

ROYAL COMMISSION INTO TRADE UNION GOVERNANCE AND
CORRUPTION

NSW GOVERNMENT
SUBMISSION
AUGUST 2014

Section 1. Introduction 2

Section 2. NSW Legislative Amendments..... 4

Section 3. Building and Construction Industry 6

Section 4. Future Directions: Commonwealth..... 8

Section 5. Future Directions: NSW 10

Attachment A..... 12

Attachment B..... 15

Attachment C..... 17

Attachment D..... 18

Attachment E 19

Section 1. Introduction

- 1.1 The NSW Government is committed to ensuring that all registered organisations are accountable, transparent and responsive to their members. An appropriate regulatory regime has been established to achieve these aims and its adequacy is continually assessed. In particular, the NSW Government seeks to ensure that its regulatory regime is consistent with Commonwealth legislation. This combined Commonwealth/ State framework helps to create a flexible working environment that improves and enhances employee engagement and promotes productivity.
- 1.2 In NSW, the private sector employs over 3 million workers in an economy that contributes 31% of Australia's GDP, at a value of \$47 billion. While all of these employers and employees fall within the coverage of the Fair Work system, the NSW Government has a key role to play in supporting the economy in which they operate, and determining the industrial framework in which they do business.
- 1.3 NSW has developed guidelines for union behaviour on government construction projects, to be enforced by industry participants via the relevant contracts.¹ This is particularly relevant to the delivery of infrastructure, for which the NSW Government has committed \$61 billion over the next four years. Most, if not all, of the unions involved in these construction projects are federally registered and are subject to federal enterprise agreements, while the work performed is for the benefit of the NSW Government, and ultimately that of the people of NSW.
- 1.4 The NSW Government supports the amendments to the *Fair Work (Registered Organisations) Act 2009* (FWRO Act) proposed by the Commonwealth's Fair Work (Registered Organisations) Amendment Bill 2014. The community, and members of registered organisations in particular, want those organisations to be transparent and accountable, and any misconduct or wrongdoing to be promptly investigated and appropriately addressed.
- 1.5 In particular, the NSW Government believes that the regulation of registered organisations should be closely aligned with the regulation of corporations and their directors. Many registered organisations control assets worth

¹ See Section 3 below

millions of dollars, purchased with the funds of their members. Accordingly, the NSW Government is considering action to ensure that NSW legislation is consistent with this principle, as expressed in the Bill.

- 1.6** Recent events of union misconduct and mismanagement highlight the need for regulatory change. For example, in 2012 the HSUEast was put under the control of an administrator after the Federal Court found that, inter alia: '[it] had not implemented effective financial control measures', '[it] could not conduct [its] business in an effective and timely way', '[its] governing bodies... [had] been disrupted and in some cases abandoned', and that it had 'been unable to effectively investigate complaints and allegations of misconduct made in respect of officers'.²
- 1.7** It emerged that the former General Secretary of the union, Michael Williamson, misappropriated millions of dollars of membership funds to the benefit of himself and his family. Mr Williamson pleaded guilty to two charges of fraud totalling \$1 million, and was sentenced to seven and a half years imprisonment by the NSW District Court in March 2014.³ Craig Thomson, formerly the National Secretary of the HSU, was also convicted of defrauding the union of \$24,000 and sentenced to 12 months' jail.⁴ It is understood that civil proceedings against Williamson and Thomson are pending.
- 1.8** The Construction Forestry Mining and Energy Union has also displayed similarly concerning behaviour, having been prohibited by the FWC from accessing any Lend Lease building sites in South Australia for 12 months,⁵ been accused of significant disruption to Lend Lease sites across the country,⁶ convicted of criminal contempt by the Victorian Supreme Court,⁷ and recently prohibited from taking further industrial action at the Barangaroo site in Sydney.⁸

² All quotes from *Brown v Health Services Union* [2012] FCA 644 (21 June 2012), at 60

³ <http://www.abc.net.au/news/2014-03-28/michael-williamson-sentencing-hearing-begins-over-hsu-fraud/5351400>

