



DECISION

Fair Work Act 2009
s.394—Unfair dismissal

Adam Poulter

v

The ACT Greens Incorporated
(U2024/3401)

DEPUTY PRESIDENT DEAN

CANBERRA, 20 AUGUST 2024

Application for relief from unfair dismissal – minimum employment period (Small Business) – associated entities.

[1] Mr Adam Poulter (the Applicant) has made an application for a remedy pursuant to s.394 of the *Fair Work Act 2009* alleging that he was unfairly dismissed from his employment with the ACT Greens Incorporated (ACT Greens or Respondent). He had been employed as Party Director and his employment contract provided that the terms and conditions of his employment were governed by the contract and the *Australian Greens Multi-Enterprise Staff Collective Agreement 2021* (the Agreement).

[2] The Respondent raised a jurisdictional objection to the application on the grounds that it is a small business employer and the Applicant had not completed the minimum employment period.

[3] Section 382(a) of the Act provides that a person is protected from unfair dismissal if they have completed a minimum employment period with the employer.

[4] The minimum employment period is defined in s.383 of the Act:

“383 Meaning of minimum employment period

The **minimum employment period** is:

- (a) if the employer is not a small business employer—6 months ending at the earlier of the following times:
 - (i) the time when the person is given notice of the dismissal;
 - (ii) immediately before the dismissal; or
- (b) if the employer is a small business employer—one year ending at that time.”

[5] There is no dispute that the Applicant was employed by the Respondent from 3 April 2023 until 6 March 2024, being a period of about 11 months. The parties disagreed as to whether the Respondent is a small business within the meaning of the Act because the Applicant

contends the Respondent has ‘associated entities’, those being other ‘Greens’ organisations. The Commission is therefore required to determine whether the Respondent is a small business employer. If the Commission finds that the Respondent is a small business employer, then it follows that the Applicant has not completed the minimum employment period as required by s.383 of the Act and his application must be dismissed.

[6] The application was listed for hearing, where Ms J Lee of Professionals Australia appeared for the Applicant and Mr B Goodger of Signus Legal appeared with permission for the Respondent.

[7] The following persons gave evidence for the Applicant:

- Ms Sheridan Burnett – has held various office bearer roles in ACT Greens
- Mr David Schwartz – has held various office bearer roles in NSW Greens
- Mr Michael Brewer – former Secretary and Convenor/Co-Convenor ACT Greens

[8] The following persons gave evidence for the Respondent:

- Mr James Cruz – Co-Convenor ACT Greens
- Ms Julie Randall – Co-Convenor ACT Greens
- Ms Jillian Reid – Principal National Council representative ACT Greens
- Mr Denby Angus – Treasurer ACT Greens
- Mr Andrew Wyndberg – ACT Greens
- Mr Jonathan Parry – Convenor NT Greens
- Ms Samantha Nugent – Office Manager ACT Greens

[9] For the reasons set out below, I find that the Respondent is not a small business employer and accordingly the jurisdictional objection is dismissed and the application can proceed.

Relevant legislative provisions

[10] Section 23 of the Act sets out the meaning of ‘small business employer’. It states:

- “(1) A national system employer is a *small business employer* at a particular time if the employer employs fewer than 15 employees at that time.
- (2) For the purpose of calculating the number of employees employed by the employer at a particular time:
- (a) subject to paragraph (b), all employees employed by the employer at that time are to be counted; and
 - (b) a casual employee is not to be counted unless, at that time, he or she has been employed by the employer on a regular and systematic basis.
- (3) For the purpose of calculating the number of employees employed by the employer at a particular time, associated entities are taken to be one entity.

- (4) To avoid doubt, in determining whether a national system employer is a *small business employer* at a particular time in relation to the dismissal of an employee, or termination of an employee's employment, the employees that are to be counted include (subject to paragraph (2)(b)):
- (a) the employee who is being dismissed or whose employment is being terminated; and
 - (b) any other employee of the employer who is also being dismissed or whose employment is also being terminated."

