



New South Wales

Industrial Relations Amendment (Industrial Representation) Act 2012 No 68

Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Industrial Relations Act 1996 No 17	3



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Industrial Relations Amendment (Industrial Representation) Act 2012 No 68

Act No 68 , 2012

An Act to amend the *Industrial Relations Act 1996* with respect to overlapping representation of classes of employees or contract drivers or carriers and related demarcation disputes. [Assented to 24 September 2012]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Industrial Relations Amendment (Industrial Representation) Act 2012*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Industrial Relations Act 1996 No 17

[1] Section 218 Criteria for registration

Insert “(other than an organisation referred to in paragraph (n) during the period referred to in that paragraph)” after “organisation of employees” where firstly occurring in section 218 (1) (m).

[2] Section 218 (1) (n) and (o)

Insert after section 218 (1) (m):

, and

- (n) in the case of an organisation of employees—the organisation is free from control by, or improper influence from, an employer or by an organisation or other association of employers, and
- (o) in the case of an organisation of employees to which Schedule 5 applies that made an application for registration before, or makes such an application within 12 months after, the date of assent to the *Industrial Relations Amendment (Industrial Representation) Act 2012*—the organisation satisfies the requirements of subsection (1A).

[3] Section 218 (1A) and (1B)

Insert after section 218 (1):

- (1A) An organisation satisfies the requirements of this subsection if:
 - (a) there is no other industrial organisation of employees to which members of the organisation might belong or, if there is such an organisation, it is not an organisation:
 - (i) to which the members of the organisation could more conveniently belong, and
 - (ii) that would more effectively represent those members, or
 - (b) the Industrial Registrar accepts an undertaking from the organisation that the Industrial Registrar considers appropriate to avoid disputes as to the demarcation of the industrial interests of the organisation and any other organisation that might otherwise arise from an overlap between eligibility for membership of the organisation and membership of the other organisation.
- (1B) In determining under subsection (1A) (a) whether an existing organisation would more effectively represent members than the

applicant organisation, the Industrial Registrar must have regard to the resources and representative infrastructure of the applicant.

[4] Section 244A

Insert after section 244:

244A Industrial Registrar may determine alterations of rules where breach of demarcation undertaking

- (1) If an organisation breaches an undertaking given under section 218 (1A) (b), the Industrial Registrar may, by instrument in writing, determine such alterations of the rules of the organisation as are, in the Industrial Registrar's opinion, necessary to remove the overlap between the particular classes or groups of employees who are eligible for membership of the organisation and another organisation that gave rise to the undertaking.
- (2) The Industrial Registrar must give the organisation, and the other organisation, at least 14 days to be heard on the matter before determining the alterations.
- (3) Alterations determined under this section take effect on the date of the instrument.

[5] Section 245 Alteration of rules of State organisation

Insert after section 245 (3):

- (3A) The Industrial Registrar must not consent to an alteration of the rules of an industrial organisation of employees to which Schedule 5 applies relating to eligibility for membership of the organisation (being an application for consent made before, or within 12 months after, the date of assent to the *Industrial Relations Amendment (Industrial Representation) Act 2012*) if, in relation to persons who would be eligible for membership because of the alteration there is, in the opinion of the Industrial Registrar, another organisation:
 - (a) to which those persons could more conveniently belong, and
 - (b) that would more effectively represent those persons.
- (3B) However, subsection (3A) does not apply if the Industrial Registrar accepts an undertaking from the organisation that the Industrial Registrar considers appropriate to avoid disputes as to the demarcation of the industrial interests of the organisation and any other organisation that might otherwise arise from an overlap

between eligibility for membership of the organisation and membership of the other organisation.

- (3C) In determining under subsection (3A) whether an existing organisation would more effectively represent members than the applicant organisation, the Industrial Registrar must have regard to the resources and representative infrastructure of the applicant.
- (3D) The Industrial Registrar may refuse to consent to an application referred to in subsection (3A) for consent to an alteration of the rules of an industrial organisation of employees if satisfied that the alteration would contravene an agreement or understanding to which the organisation is a party and that deals with the organisation's right to represent under this Act the industrial interests of a particular class or group of employees.

[6] Section 245 (6) (a)

Insert “, 244A” after “section 244”.

[7] Section 294 Determination of demarcation questions concerning interests of industrial organisations of employees

Insert after section 294 (2):

- (3) The Commission must not make a demarcation order unless it is satisfied that:
- (a) the conduct, or threatened conduct, of an organisation to which the order would relate, or of an officer, employee or member of the organisation, is preventing, obstructing or restricting the performance of work, or
 - (b) the consequences referred to in paragraph (a) have ceased, but are likely to recur or are imminent, as a result of such conduct or threatened conduct.
- (4) In considering whether to make a demarcation order, the Commission must have regard to the wishes of the employees who are affected by the dispute and, if the Commission considers it appropriate, is also to have regard to the following:
- (a) the effect of any order on the operations of an employer who is a party to the dispute or who is a member of an organisation that is a party to the dispute,
 - (b) any agreement or understanding of which the Commission becomes aware that deals with the right of an industrial organisation of employees to represent under this Act the industrial interests of a particular class or group of employees,

- (c) the consequences of not making an order for any employer, employees or organisation involved in the dispute,
- (d) any other order made by the Commission in relation to another demarcation dispute involving the organisation to which the demarcation order would relate that the Commission considers to be relevant.

[8] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

*Industrial Relations Amendment (Industrial Representation)
Act 2012*

[9] Schedule 5

Insert after Schedule 4:

Schedule 5 Registration of similar organisations

Application of Schedule

This Schedule applies to the following organisations:

- the Emergency Medical Service Protection Association (NSW) Inc (EMPSA NSW),
- the Australian Salaried Medical Officers' Federation (NSW).

[Second reading speech made in—
Legislative Council on 6 March 2012
Legislative Assembly on 18 September 2012]