⁴ Ibid

⁵ *Fair Work Commission* [2014] FWC 3907 (13 June 2014)

⁶ S615A(2) Application, Lend Lease [2014] FWC 5026 (25 July 2014)

⁷ *Grocon Constructors (Victoria) Pty Ltd v Construction, Forestry, Mining and Energy Union* [2014] VSC 134 31 March 2014

⁸ *Lend Lease Building Pty Ltd v Construction Forestry Mining and Energy Union & Anor* [2014] FWC 5091 29 July 2014

- 1.9** These, and numerous other instances, highlight the need for significant change to eliminate corruption in registered organisations and associated misconduct in NSW.
- 1.10** The NSW Government is currently undertaking a significant investment in infrastructure in order to clear the \$30 billion backlog inherited from the previous Labor Government. The NSW Government is also seeking a mandate to lease a minority stake in its power networks, excluding Essential Energy. It is estimated that this will release another \$20 billion for infrastructure projects such as the Sydney Rapid Transit (second harbour rail crossing) and WestConnex.
- 1.11** The recent rise in unprotected industrial action on building sites such as the Myer Emporium Project in Melbourne and the Lady Cilento Children’s Hospital in Brisbane highlights the danger of this investment producing far less infrastructure than it should and ultimately hurting the people of NSW.
- 1.12** Previous studies have shown that the introduction of the Australian Building and Construction Commission (ABCC) reduced construction costs for major infrastructure projects by up to 11 per cent. It is estimated the impacts of a 2 per cent annual increase in wages would adversely impact the NSW Government’s infrastructure spend by \$130 million over the forward estimates.⁹
- 1.13** For more information on the jurisdictional background and an overview of relevant statutory provisions relating to the regulation of registered organisations in NSW see **Attachment A**. A full list of organisations with current NSW registration – 88 in all – is provided at **Attachment B**.

Section 2. NSW Legislative Amendments

Industrial Relations Amendment (Industrial Organisations) Act 2012

- 2.1** NSW-Registered Organisations are regulated by Chapter 5 of the *Industrial Relations Act 1996* (the IR Act) and relevant subordinate legislation. While Chapter 5 of the IR Act has operated effectively over the years, there were

⁹ Economic Impact of construction industrial arrangements and investments in infrastructure – A New South Wales perspective, Report to the Business Council of Australia, Allen Consulting Group, 6 March 2013.

limitations on the regulatory capacity to address problems arising where a registered organisation had become dysfunctional, or its ability to govern itself in the interests of members was impaired. This shortcoming was highlighted by the situation prevailing in the HSUEast Branch of the Health Services Union in 2012.

- 2.2** As was subsequently made clear in Federal Court proceedings, the HSUEast had ceased to function effectively and its governing bodies were no longer able to manage the union's affairs.¹⁰ In the absence of means under its rules which would enable it to function effectively, an administrator was appointed to manage the union,¹¹ all elected offices were declared vacant¹² and fresh elections were held.
- 2.3** The *Industrial Relations Amendment (Industrial Organisations) Act 2012* introduced a new mechanism to address this situation, giving the NSW Industrial Relations Commission the power to intervene, on application, where the organisation is dysfunctional or there is gross misconduct on the part of its officers in relation to the carrying out of their functions.
- 2.4** For more information on the Industrial Relations Amendment (Industrial Organisations) Act 2012 see **Attachment C**.

Industrial Relations Amendment (Industrial Representation) Act 2012

- 2.5** Later in 2012, the NSW Government introduced the Industrial Relations Amendment (Industrial Representation) Bill 2012 to provide employees with greater choice when deciding on their union membership.
- 2.6** Despite amendments in the Legislative Council which curtailed its coverage, the new laws finally provided paramedics and junior doctors the freedom to choose the industrial representation that best suited their needs. Previously, these workers had no choice other than to join the Health Services Union.
- 2.7** For more information about the Industrial Relations Amendment (Industrial Representation) Act 2012 see **Attachment D**.

