

Industrial Relations and Other Legislation Amendment Bill 2022

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INDUSTRIAL RELATIONS AND OTHER LEGISLATION AMENDMENT BILL 2022 SUBMISSION

Prepared by Red Union Support Hub on behalf of:

Nurses' Professional Association of Queensland

Teachers' Professional Association of Queensland

Professional Drivers' Association of Australia

Australian Medical Professionals' Society

Sworn Officers' Professional Association of Australia

Independent Workers' Union of Australia



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Background

1. The Labor Government detests independent unions that do not provide financial support, in-kind electoral support or 'anti-all-other-parties' campaigning during elections. This Bill seeks to shut them down to coerce workers back into registered organisations that *do* provide the above.
2. Making legislative changes that crush workers' rights on the basis that it will mean more money for the Government's election campaigns and to help sure-up their electoral success is not only an integrity issue, it is blatant corruption.
3. The stated premise for the introduction of this Bill is ludicrous. The Minister submits that this Bill is about 'clearing up confusion'¹ amongst employees and employers in identifying which organisation can fully represent their industrial interest under the IR Act. If this were the case, a review of the definitions of 'Industrial Association' should have been the central focus of the Bill, however it was not.
4. If the Government genuinely believed in workers' rights they would have expanded the protections and definition for industrial associations, however they did not.
5. Instead, the Bill seeks to create the barrier to registration as a registered organisation impossibly high, whilst granting additional powers to the current registered organisations in what can only be described as an attempt to return in excess of \$12 million dollars per year back into ALP-friendly hands.
6. We submit that there is little need for registration in order to provide effective workplace protections to members or to provide clarity to the employee/employers. Regardless of registration status, organisations are able to provide professional indemnity insurance, industrial relations advice, arrange legal representation in various jurisdictions, enterprise bargaining and other services provided by registered organisations. The only substantial difference to service provision between registered organisations and non-registered organisations is that of "right of entry" which will be detailed later.

Public Interest

7. The premise of a free and open market is in the public interest and is fundamental to a representative democratic system of government and to good public administration. The proposed legislation is simply an attempt by the legacy unions and the Palaszczuk Government to create a business monopoly which is against the public interest.
8. Having genuine choice means regulation through competition. Members will not, and do not settle for misuse of funds. Members vote with their feet, as has been seen by the

¹ Record of Proceedings, First Session of the 57th Parliament, Thursday, 23 June 2022, 1691.

mass exodus to independent unions that provide similar services at half the price. At half the price, concerns about misallocation of funds should be pointed at those charging double and perhaps whether they offer fleet cars, who used fleet cars are sold to, whether holiday homes are offered and who uses them the most and during peak times etc.

9. Competitive tension is good for workers. Take a basic metric as a litmus test before competition, the websites of registered organisations were woeful, HTML relics that provided a poor user experience. Once the independent unions came along and outperformed in this metric, it forced the legacy unions to improve their websites and ultimately the end user experience.
10. The Bill is an affront to workers who have voted with their feet and is an obvious attempt to deny them the non-ALP representation that they want. This Bill seeks to reestablish the union monopoly system, and reestablish the business cash flow system that ends up supporting the Australian Labor Party causes and policies. This is nothing more than a State Government attempting to outlaw competition for organisations that provide its electoral funding.

Reporting obligations

11. Regardless of an organisation's registration status under the *Fair Work (Registered Organisations) Act 2009* ('**RO Act**'), associations are still subject to reporting obligations required by various other third-party bodies in order to ensure that member funds are not misappropriated. The premise that registration under the RO Act should be required in order to prove an association is "above board" is entirely a false flag, and simply does not have any basis in fact.
12. This Bill attempts to coerce the 10,000+ Queensland nurses, teachers, doctors and other professionals, who have decided not to join a registered organisation which supports the ALP, back into the legacy registered union movement. This forces those individuals to each financially support, to the tune of about \$200 each year, a political cause they disagree with. This is a massive affront to those workers and is an obvious attempt to deny them the non-ALP representation that they want.
13. Concerns about regulation and transparency are ill-founded. Division 2 of the *Associations Incorporation Act 1981* sets out a compulsion to have the financials audited once turnover is over \$2m p.a. All unions under the 'red union' umbrella have always audited their financials, regardless of turnover.
14. Ultimately, members are adults and can vote with their feet if they are offered a choice.

Apprehended Bias

15. This Bill comes after an attack on the NPAQ's legitimacy that originated with former QNMU staff member [REDACTED], who drafted a Queensland Health Memo titled "Nurses' Professional Association of Queensland" which then misled and incorrectly stated what the NPAQ could or could not do.
16. This memo was then sent to the QNMU for further changes *after* it was cleared by the Government's legal department. The QNMU reverted with marked up changes which were adopted and sent out without subsequent legal approval.
17. Grace Grace MP (who was also at the QNMU during her time out of office was granted a salary of roughly \$186K plus super plus car) commissioned Linda Lavarch (QNMU member director) to review the *Industrial Relations Act 2016* (Qld) ('**IR Act**') which incorporated arguments led from the bar by Paul Freeburn QC, who's client was QNMU and had been directed not to be heard.
18. In addition, the behaviour of [REDACTED] and the Queensland Health Memo's legitimacy currently remains in dispute and is the subject of a Supreme Court Appeal. This whole Bill reeks of QNMU interference.
19. The 'codification' of the Gilbert matter is also misguided as this bill simply adopts the QNMU's legal arguments. Not the Crown's, not the Commission's. Further, the timing is wildly inappropriate as the matter is still in Industrial Court with the decision expected anytime now.
20. There is no pretence. This is about money and the mandatory introduction and enforcement of the ALP politicisation of union representation in the workplace. Tribal like Departmental bureaucracy, Union, and Political Party are now openly interwoven. The past pretence is gone. There is just too much money at stake. Working nurses, teachers and other professionals are just the cannon fodder who are now all expected to pay about \$200 more each year than is needed to provide the union member services that they want.



Title: Government Corruption Model

Access to Justice

21. Although the standing of Industrial Associations is still being determined in the Courts, what has always been clear, and is an unalienable right, is that of an individual to receive representation. Although this Bill reportedly aims to “clear up confusion”, it aims to prevent entities that are declared ineligible from arranging legal representation for members. As it stands, there are several cases currently before various Courts and Commission in Queensland where the “arranging of an agent” by organisations likely to soon be declared “ineligible” has resulted in a worker receiving their day in Court. The current Bill threatens to curb access to justice for workers.

Freedom of association

Federal

22. The introduction of the WorkChoices legislation amended the *Workplace Relations Act 1996* (Cth) (**‘WR Act’**) with the “Freedom of Association” provisions being included in Part 16. The objects of Part 16 were set out in s 778 of the *WR Act* as being:

- “(a) to ensure that employers, employees and independent contractors are free to become, or not become, members of industrial associations;
- (b) to ensure that employers, employees and independent contractors are not discriminated against or victimised because they are, or are not, members or officers of industrial associations;
- (c) to provide effective relief to employers, employees and independent contractors who are prevented or inhibited from exercising their rights to freedom of association;

(d) to provide effective remedies to penalise and deter persons who engage in conduct which prevents or inhibits employers, employees or independent contractors from exercising their rights to freedom of association.”

23. Section 779 of the *WR Act* contained effectively the same definition of “industrial association” as the previous s 298B of the *WR Act* and the *Industrial Organisations Act 1997* (Qld) (**‘IO Act’**) outline above. The *WR Act* included no definition of “association”, but it defined “Trade Union” as follows (see s 4 of the *WR Act*):

“trade union means:

- (a) an organisation of employees; or
- (b) an association of employees that is registered or recognised as a trade union (however described) under the law of a State or Territory; or
- (c) an association of employees a principal purpose of which is the protection and promotion of the employees’ interests in matters concerning their employment.”

24. The *Fair Work Act 2009* (Cth) (**‘FW Act’**) commenced on 1 July 2009 replacing the *WR Act*. The General Protections provisions in Chapter 3 of the *FW Act* stated the following objects at s 336(1)(b), as set out below:

“...

