

Health and Hospitals Network and Other Legislation Amendment Bill 2012

Explanatory Notes for amendments to be moved during consideration in detail by the Honourable Lawrence Springborg MP

Short Title

Health and Hospitals Network and Other Legislation Amendment Bill 2012

Objectives of the amendments

The Health and Hospitals Network and Other Legislation Amendment Bill 2012 amends the *Industrial Relations Act 1999* to provide that the departmental chief executive is to be the party to awards, certified agreements and industrial disputes instead of prescribed Hospital and Health Services. The purpose of these amendments, as outlined in the Explanatory Notes for the Bill, is to ensure that staff employed by Hospital and Health Services will be subject to State-wide enterprise bargaining agreements and awards, and other standard State-wide employment terms and conditions.

The Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012 (the 'Industrial Relations Amendment Bill') was recently passed by the Parliament. This Bill amends the *Industrial Relations Act 1999* in areas which now require modification in their application to health service employees and Hospital and Health Services to maintain the policy intent in the *Health and Hospitals Network and Other Legislation Amendment Bill 2012* to have a State-wide approach to employment terms and conditions.

In addition, the report of the Health and Community Services Committee into the Bill recommended that the term 'clinician' be defined for the purpose of membership of Hospital and Health Boards and Executive Committees of boards.

It is intended that a clinician would be a ‘hands-on’ practitioner who is currently registered and actively practising in providing health care to patients and other persons. In addition, to ensure direct relevance to Hospital and Health Services, clinicians will need to be working in a profession that traditionally provides services in the public sector.

Achievement of policy objectives

The maintenance of a State-wide approach to employment terms and conditions for health service employees will be achieved by making amendments to Schedule 4A of the *Industrial Relations Act 1999*, which is inserted into the *Industrial Relations Act 1999* by the Bill.

The amendments also insert a definition of clinician in the Bill. A clinician is to be defined as a person who is:

- a health professional registered under the Health Practitioner Regulation National Law, other than as a student, and
- currently personally providing care or treatment to persons, and
- in a profession that provides care or treatment to persons in public sector health services.

Estimated cost for government implementation

There are no costs to government associated with these amendments.

Consistency with fundamental legislative principles

The amendments do not raise any fundamental legislative principle issues.

Consultation

The proposed amendments to include a definition of clinician have been made in response to submissions to the Health and Community Services Committee’s inquiry into the Bill.

Notes on provisions

1. Amendment of clause 12 (Amendment of s 23 (Membership of governing councils))

Under the Bill, at least one member of a Hospital and Health Board must be a clinician. This amendment inserts a definition of clinician as outlined above.

2. Amendment of clause 16 (Insertion of new pt2, div2A)

This amendment inserts subsection numbering, as a result of the subsequent amendment.

3. Amendment of clause 16 (Insertion of new pt2, div2A)

Under the Bill, at least one member of an executive committee must be a clinician. This amendment inserts a definition of clinician, which is the same as the definition in Amendment 1.

4. Amendment of clause 51 (Insertion of new sch 4A)

The Industrial Relations Amendment Bill inserted a new section 147A into the *Industrial Relations Act 1999* to provide that an employer may request employees who will be bound by a proposed agreement to approve it. This amendment provides that the departmental chief executive is the employer for this purpose instead of a prescribed Hospital and Health Service.

5. Amendment of clause 51 (Insertion of new sch 4A)

The Industrial Relations Amendment Bill replaces section 175 of the *Industrial Relations Act 1999* in relation to taking industrial action by a negotiating party in response to action taken by another party. This amendment provides that the prescribed Hospital and Health Service is the negotiating party for the purpose of this section.

The Industrial Relations Amendment Bill inserted a new section 181D into the *Industrial Relations Act 1999*, which enables the Minister to give written directions in relation to a termination declaration. This amendment provides that the Minister may give directions to both the departmental chief executive and a prescribed Hospital and Health Service.

6. Amendment of clause 51 (Insertion of new sch 4A)

This amendment modifies how Schedule 4 of the *Industrial Relations Act 1999*, which was inserted by the Industrial Relations Amendment Bill, applies to health services employees and Hospital and Health Services, as follows:

- the departmental chief executive, as well as a prescribed Hospital and Health Service, is to be given a copy of an application for a protected action ballot order
- the Commission may deal with two or more applications for a protected action ballot order at the same time for prescribed Hospital and Health Services and the department
- the departmental chief executive is taken to be the employer, instead of a prescribed Hospital and Health Service, for the purpose of the Commission being satisfied that an applicant is genuinely trying to reach agreement with an employer
- the departmental chief executive, as well as a prescribed Hospital and Health Service, is to be given a copy of a protected action ballot order
- the Commission may require protected action ballots to be held at the same time for prescribed Hospital and Health Services and the department, and
- the departmental chief executive, as well as a prescribed Hospital and Health Service, is to be given a copy of the results of a protected action ballot.

7. Amendment of Schedule (Acts amended)

This amendment amends the numbering of schedule 2 in the Act to schedule 1, as the current schedule 1 is to be omitted on the commencement of the Act on 1 July 2012.

8. Amendment of Schedule (Acts amended)

Amendment 8 rectifies a drafting inconsistency by amending existing references in the Act from 'chairperson' to 'chair' for consistency with the use of 'chair' in the Amendment Bill.