¹⁰ *Brown v Health Services Union* [2012] FCA 644 (21 June 2012), at 60-68

¹¹ *Ibid*, at 98-126

¹² *Ibid*, at 127-147

Section 3. Building and Construction Industry

Procurement Guidelines

- 3.1** The NSW Government's \$61 billion infrastructure program demands close oversight of the potential for cost overruns and project delays that may result from worksite misbehaviour and poor management of projects by industry participants including unions, contractors and constructors.
- 3.2** In recognition of the significant watering down of the powers of the ABCC, the NSW Government introduced mandatory obligations in all construction procurement contracts involving government funding, to ensure contractors maximised productivity on worksites and operated in strict compliance with the law.
- 3.3** The NSW Procurement Guidelines were established to avoid unnecessary expenditure of public finances by ensuring that major construction projects are cost effective and delivered on time. Their introduction is estimated to have avoided costs of up to \$790 million over four years.
- 3.4** On 1 July 2013, the 'Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction' commenced. The Guidelines and supporting documentation are available on the NSW Industrial Relations website.¹³ The Guidelines are designed to ensure value for money on NSW infrastructure projects, and apply to all building and construction companies that tender or bid for NSW Government infrastructure work. The Productivity Commission has recently endorsed guidelines of a similar nature to those now operating in NSW, Victoria and Queensland in its July 2014 report into public infrastructure.
- 3.5** Guidelines of this type are the most promising policy approach to drive reform and deal with industry conduct that leads to high costs, 'sweetheart' deals and coercion. The Guidelines establish a compliance regime comprising the NSW Industrial Relations Construction Compliance Unit (CCU) to monitor and enforce compliance by way of investigation and audit work.

¹³ www.industrialrelations.nsw.gov.au

- 3.6** The CCU was established and operational from 1 July 2013. It has published guidance material on the NSW IR website; including model contractual clauses, a model Workplace Relations Management Plan and a series of Fact Sheets for industry. For more information on the operation of the NSW Guidelines and the role of the CCU, see **Attachment E**.

Building and Construction Industry (Improving Productivity) Bill 2013

- 3.7** The Commonwealth Government has introduced a Bill that would re-establish the ABCC as an independent regulator in the industry to replace the current regulator, Fair Work Building and Construction. The Bill ensures the re-established ABCC would have sufficient power to obtain information quickly and effectively when enforcing the law. The use of these powers would continue to be reviewed and reported on by the Commonwealth Ombudsman.
- 3.8** These powers are particularly important so that instances of unlawful conduct, such as the reported abuse of public officers by union officials and industrial action in the form of a disruptive and unlawful walk-off that occurred on the Barangaroo project recently, can be dealt with expeditiously. The watering down of the powers of the former ABCC that occurred under the previous Commonwealth Government, has increasingly led to the return of undesirable behaviour in the building and construction industry.¹⁴
- 3.9** The initial Bill has been further strengthened by proposed Commonwealth Government amendments that ensure unproductive deals that blight the industry, like 'jump-up' clauses which require subcontractors to pay higher wages than their own legitimately negotiated agreements, can be eliminated. This is particularly important for NSW as it embarks on a significant infrastructure building program. So-called 'sweetheart' deals between unions and contractors must be eliminated in accordance with construction procurement guidelines to deliver optimal outcomes for taxpayers.
- 3.10** The Commonwealth Government also intends to issue a new Building and Construction Industry Building Code, under subsection 34(1) of the Building and Construction Industry (Improving Productivity) Act 2013 (when passed).

¹⁴ The Bill also contains provisions dealing with unlawful industrial action and coercion and introduces a new civil penalty offence of unlawful picketing.

The new Code reflects the intent of the NSW guidelines. The CCU, and the equivalent units within Victoria and Queensland, are being consulted in relation to the provisions of the draft Commonwealth Code, to promote consistency with State building and construction guidelines.

- 3.11** When the Federal building code takes effect it will provide for certain requirements in relation to the content of enterprise agreements and prohibited conduct, arrangements and practices. The NSW Government broadly supports this Bill and the Commonwealth's proposed amendments which are currently before the Senate.