- (b) to protect freedom of association by ensuring that persons are:
 - (i) free to become, or not become, members of industrial associations; and
 - (ii) free to be represented, or not represented, by industrial associations; and
 - (iii) free to participate, or not participate, in lawful industrial activities”

25. Section 347 of the *FW Act* sets out the meaning of “engages in industrial activity” which is replicated in s 290 of the *IR Act*.

26. Section 12 of the of the *FW Act* widened the scope of the definition of “Industrial Association” from the definition in s 779 of the *WR Act* as follows:

“industrial association means:

- (a) an association of employees or independent contractors, or both, or an association of employers, that is registered or recognised as such an association (however described) under a workplace law; or
- (b) an association of employees, or independent contractors, or both (whether formed formally or informally), a 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 may be); or

(c) 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;
 ...”

27. The Explanatory Memorandum of the Fair Work Bill 2008 (**‘ExM FW Bill’**) says the following regarding (b) above:

“39. Paragraph (b) of the definition provides that an industrial association means an association of employees and/or independent contractors (whether formed formally or informally), a purpose of which is the protection and promotion of their interests in matters concerning their employment, or interests as independent contractors, as the case requires. This element of the definition differs from the pre-reform definition in subsection 779(1) of the *WR Act* in two respects:

- it now includes informal associations of employees and/or independent contractors; and
- the requisite purpose of protecting and promoting their interests does not need to be a principal purpose of the association.”

28. Section 308(e) of the IR Act, which “*provides what is taken to be action of an industrial association*” (see Explanatory Notes of the Industrial Relations Bill 2016 (**‘ExN IR Bill 2016’**) cl 308) contemplates that an “Industrial Association” can embrace entities other than unincorporated bodies: AOS at [7].

29. Clause 308 of the ExN IR Bill 2016 says that s 308 of the IR Act “*generally reflects section 363 of the FW Act.*” Section 363(e) of the *FW Act* similarly provides that “*if the industrial association is an unincorporated industrial association that does not have a committee of management—action taken by a member, or group of members, of the industrial association.*”

30. The ExM FW Bill says the following regarding s 363(e) of the *FW Act*:

“1470. Clause 363 is intended to broadly cover subsection 779(2) of the *WR Act*. However, the provision has been broadened to include paragraph 363(1)(e) which deals with unincorporated industrial associations that do not have a committee of management. In such circumstances, action taken by a member or group of members of the industrial association is deemed to be action of the industrial association.”

Queensland

31. The “Freedom of Association” provisions in the IR Act, understood in their historical context, emulate the *FW Act*’s general protections regime. They have the stated purposes of Chapter 8, Part 1 of the IR Act pursuant to s 278(1)(b) (and its analogue s

336(1)(b) of the *FW Act*) and are directed to protect freedom of association by ensuring that persons are:

- a. free to become, or not become, members of industrial associations;
- b. free to be represented, or not represented, by industrial associations; and
- c. free to participate, or not participate, in lawful industrial activities.

32. In *Construction, Forestry, Maritime, Mining and Energy Union v Australian Building and Construction Commissioner (2020) 282 FCR 1* (*CFMMEU v ABCC*) Allsop CJ considered

s 336(1)(b) of the *FW Act* (which is replicated in s 278(b) of the IR Act), and said the following (at [15] and [16]):

“15 Freedom to be involved in lawful industrial activities is an aspect of freedom to associate. If one is free to associate, but one has no protection to engage in lawful industrial activities as an expression of the association with others, the freedom to associate is undermined or diminished.

16. Section 336(1)(b) as an aid to interpretation informs one how the subject freedom of association is to be protected: by ensuring that persons are free to become (or not) members of industrial associations, or to be represented (or not) by them, or to participate (or not) in lawful industrial activities. This third way that freedom of association is intended to be protected (s 336(1)(b)(iii)) requires an understanding of the phrase “industrial activities” and what it means to “participate” in them (or not).”

33. In *CFMMEU v ABCC*, Flick J (with whom Allsop CJ concurred), said the following (at [62]):

“When confronted with an argument that involves reading words into a legislative provision, it is well recognised that “courts should be hesitant to do” so (*R v Holliday* [2017] HCA 35; (2017) 260 CLR 650 at [83] per Nettle J) and that it “is no function of the courts to fill in gaps in legislation” (*Minogue v Victoria* [2018] HCA 27; (2018) 264 CLR 252 at [43] per Kiefel CJ, Bell, Keane, Nettle and Edelman JJ). But it is an entirely different course of reasoning to construe a legislative phrase by reference to the context in which that phrase appears and to read that phrase in a manner which gives effect to its presumed legislative object and purpose: *Project Blue Sky Inc v Australian Broadcasting Authority* [1998] HCA 28; (1998) 194 CLR 355 at [69] per McHugh, Gummow, Kirby and Hayne JJ.”

Summary

34. What is demonstrated by the history of the legislative provisions is that the Freedom of Association provisions introduced by the Howard Government in 1996 and the Borbidge

Government in 1997, and replicated in successor legislation through the IRA 1999 and the *FW Act*, is that a worker's freedoms of association do not exclude, whether expressly or by necessary implication, freedoms related to incorporated associations of employees. That is, of course, provided the incorporated association has as a principal purpose, the protection and promotion of the employees' interests in matters concerning their employment.

35. To the contrary, the *FW Act* has expanded the definition of industrial associations to include informally formed associations employees, and embraces entities whether incorporated or unincorporated.
36. The legislative provisions that protect an individual's freedom to associate have never been entwined with the provisions relating to registration of organisations. This is because freedom of association principles and provisions regarding registration of organisations (however described) are directed towards different ends. One relates to ensuring individuals are not adversely treated by reason of their choice to engage in industrial activity, the other is directed at the registration and regulation of organisations and the conduct of their affairs.

True motivations behind legislative change

Cashflow

The Labor Government is facing an existential crisis as the ALP-slanted union movement is required to fund and fight its elections. This bill is an attempt to coerce workers back into those unions that they chose to leave so that they must pay an extra \$200 to \$250 p.a.

With approximately 17,000 members covered in various independent unions, this amounts to \$4.25m in excess funds p.a. that must go to political purposes that no longer end up being spent in this regard. Totally, it amounts to over \$12m that does not go to ALP legacy unions - *each year*.

Stamping out dissent

Various independent unions in Queensland have been loud advocates in the media holding the Government to account in areas primarily focusing on Queensland Health failures and Education Queensland failures. Just a few examples of this:

Caboolture

An NPAQ whistleblower first broke the story with the Courier Mail which started a week long media onslaught. It also prompted the Opposition to focus their attention on the failings of Hospital administration and the pressure this put on nurses' registrations.²

Rockhampton nurse

The NPAQ embarrassed the QLD Government in its strident defence of the Rockhampton nurse who was verbally abused by senior Government ministers. The union has ongoing legal action against these ministers and it would not be prudent to elaborate. We hope justice prevails.³

Asbestos in classrooms

The TPAQ first broke the story that teachers were unwittingly writing their names with their fingers in asbestos dust. This story developed as further schools were revealed and prompted further scrutiny in Parliament.⁴

COVID response

The Government at one point mentioned the Red Unions dozens of times in Parliament calling us dangerous and anti-vaxxers. Nothing could be further from the truth and is simply a grubby smear. The concerns of the unions were the lack of consultation and the lack of valid (or any) risk assessments by departments who are supposed to be best practice employers. Ministers should note the thousands of pieces of correspondence that were sent to their departments by these union members outlining these concerns.

Quite apparently the State Government is sick of dissent. They do not agree with us that 'sunlight is the best disinfectant' and that members and journalists are not entitled to report on Government failings so they instead choose to attempt to silence.⁵

² "Mother forced to live with a stoma after Caboolture Hospital Surgery goes terribly wrong", Jill Poulsen (<https://www.couriermail.com.au/news/queensland/qld-politics/mother-forced-to-live-with-a-stoma-after-caboolture-hospital-surgery-goes-terribly-wrong/news-story/3f14817fb3fc9495be6e1c93a5eb996c>).

³ "Nurse's union defends Blackwater trip, says she could not have infected miner", Tony Moore (<https://www.brisbanetimes.com.au/national/queensland/nurse-s-union-defends-blackwater-trip-says-she-could-not-have-infected-miner-20200529-p54xmm.html>).

