Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019

(Amendments to be moved by Senator Lambie, on behalf of the Jacqui Lambie Network, in committee of the whole)

(1) Page 2 (after line 12), after clause 3 insert:

4 Review of this Act

(1) The Minister must cause an independent review to be conducted of the operation of the amendments made by this Act.

(2) The review must be commenced as soon as practicable after the end of 12 months after this Act commences.

(3) The review must examine:
   (a) the effectiveness of the amendments made by this Act; and
   (b) whether there is a need for further amendments to the Fair Work (Registered Organisations) Act 2009 relating to the administration of dysfunctional organisations and a public interest test for amalgamations of organisations.

(4) The persons who conduct the review must give the Minister a written report of the review.

(5) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

(2) Schedule 1, item 1, page 3 (after line 9), after the item, insert:

1A Section 6 (definition of serious contravention)

Repeal the definition, substitute:

serious contravention, in relation to a contravention of a civil penalty provision by an organisation, a branch of an organisation or a person who is, or was, an officer or employee of an organisation or a branch of an organisation, means a contravention that:
(a) either or both:
   (i) materially prejudices the interests of the organisation or branch, or the members of the organisation or branch; or
   (ii) materially prejudices the ability of the organisation or branch to pay its creditors; and

(b) is:
   (i) engaged in knowingly; and
   (ii) a part of a systematic pattern of conduct relating to one or more persons.

[serious contravention; designated finding]

(3) Schedule 1, item 2, page 3 (lines 13 to 27), omit subsection 9C(1), substitute:

Designated findings

(1) A designated finding, in relation to a person, is:
   (a) any conviction against the person for an offence against a designated law where a term of imprisonment is imposed on the person for the offence; or
   (b) any order for the person to pay a pecuniary penalty for the serious contravention of a covered provision; or
   (c) any order for the person to pay a pecuniary penalty for the contravention of a covered provision if the pecuniary penalty ordered is 60% or more of the maximum penalty for that contravention.

(1A) A covered provision is any of the following:
   (a) a civil penalty provision of this Act;
   (b) a civil remedy provision of the Fair Work Act;
   (c) a civil remedy provision of the Building and Construction Industry (Improving Productivity) Act 2016;
   (d) a WHS civil penalty provision of the Work Health and Safety Act 2011;
   (e) a provision of a State or Territory OHS law (within the meaning of the Fair Work Act), other than an offence.

(1AA) However, designated finding does not include an order to pay a pecuniary penalty for a contravention of a civil penalty provision of the Fair Work Act if the conduct that constitutes the contravention consists solely of:
   (a) a failure or refusal by the person to attend for work; or
   (b) if the person attends work—a failure or refusal to perform any work at all while attending for work.

[designated finding; industrial action]

(4) Schedule 1, item 11, page 6 (lines 15 to 20), omit subsection 222(1), substitute:

(1) The Commissioner may apply to the Federal Court for an order under this section if the Commissioner considers that any of the grounds for disqualification set out in section 223 apply in relation to a person.

[standing]

(5) Schedule 1, item 11, page 7 (after line 3), after subsection 222(3), insert:

(3A) If, after an application is made for an order under subsection (2), the applicant and the person to whom the application relates to reach an agreement, the Court:
   (a) must consider the agreement in making the order; and
(b) may make any other order the Court considers appropriate for the purposes of giving effect to the agreement.

(3B) In determining an appropriate period for a person to be disqualified from holding office in an organisation, if the person holds such an office and the term of that office has not expired at the time of the order, the Court must consider whether it is appropriate to disqualify the person for a period that exceeds the remainder of the person’s term in the office.

