

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

PROOF

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Bill introduced on motion by Mr Greg Smith, read a first time and printed.

Second Reading

Mr GREG SMITH (Epping—Attorney General, and Minister for Justice) [3.56 p.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Industrial Relations Amendment (Industrial Organisations) Bill 2012. This bill proposes to make amendments to the provisions in the Industrial Relations Act 1996 that deal with misconduct in industrial organisations registered under that Act. Industrial organisations are bodies that represent the industrial interests of employers or employees. An organisation registered under the New South Wales Act becomes a legal entity and has the right to participate in the industrial relations framework established under that Act. A similar approach is taken in the national Fair Work system. Industrial organisations may be registered under the Fair Work (Registered Organisations) Act 2009. It is not unusual for there to be separate national and State registered organisations representing the same kinds of workers for the purposes of operating in each jurisdiction.

The Health Services Union is such a union. It is registered under the national law and has a branch called the HSU East Branch, which covers New South Wales and Victoria. Under the State law, there is a legally distinct entity called the HSUeast, which is registered in the State system and is able to operate in the New South Wales industrial relations system. It does not operate in the Federal jurisdiction. The two organisations, while separate legal entities, have substantially the same members. The rules of the State union provide that persons elected to office in the branch of the national union are taken to be elected to office in the State union; this includes officers elected in Victoria. The finances of the two organisations are intertwined. It is understood that members of the national union's branch pay their membership dues to the State union.

The current state of affairs within the Health Services Union is notorious. There are serious allegations of wrongdoing against various office holders. Several investigations are underway, including the inquiry by Fair Work Australia, which has taken three years to make its report, and the investigation by the NSW Police Force which culminated in a dramatic raid on the union's premises last week. The Commonwealth Minister for Workplace Relations, Bill Shorten, has applied to the Federal Court for a scheme to be set up under section 323 of the Fair Work (Registered Organisations) Act to provide for an administrator to be appointed to run the union and arrange for the reconstitution of its branches. Controversially, Minister Shorten's application would extend to the State union. Currently, the New South Wales Act

does not contain any provision that would permit the establishment of a scheme or the appointment of an administrator to clean up a union that is in the kind of mess that the Health Services Union is in. This is a significant shortcoming. The bill seeks to address those shortcomings in the New South Wales Act. It is incumbent on the New South Wales Government to ensure that State law contains the powers necessary to ensure that State-registered organisations operate appropriately. That should not be the task of the Federal Minister.

The main proposal in the bill is to provide that the responsible Minister—in this case the Minister for Finance and Services—is able to appoint an administrator for a State organisation. This would address the most serious and urgent cases, such as the situation of the Health Services Union. That is a significant and far-reaching power which is not to be exercised lightly or capriciously. For that reason, a high threshold must be surmounted before the power can be exercised. The bill accordingly provides that the Minister must have reason to believe that there is an ongoing investigation into alleged gross misconduct by a collective body of an organisation or one or more officers of that organisation, or that an investigation has found that there is evidence of such alleged gross misconduct and that the appointment of the administrator will enable proper administrative arrangements to be put in place. In this context, gross misconduct includes any conduct that would constitute a serious offence within the meaning of this division of the Act, which includes fraud or dishonesty; offences in relation to the conduct of elections; or offences in relation to the formation, registration or management of a registered organisation.

Orders made by the Minister under this provision provide for the appointment of an administrator to conduct the affairs of a State organisation. Officers of the organisation cease to hold office once the administrator is appointed. The administrator may make arrangements for elections to fill the now vacant offices. Importantly, the exercise of these powers by the Minister would be subject to review by the Supreme Court, which may affirm or set aside the Minister's order, or alternatively make another order in accordance with the powers proposed in the bill.

In addition, a section modelled on section 323 of the national law, but with appropriate modifications to ensure that it operates effectively under the State law, will be inserted into the New South Wales Act. That section will permit persons with a sufficient interest, and the Minister, to apply to the Industrial Relations Commission in Court Session for a scheme to be put in place where an organisation is not operating effectively or its officers engage in gross misconduct or an office is vacant and cannot be filled. Unlike section 323—the shortcomings of which have been revealed by questions asked by the Federal Court judge who is dealing with Minister Shorten's application—this section will make it clear that such orders may be sought by the Minister and that schemes may include the appointment of an administrator.

The appointment of administrators will be possible even if an organisation is registered in both the State and Commonwealth jurisdictions. If an organisation is dually registered, the administrator appointed in the State jurisdiction may be the same person as that appointed in

the Commonwealth jurisdiction. Generally speaking, administrators appointed under these provisions will have the job of ensuring that the organisation operates effectively while the relevant organisational and administrative problems are addressed and fresh elections for official positions take place, as appropriate. It will be an offence to fail to assist or to provide information to an administrator and, in particular, to fail to provide documents reasonably requested by the administrator. Administrators will be indemnified in relation to any act or omission done in good faith during their term of office as an administrator.

A number of other amendments are proposed that would shore up the capacity to deal with dysfunction or misconduct within unions. These include express powers to investigate the internal affairs of unions to determine whether officers of a union have contravened express requirements in the New South Wales Act that they not act dishonestly or make improper use of their positions for personal profit. Changes to the regulations will ensure that persons with appropriate skills and experience are able to be appointed to undertake any such investigations and to prosecute any alleged contraventions.

Finally, the bill proposes to extend the statute of limitations for offences in relation to the duties and liabilities of officers of organisations from the current 12 months to five years by amending section 398 of the New South Wales Act. The amendments proposed in this bill are crucial to ensure that unions operating in the New South Wales industrial organisation are properly regulated with a view to ensuring maximum probity. These entities are given special status and privileges under the State industrial law. Most importantly, these organisations are supposed to be democratic and must be accountable to their members. This bill will give teeth to those commitments. I commend the bill to the House.