⁴ "Asbestos scare rocks major Queensland high school", Stephanie Bennet (<https://www.couriermail.com.au/education-queensland/asbestos-scare-rocks-major-queensland-high-school/news-story/393f245b01bca1f2d6b71c78c0c081eb>).

⁵ "Palaszczuk ministers sledge nurses group as 'fake union, anti-vax campaign'", Felicity Caldwell (<https://www.brisbanetimes.com.au/politics/queensland/palaszczuk-ministers-sledge-nurses-group-as-fake-union-anti-vax-campaign-20211012-p58zcp.html>).

Favours for Registered Organisations for Jobs for Ministers

During the Newman Government the current Industrial Relations Minister was voted out of Parliament. During her stint in the political wilderness she found safe harbour at the QNMU. A cynic may suggest this is either a thank you for previous patronage or a favour to a union to ensure a job after Parliament when she may very well be replaced at the next election.

To Allow Registered organisations the ability to do deals with employers that pay less than the award and sell out workers.

As per Chiquita Mushrooms, Cleanevent and the Coles agreement it has been suggested that deals are done between union officials and employers where, in return for a pseudo 'closed shop' the union will approve a deal that flattens penalty rates or even pays workers less than the award similar to the recent Vickers case that knocked out the Coles EBA.

Similarly at a State level, the only time that a Registered Organisation finds its voice and manages to obtain a pay rise that outstrips CPI is when there is a non-labor Government in power.

If there was another party at the table, no 'special deals' could be arranged and workers' interests would be protected.

Unions and Industrial Associations in Queensland, Australia and Internationally

International Definition of a Trade Union

At an international level, the International Labor Organisation Convention 087 defines a worker organisation as "any organisation of workers or of employers for furthering and defending the interests of workers or of employers".⁶

This far-reaching definition embodies the prevailing international sentiment concerning the salience of worker representation – in all its diverse forms. For worker organisations to remain effective, their manifestations should not be grossly restricted by state regulation. Gratuitous and self-serving regulation will reduce representation options for workers and force them to rely on monopolistic organisations that see no need to optimise their services because of the lack of competition.

⁶ International Labour Organisation, C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Article 10.

In this sense, Red Union supported industrial associations reflect the value of a broad definition for worker organisations. These associations provide a cheaper and apolitical option for workers who would be otherwise forced to join traditional unions.

Federal Definition of a Trade Union

Federally, trade unions are defined under s 3 of the *Australian Human Rights Commission Act 1986* (Cth):

“**trade union** means:

- (a) an association of employees that is registered as an organisation, or recognised, under the Fair Work (Registered Organisations) Act 2009; or
- (b) a trade union within the meaning of any State Act or law of a Territory; or
- (c) any other similar body.”

Queensland’s Definition of a Trade Union

In Queensland, a substantive definition of a trade union remains elusive – reflecting the legislative reluctance to narrow the accepted conception/s of trade unions. However, a definition was provided in the *Work Health and Safety Act 2011* (Qld) (**‘WHS Act’**), sch 5:

“**union** means—

- (a) an employee organisation that is registered, or taken to be registered, under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth; or
- (b) an employee organisation under the *Industrial Relations Act 2016*; or
- (c) an association of employees or independent contractors, or both, that is registered or recognised as such an association (however described) under a State or Territory industrial law.”

Federal Definition of Industrial Association

Federally, an industrial association is defined in s 12 of the *FW Act*:

“**industrial association** means:

- (a) an association of employees or independent contractors, or both, or an association of employers, that is registered or recognised as such an association (however described) under a workplace law; or
- (b) an association of employees, or independent contractors, or both (whether formed formally or informally), a 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 may be); or

(c) 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:

(d) a branch of such an association; and

(e) an organisation; and

(f) a branch of an organisation.”

In this context, sub-section (b) applies to Red Union supported industrial associations. Regarding sub-section (a), Red Union supported industrial associations are not registered under the *Fair Work (Registered Organisations) Act 2009* (Cth) or the *Industrial Relations Act 2016* (QLD) nor are they recognised as an industrial association under workplace law.

Queensland’s Definition of Industrial Association

IR Act 2016

In Queensland, s 279 of the *IR Act* defines industrial associations:

"Industrial association means any of the following—

(a) an employee organisation;

(b) an association of employees having as a principal purpose the protection and promotion of their interests in matters concerning their employment;

(c) an employer organisation;

(d) an association of employers having as a principal purpose the protection and promotion of their interests in matters concerning employment;

(e) a branch of an industrial association under *paragraphs (a) to (d)* .

Note— An organisation is a body that is registered as an organisation under chapter 12—see schedule 5, definition of organisation.”

Registered Organisations

1. Current Registration Conditions:

- a. Organisations may register to represent the industrial interests of employees of which they have registered for coverage under the *Fair Work (Registered Organisations) Act 2009* (Cth). An organisation that has coverage is permitted to represent the industrial interests of those members it has coverage of.

- b. Registration may not however be permitted to an organisation that applies for registration if:
- “There is no organisation to which members of the association might belong or, if there is such an organisation, it is not an organisation:*
- a. *To which the members of the association could more conveniently belong;*
 - and*
 - b. *That would more effectively represent those members.”⁷*
2. The current registration conditions effectively have the impact of creating “union monopolies” where members of a particular industry are only able to be officially represented by the organisation that is already registered, regardless of any potential price gouging, poor service, deals made with employers at the expense of workers, or other media-worthy stories which the legacy unions have become known for in the past.
3. Having singular coverage of an industrial sector has resulted in:
- a. Corruption risks;
 - b. Poor member service;
 - c. Lack of separation between Department, Union and Political Party;
 - d. Overpricing;
 - e. Union’s being used as political (and financial) tools to help the ALP rather than represent member’s genuine interests;
 - f. Under negotiation of wage and other employment conditions with little recourse for employees covered by a registered organisation;
 - g. A failure of service in member-to-member disputes;
 - h. all the other inefficiencies that lack of competition in a sector brings.
4. In addition to achieving poor member outcomes, we submit that the current registration requirements are contrary to international conventions ratified by Australia. In particular, the freedom of association established by *C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)*, Article 2 providing:
- “Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.”*
5. We submit that the current registration clauses already fall short of the international obligations Australia has agreed to. The current Bill seeks to further curtail the rights of workers established in C087 to be able to form employee organisations without previous authorisation from a Government.
6. With barriers to registration already potentially being contrary to international conventions, the further restriction of the right of workers to organise as proposed by the

⁷ *Fair Work (Registered Organisations) Act 2009 (Cth) s 19(1)(j)(i).*

Bill is particularly egregious. Furthermore, after the near-impossible conditions of registration proposed by the Bill are passed, and the subsequent one month “grace period” for registration occurs, it is apparent that workers who have chosen voluntarily not to belong to a registered organisation will be coerced back into the legacy unions. This removes the key right of workers to join organisations of their own choosing and may well see workers disheartened with these changes be left without representation altogether.

Transparency

7. The explanatory memorandum praised registered organisations for being “*subject to a range of accountability and transparency obligations including reporting to ensure they operate with rigour and integrity.*” The implication being that unregistered organisations are not held to the same standard.
8. Registered Organisations are currently able to have as a part of their objects and powers, the ability to set up trusts. These trust systems would not be able to be established by associations in a similar manner and rightfully so. The trust structures that registered organisations are able to establish permit the funnelling of money away from membership to be spent outside of the objects of the constitution.
9. Unlike registered organisations, unregistered organisations are unable to set up such trusts and rightfully so. Registration organisations are permitted dangerous levels of power to establish methods of funnelling money into activities contrary to those established by their constitutions.
10. Registered organisations have their voting conducted by the AEC or the QEC however only the incumbents have access to membership lists and hence there is really no competitive elections in the union movement which leads to family dynasties.
11. In addition, unregistered organisations have reporting requirements to the Office of Fair Trade.

