the right to take part in public life. The limits on those human rights (and any other rights that might be limited) are considered reasonable and justified under section 13 of the *Human Rights Act* as follows.

(a) the nature of the right

The right concerns the ability of CFMEUQ members to associate freely in an association that has organisational autonomy. Freedom of association is intrinsically important to the individual, but it is also indispensable to a functioning democracy, because group interests can only be championed in community with others.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purposes of new chapter 12, part 15A of the IR Act are set out in section 876B.

The first purpose referred to is the public interest. In ensuring public confidence that employee organisations act lawfully and appropriately. This includes ensuring that where a member of the C & G Division of the CFMEUQ pays their union membership fees these are used for their proper purpose and are not used to support illegal activities. It further supports the public interest in ensuring public confidence in the construction industry for all participants and supports fair, safe and productive workplaces for all Queenslanders including those in the construction industry.

One purpose is to ensure the C & G Division of the CFMEUQ acts lawfully and appropriately and in the interests of its members. This purpose is met by returning the C & G Division of the CFMEUQ to a position where it is democratically controlled by those who promote and act in accordance with Australian laws, including workplace laws.

Serious allegations have been raised concerning the conduct of officials and associates of the C & G Division of the federal CFMEU. CFMEUQ shares common officeholders with the federal CFMEU State C & G Division, due to their rules and exemptions for holding elections under the IR Act. It is also legitimate for the State to respond to risks that have materialised in relation to related entities registered federally or interstate.

Another purpose of the Bill is to ensure consistency with the regulation of related entities by the Commonwealth and other States, to ensure the effective and efficient operation of any administration scheme across all entities operating in the C & G Division of the CFMEU, as well as to remove the prospect of avoidance of an administration scheme, including the transferring of money, resources, assets or documentary records between State and federal organisations.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

By providing for the C & G Division of the CFMEUQ to be placed into administration, the Bill helps to achieve the purpose of returning the C & G Division to the position where it is controlled by people who act lawfully and appropriately in the interests of its members. That is especially the case given that some of the officeholders of the C & G Divisions of the federal CFMEU and CFMEUQ are the same people.

By replicating the Commonwealth amendments, the Bill also helps to ensure consistency in how all entities operating in the C & G Division of the CFMEU are dealt with.

The Bill is rationally connected to its legitimate aims.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

There is no less restrictive, reasonably available way for the Bill to achieve its legitimate aims. In particular, it is not possible to rely on the existing provisions of chapter 12, part 15 of the IR Act to place the C & G Division of the CFMEUQ into administration. That is because those provisions are not specifically directed to the situation where the officeholders and employees of an employee organisation are engaging in criminal and other unlawful conduct, or where the officeholders and employees of related entities have.

It is not possible to narrow the impact on human rights further, without impacting on the objective of ensuring consistency with the equivalent legislation of the Commonwealth and other States.

There are also safeguards built into the amendments to help ensure that the impact on human rights is as small as possible. Under new section 876E(1), the Minister must have regard to the public interest when devising the administration scheme. When performing their functions or exercising their powers under the administration scheme, the administrator must also have regard to the public interest under section 876J(3). The public interest includes respect for the rights of individuals.

The impact on human rights is also time limited. Under section 876D(2), the C & G Division of the CFMEUQ can only be placed in administration for a maximum of five years, with an ability to revoke the scheme after a period of three years subject to particular criteria. The amendments will allow for the possibility of ending the administration earlier if the objectives are achieved earlier, if the Administrator consents. Further, under section 876U, the new part will be subject to a five-year sunset clause.

As there is no less restrictive way to achieve the legitimate ends, the limits on human rights are necessary to achieve those ends.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments will curtail the ability of members to freely associate with full control over the association's rules, membership, employees, officeholders and property. There may also be incidental impacts on other human rights including freedom of expression and impacts on employment for particular officeholders and employees.

However, the Bill pursues the legitimate objective of ensuring that registered organisations are functioning lawfully and appropriately to serve the interests of their members. Returning the C & G Division of the CFMEUQ to that position will ultimately promote the freedom of association and the important role unions play in advocating for the interests of their members. Civil society depends on unions fulfilling that role while respecting the rule of law. The Bill also pursues the objective of ensuring that all entities operating in the C & G Division of the CFMEU are dealt with consistently by the Commonwealth and other States.

Having regard to the safeguards built into the amendments and the targeted nature of the intervention, I consider that the negative impact on human rights is outweighed by the legitimate aims pursued by the Bill.

(f) any other relevant factors

When the Fair Work (Registered Organisations) Amendment (Administration) Bill 2024 (Cth) was introduced into the Senate, it was accompanied by a statement of compatibility, which also came to the conclusion that the equivalent Commonwealth amendments were compatible with human rights.

Conclusion

In my opinion, the Bill is compatible with human rights under the *Human Rights Act* because it limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the *Human Rights Act*.

GRACE GRACE MP
MINISTER FOR STATE DEVELOPMENT AND INFRASTRUCTURE
MINISTER FOR INDUSTRIAL RELATIONS AND
MINISTER FOR RACING

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