# Legislative Council

18/06/2002

## Public Sector Employment And Management Bill Hansard - Extract

**Second Reading**

**The Hon. JOHN DELLA BOSCA** (Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast) [8.51 p.m.]: I move:

That this bill be now read a second time.

The object of this bill is to replace the Public Sector Management Act 1988 with modern public sector management and employment legislation. The bill also amends the Government and Related Employees Appeal Tribunal Act 1980—the GREAT Act—and the Transport Appeal Boards Act 1980—the TAB Act—in ways that I shall detail later. In the 1990s Australia, with the rest of the world, experienced a period of great change. The way we work, conduct business, communicate with each other and spend our free time has been fundamentally transformed.

These changes arise from technological advancement, increases in the movement of global capital, improved communication systems, increased migration and mobility of people, and the removal of trade barriers. For the people of New South Wales—and particularly for government—these represent a fundamental challenge to how we manage the impact of those changes socially, economically and environmentally. The public sector in New South Wales has had to accelerate its adaptation to change in the past decade to meet these challenges. The public sector continues to face increasing demands for its services within a tight fiscal environment. The changes proposed in this bill respond to these challenges.

The bill strikes a balance: updating the relevant pieces of legislation to accommodate new service delivery models and reducing red tape while ensuring that public service employees have appropriate security of employment and conditions of employment. The bill introduces changes to the following main areas. Objectives for the public service disciplinary scheme are to be introduced by the bill to emphasise that discipline is concerned with the public interest and not just penalties and punishments. The Government has worked closely with the unions to develop a less prescriptive, streamlined disciplinary process which emphasises natural justice rather than bureaucratic process.

The New South Wales Government has placed significant priority on agencies working together to deliver better services to the community and agencies working together to address the needs and expectations of the community in a seamless way. The focus is on outcomes rather than structures and processes. In order to assist agencies to achieve these Government priorities, the bill introduces provisions to enable cross-agency employment. The new provisions will result in an increase in the range of services offered in New South Wales, particularly in the bush. Career opportunities will be expanded without diminishing the rights of staff.

With this Government's focus on providing quality services to the people of New South Wales, staff movements across the public sector are essential. This bill will provide agencies with the ability to acquire suitably skilled staff and just as importantly to provide developmental opportunities for employees. The bill removes the role of the Governor from the majority of the administrative functions associated with the appointment to and removal of officers from positions. These changes will free the Governor from the never-ending task of signing the requisite paperwork. The new, streamlined approach will also result in significant savings for agencies.

Work in the public service has changed over time. The demands of new models of service delivery and the concern to match industry norms in employment arrangements signal a need to modernise employment categories. Therefore, in particular circumstances, people will be employed on a temporary or casual basis. However, the Government has made a strong public commitment to prevent casualisation of employment within the New South Wales public sector. As a result, the bill for the first time makes clear that the usual method for employment in the public service is ongoing, as a permanent officer.

As with the public service disciplinary scheme, this bill will remove red tape and streamline the appeal processes in New South Wales. These changes will enable appeals to be resolved at an early stage. This will alleviate the stress and anxiety of both the employee and employer and lessen the costs for both parties. This bill also brings forward many of the provisions of the current Public Sector Management Act 1988. The Government and the unions have worked together to develop this bill. The proposed amendments respond to the challenges facing public sector agencies. But just as importantly, they reflect the outcomes of extensive consultation with the Public Service Association, the Labor Council and affiliated unions.

In accordance with the bill, guidelines will be issued on the new public service disciplinary system, cross-agency employment, staff mobility and the new categories of employment. The guidelines will be developed in the same inclusive way this bill has been developed—in consultation with agencies and unions. The relevant parts of the bill will not commence until the guidelines have been finalised. Once issued, the agencies affected by the

guidelines will be required to comply with them.

I now turn to some of the details contained in the bill. Objectives for the public service disciplinary scheme are to be introduced. The objectives are: to maintain appropriate standards of conduct and work-related performance in the public service; to protect and enhance the integrity and reputation of the public service; and to ensure that the public interest is protected. Underpinning these objectives will be a streamlined public service disciplinary process. The former New South Wales Industrial Court described the law in this area as "overly detailed and intricate". There are currently 14 mandated steps in any disciplinary matter. Matters can take up to 12 months or more to resolve. This obviously results in a detrimental impact on the workplace and the employee being investigated.

The procedures for this new disciplinary system will be contained in guidelines. The bill makes clear that the guidelines must be consistent with the rules for procedural fairness. The bill will simplify the current 16 breaches of discipline, introducing a general ground for disciplinary action called "misconduct". The bill also ensures remedial action can be taken as an alternative to disciplinary action. Remedial action includes formal and informal counselling, staff development, training and staff rotations. Both employers and unions have expressed concern about the current disciplinary system because it treats unsatisfactory performance in the same way as a disciplinary matter. This bill separates the two.

The bill for the first time introduces provisions to enable cross-agency employment arrangements. Agencies will now be able to employ one person to undertake the functions of more than one agency. This will be a particular benefit in rural and regional New South Wales as agencies often face significant problems employing qualified people when only a part-time job is on offer. The aim of the new provisions is to facilitate cross-agency employment for compatible positions which currently have different statutory obligations. The bill requires one agency to be the employer for the purpose of conditions of employment and in relation to disciplinary matters. The new provisions address issues such as the power to delegate and different statutory obligations, including confidentiality and mandatory reporting. Employees will not be disadvantaged by these arrangements.

