

## **Public Sector Employment and Management Amendment (Extended Leave) Bill 2005**

### **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 *Public Sector Employment and Management Act 2002* (the **Principal Act**):

(a) to provide for certain employees of the State to have the benefit of additional extended leave entitlements, and

(b) to replace (and simplify) provisions regarding the recognition of former government service currently in the *Transferred Officers Extended Leave Act 1961* (which is repealed by the proposed Act).

#### 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 a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the amendments to the *Public Sector Employment and Management Act 2002* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the Acts and regulations set out in Schedule 2.

**Clause 5** repeals the *Transferred Officers Extended Leave Act 1961* and the *Transferred Officers Extended Leave Regulation 1998*.

#### **Schedule 1 Amendment of Public Sector Employment and Management Act 2002**

**Schedule 1 [4]** omits and re-inserts Schedule 3 to the Principal Act and inserts proposed Schedule 3A.

The current Schedule 3 provides for the extended leave entitlements of officers and temporary employees of the Public Service. It also applies, by way of reference to the Schedule in other Acts and instruments, to certain other State employees.

Proposed Schedule 3 provides for certain State employees to have certain extended leave entitlements in addition to the entitlements provided for under current Schedule 3. A number of the existing provisions of Schedule 3 are also clarified.

Under proposed Schedule 3, a relevant State employee has the benefit of the following additional extended leave entitlements:

(a) an entitlement to extended leave after service for, or in excess of, 7 years (currently the Principal Act provides for an entitlement to extended leave after service for 10 years),

(b) an entitlement to take extended leave on double pay for a proportionately reduced period (currently the Principal Act provides for extended leave to be taken on full pay or half pay),

(c) an entitlement to have a public holiday that occurs during a period of extended leave not treated as extended leave.

Proposed clause 2 of Schedule 3 provides for an entitlement to extended leave after service for, or in excess of, 7 years. The entitlement in respect of service between 7 years and 10 years is an amount of leave proportionate to the officer's or temporary employee's length of service (up to 10 years) calculated at the rate of 2 months on full pay for 10 years served.

Proposed clause 2 of Schedule 3 also provides for an entitlement to extended leave on full pay, half pay or double pay (the amount of the entitlement varying proportionately).

Extended leave taken is deducted from an officer's or temporary employee's

extended leave entitlement under proposed clause 8 of Schedule 3. Proposed clause 8 (2) of Schedule 3 provides that if a public holiday occurs while an officer or temporary employee is taking extended leave, the amount of extended leave to be deducted is to be reduced by the length of the holiday (one day or half a day, as the case may be).

Proposed Schedule 3A contains the provisions included in the Principal Act to replace and simplify the provisions of the *Transferred Officers Extended Leave Act 1961*. The object of this Schedule is to provide for the recognition of former government service in the calculation of the extended leave entitlement of an employee of a public sector service. The Schedule comprises 3 Parts. Part 1 contains certain preliminary provisions.

Part 2 contains the provisions that set out the basis on which former government service is recognised.

Proposed clause 6 of Schedule 3A sets out the conditions for former government service to be recognised service. Prior employment in a public sector service or a Commonwealth or interstate agency is recognised service for a public sector employee in his or her current employment if the person's current employment immediately follows the prior employment or if the person is entitled by law or administrative practice to have the service in the former agency form part of the service in the current agency. Proposed clause 6 also provides for the mechanism by which recognised service is recognised in a public sector employee's current extended leave entitlement by providing that the public sector employee's service with his or her current employer is taken to include his or her recognised service.

Proposed clause 7 of Schedule 3A provides for certain amounts of extended leave to be deducted from the extended leave entitlement of a public sector employee whose service with his or her current employer includes recognised service. The deduction is to adjust the person's entitlement in light of the inclusion of the recognised service.

Proposed clauses 8 and 9 make further provision for this adjustment.

Proposed clause 8 of Schedule 3A provides that a public sector employee who ceases to be employed in a public sector agency and commences employment in another public sector agency may elect to be paid the money value of his or her accrued extended leave or to retain the entitlement to the accrued extended leave.

Proposed clause 9 of Schedule 3A provides that a public sector employee with recognised service from previous employment in a Commonwealth or interstate agency is deemed to have taken certain leave. The leave deemed to have been taken under the proposed clause is deducted under proposed clause 7 of Schedule 3A. The amount of the leave deemed to have been taken is calculated as if the leave was accrued in the employment of the employee's current employer. Calculating the leave in this manner has certain consequences, including ensuring that the employee cannot have a "negative" leave entitlement as a result of the deduction under proposed clause 7 of Schedule 3A in respect of the recognised service.