Entry Notices

12. The *FW Act* provides Registered Organisations with the ability to apply for an entry notice, more commonly known as “Right of Entry”.⁸ An entry notice permits an official holding a permit to enter a premises to:
 - a. Inspect any work, process, or object believed to be reasonably suspected of a contraventions of the *FW Act* or other instrument;
 - b. Interview someone who agrees to be interviewed whose industrial interests the organisation is permitted to represent (ie Union members);
 - c. Request copies of documents directly related to a suspected breach;⁹ or

⁸ *Fair Work Act 2009* (Cth) s 518.

⁹ *Fair Work Act 2009* (Cth) s 482.

- d. May speak with potential members on-site during lunch breaks.¹⁰
- 13. Entry notices have zero impact on an organisation's ability to attend disciplinary matters in support or to advocate on behalf of members.
- 14. Right of entry does not equate to banning of entry. Industry super funds do not have right of entry but are oftentimes invited or allowed to present to staff due to the benefits they may offer.
- 15. Where documents aren't willing to be handed over by an employer easily, existing provisions exist in the *IR Act* and *FW Act* to request these.¹¹

Enterprise Bargaining

- 16. An Enterprise Agreement is an agreement between an employer and employees at a facility with regard to working conditions.
- 17. Registration provides an organisation with an automatic seat at the table for enterprise bargaining negotiations and with the ability to be a party to an Agreement. This is regardless of whether the registered organisation has any members at a facility or not.
- 18. Registration permits the organisation to be a party to an agreement and to speak on behalf of all employees that they are registered to cover. This means that employees that have chosen not to join a registered organisation are bargained for by the registered organisation.
- 19. The *FW Act* permits an employee to appoint a bargaining agent (regardless of whether they are from a registered organisation) to bargain on their behalf. In the private sector both registered organisation and independent unions have co-existed at the bargaining table, providing greater opportunity for workers to have their voices heard regardless of their organisation of choice. Although bargaining agents are not parties to the agreement, it is undeniable that independent unions have used these laws to ensure the voices of all workers are heard.
- 20. At a State level, we still maintain that the right of individuals to be a party to the agreement remains. If they are a party, they should be able to grant agency to any person or organisation that they wish to bargain on their behalf, like the NPAQ or the TPAQ or even an office bearer/department employee so as to streamline bargaining.

¹⁰ *Fair Work Act 2009* (Cth) s 484.

¹¹ *Industrial Relations Act 2016* (Qld) s 347; *Fair Work Act 2009* (Cth) s 535; *Fair Work Regulations 2009* r 3.42.

Dispute Resolution

21. Many agreements permit a registered organisation to enter a dispute process between employee and employer regardless of whether the impacted individual is a member or not.
22. Although, hypothetically this should permit registered organisations to assist workers in the disputes process, it has been used as a political tool by registered organisations to the detriment of workers.
23. There is no better example of this than the industrial disputes lodged by NPAQ and its members about the dangerous ramping at Redlands Hospital. After following the standard escalation process and having the issue largely ignored, the industrial dispute reached Stage 3, where the registered organisations stepped in.
24. After bringing concerning images to the public showing patients being treated in hallways, it was apparent that Redlands had a serious issue, one that undoubtedly the State Government would have rathered not to reach the media.
25. Rather than the industrial dispute proceeding past stage 3, where it is then able to be heard in the Commission and an outcome for workers and patients achieved, the issue was stalled indefinitely with no outcome.
26. Whether intentionally or not, the registered organisations stalled the issue and to this day, ramping is still out of control at Redlands Hospital.

Summary

27. It is apparent that the Registered Organisation laws and the proposed broadening of the powers these entities have, are not only used as a political tool to support the Australian Labor Party, both financially and otherwise, but also fail to adequately protect the rights of workers. This is even more apparent when a worker steps outside of what the Government or the Registered Organisations are comfortable with and in many occasions, long standing union members have been left without adequate representation. If this were not the case nurses and teachers would not need or have sought alternate organisations.

International Obligations

1. By narrowly construing s 279(b) of the IR Act, the Commission failed to have regard to s 4(r) of the IR Act by not construing the provision in a way that gave effect to Australia's international obligations in relation to labour standards, namely the Freedom of Association and Protection of the Right to Organise Convention, 1948, No. 87 and The Right to Organise and Collective Bargaining Convention, 1949, No. 98. Neither convention places any constraints on workers freedom to organise in associations, incorporated or otherwise. This is detailed in greater detail below.

2. In interpreting an Act, consideration may be given to extrinsic material capable of assisting in the interpretation if the provision is ambiguous or obscure to provide an interpretation of it; or if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable to provide an interpretation that avoids such a result; or in any other case to confirm the interpretation conveyed by the ordinary meaning of the provision: see s 14B (1) and (2) of the AI Act. Relevantly, extrinsic material includes, inter alia, a treaty or other international agreement that is mentioned in the Act: s 14B(3) of the Acts Interpretation Act 1954 (Qld) (AI Act).

Human Rights and ICCPR

1. The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty that commits signatories – of which Australia is one – to recognize fundamental limitations on states’ power to restrict certain civil and political capacities of their subjects.
2. The ICCPR is a seminal document of international law, comprising part of the International Bill of Human Rights. Among other things, the treaty recognizes the right to life, freedom of religion, freedom of speech and freedom of assembly.
3. Although not directly enforceable in Australia, provisions of the ICCPR have directly influenced legislation Federally (e.g., *Privacy Act 1988* and *Disability Discrimination Act 1992*) and in Queensland (e.g. *Human Rights Act 2019*).
4. In the context of this Bill, Article 22 of the ICCPR is of special significance:

“1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.”

5. We have already established the right to form and join trade unions several times in these submissions, of particular importance is that State Parties are to take legislative measures which would prejudice the guarantees provided in the Convention, something of which the Bill clearly aims to achieve.

Case Law background: *Gilbert v Metro North Hospital Health Service & Ors* [2021] QIRC 255 ('*Gilbert*')

1. Margaret Gilbert is a veteran nurse who made statements to the media in her capacity as a Branch Secretary of NPAQ, complaining about the standard of education nurses were receiving at universities. Graduate nurses were entering the profession without having completed several job-ready skills such as cannulation or inserting a catheter.
2. She was later issued with a show cause by Metro North HHS for breaching Queensland Health's "gag clause", a policy which prevents staff from speaking to the media. Trade Union delegates however, are afforded certain protections and are permitted to make statements to the media.
3. The issuing of the show cause notice to Margaret Gilbert was not just a nurse speaking about falling standards of nursing, it was a test case for what a trade union (ie NPAQ) was considered to be. It was held that the unregistered organisation was not a trade union in light of its legal personality, corporate structure, history and relevant documents, and was accordingly not afforded the rights and protections of a registered organisation under Chapter 8 of the IR Act."¹²
4. The original decision in *Gilbert* adopted many of the arguments put forward by the QNMU, including the provision that industrial associations should be unincorporated. The matter is currently under appeal.
5. Out of respect for the independence and procedures of the Industrial Court of Queensland, the NPAQ and all other Red Union supported associations have deliberately avoided commentary on this matter as it remains sub judice.
6. This case is critical not only for this determination, but for the future of nursing and other industries. Registered Organisations that have a close relationship with the Government often remain silent when there is a Labor Government and will only speak out on issues when the Labor party is in opposition.

¹² Industrial Relations and Other Legislation Amendment Bill 2022 (Qld) Statement of Compatibility.

7. The codification of Gilbert prior to a judgement being handed down will have a further chilling effect on nurses and other public servants being able to speak out about the declining outcomes being seen in State Departments - notably health and education.

NPAQ and other unions record

Queensland

The effect of Red Union supported industrial associations on employee advocacy is not to be understated. Below are some figures which establish how much of an impact these associations are having in terms of membership. When compared to the 26 registered industrial organisations of employees in the 2020 - 2021 Annual Report of the Industrial Court (QIRC, 2021) all of which are inflated by “non” financial memberships, NPAQ’s Queensland members alone would put it 14th on the list, larger than the Transport Workers’ Union of Australia (Queensland branch).