Alleged criminal involvement on NSW building sites

- 3.12** In January and February of 2014 there were numerous reports in the Sydney metropolitan newspapers about instances of alleged criminal behaviour at the Barangaroo building site. Such reports are disturbing and of concern to the NSW Government.

- 3.13** It is imperative that any association, real or potential, between criminal organisations and registered organisations on building sites in NSW be quickly identified and eradicated.

Section 4. Future Directions: Commonwealth

Fair Work (Registered Organisations) Amendment Bill 2014

- 4.1** The Fair Work (Registered Organisations) Amendment Bill 2014 seeks to establish the fundamental principle that, to the greatest possible extent, the regulation of registered organisations should be aligned to the regulation of corporations and their directors. This is done on the basis that both corporations and registered organisations control a significant asset base, and must be strongly accountable to their members or shareholders.
- 4.2** As illustrated by the investigations into the Health Services Union, financial impropriety can occur under the existing regulatory framework. It is expected that closer alignment of the regulation of registered organisations with that of companies will provide members with the confidence that their organisations are being operated appropriately and in their best interests.
- 4.3** The NSW Government strongly supports the Commonwealth's approach in this area and believes the current legislation fills a significant gap in the regulation of registered organisations. More specifically, the NSW

Government notes the Bill addresses significant deficiencies in current legislation in relation to:

- the lack of an independent regulator;
- inadequate penalties for misconduct and wrongdoing;
- inadequate disclosure and transparency obligations; and
- inadequate requirements for disclosure of personal interests.

- 4.4** To improve oversight of registered organisations, the Bill would establish an independent Registered Organisations Commission within, but separate from, the Fair Work Ombudsman. It would be provided with stronger investigation and information gathering powers to ensure registered organisations are regulated effectively and in a transparent manner. Significantly, the Commission would also educate and advise registered organisations and their members about their respective obligations and rights.
- 4.5** Presently, registered organisations and their officers do not bear the same consequences as companies and directors for breaches of the relevant laws. The Commonwealth Bill will rectify this by increasing the amount of specific civil penalties and introducing a criminal offence regarding intentional breaches of officers' duties.
- 4.6** Recent examples of financial misappropriation by certain registered organisations have demonstrated the current compliance regime is not operating effectively. A new enhanced penalty framework is an appropriate mechanism to ensure members of registered organisations are protected and their contributions are being used in an appropriate manner.
- 4.7** The Bill also provides important enhancements to organisational disclosure and reporting requirements, making them significantly more transparent to members and turning some existing rule-based obligations into statutory requirements. Requirements to comprehensively disclose remuneration of senior officials and payments to related parties in an annual statement to members will encourage more active and open governance processes.
- 4.8** Importantly, officers of a registered organisation will be statutorily required to undertake relevant financial training in order to ensure that these accountability requirements are met. In addition, accountability obligations will be extended to individual officers of organisations who will be required to disclose any material personal interest in a matter that relates to the organisation. These provisions are similar to the material personal interest regime operating under the *Corporations Act 2001* (Cth), and any officer who

has declared a material personal interest would not be permitted to participate in a decision making process that relates to that interest.

- 4.9** The NSW Government also supports the Commonwealth Government's proposed amendments to the 2014 Bill. These amendments deal with some exceptions regarding the disclosure of material personal interests of officers and enable the Commissioner to grant exemptions from training requirements if it can be demonstrated that the officer had a proper understanding of their financial obligations in their organisation.