[11] Relevant for the purposes of s.23(3) is s.50AAA of the *Corporations Act 2001* (Corporations Act) which sets out the meaning of 'associated entity' in the following terms:

"50AAA Meaning of *associated entity*

- (1) One entity (the *associate*) is an associated entity of another entity (the *principal*) if subsection (2), (3), (4), (5), (6), (7) is satisfied.
- (2) This subsection is satisfied if the associate and the principal are related bodies corporate.
- (3) This subsection is satisfied if the principal controls the associate.
- (4) This subsection is satisfied if:
 - (a) the associate controls the principal; and
 - (b) the operations, resources or affairs of the principal are material to the associate.
- (5) This subsection is satisfied if:
 - (a) the associate has a qualifying investment (see subsection (8)) in the principal; and
 - (b) the associate has significant influence over the principal; and
 - (c) the interest is material to the associate.
- (6) This subsection is satisfied if:
 - (a) the principal has a qualifying investment (see subsection (8)) in the associate; and
 - (b) the principal has significant influence over the associate; and
 - (c) the interest is material to the principal.
- (7) This subsection is satisfied if:
 - (a) an entity (the *third entity*) controls both the principal and the associate; and
 - (b) the operations, resources or affairs of the principal and the associate are both material to the third entity.

- (8) For the purposes of this section, one entity (the *first entity*) has a *qualifying investment* in another entity (the *second entity*) if the first entity:
- (a) has an asset that is an investment in the second entity; or
 - (b) has an asset that is the beneficial interest in an investment in the second entity and has control over that asset.”

[12] Further, s.50AA of the Corporations Act defines ‘control’ as follows:

“50AA Meaning of *control*

- (1) For the purposes of this Act, an entity controls a second entity if the first entity has the capacity to determine the outcome of decisions about the second entity’s financial and operating policies.
- (2) In determining whether the first entity has this capacity:
- (a) the practical influence the first entity can exert (rather than the rights it can enforce) is the issue to be considered; and
 - (b) any practice or pattern of behaviour affecting the second entity’s financial or operating policies is to be taken into account (even if it involves a breach of an agreement or a breach of trust).
- (3) The first entity does not control the second entity merely because the first entity and a third entity jointly have the capacity to determine the outcome of decisions about the second entity’s financial and operating policies
- (4) If the first entity:
- (a) has the capacity to influence decisions about the second entity’s financial and operating policies; and
 - (b) is under a legal obligation to exercise that capacity for the benefit of someone other than the first entity’s members;
- the first entity is taken not to control the second entity.”

The Greens legal structure

[13] The Respondent is an association incorporated under the *Associations Incorporation Act 1991* (ACT).

[14] The Charter and Constitution of the Australian Greens (ie the national body) was put into evidence, as was the Constitution of the Respondent and the NSW Greens.

[15] Relevantly, the preamble of the Constitution of the Australian Greens is in the following terms:

“This Constitution sets out an organisational structure that is a confederation of state and territory parties (Member Bodies). This Constitution sets out the role and powers of The Greens. This constitution seeks to maximise opportunities for productive co-operation between individual Members and Member Bodies.

This Constitution requires all Member Bodies of The Greens to agree to:

- a) Abide by The Charter of The Greens;
- b) Abide by this Constitution and the decisions of the National Organisation;
- c) Participate fully and equitably in developing national policies and campaigns;
- d) Use similar decision making procedures, membership criteria and other procedures;
- e) Support affirmative action and practice participatory, democratic and accountable internal decision making processes; and
- f) Share the costs of national and international organisation through payment of levies.

This Constitution further requires that the Member Bodies of The Greens and their Constituent Groups have explicit autonomy to make decisions relating to their own affairs provided that these decisions remain compatible with The Charter, and the policies of The Greens.”

[16] Clause 2 of the Constitution requires that “all Member Body constitutions must remain compatible with this Constitution”, and “where a Member Body or constituent group’s constitution is incompatible with this Constitution, to the extent of their inconsistency, this Constitution will prevail”.

[17] Clause 3.2 of the Constitution provides that “Member Bodies have the autonomy to make decisions relating to their own affairs according to their own constitutions provided that:

- a) these decisions remain compatible with the Charter and the agreed policies of The Greens;
- b) they take into consideration national and Member Body campaign priorities and election strategies”.

[18] Clause 4 of the Constitution provides that Constituent Groups of The Greens may not publicly forward ideas at variance with the Charter without calling into question their continued membership of The Greens.

[19] In terms of membership, the Constitution at clause 7 provides that “Member Bodies agree to abide by this Constitution and to adopt The Charter of The Greens as their own Charter”, and “Member Bodies agree to abide by the decisions of the National Organisation and the outcomes of National Ballots”.

[20] In clause 8 of the Constitution, “A Member Body which has been expelled will forfeit any right and claim upon The Greens and its property and funds. It will cease to be a related political party of The Greens and all other Member Bodies. It will remain liable for any outstanding debts to The Greens”.