Number of QLD Members for each Red Union Association

Association Membership	Count
AMPS	157
IWUA	422
NPAQ	8,326
PDAA	99
SOPAA	132
TPAQ	1,899
Total	11,035

Red Union supported association members in Queensland as at 4 July, 2022

NPAQ and other unions record at a Federal level

By having a central servicing arm in Red Union Support Hub, newly formed industrial associations gain access to experienced industrial relations advocates and assistance. This obviously allows for assistance and resourcing at a level uncommon for small registered organisations. In addition to not funding political parties, Red Union supported associations are able to provide their services at significantly lower fees than registered organisations, because of this model. This model has allowed Red Union to service all professions via different industrial associations, and double in size over the span of a year.

Association Membership	Count
AMPS	472
IWUA	1,484
NPAA	10,366
PDAA	358
SOPAA	385
TPAA	3,423
Total	16,488

Red Union supported association members in Australia as at 4 July, 2022

Support provided:

- Over 100,300 total emails closed by rep in the financial year 2021-2022
- Over 11,000 Inbound calls by associations for the financial year 2021-2022

Association Name	Number of Cases Closed By Case Manager
AMPS	50
IWUA	142
NPAA	45
NPAQ	751
NPAV	14
PDAA	70
SOPAA	35
TPAA	128
TPAN	17
TPAQ	244
TPAV	6
Grand Total	1524

Number of cases closed by a case manager for the financial year 2021-2022

State or Territory	AMPS	IWUA	NPAA	NPAQ	NPAV	PDAA	SOPAA	TPAA	TPAN	TPAQ	TPAV	Unknown Association	Total
ACT	1	1		1									3
NSW	8	29	10	20		15	4	61	20	15			182
NT	2	1	2	2		5	1	1		2			16
QLD	22	54	3	865		37	13	5	1	229		9	1238
SA	5	2	4	4				2		2			19
TAS	1	2	2				1	1					7
VIC	20	46	24	26	16	20	23	49		15	9	7	255
WA	4	25	6	7		1	8	11		4		6	72
Undetermined		1		115		6		1		8		1	132
Grand Total	63	161	51	1040	16	84	50	131	21	275	9	23	1924

Number of cases closed by a case manager 2022 financial year

Types of Issues	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Undetermined State	Total
Contract Query				15	1		1	1		18
Dismissal / Allegations		4		30	1		11	2	1	49
Enterprise Agreement Contravention		2		1			1			4
Enterprise Bargaining Agreement				7			1			8
Leave Entitlement		1		21	1		6	2		31
Membership Hold				1						1
Other	2	12	1	111	3	1	31	10	7	178
Overpayments		1		11			1			13
Payroll / Allowance / Underpayments		5		41			6	2	1	55
Performance Management		2		16						18
Policy / Procedure	1	2	1	17	1	2	2	1		27
Registration / Regulatory Body	1			17		1	2	4		25
Shift / Roster		1		14			3			18
Statement (Police/Coroner)				2						2
WorkCover		3		14	1	1	5	1		25
Workplace Relationship / Bullying		9		53	1		8	2		73
Grand Total	4	42	2	371	9	5	78	25	9	545

Type of In progress cases as of current financial year

The practical effect of this proposed legislation

Once introduced, these Red Union supported associations will have one month to attempt registration. They will not be able to be registered because of new changes meaning incorporated bodies cannot register. A declaration will be made that they are 'inelligible for registration'. Further new ancillary orders will be made which restrains these bodies from their staff or office bears from representing members in the QIRC or even arranging an agent to represent members. It will also prevent these associations telling potential members they can represent them. If transgressed, they will suffer heavy fines and most egregiously, have their incorporation status wound up by the Office of Fair Trade. A penalty not even proposed by the former Federal Government when pursuing the CFFMEU.

The money back into Labor Party coffers

1. Already subject to misleading memorandums drafted by State Departments with guidance from Registered Organisations¹³, members of independent unions have been subject to continuous attacks attempting to undermine their trade union of choice. The introduction of this Bill will see it weaponised as a way to strip genuine choice away from hard working nurses, teachers and other Queensland public servants to force members and their fees back into monopoly ALP-friendly registered organisations and their respective coffers.
2. In contrast, organisations such as the NPAQ, TPAQ and other Red Union supported organisations, all have constitutional prohibitions from using member money to fund political parties or candidates.
3. The fact that members of these organisations are to now be denied the right to be represented in employment matters simply because they are not prepared to pay an extra ~ \$250 to organisations which uses that extra money to support the ALP is a great miscarriage of justice and strikes at the very heart of the State Government's integrity crisis. Every non-ALP Queensland Government worker must now effectively contribute to the ALP in order to be able to be represented in any employment issue or dispute. That is corrupt.
4. Member concerns with their old unions may be heard in Appendix 1.

Changes to the Incorporations Act

1. The Bill is an outrageous attack on nurses, teachers and state public servants personally and is disgustingly anti-worker. The amendments mean limiting what law-abiding workers who associate together can attempt to achieve under a constitution. That being,

¹³ See *Gilbert*.

protecting their workplace interests. It also means that a union that attempts to compete can likely have their incorporation protection taken away so there is no separate legal entity. This means the corrupt Labor Government and other vindictive registered organisations can attempt to personally attack members. Not on our watch.

Corruption

1. The Bill itself is evidence of legislative change in exchange for electoral and personal support for some ALP politicians. Most politicians in the ALP have links to registered organisations listed on their pecuniary interests. The legislation helps scratch the back of registered organisations which in turn allows those organisations to either provide funds to or assist in the reelection of those politicians. Further, we are left in the dark as to what deals may have been made with politicians to provide them with well paid jobs when the electoral cycle does not favour them

Remove protections from workers collectivising

1. For example a group of child care workers meeting to discuss what they might do in relation to concerns about lifting weights and how they might broach the issue with the employer. This scenario, once protected, would now not be protected as they would be an ineligible entity as they could already conveniently belong to the United Workers Union (UWU). The workers in the above scenario are uncomfortable with the UWU being affiliated with and financially contributing to the Labor party and hence would rather not join. The workers in the above scenario cannot afford to pay ~\$689 p.a. Perhaps they could afford to pay ~\$442 p.a. with one of the 'red unions'.
2. Practically this means that if a member of a registered organisation is told they will not assist with an issue because it embarrasses the Government, then they will not be able to find any protection in collective action. For example, commencing an industrial dispute over ramping at hospitals.

Preventing Representation before a Commission or Court

The addition of the ancillary order powers in the proposed s 483D would allow a Commission, upon receiving an application from a registered organisation, an entity eligible for registration, or an employer, to seek orders from the Commission to prevent an entity from representing its members or even arranging an agent to represent its members.

Such an order would, in effect, prevent all associations serviced by Red Union from either appearing as appointed industrial advocates, appointing Red Union staff, or even appointing third-party lay advocates and lawyers in any industrial dispute matter. It would prevent us from representing members in the QIRC and Industrial Court. As has been previously established, all associations serviced by Red Union would not be eligible for registration

under the new strict rules, and so we would be excluded from even applying for an order against another entity.

Orders unnecessarily excessive and lacking checks and balances

The NPAQ and other Red Union supported industrial associations may fall within the scope of the existing “Ancillary Order” provisions in the IR Act¹⁴. However, for an ancillary order preventing industrial association representation in the Commission to be available under the existing scheme, a number of criteria must have been met:

1. The full bench, upon application by a registered organisation, employer or the minister,¹⁵ has ordered that an association or employee organisation does not have the right to represent a particular group of employees who are eligible for membership of the organisation pursuant to s 479.¹⁶
2. The full bench is limited by s 481 when making an order pursuant to s 479 above:

481 Limitations on when order may be made

(1) The full bench may make an order under section 479 only if—

- (a) the full bench considers conciliation proceedings would not help in the prevention or settlement of the dispute; or
- (b) conciliation proceedings for the dispute are completed, but the dispute has not been fully settled.

(2) Also, the full bench may make the order only if it is satisfied—

- (a) the conduct, or threatened conduct, of an association or organisation to which the order would relate, or of an officer, member or employee of the association or organisation is—
 - (i) preventing, obstructing or restricting the performance of work; or
 - (ii) harming an employer’s business; or
- (b) the conduct, or threatened conduct, of an association or of an officer, member or employee of the association is preventing, obstructing or restricting negotiations or discussions between the employer and an organisation or the employer and the employer’s employees; or
- (c) the association or an officer, member or employee of the association has made or is making representations directed at employees about the association having rights, functions or powers in relation to employees under this Act that it does not have; or
- (d) the consequences or representations mentioned in paragraph (a), (b) or (c)—
 - (i) have stopped, but are likely to recur as a result of the conduct or threatened conduct; or
 - (ii) are imminent as a result of the conduct or threatened conduct.