Whistleblower protections

- 4.10** A whistleblower is a person, usually an employee, contractor or member of an organisation, who reports misconduct or dishonest or illegal activity that has occurred within that same organisation. Individuals who have inside knowledge of organisations are often well placed to provide accurate and informative material and intelligence to the relevant regulator about potential misconduct. Given the nature and prevalence of union misconduct in workplaces across Australia, whistleblower protection laws must be an integral part of an effective regulatory regime.
- 4.11** Part 4A of Chapter 11 of the FWRO Act sets out protections available to whistleblowers and is modelled on similar provisions in the *Corporations Act 2001* (Cth). These set out which disclosures of information are protected and the requirements of good faith and reasonable grounds for suspecting that the information disclosed indicates a breach of the relevant legislation.
- 4.12** If an individual encounters a significant problem within their registered organisation, such as corruption or abuse of process and wishes to disclose such behaviour, it is important that they are afforded appropriate protections. This is especially significant in some workplace settings where bullying or threatening behaviour is all too often apparent.
- 4.13** Whistleblowers should not be subjected to any civil or criminal liability for making the disclosure. Reinstatement provisions should be available in circumstances where employment has been terminated and it should be a criminal offence to victimise a whistleblower because of any protected disclosure made.

Section 5. Future Directions: NSW

- 5.1** The NSW Government is committed to a system of regulation that ensures that registered organisations maintain the highest possible standards of accountability and transparency. To this end, the NSW Government strongly supports proposed Commonwealth legislation with this aim.

- 5.2** The paramount policy objective should be to ensure that registered organisations act in the interests of their members, and do so in the most accountable and transparent manner possible. The benchmark for a regulatory regime with this goal is that registered organisations should be as accountable to their members as company directors are to their shareholders.
- 5.3** Consequently, the NSW Government is giving serious consideration to harmonising relevant NSW legislation with the provisions of the FWRO Act to the greatest possible degree. The NSW Government is currently considering a number of possible strategies for achieving this goal to ensure officers of registered organisations are held to account, and their members and the wider community are provided with the high standards of transparency expected.

Attachment A

Background and overview of relevant statutory provisions

- A.1 The NSW industrial relations jurisdiction has existed since 1900. Throughout this time, the various statutes supporting the jurisdiction have provided for the registration of employee and employer organisations and the regulation of their conduct and affairs.
- A.2 The parallel operation of the federal industrial relations system from 1904 onwards permitted employer and employee organisations to be registered in both systems, which at times necessitated legislative remedies for problems that then arose.¹⁵
- A.3 This legislative context changed significantly on 1 January 2010, with the referral to the Commonwealth of this State's powers to make workplace laws for all but public sector and local government employers and employees. This meant that, from this time, regulation of all but the latter classes of employees passed to the Fair Work system.
- A.4 Consequently, only those organisations active in the public sector and/or local government now fall within the legislative scope of the NSW jurisdiction.
- A.5 Given the number and range of current NSW registered organisations, it is clear that relevant NSW legislation still has work to do.
- A.6 NSW-Registered Organisations are regulated by the *Industrial Relations Act 1996* (the IR Act) and relevant subordinate legislation, principally the *Industrial Relations (General Regulation) 2001*.
- A.7 Chapter 5 of the IR Act¹⁶ provides a comprehensive scheme of regulation of industrial organisations, including the following key provisions:
- Principles of Association, including freedom of association;
 - Employee and employer peak councils;
 - Registration of organisations;

¹⁵ See *Moore v Doyle* (1969) 15FLR 59 and for remedies *IR Act 1996* (NSW) Ch5 Part 3 Div 1, *FW(RO) Act 2009* Ch 11 Part 7

¹⁶ <http://www.legislation.nsw.gov.au/maintop/view/inforce/act+17+1996+cd+0+N>

- Rules;
- Election of officers;
- Duties and liabilities of officers;
- Disqualification from office;
- Record keeping;
- Accounts and audit;
- Amalgamation;
- Demarcation; and
- Powers relating to dysfunction, misconduct or vacancy.

A.8 These statutory provisions are supported by Part 6 of the *Industrial Relations (General) Regulation 2001*.¹⁷

A.9 As well as this, two sections of the IR Act draw on provisions of the (now repealed) *Industrial Relations Act 1991* (NSW), these being s249, which relates to the election of officers, and s282, relating to accounts and audit requirements. Both provide a regulation making power in relation to their respective subjects, and both provide that regulations so made, may draw on the relevant provisions of the FWRO Act, in whole or part. Until such regulations are made, the relevant provisions of the *Industrial Relations Act 1991* remain in force.