[21] In terms of the Constitution of the Respondent, it provides under the heading of *Principles and objectives* that “the ACT Greens operates as a member body of the Australian Greens, the national confederation of State and Territory Green parties”, and that “this constitution is subordinate to the Charter of the Australian Greens and the national constitution of the Australian Greens, so if there is an inconsistency, the national documents prevail”.

[22] The objectives set out in the Respondent’s constitution include that it is to strive to implement policies based on the Charter of the Australian Greens, and to support and assist members of the federal parliament and the ACT Legislative Assembly who are members of the Australian Greens or who agree with the Charter of the Australian Greens.

The case for the Applicant

[23] The essence of the Applicant’s case is that the Australian Greens exert sufficient control over all State and Territory Greens organisations such that those organisations should be considered to be associated entities with and controlled by the Australian Greens within the definition of s.50AAA(7) of the Corporations Act.

[24] In support of the Applicant’s case, the following submissions were made:

- “12. The Australian Greens (The Greens) Incorporated (Australian Greens) is a national confederation of state and territory member bodies (Member Bodies), which includes the ACT Greens. All individual members of Member Bodies are therefore members of the Australian Greens.
13. The state and territory parties are established by their respective Constitutions as Member Bodies of the Australian Greens. National Conference, comprised of delegates from each of the Member Bodies, is the supreme governing body of the Australian Greens. All by-laws, rules, procedures and processes of the Member Bodies are subject to, and must be consistent with, the Australian Greens Constitution (AG Constitution). Amendments to the AG Constitution can only be made through National Conference in accordance with clause 43.
14. Member Body Constitutions establish, or provide for the establishment of, local group and/or other decision-making structures. For example, the Constitution of the Greens NSW provides at clause 2.1 that the Greens NSW (GNSW) is ‘*composed of local groups ('member-groups'), non-group individual members ('members (non-group)) and a Delegates Council*’. Clause 2.3 of the GNSW Constitution provides that ‘*[e]ach member-group is responsible for its own office-bearers, finances, policy platforms and all campaigns or activities which they undertake*’ and ‘*[m]ember- groups shall have their own constitutions, or organisational rules, from which they shall function*’.
15. The Parramatta Greens is a member-group of GNSW. The Constitution of the Parramatta Greens establishes the operational and governance structures of the sub-group. Clause 1 of the Parramatta Greens Constitution confirms that the instrument is subordinate to the GNSW Constitution.

16. The constitutive documents of the Australian Greens, the Member Bodies, and their respective sub- groups or branches clearly demonstrate the parties' intention to maintain democratic decision- making and operational processes throughout the national organisation. One of the 'four pillars', upon which the Australian Greens parties are founded, is a commitment to 'grassroots participatory democracy' in order for party members to form a significant base and have meaningful power.
17. The Applicant asserts that the deliberate formation of democratic decision-making processes and operations is not inconsistent with a finding that the Member Bodies, collectively constituted as the Australian Greens, have the capacity to make significant decisions about the operational and financial affairs of individual Member Bodies.

Australian Greens Constitution and By-Laws

18. Clause 3.2 of Australian Greens Constitution provides that:

Member Bodies have the autonomy to make decisions relating to their own affairs according to their own constitutions provided that:

- a) *these decisions remain compatible with the Charter and the agreed policies of The Greens;*
- b) *they take into consideration national and Member Body campaign priorities and election strategies.*

19. Contrary to the ACT Greens' submission, clause 3.3 of the AG Constitution does not modify clause 3.2 or *permit* a Member Body to promote a policy that differs substantially from the national policies of the Australian Greens. The provision imposes a requirement about public communications *if* a Member Body intends to promote a policy that differs substantially from national policy *despite* clause 3.2.
20. Clause 34.4 of the Australian Green Constitution provides that '*[p]olicies which concern only one Member Body or Constituent Group may be decided by that body or group provided the policies remain compatible with The Charter and the agreed policies of The Greens*'. This is consistent with the fact that policies and initiatives must be '*formulated and interpreted with the maximum possible participation of Individual Members*'.
21. As per the above provisions, the ability for Member Bodies to make decisions about their own affairs is subject to the requirement for decisions to be compatible with the Australian Greens Charter, AG Constitution, and agreed policies, including the Australian Greens By-Laws (AG By- Laws). Further, Member Bodies' decision-making autonomy is *provided by* the AG Constitution, the instrument controlled by members of the national organisation collectively through National Conference.
22. The AG Constitution, AG By-Laws and other agreed policies provide a framework with substantial scope. The operational and financial matters determined and

prescribed by Member Bodies collectively in the Australian Greens Constitution and By-Laws include the following:

