

**INDUSTRIAL RELATIONS AMENDMENT (INDUSTRIAL REPRESENTATION)
BILL 2012**

18 SEPTEMBER 2012

Page: 34

Second Reading

Mr MIKE BAIRD (Manly—Treasurer, and Minister for Industrial Relations) [3.53 p.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Industrial Relations Amendment (Industrial Representation) Bill 2012. This bill proposes to make amendments to the eligibility provisions applying to industrial organisations in the Industrial Relations Act 1996. Industrial organisations may be associations of employers or associations of employees. The latter is usually referred to as unions. Registered organisations have the right to represent the industrial interests of their members. They also have obligations, which encourage the responsible management and democratic control of these bodies. The purpose of these amendments is to provide greater choice for particular groups of employees—junior doctors and paramedics in the health industry—about the organisations they want to join and which organisation has the right to represent their industrial interests.

I put on the record that the Government had wanted the amendments to go much further and to provide choice and competition in relation to the organisations that all employees can join and that represent their industrial interests. However, those in the other place narrowed the scope of the amendments. Most amendments now only apply in relation to applications made within the next 12 months by two named organisations: the Emergency Medical Services Protection Association [EMSPA] and the Australian Salaried Medical Officers Federation [ASMOF]. While it is disappointing that the principle of choice was not enacted, the Government is pleased that at least some employees, if they want to join a union, will have some choice in the union they can be represented by.

The current eligibility provisions in the Industrial Relations Act 1996 have been in place, largely unchanged, since the Act was first made in 1996. Indeed, many of the provisions of the 1996 Act were carried forward from its predecessor, the Industrial Relations Act 1991. Broadly speaking, those provisions are intended to create a situation where only one organisation is eligible to represent employees in a single occupational group.

Overlapping coverage and the subsequent competition between organisations is neither supported nor encouraged under the current Act. The aim of this arrangement is to provide representational stability and continuity at the workplace. However, even the best intentions can have unforeseen consequences. The danger in institutionalising monopoly coverage is that of all monopolies: the danger of organisations losing touch with their clients and becoming unresponsive to their needs. In this case, the usual remedy is the best one, creating

an environment where healthy competition keeps representative organisations closely in touch with their clients' needs.

The bill puts to an end the notion, at least in the health sector, that if there is already an organisation to which employees can conveniently belong then no other organisation has the ability to represent them. Even if there is an organisation to which junior doctors or paramedics belong, with these amendments it will be possible for the other two named organisations to make applications to the Industrial Registrar to be eligible to cover those employees.

Provisions of this kind have existed in the Federal jurisdiction for well over a decade. In that time, a number of cases have been decided where overlapping coverage has been awarded and operated. There have been few, if any, related demarcation disputes. As such, this bill represents a significant departure from the existing approach to industrial coverage of workplaces and/or classes of employees. Instead of an exclusive coverage approach, overlapping coverage will be possible in relation to the particular classes of employees specifically identified by the amendments made in the other place.

I turn now to the elements of the bill. The first means by which the bill provides for freedom of choice is by making amendments to the criteria for registration of an organisation. Section 218 currently provides for an organisation to satisfy a number of requirements in order to be granted registration. In particular, the current section 218 (m) permits a new organisation to be registered only if there is no other industrial organisation to which the members might conveniently belong.

The amendments as agreed to in the other place change the criteria for registration, but only in the limited case of the two organisations, the Emergency Medical Services Protection Association and the Australian Salaried Medical Officers Federation, and only where these organisations make their applications within 12 months of assent to the legislation. For all other organisations, the requirements will remain as they are currently expressed in section 218, except in one respect. The only amendment that has been made to the general criteria for registration is that in future any organisation seeking coverage of employees will also need to satisfy the Industrial Registrar that the organisation is free from control by or improper influence of an employer or an employer association. This amendment is not limited to the two organisations to which the other amendments apply.

The amendment provides that if there is an existing organisation to which members of the applicant organisation might belong, the existence of that other organisation will only prevent registration of the applicant if the existing organisation is one to which the members could more conveniently belong and is one that can more effectively represent those members. In the present case, it is clear that neither the paramedics nor the junior doctors are of the view that their current union, the Health Services Union, is effectively representing them.

Alternatively, a new organisation may be registered if the Industrial Registrar accepts an

undertaking from the body that is appropriate to avoid demarcation disputes that could otherwise arise from an overlap of the membership rules of two organisations. In circumstances where a registered organisation breaches a demarcation undertaking, the proposed new section 244A provides an important safeguard. The amendment gives the Industrial Registrar the power to alter the rules of the organisation that gave the undertaking and remove the overlap and thus remove the power of the organisation to represent that particular class or group of employees.

In addition to the above described requirements, in deciding whether to accept an application for registration, the Industrial Registrar will also have to have regard to the resources and representative infrastructure of the applicant organisation. Freedom of choice will also be enhanced by making amendments to the eligibility rule provisions in the Act. The proposed section 245 amendments are similar in nature to the criteria for registration amendments; that is, they are intended to provide paramedics and junior doctors with greater choice of representation. The proposed section 245 (3) amendments will mean that the Industrial Registrar must not consent to an alteration of the eligibility rules of an organisation where there is another organisation to which those persons could more conveniently belong and which would more effectively represent junior doctors and paramedics. However, similar to the amendments dealing with the registration of a new organisation, the Industrial Registrar is given the discretion to accept an undertaking from the organisation seeking the rule change that it would avoid demarcation disputes that might arise from the overlap. The acceptance of such an undertaking can then be the basis of consent to the rule change. The Industrial Registrar may refuse to consent to an alteration of rules if it would contravene an agreement or understanding to which the organisation is a party dealing with its right to represent a particular class or group of employees.

However, it should be noted that the intention of this provision is not to permit existing agreements for exclusive coverage to thwart the broad purpose of this bill and act as an obstacle to overlapping coverage. It would be inconsistent with Parliament's intention in enacting this legislation for any such agreements made under the previous legislation to operate as an obstacle to a relevant rule alteration. I hasten to add that decisions about this issue will, of course, depend on the relevant facts and circumstances of each case and the exercise of the commission's discretion.

Section 294 is to be amended by inserting a new subsection (3) that sets out the circumstances in which the commission can make a demarcation order. Such an order must not be made unless the commission is satisfied that the conduct, or threatened conduct, of an organisation, or an officer, employee or member of the organisation, is preventing, obstructing or restricting the performance of work or is likely to have that effect. Proposed new subsection (4) provides that the commission will be required to have regard to a number of matters in considering whether to make a demarcation order. These include the wishes of the affected employees, the effect of any order on the operations of an employer, any agreement relating to industrial representation, the consequences of not making an order and any other order made by the commission in relation to another demarcation dispute

applicable to the organisation that are relevant. These requirements are modelled on their equivalents in the fair work legislation, which, as noted earlier, have been operating effectively for some time. When significant changes to legislation such as this are made, the Minister may intervene in the first relevant matter or matters with the purpose of assisting the commission in construing the purpose and intended operation of that legislation. I will consider doing so as and when such cases arise.

As originally introduced in the other place, this bill was designed to provide choice of representation for all employees in the workplace. As amended in the other place and now introduced in this place, the bill has a more limited effect. It provides such choice for paramedics and junior doctors only. In providing that extra degree of choice, competition between organisations could arise, but the Government is confident that the bill provides adequate safeguards to ensure that competition is not unrestrained and will not lead to damaging demarcation disputes between organisations. If there is to be competition between organisations, it must be competition between organisations that are capable of representing their members, responding to their needs and delivering what they want. I understand that the Opposition will support the bill and I commend it to the House.