# Industrial Relations Amendment (Industrial Representation) Bill 2012

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## INDUSTRIAL RELATIONS AMENDMENT (INDUSTRIAL REPRESENTATION) BILL 2012



**Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Greg Pearce.**

### Second Reading

**The Hon. GREG PEARCE** (Minister for Finance and Services, and Minister for the Illawarra) [3.02 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. The bill proposes to make amendments to the eligibility provisions applying to industrial organisations in the Industrial Relations Act 1996. The purpose of its amendments is simple and straightforward: to provide greater choice for employees about the organisation that they want to join that has the right to represent their industrial interests. In doing so, the amendments will harmonise industrial relations provisions with the current Commonwealth provisions as found in the Fair Work (Registered Organisations) Act 2009, which have been in place, in more or less the same form, since 1996 in the latter Act, and in its predecessor statutes.

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 whereby one, and only one, organisation is eligible to represent employees in a single occupational group. Overlapping coverage and its natural corollary—competition between organisations—is neither supported nor encouraged in the current Act. The aim of this arrangement was to provide representational stability and continuity in the workplace. However, even the best intentions can have unforeseen consequences. The danger of institutionalising monopoly coverage is that of all monopolies—the danger of losing touch with clients and becoming unresponsive to their needs—and in this case the usual remedy is the best one: creating an environment in which healthy competition keeps representative organisations closely in touch with their clients' needs.

**The Hon. Amanda Fazio:** We know the code.

**The Hon. GREG PEARCE:** Listen to how many Opposition members are supporting the Health Services Union [HSU] and its practices. How many of them have a credit card from the Health Services Union? The bill applies the remedy first and foremost by putting an end to the notion that if there is an organisation to which employees can conveniently belong then no other organisation is permitted to represent them. The bill does that by providing that, even if there is an organisation to which employees could more conveniently belong, another organisation can become eligible to cover those employees, provided that the latter organisation is able to convince the Industrial Relations Commission that demarcation disputes will not arise as a result of overlapping coverage. In other words, suitable undertakings would need to be provided to the commission in such cases. That will result in more work for the Industrial Relations Commission.

The relaxation of current provisions will, of course, be accompanied by suitable safeguards. In the event that an organisation breaches an undertaking given to the commission, the commission will have the power to remove the overlapping coverage, if that is appropriate. Further, it is proposed that the commission will have broad powers to put an end to any demarcation disputes that may arise by making orders about the representation of any employees who are the subject of a dispute. As I mentioned earlier, 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 in which overlapping coverage has been awarded and operated. There have been few, if any, related demarcation disputes.

I now turn to the elements of the bill. The first means by which the bill provides freedom of choice is by making amendments to provisions relating to the criteria for registration. Currently section 218 provides for an

organisation to satisfy a number of requirements to be granted registration. In particular, current section 218 (1) (m) permits a new organisation to be registered if there is no other industrial organisation to which members might conveniently belong. This provision will be amended to provide that the organisational employees must satisfy the requirements of new section 218 (1A) to become registered. Proposed section 218 (1A) will allow for the registration of an organisation if there is no other industrial organisation to which members might belong; or, if there is such organisation, registration will be permitted if it is not an organisation to which the members more conveniently could belong and that would more effectively represent those members. More significantly, new section 218 (1A) amendments will provide for an organisation to be registered even when there is such an organisation by giving the industrial registrar the discretion to accept an appropriate undertaking to avoid demarcation disputes that might arise from an overlap of eligibility rules.

In circumstances in which a registered organisation breaches a demarcation undertaking, 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 to remove the overlap, thus removing the power of the organisation to represent that particular class or group of employees. Freedom of choice also will be made possible by making amendments to the eligibility rule provisions in the Act. The section 245 amendments are similar in nature to the criteria for registration amendments: in other words, they are intended to provide employees with greater choice of representation. Proposed section 245 (3) amendments will mean that the industrial registrar must not consent to the alteration when there is another organisation to which those persons could more conveniently belong and that would more effectively represent those persons.

However, similar to the amendments dealing with the registration of a new organisation, the industrial registrar is given discretion to accept an undertaking from the organisation seeking the change of rule 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. By virtue of proposed new subsection (3B) 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. Section 294 will be amended by inserting new subsection (3) that provides the circumstances in which the commission can make a demarcation order concerning the industrial interests of industrial organisations of employees. 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) will require the commission to have regard to a number of matters in considering whether to make a demarcation order. These include the wishes of the affected workers, the effect of any order on the operations of an employee, 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.

**The Hon. Catherine Cusack:** That is a novel approach.

**The Hon. GREG PEARCE:** Yes, the commission actually has to consider the wishes of the employees. Amendments have also been made to the "conveniently belong" provisions contained in chapter 6 of the Act. The amendments are intended to extend freedom of choice to chapter 6, which provides a discrete regulatory regime for contracts of bailment, for taxis, and contracts of carriage, for owner-drivers.

Firstly, section 336(1) (b) is amended to provide for any person to object to the registration of a driver or carrier association if there is already an association to which the bailee or carrier could more conveniently belong and that would more effectively represent those members. Currently section 336 (1) (b) provides for the objection to be made on the grounds that the bailees or carriers are already represented or there is such an association to which they might conveniently belong. Then, importantly, new section 337(1A) is inserted that gives the industrial registrar the discretion to accept an undertaking to avoid demarcation disputes and register an association, even if an overlapping objection has been made out.

In determining demarcation questions relating to associations under section 339 the commission, by virtue of the proposed new subsection (1A), is to have regard to any undertaking and any breach of an undertaking given. To conclude, this is a bill designed to provide choice of representation for employees in the workplace and, as such, is a departure from the existing provisions in the New South Wales jurisdiction. The provision of that extra degree of choice no doubt will give rise to competition between organisations.

**The Hon. Walt Secord:** This is WorkChoices.

**The Hon. GREG PEARCE:** More like union choices, choices of union. However, this bill provides adequate safeguards to ensure that competition is not unrestrained and does 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 their members want. I commend the bill to honourable members.

**Debate adjourned on motion by the Hon. Sophie Cotsis and set down as an order of the day for a future day.**