A.10 Ministerial responsibility for these legislative instruments rests with the Minister for Industrial Relations. Day to day responsibility for the functioning of the system rests with the NSW Industrial Relations Commission and particularly the Industrial Registrar. In some cases, the NSW Industrial Court may decide matters¹⁸ – e.g. in relation to registration¹⁹ or cancellation of registration.²⁰

¹⁷ <http://www.legislation.nsw.gov.au/maintop/view/inforce/subordleg+671+2001+cd+0+N>

¹⁸ IR Act NSW s153

¹⁹ IR Act NSW Ch 5 Parts 3, 4 & 5

²⁰ IR Act NSW Ch 5 Part 4 Div 3

- A.11 Employee organisations are incorporated by virtue of becoming registered,²¹ while employer organisations must be incorporated in order to be able to apply for registration.²² Issues arising from dual registration have been partly addressed by means of Part 3 of Chapter 5 of the IR Act.²³
- A.12 These provisions are broadly similar to those in the FWRO Act, with perhaps two significant exceptions.
- A.13 Firstly, the current NSW system does not permit overlapping rules or competitive coverage, and still includes the ‘conveniently belong’ rule.²⁴ Legislative attempts to modernise these provisions have been undertaken (See Sections 2).
- A.14 Secondly, the enhanced accountability and transparency provisions established by means of the *Fair Work (Registered Organisations) Amendment Act 2012* have not been replicated in the IR Act. It is noted that further amendments of this kind are now in prospect, as per the Fair Work (Registered Organisations) Amendment Bill 2014, and some discussion of this Bill is set out in Section 4.
- A.15 In recent times, the IR Act as it relates to registered organisations has been amended to address contemporary circumstances. Further amendments are presently under consideration. In addition, conduct of organisations in the building and construction industry has been addressed via NSW Government procurement processes. (See Section 3).

²¹ IR Act NSW s222

²² IR Act NSW s217(1)(c)

²³ See s217(1)

²⁴ Cf s19 FW(RO)Act and s218(1) IR Act NSW

Attachment B

Lists of NSW Registered Organisations

Employee organisations
Australian Institute of Marine and Power Engineers New South Wales District
Australian Maritime Officers' Union of New South Wales
Australian Paramedics Association (NSW)
Australian Salaried Medical Officers' Federation (New South Wales)
Australian Services Union of N.S.W.
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, New South Wales Branch
Club Managers' Association
Construction, Forestry, Mining and Energy Union (New South Wales Branch)
Electrical Trades Union of Australia, New South Wales Branch
Finance Sector Union of Australia, New South Wales Branch
Fire Brigade Employees' Union of New South Wales
Health Services Union NSW
Industrial Staff Union
Institute of Senior Educational Administrators of New South Wales
Media, Entertainment and Arts Alliance New South Wales
Musicians' Union of Australia (Sydney Branch)
N.S.W. Dental Assistants' Association
National Union of Workers, New South Wales Branch
New South Wales Independent Education Union
New South Wales Local Government, Clerical, Administrative, Energy, Airlines & Utilities Union
New South Wales Nurses and Midwives' Association
New South Wales Teachers Federation
Newcastle Trades Hall Council
NTEU New South Wales
Police Association of New South Wales
Police Association Salaried Officers Union
Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales
Real Estate Association of New South Wales
Shop Assistants and Warehouse Employees' Federation of Australia, Newcastle and Northern, New South Wales
Shop, Distributive and Allied Employees' Association, New South Wales
The Association of Principals of Independent Schools in New South Wales
The Association of Professional Engineers, Scientists and Managers, Australia (NSW Branch)
The Australasian Meat Industry Employees' Union, New South Wales Branch
The Australasian Meat Industry Employees' Union, Newcastle and Northern Branch
The Australian Rail, Tram and Bus Industry Union, New South Wales
The Australian Workers' Union, New South Wales
The Broken Hill Town Employees' Union
The Development and Environmental Professionals' Association
The Funeral and Allied Industries Union of New South Wales Branch
The Local Government Engineers' Association of New South Wales
The New South Wales Plumbers and Gasfitters Employees' Union
The Seamens' Union of Australia, New South Wales Branch
Transport Workers' Union of New South Wales
Unions NSW
United Voice, New South Wales Branch