3. The full bench also has a number of considerations to make, prescribed in s 482:

482 Matters the full bench must consider in making order

In considering whether to make an order, the full bench must consider—

¹⁴ *Industrial Relations Act 2016* (Qld) ch 11 pt 2 div 4 sub-div 10.

¹⁵ *Industrial Relations Act 2016* (Qld) s 480.

¹⁶ *Industrial Relations Act 2016* (Qld) ss 479(c); 483(1).

- (a) the wishes of employees who would be affected by the order; and
- (b) the effect of an order on the operations (including operating costs, work practices, efficiency and productivity) of the employees' employer; and
- (c) whether it should consult with appropriate State peak councils or organisations; and
- (d) the ability of the organisation to adequately represent the employees' interests; and
- (e) an agreement or understanding that deals with an employee organisation's right to represent a particular group of employees; and
- (f) the consequences of not making an order for the employees, employer or organisation; and
- (g) another order made by the commission that it considers relevant.

Only when the above criteria required to issue the s 479 Order is satisfied, is the Full bench able to make an ancillary order regarding an association's ability to represent before the Commission or in an industrial dispute. The current system provides rigorous checks and balances to prevent misuse of this process.

These rigorous checks and balances are not present in the proposed ancillary order power (s 483D). Notably:

- The s 483D ancillary order decision does not have to be one of the full bench
- In making an ancillary order, the Commission does not need to consider the wishes of employees who would be affected by the order, nor does it need to consider the ability of the entity to adequately represent the employees' interests
- The Commission need not consider if conciliation would be a more appropriate resolution to the dispute
- The Commission does not need to be satisfied that an entity's conduct or threatened conduct affecting work, or that the entity has made any misrepresentations about workplace rights

Given that the checks and balances exist for ancillary orders relating to a demarcation dispute, why was it not considered appropriate to include similar checks and balances for new ancillary orders where the outcome is more severe? These new ancillary orders would essentially allow a union to ask for an unregistered entity to be barred from representing employees before the QIRC or Industrial Court, just for merely existing. And yet, the views of the employees being represented, and the conduct of the unregistered entity, are not relevant considerations for the sole commissioner to consider?

It should also be noted that, where a Commissioner has concerns about an advocate from an unregistered entity behaving with contempt of the commission, disorderly, outside the QIRC Code of Conduct, or breaching a penalty provision within the IR Act, they have existing mechanisms to prevent them from appearing before it.

Human Rights Considerations

Codification of matter currently before the Court

1. The Human Rights Statement of Compatibility for this bill states that it seeks “to codify aspects of the decision of the Queensland Industrial Relations Commission (QIRC) in *Gilbert v Metro North Hospital Health Service & Ors* [2021] QIRC 255 (Gilbert) detailed above.
2. The Queensland Government, in preparing this legislation while the matter remains on foot, has not only bailed out of a legal fight, but has shown their contempt for the independence of the Industrial Court. The move to hastily push these amendments through while the appeal judgement is nearing its release, can be seen as nothing more than an attempt to influence the decision making. By introducing this bill in the manner that they have, the Queensland Government has effectively prevented in-depth legal commentary with regard to opposition of certain aspects of this bill.

Freedom of Association Concerns

Right to freedom of association (section 22 of the HR Act) – section 293A (Misrepresentation) and AI Act amendments;

- i. The right to freedom of association with others protects the rights of individuals to join together with others to formally pursue a common interest, such as political groups, sporting groups, professional clubs, non-government organisations and trade unions. It includes the freedom to choose between existing organisations or to form new ones.
- ii. Right to freedom of thought, conscience, religion and belief (section 20 of the HR Act)

AI Act amendments;

- I. Right to hold an opinion without interference and the right to freedom of expression (section 21 of the HR Act) – AI Act amendments; and
- II. Right of a person not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with and not to have their reputation unlawfully attacked (section 25 of the HR Act) – AI Act amendments.

Conflicts with the *International Covenant on Civil and Political Rights* (ICCPR)¹⁷

¹⁷ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 (UNTS 171 (entered into force 23 March 1976)).

Article 22 of the ICCPR ought to be considered when legislative amendments curtails workers' freedom to associate with and rely on the advocacy of industrial associations. As referenced above, Article 22 recognises three significant rights:

- “1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.”¹⁸

Furthermore, s 22(2) of the *Human Rights Act 2019* (QLD) is modelled off Article 22(1)¹⁹ stating:

“Every person has the right to freedom of association with others, including the right to form and join trade unions.”

The *HRA*'s explanatory notes expands on the statute's commitment to freedom of association, affirming s 22(2) “extends to all forms of association with others. It includes the freedom to choose between existing organisations and form new ones.”²⁰

1. Workers have the right to choose between existing organisations and to form new ones, the Bill would have the impact of making registration impossible in clear contravention of the international covenants.

Conflicts with *C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)*²¹ (C087)

1. C087 was ratified by Australia on 28 February 1973 and remains In Force to this day.²²
2. C087 Article 2 states:

¹⁸ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 (UNTS 171 (entered into force 23 March 1976), Article 22.

¹⁹ *Human Rights Bill 2018 (Qld) Explanatory Notes Pt 2 Div 2.*

²⁰ *Human Rights Bill 2018 (Qld) Explanatory Notes Pt 2 Div 2.*

²¹ International Labour Organisation, *C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).*

²² International Labour Organisation, *C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Ratifications of C087.*

*“Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.”*²³

3. The Bill proposes to limit the right of workers to join a truly independent union of their choosing and instead attacks this right, forcing workers back into registered organisations.

4. C087 Article 4 states:

*“Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.”*²⁴

5. Section 483B of the Bill²⁵ grants a the Commission the power to make an order about [an] ineligible entity. In particular, it states:

“On application by an entity under section 483C, the commission may make an order declaring an entity, other than an organisation, to be an ineligible entity.”

6. C087 Article 8(2) states:

*“The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.”*²⁶

7. The Commission being able to strip away the standing of an employee organisation, meets the definition of being dissolved or suspended by administrative authority. This proposed section falls short of the obligations Australia has agreed to internationally. Furthermore, the law shall not impair the guarantees provided by the Convention.

Conflicts with C098 - *Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*²⁷ (C098)

1. C098 was ratified by Australia on 28 February 1973 and remains In Force to this day.²⁸

2. C098 Article 2(1) states:

²³ International Labour Organisation, *C087 - Freedom of Association and Protection of the Right to Organise Convention*, 1948 (No. 87) Article 2.

²⁴ International Labour Organisation, *C087 - Freedom of Association and Protection of the Right to Organise Convention*, 1948 (No. 87) Article 4.

²⁵ *Industrial Relations and Other Legislation Amendment Bill 2022* s 483B.

²⁶ International Labour Organisation, *C087 - Freedom of Association and Protection of the Right to Organise Convention*, 1948 (No. 87) Article 8(2).

²⁷ International Labour Organisation, *C098 - Right to Organise and Collective Bargaining Convention*, 1949 (No. 98).

²⁸ International Labour Organisation, *C098 - Right to Organise and Collective Bargaining Convention*, 1949 (No. 98), Ratifications of C098.

“Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.”

3. It is unequivocally clear that the impositions on adverse action rights on the basis of association affiliation, is a clear breach of this article.

Conflicts with Human Rights Act 2019 (Qld)

The *Human Rights Act 2019* (Qld) further enshrines the international conventions and gives them authority within Queensland. Specifically, section 22(2)²⁹ which states:

“(2) Every person has the right to freedom of association with others, including the right to form and join trade unions.”

This Amendment Bill breaches the right to form trade unions as previously established. It is ironic that a State Government that introduced the Human Rights Act would have so little regard for its implementation.