- the formation of policy platforms and initiatives;
- the formation of national Working Groups and other bodies established for particular purposes from amongst Member Bodies;
- donations and conflicts of interest policies;
- branding, use of trademarks, and communications;
- record-keeping requirements;
- certain financial requirements;
- a funding framework and formula for Member Body contributions to the national organisation;
- a Code of Conduct for MPs;
- cost sharing arrangements between Member Bodies to facilitate participation in the national organisation;
- the keeping and maintenance of the national register of members; and
- inter-state complaints and conflict resolution.

Further Operational Matters

- 23 As outlined in the Witness Statements of Ms Sheridan Burnett and Mr David Schwartz, many of the systems used by Member Bodies to undertake their core activities are organised and managed centrally through the national office.
24. In *Myburgh v Variety NSW the Children's Charity*, Commissioner Harrison found that, in the circumstances of the matter, '*the presence of a common web site, shared publicity material and information sharing*' was not a basis on which the applicant could establish the relevant entities were associated.
25. Rather than being superficial organisational and logistical arrangements between the Member Bodies, the Applicant submits that the shared systems, managed by the federal body as a collective according to a prescribed framework, relate to the key operations of the Member Bodies, namely member interactions and campaigning.
26. The National Council has the power to employ national office staff under the AG Constitution and the ACT management committee has the power to employ staff under the ACT Greens Constitution.
27. The Member Bodies are not required to participate in enterprise bargaining or apply the terms of the *Australian Greens Multi Enterprise Staff Collective Agreement 2021*. However, in practice, employees within the national office and the employees of Member Bodies are employed in accordance with the terms and conditions of employment in the EA, whether or not the Member Body is covered by the EA.

Registered Political Parties

28. As outlined by the ACT Greens, the party is registered as the 'ACT Greens' in the ACT under the *Electoral Act 1992* (ACT). It is entirely logical for the party to be

registered in the name of the territory association, given that no members of the Australian Greens, other than members of the ACT Greens, are entitled to run as a candidate or vote in an ACT election.

29. In relation to federal elections, the Australian Greens is registered as a political party under the *Commonwealth Electoral Act 1918* (Cth) (CE Act), and the following are registered as related second-tier parties:
- Queensland Greens
 - The Australian Greens – Victoria
 - The Greens (WA) Inc
 - The Greens NSW.
30. The ACT Greens is not a registered political party under the CE Act. This means that ACT Greens candidates run as candidates for the Australian Greens, and all election funding payments for ACT Greens candidates in federal elections are received by the Australian Greens.

Conclusion

31. The Applicant asserts that the Australian Greens, being the body comprised of its constituent Member Bodies, has a sufficient degree of control over the operational and financial affairs of the ACT Greens to be considered an ‘associated entity’ in satisfaction of subsections 50AAA(3), (4) and (7) of the Corporations Act, for the purposes of section 23(3) of the FW Act. Most relevantly, the Applicant asserts that, in satisfaction of subsection 50AAA(7) of the Corporations Act:
- a) the Australian Greens, being the sum of its constituent Member Bodies, ‘controls’ the individual Member Bodies; and
 - b) the operations, resources or affairs of the Members Bodies are material to the Australian Greens.
32. The number of employees employed by the Australian Greens and the ACT Greens, or by the national office and all Member Bodies, at the time of the Applicant’s dismissal was greater than 15. As such, the Applicant submits that the ACT Greens was not a ‘small business employer’ within the meaning at section 23 of the FW Act and the Respondent’s jurisdictional objection should be dismissed.” (Footnotes omitted)

[25] Mr Brewer, the Convenor/Co-Convenor on the Management Committee of the ACT Greens from 2021 to 2023, gave evidence that the purpose of the ACT Greens is to serve as the ACT branch of the Australian Greens. This involved electing candidates to stand in general elections in both the ACT and federal elections, participating in ACT and federal campaigns to advance the interests of the movement, as defined by the ‘Four Pillars’ (which is the basis on which the Australian Greens were founded), and developing ACT specific policies and contributing to the development of the Australian Greens policy.

[26] Mr Brewer gave evidence that each Member Body must pay a portion of its income to the Australian Greens. Further, the Constitution of the ACT Greens must align to the Constitution of the Australian Greens and to the extent there was any inconsistency, the Australian Greens' constitution prevailed.