Employer Associations
Aged & Community Services Association of NSW & ACT Incorporated
Association of Quality Child Care Centres of NSW Inc
Australian Credit Union Employers' Association
Australian Federation of Employers and Industries
Australian Hotels Association (NSW)
Australian Medical Association (NSW) Limited
Australian Retailers Association
Australian Road Transport Industrial Organization, New South Wales Branch
Baking Associations of Australia NSW
Bus and Coach Industrial Association of New South Wales
Clay Brick & Paver Association of New South Wales
Furnishing Industry Association of Australia Limited
Leading Age Services Australia NSW - ACT
Local Government and Shires Association of New South Wales
Motor Inn, Motel and Accommodation Association of New South Wales
Motor Traders' Association of New South Wales
New South Wales Taxi Council Limited
Newcastle Master Builders' Association
NSW Business Chamber Limited
NSW Farmers' (Industrial) Association
Nursery & Garden Industry NSW & ACT Limited
Printing and Allied Trades Employers Association of New South Wales
Private Hospitals Association of NSW Inc
Restaurant and Catering Industry Association of New South Wales
Roofing Industry Association of NSW Incorporated
TAB Agents' Association of New South Wales
The Association of Wall & Ceiling Industries of New South Wales
The Australian Industry Group New South Wales Branch
The Caravan Camping and Touring Industry and Manufactured Housing Industry Association of NSW Limited
The Electrical Contractors' Association of New South Wales
The Funeral Directors' Association of New South Wales Limited
The Master Builders' Association of New South Wales
The Master Fish Merchants' Association of Australia
The Master Plumbers & Mechanical Contractors Association of New South Wales
The N.S.W. Retail Tobacco Traders' Association
The New South Wales Chamber of Fruit and Vegetable Industries Incorporated
The New South Wales Pharmacy Guild
The Newsagents' Association of NSW and ACT Ltd.
The Racing Guild of New South Wales
The Real Estate Employers' Federation of NSW
The Registered Clubs Association of New South Wales
Timber Trade Industrial Association
Waste Contractors and Recyclers Association of N.S.W.

Attachment C

Industrial Relations Amendment (Industrial Organisations) Act 2012

- C.1 Under the terms of this Act that amends the IR Act, the Industrial Relations Commission of NSW is able to approve a scheme for the reconstitution of the organisation which may include the appointment of an administrator with significant investigative powers. Significantly, the amendments confer express powers to investigate the internal affairs of a State organisation of employees or employers to determine whether the requirements for the conduct of officers under the IR Act have been contravened.
- C.2 The Commission must not make an order under the new s290B of the IR Act inserted by the amending Act if it is satisfied that it would do substantial injustice to the organisation or member of such organisation but any order made will take effect despite the rules of the organisation.
- C.3 In addition, this amending legislation provided additional compliance powers²⁵ to allow NSWIR inspectors to investigate possible breaches of the duties and responsibilities of officers of registered organisations.²⁶ These powers include inspection of relevant premises, seizure of documents and requirements to provide relevant information which may support action to address serious dysfunction in a registered organisation.
- C.4 This initiative is a sensible and balanced reform which extends the scope of proper oversight and prudential regulation of State industrial organisations in the interests of their members and the wider community. It is similar to the provisions in s323 of the FWRO Act which gives the Federal Court power to order the reconstitution of a branch or part of a federally registered organisation where the organisation has ceased to exist or function effectively.
- C.5 It is significant in this regard that the Federal Court, in making a declaration that the HSUEast Branch of the Health Services Union had ceased to function effectively, made orders based on both the FWRO Act and the IR Act as amended.²⁷

²⁵ NSW IR Act s385A

²⁶ See NSW IR Act Chapter 5 Part 4 [Division 5](#)

²⁷ *Brown v Health Services Union* [2012] FCA 644 (21 June 2012) Flick J at p5.