The bill proposes to amend s 290 to change the definition of industrial activity to prevent coverage for members of industrial associations. This section currently includes “to seek to be represented by an industrial association” as a definition of *engages in industrial activity*.³⁰ By changing the definition to only cover industrial organisations, this would have the flow-on effect of members not being protected from adverse action because they choose to be represented by anyone other than the registered unions. Currently, this protection arises from s 291 relying on definitions of industrial activity in s 290, which covers seeking representation from industrial associations.³¹

Even if this legislation is by its inherent nature, an instrument designed to prop up legacy registered industrial organisations, the proposed amendments to s 290 have disastrous consequences. If by chance someone did not want to be represented by a registered organisation, they would not be protected from any adverse action because of their decision to seek representation, be it from an industrial association, lawyer, lay advocate or support person. Unless of course a workplace right is established elsewhere.

The path to registration is blocked - we don't care. NPAQ, TPAQ and other Red Union supported organisations have successfully represented members for years regardless of registration status. The various organisations are happy to leave registration only being available to those already registered.

²⁹ *Human Rights Act 2009* (Cth) s 22(2).

³⁰ *Industrial Relations Act 2016* (Qld) s 290(b)(vii).

³¹ *Ibid* s 291(b).

The General Protections regime is about individual rights

These rights are being infringed not being 'engaged with' and to suggest otherwise is contemptuous.

- a. *Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (Freedom of Association convention)* (s 4(r) of IR Act).
2. The Freedom of Association convention says the following:
 - a. Article 1: "Each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the following provisions."
 - b. Article 2: "Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation."
 - c. Article 3:
 1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.
 2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof."
 3. The Commission was required to consider this convention when interpreting s 279 and s 295 of the IR: see AOS [12] – [17]; [27] – [32].

We could potentially see a new age of victimisation of workers based on who they wish to associate with owing to the removal of industrial protections proposed by the Bill.

Comments on the proposed changes to the Incorporations Act

1. The "essential purpose" of the introduction of the Associations Act was:

"... to provide a simple system of registration allowing unincorporated associations to incorporate. In substance the system is not a reform of the law relating to unincorporated associations but the provision of machinery to allow such associations to avoid that law.": *Pine Rivers, Caboolture and Redcliffe Group Training Scheme Inc & Ors v Group Training Association Queensland & Northern Territory Inc* [2013] QCA 358 ('*Pine Rivers*') per Fraser JA (with whom Margaret McMurdo P and Fraser Atkinson J agreed) at [27].
2. The Associations Act also adopts provisions from the *Commonwealth Conciliation and Arbitration Act 1904-1934* (Cth) giving members the statutory right to make a "complaint" to the Supreme Court to seek an order giving directions for the performance and observance of the rules of the association: *Pine Rivers* per Fraser JA at [43]; see s

72(1)(a) of the Associations Act; s 58E of the *Commonwealth Conciliation and Arbitration Act 1904-1934* (Cth).

3. The effect of the NPAQ being an incorporated association is that members are able to enforce their rights in accordance with the rules or require compliance with the rules as prescribed by the statute. This is a fundamental feature of membership-based organisations and is consistent with the rights of members of other industrial associations, such organisations registered in accordance with the IR Act.

The madness of the proposed laws under the guise of ‘not having enough regulation’ is to force an even more unregulated model on members.

Summary

Protections and access to being an industrial association should be strengthened under any Government that holds workers’ rights as important. This legislation does the opposite. Workers should always have a choice about how they associate, who represents them and what is in their best interest. This legislation does the opposite.

The effect will not be to clear up non-existent ‘confusion’ among workers, but to lock them back into an inefficient system they made the conscious decision to leave in the first place. For clarity, the effect and aim of the changes is to subsidise underperforming, overtly politically partisan and inefficient legacy registered organisations by giving workers no other choice.

Stated reasons for the changes are spurious; regulation and punitive provisions already exist for industrial associations. The Government cannot and should not seek to codify the *Gilbert* decision as it is currently before the Courts.

The Government should be choosing to back the right of workers to associate, organise and unionise however they wish by opening access to declarations, and making it possible for associations to be declared an industrial association. What is actually required is to make State IR reforms that harmonise and reflect the Fair Work Act to ensure Australia is meeting its obligations under the ILO and ICCPR.

Submissions prepared by Red Union Support Hub:

A handwritten signature in blue ink, appearing to read 'Jack McGuire', is positioned above the printed name.

Jack McGuire

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Appendices

Appendix 1 - NPAQ, TPAQ & Other Red Union Supported Unions Member Submissions

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The Industrial Relations Minister, Hon Grace Grace, has admitted that the *Industrial Relations and Other Legislation Amendment Bill* limits certain human rights. According to her *Statement of Compatibility* “Individuals who are members of a **registered** organisation will arguably have their interests more effectively represented...” She believes that the limitations on human rights are both reasonable and demonstrably justifiable. We surveyed our members who have previously been members of the Queensland Teacher’s Union and Queensland Nurses and Midwives’ Union and their experiences would demonstrate that their best interests were not effectively represented. We hope that their testimonies will highlight concerns of the hard working nurses, teachers and other health professionals have with their former unions.

Statements

I had been a member (of QTU) for over 15 years ...I chose to recently join TPAQ as I am about to return to teaching. I want an ‘independent’ and ‘for the workers’ union. Freedom is important to me.

QTU said that despite acknowledging the unfairness of my situation, their legal team advised them not to represent me. They had no clear stance or ideas on how to represent me.

Lack of help to employees within qld health

Not happy with their values or what they support.
Especially the campaigns they organise.

I was being bullied by the DON & contacted QNMU for advice and assistance. They stated the DON was well known to them as a highly-skilled/expert bully, and stated it would be easier to leave that organisation rather than trying to manage the bullying.

It was becoming too expensive. When I tried to leave I was contacted by the union and coerced to not leave and then had political opinions thrown upon me by them, even though my decision to leave had nothing to do with this.

I felt my previous union was prioritizing their relationship with the government over their members. Something which I have not found in NPAQ.
TPAQ conducted a Facilities Assessment at my school - resulting in an increase to the Capital Project budget of over \$900,000 due to the expectation of EQ that teachers should teacher in substandard / under sized / COVID risked classrooms.

The NPAQ has been pivotal in representing me with issues that I have had in my employment as a nurse. I had become very disillusioned with unions in previous dealings as both an employer and an employee, the NPAQ restored my faith.

I happily left QMNU as it was clear they were merely a mouthpiece for the labour party and did not represent me. They were overpriced, and useless in representing my requests.

From when I needed assistance from 1996 to 2006 from 2008 to 2015 QMNU where about as useful as tits on a bull. They basically just do whatever business and government want and do not represent workers at all.

No support during COVID. They were very scarce on the ground. Far too connected to the Labor Party. Not all members are Labor party supporters. Labor was the party for the workers. That seems to have been forgotten

I am not a Labor party supporter and the QNMU adds supporting the Labor party in the last federal election was the main reason.

My (previous) union did not even attempt to represent me when I had my first and only employment relations concern.

They are more about getting out money and not listening to the issues that truly affect us nurses on the front line.

I have seen QNMU leave individual nurses without representation on industrial matters. "Oh sorry we can't help you with that". On other occasions they simply did not reply.

The QTU's lawyers wrote a report to allow the QTU to get out of supporting me in a WorkCover claim against my supervisor. I wrote to the QTU a letter of disgust at their treatment and it was never acknowledged. I had indisputable evidence and if the QTU had some integrity, I would not have gone through 3 years of hell trying to get 'someone' to listen and I would not have developed PTSD! I will NEVER be a QTU member ever again! As a highly professional and dedicated Experienced Senior Teacher, I am totally disgusted by this unethical behaviour by the QTU.

I switched unions in 2021, A colleague of mine had been recommending change for a while, but it took a bit of time to get my act into gear, within my research I found that NPAQ was very member orientated while I found that QNMU was not, we had been having management issues on our ward and QNMU had done nothing for staff member as the NUM at the time was also the union representative so not helpful,

and that NPAQ did indeed actually help their members,, which helped open my eyes about the problems with QNMU

I was only with QNMU as it was required by Apha. Pricing was another factor, for not much help QNMU is around \$800.00+ per year where as NPAQ for the same cover is half the price, major draw card. Overall the service is better and the communication is excellent, I am trying to convince all of my colleagues to switch, but they fear the government and the QNMU...

we need choice in who we choose for unions. as it is mandatory for registration, we need to be able to choose who and what is our best option and not just be told this is all you have.