[27] Ms Burnett, who had held various office-bearer roles in the ACT Greens, including Secretary and Deputy Convenor, and roles on the Governance Working Group, explained that the Australian Greens is a national confederation of state and federal member bodies, and its National Conference is comprised delegates from each of the Member Bodies, which is the supreme governing body of the Australian Greens. She said many of the systems used by Member Bodies to undertake their core activities are organised and managed centrally through the Australian Greens. Further, all party branding is developed and managed by the Australian Greens.

[28] Mr Schwartz gave evidence he had held various roles in the NSW Greens, including Treasurer, Campaign Coordinator, and Convenor. He said the Australian Greens develops, reviews and maintains the policies portfolio and the National Council (ie delegates of Member Bodies) makes decisions on various aspects of policy and election priorities. He also gave evidence that the Australian Greens undertakes fundraising for federal elections and for State and Territory elections. He further stated that the Australian Greens provides the core IT systems for Member Bodies.

[29] Two of the Applicant's witnesses gave evidence that they believe the Australian Greens has 15 or more employees.

The case for the Respondent

[30] The Respondent denied that the Australian Greens exerted control over the Member Bodies and contended instead that there was a 'collaborative approach' between Member Bodies that shared resources and materials.

[31] The witness statements for each of the Respondent's witnesses were in the form of a 'question and answer' style with the following questions asked:

1. How long have you been a member of The ACT Greens?
2. Are you a member of The Australian Greens?
3. How long have you been a member of the Management Committee for The ACT Greens?
4. In your role as a member of the Management Committee for The ACT Greens, have you had any interactions with anyone from The Australian Greens?
5. If the answer to question 3 is yes, please describe those interactions. Specifically, why were you in contact with The Australian Greens and what was the purpose of that contact?
6. In your role as a member of the Management Committee, have you ever felt that The Australian Greens were seeking to control or influence the financial and operating policies of The ACT Greens?
7. If the answer to question 5 is yes, please describe why you feel this and how your feel The Australian Greens were trying to do this.

8. Are you aware of any instance where The Australian Greens has sought to control or influence the financial and operating policies of any other member body?
9. If the answer to question 7 is yes, please describe how the Australian Greens were trying to do this.
10. Have you ever had reason to feel that The ACT Greens was not independent from The Australian Greens in its operations?

[32] In each case, the answers to questions 6, 8 and 10 was no (or in one case, the answer was 'not applicable').¹

[33] The Respondent submitted that the Applicant did not produce evidence to show that the Australian Greens had any influence or control over the Respondent's financial policies, nor any practice by which it could affect the Respondent's financial policies, which was necessary to satisfy s.50AAA(7).

[34] The Respondent pointed to sections 2.3 and 3.2 of the Australian Greens constitution in support of its contention that that the entities were not associated, arguing in respect of section 2.3 that a conflict between the constitutions needed to arise before the section was relevant, and in respect of section 3.2 that Member Bodies can exercise autonomy to make decisions as long as they were compatible with the Charter and the constitution of the Australian Greens.

[35] The Respondent contended that there were no implicit or explicit powers in the constitution of the Australian Greens to control the internal affairs of Member Bodies. In this regard, it said that the Management Committee of the Respondent retained the power to make its own decisions and manage the affairs of the Respondent independently in accordance with section 60(2) of the Associations Incorporation Act 1991 (ACT), and that sections 3.2 and 3.3 of the constitution of the Australian Greens confirmed the Respondent had autonomy to make decisions about its own affairs in accordance with its own constitution.

[36] In relation to the fact that the Agreement was applied to the Applicant, the Respondent stated that it voluntarily applied the terms of the Agreement but was not directed or required to do so by the Australian Greens. It also noted it was not an employer covered by the Agreement but for this voluntary adoption, and the incorporation of the terms of the Agreement to the Applicant's employment contract did not grant the Australian Greens any right or power to direct the Applicant in his employment.

