

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [7.48 p.m.], on behalf of the Hon. John Hatzistergos: I move:

That this bill be now read a second time.

I seek leave to have the second reading incorporated in *Hansard*.

Leave granted.

I am pleased to introduce the Occupational Health and Safety (Authorised Representatives) Bill 2009.

This Bill makes an amendment to the Occupational Health and Safety Act 2000 to clarify the definition of 'authorised representative'.

The need to clarify this definition has arisen as a result of a recent decision of the Federal Court of Australia which affects the ability of authorised representatives to enter workplaces and perform other health and safety functions.

In the recent case of *John Holland Pty Ltd & the Construction, Forestry, Mining and Energy Union (New South Wales Branch)*, the Federal Court held that two CFMEU organisers did not have a right of entry under the NSW Occupational Health and Safety Act 2000 in relation to the Sydney Desalination Plant.

Right of entry was denied because they were not 'officers' of the CFMEU, as defined in the Occupational Health and Safety Act.

The court applied a strict legal interpretation of the term which has been in place since 1996.

The Federal Court decision threw into doubt many years of custom and practice in NSW where union employees, even if not elected as officers of a union, can be authorised under occupational health and safety laws to have a 'right of entry' to workplaces for health and safety purposes.

The amendments contained in the Bill restore the definition to the previously accepted position.

The amendments are also consistent with the significant progress being made towards the national harmonisation of occupational health and safety laws.

Honourable members will be aware that the NSW Government has strongly argued in favour of preserving right of entry laws throughout the harmonisation negotiations.

The Workplace Relations Ministerial Council has endorsed the development of a national model Occupational Health and Safety Bill, following the first and second reports of the National Review into Model Occupational Health and Safety Laws, which were released in late 2008 and earlier this year respectively.

I anticipate that a draft national Occupational Health and Safety Bill will be released for public consultation later this year.

The approach taken in the Bill before the House is consistent with the position endorsed by the National Review and the Workplace Relations Ministerial Council.

The amendments contained in the Bill before the House are also consistent with Federal occupational health and safety laws.

Under Commonwealth industrial laws, authorised representatives must hold permits issued by Fair Work Australia to exercise occupational health and safety powers in workplaces.

The Commonwealth Fair Work Act 2009 provides for permits to be issued to officials of unions, which are defined in section 12 of that Act to include employees.

It is important to note that there are safeguards under New South Wales law in relation to the exercise of powers by authorised representatives.

Authorised representatives must hold permits issued by the Industrial Registrar under the Industrial Relations Act 1996 and must satisfy the Industrial Registrar that they are a fit and proper person to hold a permit.

The Industrial Registrar can revoke a permit if a permit holder has intentionally hindered or obstructed employers or employees during their working time or has otherwise acted in an improper manner in the exercise of any power conferred on the person.

These safeguards are unchanged by the amendments contained in this Bill and the Bill contains no other changes to provisions regarding union right of entry.

An authorised representative of a union will only be allowed to enter a worksite where members of that organisation, or those who are eligible to be members, work.

The usual notice periods regarding union entry will continue to apply and entry may only be made at a reasonable time in the daytime or at any hour when work is carried on or usually carried on at the premises.

This Bill restores NSW right of entry provisions and recognises the important role played by unions in making workplaces safe.

For this reason, the amendment will be made retrospective to ensure that any powers exercised by authorised representatives before the commencement of the amendment are valid.

I commend the Bill to the House.