QNMU treats their members with contempt if they disagree with QNMU policy. They have thrown us all under the bus and then sneer at members of 20 plus years

My previous union, despite being a member for 25 years, did not support me in any way over the most stressful workplace issue of my 25 year teaching career. There was no attempt to provide legal advice, mental health support or even provide options available to me.

I left the QTU because they were far too expensive and were spineless when it came to each bargaining agreement. They folded at the table every single time and I haven't seen any improvement in teaching conditions in the last 12 years. I want a union that actually believes in solidarity and fraternity (like the old working class left). The QTU only speaks of these things but has never had the 'power of facing' as George Orwell once put it.

Don't act in the interest of members if a Labor govt in power. Will only protest and ask for better conditions when liberal govt in power

Fair representation and freedom. Other unions would not represent the individual member. Had to 'tow' party line. That is not true democracy, it's corruption. This is not freedom of choice - this is corrupt.

I couldn't understand how they justified their fees. They kept going up for no extra services. Also the so called elections seem to be a farce. I have never met anyone who has actually voted in them and people get "elected" to positions of power within the unions.

I didn't want to be part of a union so closely tied to the Labor Party. My union fees were funding the political campaign of the most useless Premier and her government and I strongly object to that.

I joined TPAQ precisely because you are not part of a union, but represent, teachers, and try to address all the concerns they raise during the course of their work. The only time I heard from the last union, was when my subs were due. I had no confidence that they would have my back and perceived that they were often in league with the people who were perpetrating injustices against their own members.

Their policies, and how they choose to represent their members is completely aligned with Australian Labor Party politics. If my concerns fell outside of Labor Party rhetoric, QTU would not entertain my concerns. They would use the exact same language as the Premier of QLD in media publications. As someone who does not vote Labor, this concerns me deeply and I need another Union option that will listen to concerns outside of popular political opinion.

Left QTU. Fees too dear - sliding scale of fees not justified (unfair) - TPAQ - offers unbiased dispute support - QTU represents the employer (Principals and well as employees (teachers) resulting in a Conflict of Interest and teachers being sold out.

Due to the slackness of a QNMU representative of not getting paperwork in on time, my friend who did have a dispute was demoted. She had correspondence from her HR department saying the reason for her demotion was a direct result of not getting her submission in on time so it could not be considered.

The TPAQ have been supportive through contacting me by phone, email and text messages to check on my welfare. I have received ongoing support and advice since joining TPAQ after having to submit further complaints against a bullying Principal and being subjected to retribution for daring to stand up to a bully. The fees are half the price of the QTU and 100% more supportive.

Feel supported for any issues and wish I had been in NPAQ when I needed support for a previous Bullying issue.

NPAQ have always been easily accessible to me by phone or email and promptly reply to any of my concerns. My previous union never answered by calls or emails. In addition, NPAQ have been supportive in helping me understand my rights and various IR processes. My previous union did not seem to care about me as an individual.

A union, not aligned to government or party, whose only loyalty is to its members must be seen as a vital cog in the machinery of a democratic society.

My background with unions has been mixed...

I was just a silent member, until the night of the National Labor Conference in the 1990's. when on the eve of a Federal election a prominent trade union leader spoke at that conference. He said, paraphrased of course, if the Labor government is not

elected on Saturday we will have a general strike, for a 10 percent payrise, no, make it 20 percent. Union leadership was so embedded in the Labor political movement, if wanted to bludgeon the electorate if it got it wrong, and failed to elect a Labor government.

That was my last day as a unionist until recently when I joined the Red Union, as it is not affiliated with any political party.

TPAQ did not hesitate to support me 100% and guided me throughout the negotiation process to have me reinstated to my teaching position. They were timeously responsive to telephone enquiries throughout and also held zoom meetings for members weekly and often twice weekly to keep members updated and to address concerns from members. TPAQ was there for me to help me get through with encouragement and immense emotional support. I never got any of this in my 16 years with QTU.

NPAQ went above and beyond to support me in my dispute with my university when they would not support my needs as a breastfeeding mother or consider my needs related to my chronic illness. I will always be grateful for their support, advice, and knowledge. I trust them to care for each individual and stand up for what's right.

Senior Nurse said to NPAQ representative providing me with independent witnessing of the discussions "Why were NPAQ involved?" Stated she had a wonderful relationship with the QNMU so NPAQ wasn't needed. Exactly why I needed support not linked so intimately and closely with the management who were using power over other staff with bullying and nepotism.

Previous union let me down, basically telling me to 'google' the information when I requested assistance. I was let down by QTU on several occasions including when I required workers compensation, and when I needed a transfer due to hardship.

QMNU did not represent me and my values. QMNU would push certain political and social agendas that I felt were outside of what a union should be doing for its members and it certainly was not representative of all its members. Due to the political nature of QNMU I was concerned that my professional needs would not be met should I need them.

NPAQ promised (and have delivered) to represent me and not political ideologies. I felt I would get proper professional representation with NPAQ

QNMU showed themselves to be corrupt. They did not represent my best interests. My QNMU representative bullied me and sent me threatening emails. She attempted to force me to agree to outcomes that were not in my best interest and demanded I withdraw my request to proceed to a hearing in QIRC despite this being the initial goal of representation. My QNMU representative lied to me when I asked questions

about process, such as the ability to request integrity unit documents. My QNMU representative did not effectively undertake a negotiation/mediation process - she did not provide written documentation of conversations, did not involve me adequately in the negotiation process and did not take my requests to the 'table' of negotiation. I am disgusted with the way that QNMU conduct themselves and would be terrified to see an outcome where they are the only option for union representation in QIRC.

Previously I was a member of united voice now united workers union. I left because the higher managers in the QAS were union delegates. The people causing the issues were meant to then be supporting me. NPAQ were prompt and professional when UV didn't return phone calls.

I felt I wasn't represented by the legacy unions with any vigour.

Having competition in the market keeps people and organisations honest, competitive, more accountable. Having distance between unions and governments, keeps government more honest and accountable. It reduces corruption. It's no surprise the Government wants to limit their accountability, and shut down or limit the NPAQ and TPAQ for example.

I left my old union for a union who valued me as a person. With NPAQ I am treated with respect for my workload/workplace concerns and provided with assistance and steps I can take. I feel seen and appreciated. They do not expect everyone to have the same views and they respect people for their differences; something that was not at my old union as people with diverse opinions were left without any help. I am so thankful that I found an accepting and caring union who supports its members regardless.

I felt that my union did not support me with my workplace concerns and told me it didn't matter. I was treated like a number, not a person and when I raised workplace workload concerns they would never reach out to me about the concerns I had sent them.

Heavy political Labor Party marketing by QNMU. In their magazines and practically telling people how to vote. I was in the QNMU for years and years so was thrilled when another Union which was apolitical and much cheaper came along. It was recommended by a colleague and I jumped at the chance. I was also able to have the compulsory Professional Indemnity Insurance through Red Union. Because this is a compulsory insurance required for our Registration, at least there was now a choice of who I purchased that through. I would not be happy if I did not continue to have that choice. There is no way I would go back to QNMU.

They never provided support or help when I needed it. They defended the work place and not me. So I did not want to continue to pay to a union that didn't work for me. They never even tried to resolve my work place issue.

Unable to assist me on 3 occasions over roughly 40 years. I have resigned from the QTU three times and won't be going back

QMNU more interested in themselves, huge membership cost, and don't stand up for the right causes. Some corrupt and lazy self-promoting nurses I have worked with are QMNU reps.

Coercive behaviour of union requiring agreement to behaviour that was detrimental to a good workplace. Whenever a Conservative Government was in power the union would try for a 10%+ pay rise. Whenever a Labour Government was in power, the union would accept a 3% pay rise. The Union was never independent of Government.

Twice I needed assistance from QTU and both times they threw their hands in the air and did nothing. One of the times was when significant code of conduct breaches were happening at school and many staff members reported it and were all ignored by QTU.