[37] The Respondent in its submissions set out various provisions of the ACT Greens constitution and asserted that the Australian Greens:

- a. were not a member of the Respondent and no right to vote at any meeting of members of the Respondent;
- b. had no right to any representation on the Management Committee of the Respondent;
- c. the individual appointed to the position of principal delegate of the Respondent is a representative of the Respondent to the Australian Greens;
- d. the Management Committee of the Respondent had the power to make its own decisions and manage the affairs of the Respondent independently in accordance with s.60(2) of the Associations Incorporation Act 1991 (ACT);

- e. sections 3.2 and 3.3 of the Australian Greens constitution confirm the Respondent has autonomy to make decisions relating to its own affairs in accordance with its own constitution; and
- f. section 50AAA(7) of the Corporations Act 2001 relates to the scenario of a third entity controlling a principal and an associated entity, which does not correspond with the relationship between the Australian Greens and the Respondent because, as it pertains to voting rights:
 - 1. as between these two entities, there is not third entity; and
 - 2. as between the Australian Greens and the Member Bodies, the Australian Greens is not a member of the Respondent; and
 - 3. the ability of Member Bodies to jointly have the capacity to determine the outcome of decisions about financial and operating policies of the Australian Greens does not constitute control pursuant to section 50AA(3) of the Corporations Act 2001.

[38] The Respondent also pointed to section 14 of the Australian Greens constitution which deals with the make up of the National Council, and noted that the Respondent has never been allocated more than one vote at a meeting of the National Council of the Australian Greens.

[39] In its conclusion, the Respondent submitted that when the relationships of the Australian Greens and its Member Bodies were properly considered within the governance context, including actual decisions and decision-making processes, it was clear that the Respondent is not an associated entity of the Australian Greens or any other State or Territory Greens organisation within any of the definitions of s.50AAA of the Corporations Act. As such, the Respondent submitted it was a small business employer and the Applicant was therefore not entitled to protection from unfair dismissal.

Are the ACT Greens and The Australian Greens associated entities?

[40] I am satisfied that the ACT and Australian Greens are associated entities and I accept the Applicant's submissions in this regard. Specifically, I am satisfied that the requirements of s.50AAA(7) are met in that the Australian Greens 'controls' the Member Bodies, and the operations, resources or affairs of the Member Bodies are material to the Australian Greens. In all likelihood s.50AAA(3) and (4) are also met however only one subsection in s.50AAA is required to be satisfied.

[41] In coming to this decision, it is important to note that the Commission makes decisions based on facts, not feelings. To the extent the evidence of the Respondent is about its witnesses' feelings, it is of no use to the Commission in determining whether the Australian Greens and the ACT Greens (or any other Member Body) are associated entities.

[42] What is clear from the Australian Greens constitution is that the Australian Greens controls its Member Bodies to the extent necessary for the entities to be associated. This is evident from the extracts of their constitution set out earlier, and in particular that Member Bodies can only make "decisions relating to their own affairs" which are compatible with the Charter and the agreed policies of the Australian Greens. This is a significant fetter on the autonomy of the Respondent. Further, Member Bodies' decision-making autonomy is provided by the Australian Greens constitution.

[43] As set out in the Applicant’s submissions, the Australian Greens constitution and by-laws regulate the activities of Member Bodies such as:

- The formation of policy platforms and initiatives;
- The formation of national working groups;
- Donations and conflict of interest policies;
- Branding, use of trademarks, and communications;
- Record-keeping requirements;
- Certain financial requirements;
- A funding framework and formula for Member Body contributions to the Australian Greens;
- A Code of Conduct for MP’s;
- Cost sharing arrangements between Member Bodies to facilitate participation in the national organisation;
- The keeping and maintenance of the national register of members; and
- Inter-state complaints and conflict resolution.

[44] A Member Body (including the Respondent) can be expelled from the Australian Greens if it were to publicly forward ideas at variance with the Charter. If a Member Body is expelled, it “will cease to be a related political party of The Greens and all other Member Bodies. It will remain liable for any outstanding debts to The Greens”.

[45] The Australian Greens have the capacity to determine the outcome of decisions about the ACT Greens financial and operating policies by virtue of the relevant provisions of its constitution and Charter.

[46] This, in my view, gives the Australian Greens significant influence over ACT Greens in respect of its operations and resources.

Conclusion

[47] Given my satisfaction that the Australian and ACT Greens are associated entities, and given the combined number of employees between those entities is more than 15, it follows that the Respondent is not a small business. The jurisdictional objection is therefore dismissed and the application will proceed in the normal course.



DEPUTY PRESIDENT

Appearances:

J Lee of Professionals Australia for Adam Poulter.

B Goodger of Signus Legal for The ACT Greens Incorporated.

Hearing details:

2024.

By telephone:

June 12.

Printed by authority of the Commonwealth Government Printer

<[PR776193](#)>

¹ Question 2 was missing from one witness statement but nothing turns on this omission for the purposes of this case.