Part 3 contains provisions that provide for recognised service to include service with the Australian Defence Force and service in certain State statutory offices.

**Schedule 1 [1]** inserts a new definition, used in proposed Schedules 3 and 3A, in section 3 (1) of the Principal Act.

**Schedule 1 [2]** makes an amendment to section 94 of the Principal Act, being an amendment consequential on the amendments made by Schedule 1 [4] regarding the recognition of former service.

**Schedule 1 [3]** amends section 95 to insert a note in relation to an election an employee may make regarding annual leave under that section. The note inserted corresponds to a note included in relation to the corresponding election regarding extended leave (provided for by proposed clause 8 of Schedule 3A).

**Schedule 1 [5]** inserts a power to make savings and transitional regulations consequent on the enactment of the proposed Act.

**Schedule 1 [6]** inserts savings and transitional provisions consequent on the amendments made by Schedule 1 [1]–[4].

The savings and transitional provisions include a provision validating anything done or omitted to be done on or after 1 January 2005 (but before the commencement of Schedule 1 [4] to the proposed Act) in association with Schedule 3 to the Principal Act (as it would have been in force had the proposed Act then been in force).

The savings and transitional provisions also provide for how the amendments regarding additional extended leave entitlements apply to certain State employees and not to other State employees. The amendments made to provide the additional extended leave entitlements are to implement a Memorandum of Understanding made in settlement of proceedings in the Industrial Relations Commission of New South Wales, matters IRC 3817 of 2004 and IRC 4561 of 2004.

The Memorandum of Understanding does not apply to all persons to whom proposed Schedule 3 to the Principal Act applies. Schedule 3 applies to 2 categories of person. The first category is officers and temporary employees within the meaning of the Principal Act, being officers and temporary employees of the Public Service, to whom Schedule 3 applies under its own terms. The second category is persons to whom Schedule 3 applies by force of Acts (other than the Principal Act) or instruments that apply the provisions of Schedule 3 to the person by reference to Schedule 3.

Proposed clauses 16 and 17 in Schedule 4 to the Principal Act limit the effect of the amendments conferring the additional extended leave entitlements to the 2 categories of persons to whom the Memorandum of Understanding (or a corresponding agreement or determination) applies.

In respect of the first category of persons referred to in the previous paragraph, proposed clause 16 excludes the application of the additional extended leave entitlement amendments to the persons listed in the Table to the clause. The persons listed are persons to whom Schedule 3 applies by its own terms but to whom the Memorandum of Understanding, or a corresponding agreement or determination, does not apply.

In respect of the second category of persons, proposed clause 17 excludes the application of the additional extended leave entitlement amendments to persons to whom Schedule 3 applies by force of the Acts and instruments set out in the Table to the clause. The persons listed are persons to whom Schedule 3 applies by force of the Acts and instruments set out in the Table but to whom the Memorandum of Understanding, or a corresponding agreement or determination, does not apply.

Persons currently not entitled to the entitlements conferred under the Memorandum of Understanding may become entitled to corresponding entitlements as other industrial claims are settled. Proposed clauses 16 and 17 of Schedule 4 to the Principal Act provide for the Governor to, by proclamation, omit items from the list in the Table to the relevant clause as persons referred to in the item become entitled to extended leave entitlements that correspond to the entitlements of persons to whom the Memorandum of Understanding applies.

## **Schedule 2 Amendment of other Acts and regulations**

**Schedules 2.3–2.6** amend the *Police Regulation (Superannuation) Act 1906*, the *State Authorities Non-contributory Superannuation Act 1987*, the *State Authorities Superannuation Act 1987* and the *Superannuation Act 1916* so as to provide that, if extended leave is taken, remuneration in excess of leave on full pay is excluded from the relevant definition of salary in each Act. The amendments also provide a power to make savings and transitional regulations. The exclusion of the remuneration in excess of leave on full pay from the relevant definition of salary excludes, for example, double pay from inclusion in the calculation of superannuation benefits.

This amendment is to avoid a person's salary, as included in the calculation of their

superannuation benefits, being artificially inflated by the inclusion of double pay.

**Schedules 2.2 and 2.7–2.9** make amendments consequential on the repeal of the *Transferred Officers Extended Leave Act 1961* and the replacement of that Act's provisions by proposed Schedule 3A to the Principal Act.

**Schedule 2.1** makes an amendment consequential on the omission and re-insertion of Schedule 3 to the Principal Act.