[disqualification order]

(6) Schedule 1, item 11, page 7 (line 8), omit paragraph 223(1)(a), substitute:

(a) 3 or more designated findings have been made against the person within the last 3 years; or

[grounds for disqualification]

(7) Schedule 1, item 11, page 7 (lines 22 to 28), omit paragraph 223(3)(a), substitute:

(a) 3 or more designated findings have been made against any organisation within the last 3 years in relation to conduct engaged in while the person is an officer of the organisation; and

[grounds for disqualification]

(8) Schedule 1, item 11, page 7 (line 29), after “the person”, insert “, having the authority to do so,”.

[grounds for disqualification]

(9) Schedule 1, item 11, page 8 (before line 1), before subsection 223(4), insert:

(3B) For the purposes of paragraph (3)(b), in determining whether a person failed to take reasonable steps to prevent the conduct mentioned in paragraph (3)(a), regard must be had to the following:

(a) the office held by the person in the organisation when the conduct occurred;

(b) whether the conduct related to the branch of the organisation the person was a member of.

[grounds for disqualification]

(10) Schedule 1, item 11, page 8 (line 10) to page 9 (line 5), omit subsections 223(5) and (6), substitute:

Covered conduct and bringing organisation into disrepute

(5) A ground for disqualification applies in relation to a person who holds an office in an organisation if:

(a) the person engaged in covered conduct; and

(b) the person’s covered conduct was part of a pattern of conduct by the person; and

(c) the person continuing to hold the office brings the organisation into disrepute.

(6) A person engaged in covered conduct if, in any criminal proceeding against the person:

(a) the person was found during the last 10 years to have committed an offence against a law (a relevant law) of the Commonwealth or a State or Territory that is punishable by a term of imprisonment of 4 years or more; or

(b) both of the following apply:
(i) the person was found during the last 10 years to have committed 2 or more offences against one or more relevant laws and each offence was punishable by a term of imprisonment of less than 4 years;
(ii) the sum of the terms of punishment is 4 years or more.

(7) A person engaged in covered conduct if, in any civil proceeding against the person:
(a) the person was found during the last 10 years to have contravened a law (a relevant law) of the Commonwealth or a State or Territory with a maximum pecuniary penalty of 600 penalty units or more; or
(b) both of the following apply:
   (i) the person was found during the last 10 years to have committed 2 or more contraventions of one or more relevant laws and the maximum pecuniary penalties for each contravention is less than 600 penalty units;
   (ii) the sum of the penalties is 600 penalty units or more.

(8) For the purpose of paragraph (5)(b), a pattern of conduct by a person may begin before the person became an officer of the organisation.

(9) To avoid doubt, a person continuing to hold an office in an organisation may bring the organisation into disrepute for reasons that do not relate to the person engaging in covered conduct.

[grounds for disqualification]

(11) Schedule 1, item 14, page 11 (lines 11 and 12), omit “, Minister, or a person with a sufficient interest”.

[consequential—standing]

(12) Schedule 1, item 17, page 12 (lines 22 to 26), omit paragraph (2)(d), add:
   (d) for the ground mentioned in subsection 223(5)—conduct engaged in, for paragraphs 223(5)(a) and (b), after commencement.

[grounds for disqualification]

(13) Schedule 1, item 17, page 12 (lines 27 to 29), omit subitem (3), substitute:

(3) For the purposes of paragraph 222(2)(b) of the Act as amended by this Schedule, in considering whether it would be unjust to disqualify a person from holding office in an organisation, the Court may:
   (a) if matters relate to convictions, injunctions, orders, or findings against the person in a criminal or civil proceeding—only have regard to matters occurring after commencement; or
   (b) otherwise—have regard to matters occurring before or after commencement.

[disqualification orders]

(14) Schedule 2, item 4, page 15 (lines 7 to 13), omit the paragraph beginning “An applicant can apply” in section 27A, substitute:

The Commissioner can apply to the Court for cancellation. If the Commissioner applies for cancellation and the Court finds that the ground for the application is established, the Court may consider making alternative orders instead of cancellation only if the organisation satisfies the Court that cancellation would be unjust.
Schedule 2, item 4, page 15 (line 23) to page 16 (line 14), omit sections 28 to 28B, substitute:

28 Application for cancellation of registration

The Commissioner may apply to the Federal Court for an order cancelling the registration of an organisation, if the Commissioner considers that any one or more of the grounds in Division 3 exist in relation to the organisation.