Attachment D

Industrial Relations Amendment (Industrial Representation) Act 2012

- D.1 The NSW Government introduced the Industrial Relations Amendment (Industrial Representation) Bill 2012 to provide employees with greater choice when deciding on their union membership. A key driver of the Bill was to protect the interests of members and potential members by creating healthy competition between registered industrial organisations.
- D.2 The amendments in their original form also would have harmonised the NSW laws with the Fair Work laws that provide for freedom of choice and competitive unionism.
- D.3 The Bill was amended in the Legislative Council to the effect that the laws focussed only on two specific organisations – the Emergency Medical Services Protection Association and the Australian Salaried Medical Officers Federation, rather than having general application. In addition, the Legislative Council imposed a 12 month time limit from the date of assent for the filing of applications.²⁸
- D.4 Despite these amendments, the new laws finally provided paramedics and junior doctors the freedom to choose the industrial representation that best suited their needs. Previously these workers had no choice other than to join the Health Services Union.
- D.5 Following the passage of the amended Bill, the Emergency Medical Services Protection Association successfully applied for registration and the Australian Salaried Medical Officers Federation successfully applied to change its coverage rules.²⁹

²⁸ The Bill was assented to on 24 September 2012

²⁹ *Application by Emergency Medical Services Protection Association (NSW) for registration as a State Industrial organisation of employees* [2013] NSWIRComm 35; *Application by Emergency Medical Services Protection Association (NSW) for registration as a State Industrial organisation of employees (No 2)* [2013] NSWIRComm 47

Attachment E

The operation of the NSW Guidelines and the role of the Construction Compliance Unit

- E.1 The NSW guidelines have four key elements:
- Proactive management of workplace relations: Workplace relations practices ensure the strict rule of law applies so that all parties are protected from unlawful conduct.
 - Cost efficiency and productivity: Projects are delivered on time and on budget with real value for money for the NSW Government and taxpayers.
 - Workplace Health and Safety: Parties achieve and maintain high standards in workplace health and safety and rehabilitation management and practices.
 - Innovation and continuous improvement: Parties demonstrate a commitment to innovation and continuous improvement in workplace and workforce management practices at the enterprise and project levels, and in the industry generally
- E.2 The CCU has identified and is monitoring more than 130 projects (including 15 private) valued at \$1 million or more, to which the Guidelines apply (66 projects valued \$10+ million) across NSW.
- E.3 The CCU has assessed and reviewed more than 80 Workplace Relations Management Plans (WRMPs). Such plans are the key document in which building and construction companies detail their compliance with the NSW Guidelines.
- E.4 The CCU provides extensive feedback to building and construction companies about the extent of compliance of their WRMPs with the Guidelines and works with companies to improve their compliance. A WRMP that does not demonstrate sufficient compliance with the Guidelines may result in a building and construction company being eliminated from a procurement process.
- E.5 The CCU also has an active site inspection program underway, with approximately 50 construction sites already inspected between February and June this year and a forward inspection program, including audits, for the remainder of 2014.
- E.6 The NSW guidelines are consistent with those put in place in Victoria (2012) and in Queensland (2013). However, the new building code introduced by

the Commonwealth may duplicate some elements of the Guidelines. The NSW Government is working with the Commonwealth to ensure that the NSW Guidelines and federal building code are complementary and unnecessary duplication is avoided.

- E.7 The CCU also has a Memorandum of Understanding (MOU) with the Commonwealth's Fair Work Building and Construction (FWBC) to share information and work cooperatively where infrastructure projects fall within the jurisdiction of both organisations. This occurs where there is both State and Commonwealth funding of infrastructure projects and with the privately funded projects of building and construction companies who have tendered (or otherwise participated in a procurement process) for NSW Government project work.
- E.8 Under the MOU several projects have been jointly inspected by the CCU and FWBC. Joint inspections minimise the disruption to construction sites but afford both organisations the opportunity to ensure State and Commonwealth requirements are being observed and implemented.