



New South Wales

Industrial Relations Amendment (Industrial Representation) Bill 2012

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Industrial Relations Act 1996* to enable industrial representation of the same classes or groups of employees or of bailees or contractors by one or more industrial organisations or associations of contractors, subject to safeguards relating to demarcation disputes. The amendments made by the Bill are consistent with corresponding provisions in the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Industrial Relations Act 1996 No 17

Schedule 1 [1] and [2] enable an organisation to be registered as an organisation of employees only if 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 one to which the members could more conveniently belong or that would more effectively represent the members. An organisation may be registered even if there is such another organisation if it provides, and the Industrial Registrar accepts, an undertaking to avoid demarcation disputes arising from the overlapping registration. Currently, an organisation of employees cannot be registered if there is any other industrial organisation of employees to which the members might conveniently belong.

Schedule 1 [3] confers on the Industrial Registrar an express power to alter the rules of an organisation of employees, so as to remove the power to represent a class or group of employees that are represented by another organisation, if the organisation breaches a demarcation dispute undertaking.

Schedule 1 [4] amends the provisions about consent to alterations of rules of industrial organisations of employees relating to eligibility for membership to reflect the changes to the circumstances in which registration may be granted where representation is possible by more than one organisation. As with consent to registration, the Industrial Registrar may accept an undertaking by the organisation seeking the rule change to avoid demarcation disputes arising from the overlapping registration. The Industrial Registrar may refuse to consent to a rule alteration if the alteration would contravene an agreement or understanding to which the organisation is a party that deals with its right to represent the industrial interests of a particular class or group of employees. **Schedule 1 [5]** makes a consequential amendment.

Schedule 1 [6] prevents the Industrial Relations Commission from making a determination as to the demarcation of the industrial interests of industrial organisations of employees unless it is satisfied that there is conduct or threatened conduct of an organisation, or an officer, employee or member of an organisation, that is preventing, obstructing or restricting the performance of work or is likely to have that effect. The Commission will also be required to consider other matters before making a demarcation order, including the wishes of affected employees, the effect of the order on employers, any agreement relating to industrial representation and any other demarcation orders applicable to the organisation concerned that are relevant.

Schedule 1 [7] enables an objection to registration of an association of contract carriers or contract drivers to be made on the ground that there is already an association to which the bailees or carriers concerned could more conveniently belong and that would more effectively represent those members. Currently an objection can be made if the members are already represented or there is an association to which they might conveniently belong.

Schedule 1 [8] enables the Industrial Registrar to register an association of contract drivers or contract carriers, even though an overlapping registration objection has been made out, if the applicant provides an undertaking to avoid demarcation disputes arising from the overlapping registration. The Industrial Registrar may refuse to accept an undertaking if registration would contravene an agreement or understanding to which the association is a party that deals with its right to represent the interests of a particular class or group of bailees or carriers.

Schedule 1 [9] requires the Industrial Relations Commission to have regard to any demarcation dispute undertaking, and any breach of such an undertaking, when determining any question as to the demarcation of the interests of associations in the regulation of conditions of contracts.

Schedule 1 [10] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

First print



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No. , 2012

A Bill for

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.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Industrial Relations Amendment (Industrial Representation) Act 2012</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6

Schedule 1	Amendment of Industrial Relations Act 1996 No 17	1 2
[1]	Section 218 Criteria for registration	3
	Omit section 218 (1) (m). Insert instead:	4
	(m) in the case of an organisation of employees—the organisation satisfies the requirements of subsection (1A).	5 6
[2]	Section 218 (1A)	7
	Insert after section 218 (1):	8
	(1A) An organisation satisfies the requirements of this subsection if:	9
	(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:	10 11 12
	(i) to which the members of the organisation could more conveniently belong, and	13 14
	(ii) that would more effectively represent those members, or	15 16
	(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.	17 18 19 20 21 22 23
[3]	Section 244A	24
	Insert after section 244:	25
244A	Industrial Registrar may determine alterations of rules where breach of demarcation undertaking	26 27
	(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.	28 29 30 31 32 33 34 35

(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.	1 2 3
(3)	Alterations determined under this section take effect on the date of the instrument.	4 5
[4]	Section 245 Alteration of rules of State organisation	6
	Omit section 245 (3). Insert instead:	7
(3)	The Industrial Registrar must not consent to an alteration of the rules of an industrial organisation of employees relating to eligibility for membership of the organisation 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:	8 9 10 11 12 13
	(a) to which those persons could more conveniently belong, and	14 15
	(b) that would more effectively represent those persons.	16
(3A)	However, subsection (3) 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.	17 18 19 20 21 22 23
(3B)	The Industrial Registrar may refuse to 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.	24 25 26 27 28 29
[5]	Section 245 (6) (a)	30
	Insert “, 244A” after “section 244”.	31
[6]	Section 294 Determination of demarcation questions concerning interests of industrial organisations of employees	32 33
	Insert after section 294 (2):	34
(3)	The Commission must not make a demarcation order unless it is satisfied that:	35 36
	(a) the conduct, or threatened conduct, of an organisation to which the order would relate, or of an officer, employee or	37 38

member of the organisation, is preventing, obstructing or restricting the performance of work, or	1
	2
(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.	3
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(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:	6
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(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,	10
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(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,	13
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(c) the consequences of not making an order for any employer, employees or organisation involved in the dispute,	18
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(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.	20
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[7] Section 336 Objections to registration of drivers' and carriers' associations	24
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Omit section 336 (1) (b). Insert instead:	26
(b) that there is already an association of contract drivers or an association of contract carriers to which the bailees or carriers whom the applicant claims to represent could more conveniently belong and that would more effectively represent those members.	27
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[8] Section 337 Grant or refusal of applications	32
Insert after section 337 (1):	33
(1A) If the Industrial Registrar is of the opinion that the ground of objection set out in section 336 (1) (b) has been made out, the Industrial Registrar may, instead of refusing the application, accept an undertaking from the applicant that the Industrial Registrar considers appropriate to avoid disputes as to the demarcation of the interests of the association and any other association that might otherwise arise from an overlap between	34
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Schedule 1 Amendment of Industrial Relations Act 1996 No 17

the particular classes or groups of bailees or carriers who are eligible for membership of the association and for membership of the other association.	1 2 3
(1B) The Industrial Registrar may refuse to accept an undertaking under subsection (1A) if satisfied that the effect of registering the association would be to contravene an agreement or understanding to which the association is a party and that deals with the association's right to represent under this Act the interests of a particular class or group of bailees or carriers.	4 5 6 7 8 9
[9] Section 339 Demarcation questions relating to associations	10
Insert after section 339 (1):	11
(1A) Without limiting subsection (1), in determining any question under this section, the Commission is to have regard to any undertaking, and any breach of an undertaking, given under section 337.	12 13 14 15
[10] Schedule 4 Savings, transitional and other provisions	16
Insert at the end of clause 2 (1):	17
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