[standing]

Schedule 2, item 4, page 16 (line 18), omit “or 28A”.

[consequential—standing]

Schedule 2, item 4, page 17 (after line 7), after subsection 28C(2), insert:

(2A) In working out whether there is a record for the purposes of paragraph (1)(c), the Court must not have regard to conduct that would constitute not complying with designated laws by officers or members of the organisation or part of the organisation if the conduct consisted solely of:

(a) a failure or refusal by the officers or members to attend for work; or

(b) if the officers or members attended work—a failure or refusal to perform any work at all while attending for work.

[industrial action]

Schedule 2, item 4, page 17 (line 22) to page 18 (line 7), omit sections 28D and 28E, substitute:

28D Ground—serious offence committed by organisation

For the purposes of an application under section 28, a ground exists in relation to an organisation if:

(a) both:

(i) the organisation is found, in criminal proceedings against the organisation in the last 3 years, to have committed an offence against a law of the Commonwealth or a State or Territory;

(ii) the offence is punishable on conviction by a penalty for a body corporate of (or equivalent to) at least 1,500 penalty units; or

(b) 3 or more designated findings have been made in the last 3 years against a substantial number of the members of the organisation or of a section or class of members of the organisation.

[ground for disqualification]

Schedule 2, item 4, page 18 (line 9), omit “or 28A”.

[consequential—standing]

Schedule 2, item 4, page 18 (line 23), omit “or 28A”.

[consequential—standing]

Schedule 2, item 4, page 19 (after line 10), after subsection 28G(2), insert:

(2A) However, subsection (2) does not cover industrial action if the action organised or engaged in by the organisation, or the members mentioned in paragraph (1)(b), consisted...
solely of a failure or refusal by employees to attend for work or a failure or refusal to perform any work at all by employees who attend for work. [industrial action]

(22) Schedule 2, item 4, page 20 (lines 7 and 8), omit paragraph 28J(1)(a), substitute:
   (a) the Court finds:
       (i) that a ground set out in the application is established; and
       (ii) the conduct establishing the ground is part of serious and systemic pattern of conduct; and

   [disqualification order]

(23) Schedule 2, item 4, page 20 (lines 20 and 21), omit “The Court may do this whether or not an application for any of those orders has been made under section 28A.”. [consequential—standing]

(24) Schedule 2, item 4, page 21 (lines 5 to 12), omit subsection 28L(1), substitute:

   (1) The Federal Court may make orders under this Division if:
       (a) the Court finds that a ground set out in an application under section 28 in relation to an organisation is established; and
       (b) the organisation satisfies the Court that it would be unjust to cancel the registration of the organisation.

   [consequential—standing]

(25) Schedule 2, item 4, page 23 (line 30), omit “or 28A (or both)”. [consequential—standing]

(26) Schedule 2, item 4, page 24 (line 3), omit “or 28A”. [consequential—standing]

(27) Schedule 2, item 9, page 24 (lines 20 to 27), to be opposed. [delegation by the Minister]

(28) Schedule 2, item 10, page 25 (line 3), omit “or 28A”. [consequential—standing]

(29) Schedule 2, item 11, page 25 (line 6), omit “or 28A”. [consequential—standing]

(30) Schedule 2, item 11, page 25 (lines 13 and 14), omit paragraph (1)(c). [ground for disqualification]

(31) Schedule 3, page 26 (line 1) to page 33 (line 27), to be opposed. [administration of dysfunctional organisations]

(32) Schedule 4, page 34 (line 1) to page 40 (line 15), to be opposed. [public interest test for amalgamations]