Currently, there is no legislative basis for officers to temporarily move—sometimes known as secondments—across the public service. In addition, there are no legislative provisions to allow for movement from the public service to the wider public sector and vice-versa. Often the employee has to take leave without pay in order to transfer temporarily from a public service department like, for example, the Premier's Department to an authority such as the Roads and Traffic Authority. The uncertainty arising from the lack of these legislative provisions is a disincentive for staff to move across the public sector. To address these concerns, the bill allows for permanent and temporary movements across the New South Wales public sector.

A separate issue raised by agencies is their inability to fill, on a permanent basis, long-term temporary vacancies created by staff movements. Agencies are concerned that service delivery is hindered by the instability that results from long-term temporary vacancies. At the same time agencies do not wish to limit developmental opportunities for employees. Under the new provisions, a position may be permanently filled when it is vacant for more than a year as a result of an employee-initiated movement provided the employee wishes to continue with the host agency for the duration of the existing project. This approach will balance the needs of the employee to gain new skills and experience and the chief executive officers' need to ensure stability within their agency. This will not interfere with the current arrangements regarding vacancies arising from maternity leave, workers compensation and sick leave. A position will not be able to be permanently filled when an employee has been directed to move temporarily to another position by the chief executive officer.

No other jurisdiction in Australia retains the role of the Governor to the extent that exists under the current Public Sector Management Act 1988. This bill removes the role of the Governor from the majority of administrative functions associated with the appointment to, and removal of, officers from positions. Under the new provisions, the Premier or delegate will now approve the appointment and termination of chief executive officers. The relevant department head will approve all other appointments and terminations. The removal of the role of the Governor will result in significant savings for agencies. It has been estimated that removing the administrative role of the Governor could save a large department approximately $335,000 a year.

The bill also removes the schedule of senior executive service [SES] positions from the current Act. Amendments to the schedule require the Governor's approval and are also resource intensive. Transparency will be maintained as the Premier's Department will be required to keep an up-to-date list of SES positions on its web site. I am informed that Her Excellency the Governor has not expressed any concerns regarding the proposed changes affecting her role in this bill. The changes will in no way diminish the current rights of employees or the transparency of current processes.

In relation to SES officers, the current Act provides only for the re-appointment process to commence approximately six months prior to the end of their term of appointment. Re-appointment at an earlier stage may be necessary to ensure the retention of key executives. The bill provides for these circumstances. Under the current Act, there are only two types of employment arrangements available to public service departments: ongoing as an officer or temporary employment for a period of up to four months. These two categories of employment are restrictive and do not cover the full range of employment arrangements available in other parts of the public sector in New South Wales and in other Australian jurisdictions.

Under the new provisions there will be three categories of employment in public service departments: ongoing as an officer, temporary or casual. The bill introduces temporary employment for a period of up to three years in specific circumstances—for example, when recurrent funding is not available or when there is a specific

time frame for a project. Employment for periods in excess of 12 months will be subject to merit selection. Longer-term temporary employment—as opposed to four months—will provide greater financial security for employees. The bill also recognises a category of casual employment. Casual work is justified in certain circumstances—for instance, when there are unplanned absences in critical front-line positions. It is defined as employment for work that is irregular or intermittant. Casual employment is to be used only when a department's workload needs to be addressed in the short term or in an urgent or emergency situation. Direct engagement of casual employees is to be preferred to the use of staff provided by labour hire firms.

I reiterate at this point that the Government has made a strong public commitment to preventing the casualisation of employment within the New South Wales public sector, and the bill makes it clear that the usual method for employment in the public service is ongoing, as a permanent officer. The bill brings forward the provisions from the current Act regarding competitive neutrality in tendering. Due to the important nature of the functions undertaken by the State Contracts Control Board, the board will now be established legislatively rather than by regulation, as is currently the case.

I turn now to the changes to the Government and Related Employees Appeal Tribunal [GREAT] and the Transport Appeal Board [TAB] Acts. The proposed changes adopt best practice from the GREAT, the TAB and the Industrial Relations Commission [IRC]. This will benefit employees, employers, the GREAT and the TAB. The proposals in the bill do not, on the whole, affect current appeal rights. In summary, the following are the main changes to the promotional and disciplinary appeal processes in New South Wales. In relation to disciplinary appeals, one of the changes proposed to the GREAT Act is the inclusion of the IRC practice of requiring conciliation before all disciplinary proceedings. This is a practical change because a lot of disciplinary matters can and should be resolved at an early stage without the need to have a formal disciplinary hearing.

The New South Wales Industrial Relations Act 1996 contains provisions prohibiting certain appeals to the IRC. This includes probationary employees, certain casuals and those employed for a specific time or task. The bill largely replicates the Industrial Relations Act 1996 provisions in the GREAT Act in regard to these categories. The bill removes legal technical barriers to disciplinary appeals. The bill also deletes the current GREAT prohibition on implementing an agency disciplinary decision until the outcome of the appeal is finalised.

In relation to the TAB, the bill removes current provisions that allow disciplinary decisions to be further appealed back from the tribunal to the employing agency. Another commonsense amendment introduced by the bill is to provide GREAT and TAB with the power not to proceed with a promotional appeal if, for example, the recommended appointee withdraws from the promotional position. Another practical, yet important change will be that GREAT will now have the power to strike out a promotional appeal if the tribunal is of the opinion that it is vexatious or frivolous, or when the appellant is not able to put forward an arguable case in favour of his or her appointment. This will enable GREAT to focus its resources on hearing genuine promotional appeals. Currently, all promotional appeals before the TAB are formal, including legal representation and cross-examination. The TAB Act will now provide that appeals may be informal.

In conclusion, the Government is committed to ensuring that the community receives value for money and quality services from its public sector bodies and employees. The changes introduced by the bill will greatly assist the Government to achieve these outcomes. This bill will give effect to the Government's strong agenda to reform and revitalise the New South Wales public sector. I commend the bill to the House.