



NSW Legislative Council Hansard

Public Sector Employment and Management Amendment (Extended Leave) Bill

Extract from NSW Legislative Council Hansard and Papers Wednesday 9 November 2005.

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [4.59 p.m.], on behalf of the Hon. John Della Bosca: I move:

That this bill be now read a second time.

As the second reading speech for this bill was delivered in the other place, I seek leave to have it incorporated in *Hansard*.

Leave granted.

The New South Wales Labor Government has been active in seeking a fair balance between employers and employees in the pursuit of greater flexibility in the workplace. As an employer, the New South Wales Government values its employees and is always looking at further ways in which the Government can attract and retain a diverse, experienced and skilled workforce, whilst also achieving value for money for the New South Wales community. This new bill will meet this challenge by securing more flexible delivery of extended leave to New South Wales public servants. In particular, the bill will provide public service employees with earlier access to extended leave entitlements and enable these entitlements to be used at a faster rate. The bill will also provide a new regime to update and clarify the recognition of service provisions in the Transferred Officers Extended Leave Act.

The changes to extended leave entitlements contained in the bill deliver on an agreement reached with the Public Service Association on the main public service salaries award in December 2004. The agreement reached with the Public Service Association was made in settlement of the association's work value and special case claims. Since that time, a number of other groups of employees in the public sector have also received an entitlement to the enhanced extended leave provisions in settlement of their wage and salary claims. Such groups include wages staff in public service departments, police, firefighters and allied health employees. Unlike those groups, the entitlement for the public service will be legislated. Employees covered by the bill include important frontline staff, such as prison officers, child protection workers and court officers.

In preparing the bill, the Government consulted with key stakeholders, including Unions NSW, the Public Service Association of New South Wales, the New South Wales Teachers Federation, NSW Health, the New South Wales Department of Education and Training and NSW Police. The Government is now satisfied that the bill is an appropriate reflection of the settlement with the Public Service Association of New South Wales and the intention of the joint working party, which conducted the review of the Transferred Officers Extended Leave Act.

Turning to the key features of the bill, at a glance the bill will do four things. First, it will allow New South Wales public servants pro-rata access to their extended leave entitlement after seven years rather than 10 years. That is, the quantum of leave available after seven years will be a proportion of the two months that is normally available to employees following 10 years service. This proposal will benefit employees by allowing earlier access to extended leave and removing the need to resign in certain circumstances. To give an example, an employee with seven years service but less than ten years will now be able to access their extended leave in order to care for a sick family member without having to resign. Second, the bill will allow New South Wales public servants to take their extended leave entitlement at double pay. Under this arrangement, the amount of extended leave will be equal to the actual absence from the workplace, plus an equivalent amount in order to make up the additional double payment. For example, an employee may use their entitlement to two months extended leave by taking one month's leave and receiving two months pay.

Importantly, this measure provides incentives to employees with accrued leave to take a well-earned break by providing additional cash at this time. This will also reduce government liabilities that would otherwise accrue, and will assist in meeting the objectives set out in the Government's Fiscal Responsibility Act 2005. While extended leave at double pay provides employees with additional flexibility, it is important to emphasise that the proposal will not be subject to employer influence. Employees will be free to apply for extended leave at double pay, and there will be no ability for employers to compel employees to take periods of double pay. The bill will also amend State superannuation legislation to confirm that extended leave at double pay will not fall within the definition of salary in the closed New South Wales public sector employees' superannuation schemes governed by 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.

These schemes do not include ups and downs from payments such as special allowances in their calculation of the superable salary. It is therefore consistent that the hump that would arise from double pay extended leave is excluded. The double payment will, however, be superable for employees who are covered by the First State Superannuation Act 1992. This is because the payment is considered to be earnings in respect of ordinary hours of work and therefore within the meaning of salary or wages under superannuation guarantee legislation. Thirdly, the bill will provide that public holidays occurring during a period of extended leave—including a period of double pay—will not be deducted from an employee's entitlement.

That is, one additional day of extended leave will be credited to an employee for any public holiday occurring within a period of extended leave, provided it is on a day on which the employee would have received payment had they been rostered normally. This amendment reflects the current provisions under the State Long Service Leave Act, which applies to private sector employees. Finally, the bill will replace the Transferred Officers Extended Leave Act, which was written over 40 years ago and is very legalistic and difficult to read and interpret. The Act has been rewritten to make it more easily understood and user friendly with the provisions to be consolidated into the Public Sector Employment and Management Act and the existing cross-New South Wales public sector mobility provisions under that Act.

This Act essentially provides for recognition of governmental service for the purpose of extended leave from other State, Territory, and Commonwealth governments. Other State, Territory and the Commonwealth governments have similar legislation to provide for mobility across government. The provisions remain largely unchanged, continuing to allow previous eligible service with a recognised governmental employer to be taken into account when assessing and determining an employee's extended leave entitlement. The provisions create a clear definition of a governmental agency and provide for the Director General of the Premier's Department to declare interstate and Commonwealth agencies as recognised for extended leave purposes.

The bill also clarifies that service as a full-time member of the various administrative tribunals is recognised service. The continuity of service requirements have been modified and simplified to allow a person's service to be recognised as long as the new service commences within two months of leaving the previous eligible governmental employer. These changes will improve the efficiency of corporate services in agencies in the application of the provisions of the Act. The bill will also remove situations where employees transferring from other jurisdictions could have a debit or credit service balance based on the extended leave entitlements they may have taken or been paid for by the previous employer. Employees from other jurisdictions with previous eligible service with another recognised governmental employer will also be deemed to have taken or been paid for all extended leave entitlements whilst continuing to be able to have that service recognised for future accruals.

These changes to extended leave will provide public service employees with additional flexibility in balancing their work and personal lives. The three proposals central to this bill—bringing forward eligibility to extended leave after seven years, providing for extended leave at double pay and simplifying recognition of service provisions—will ensure that the New South Wales Government remains an employer of choice, and will assist in meeting the current and future work force needs of the New South Wales Government.