

Public Sector Employment and Management Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to replace the *Public Sector Management Act 1988* with modern public sector employment and management legislation.

The principal reforms effected by the Bill are as follows:

- (a) to introduce a streamlined disciplinary scheme for Public Service staff that deals with both misconduct by officers and management of poor performance,
- (b) to facilitate the movement of staff across the whole of the public sector on both a temporary and permanent basis and to make provision for cross-agency employment arrangements,
- (c) to make changes with respect to the employment of Departmental temporary employees, including providing for employment on a temporary basis for periods of up to 3 years as well as for merit selection for periods of employment that exceed 12 months,
- (d) to provide for the employment of casual employees in Departments,
- (e) to remove the role of the Governor in the appointment of Public Service staff and in the termination of their employment,
- (f) to simplify and clarify existing provisions relating to chief and senior executive officers in the public sector.

The Bill also contains a number of amendments to the *Government and Related Employees Appeal Tribunal Act 1980* and the *Transport Appeal Board Act 1980* to facilitate promotion and disciplinary appeals in the public sector and to enhance the powers of the appeal bodies under those Acts.

Outline of provisions

Chapter 1 Preliminary

Chapter 1 (**clauses 1–4**) contains provisions dealing with the name and commencement of the proposed Act and its interpretation. Judicial officers are excluded from the proposed Act. Officers of either House of Parliament are excluded from the proposed Act, except in relation to cross agency provisions such as staff mobility.

Chapter 2 The Public Service

Part 2.1 General

Part 2.1 (**clauses 5–9**) contains general provisions in relation to the Public Service, including the setting up of Departments, the categories of employment of staff in a Department and the creation of staff positions by Department Heads. The usual basis of employment of staff is to be the employment of officers (ie persons who hold staff positions in a Department), although persons may also be employed in a Department on a temporary or casual basis.

Part 2.2 Department Heads

Part 2.2 (**clauses 10–15**) provides that Department Head positions are created by virtue of the position being listed in column 2 of Schedule 1 to the proposed Act. Appointments to vacant and acting Department Head positions are to be made by the Minister. Provision is also made for the general responsibility of Department Heads and their delegation powers.

Part 2.3 Officers (other than Department Heads)

Part 2.3 (**clauses 16–26**) deals with appointments to officer positions in the Public Service (other than appointments to chief executive positions). Appointments to vacant positions are to be made on the basis of merit by the appropriate Department Head and vacancies must be

advertised. An eligibility list for a position may be created. Appointments to officer positions are subject to promotion appeals to GREAT, but no other legal proceedings may be brought in respect of an appointment. Persons admitted as officers are to be appointed in the first instance on probation. Acting appointments may be made to vacant positions, and provision is made to enable incapable officers to be retired. Provision is also made to specify the circumstances in which an officer's position becomes vacant.

Part 2.4 Departmental temporary employees

Part 2.4 (**clauses 27–31**) contains provisions for the temporary employment of persons by Department Heads to carry out work for a particular period. The maximum period for which a Departmental temporary employee may be employed at any one time is 3 years, and any re-employment is to be in accordance with the Public Employment Office's guidelines. The services of a Departmental temporary employee may be dispensed with at any time. Provision is also made for the appointment to officer positions in a Department of long-term temporary employees in special cases.

Part 2.5 Special temporary employees

Part 2.5 (**clauses 32–37**) contains provisions relating to the employment by the Director-General of the Premier's Department of special temporary employees to carry out work for political office holders.

Part 2.6 Casual employees

Part 2.6 (**clauses 38 and 39**) enables a Department Head to employ persons to carry out work in the Department on a casual basis. The services of any such casual employee may be dispensed with at any time.

Part 2.7 Management of conduct and performance

Part 2.7 (**clauses 40–53**) contains provisions for dealing with misconduct and poor performance by officers in the Public Service. Under Part 2.7, allegations of misconduct may be dealt with by the Department Head as a disciplinary matter (in which case the allegation is to be dealt with in accordance with procedural guidelines that comply with the rules for procedural fairness). Alternatively, the Department Head may decide to take remedial action (eg counselling or a warning) with respect to the officer concerned. If the allegation is dealt with as a disciplinary matter, disciplinary action (eg dismissal) may be taken. Disciplinary action may also be taken if an officer is convicted (or has been found guilty) of a serious offence. An officer may be suspended from duty while an allegation of misconduct is being dealt with.

The Part also provides that if an officer is not performing his or her duties in a satisfactory manner, remedial action may be taken by the Department Head. If the officer's performance does not improve, the Department Head may decide to take disciplinary action.

Part 2.8 Miscellaneous provisions relating to the Public Service

Part 2.8 (**clauses 54–62**) replicates a number of existing provisions of the *Public Sector Management Act 1988* relating to the employment and management of Public Service staff. These provisions include the requirement that a person is eligible to be appointed as an officer only if the person is an Australian citizen or has permanent residency in Australia. Other existing provisions dealing with excess officers and excessive salaries of officers, along with the right or power of the Crown to dispense with the services of any person employed in the Public Service, are also continued. The requirement to notify the Department Head of an officer's bankruptcy is also continued, as is the requirement that Departmental staff cannot undertake other paid work without the Department Head's permission.

Chapter 3 Public sector staff

Part 3.1 Public sector executives

Part 3.1 (**clauses 63–84**) contains provisions relating to the composition of the chief executive service and the senior executive service and to public sector executives generally. These provisions simplify and clarify the existing provisions of Part 2A of the *Public Sector Management Act 1988* and, in particular, provide:

- (a) for the designation of senior executive positions (other than statutory offices) being made by the Minister instead of being set out in the Act and being altered from time to time by

- order of the Governor, and
- (b) that the existing power to remove executive officers from office at any time extends to their removal from office without reasons or notice being given, and
 - (c) that the exclusion of the jurisdiction of the Industrial Relations Commission with respect to executive officers extends to the unfair contracts jurisdiction of the Commission.

Part 3.2 Staff mobility

Part 3.2 (**clauses 85–99**) contains provisions relating to the movement of staff across the public sector on both a temporary and permanent basis. The Part applies to the staff of any public sector agency. Temporary staff transfers (or secondments) are formalised, and provision is also made to enable the head of a public sector agency to transfer a member of staff to another position or other employment in the agency or to transfer a member of staff to the service of another public sector agency. Persons who are employed in or by a public sector agency may also be temporarily assigned to carry out work for another public sector agency. Part 3.2 also contains provisions relating to the leave arrangements for employees who transfer from one public sector service to another.

Part 3.3 Miscellaneous provisions relating to public sector staff

Part 3.3 (**clauses 100–103**) contains provisions relating to cross-agency employment (in which a person may be employed in 2 or more Departments or in the Public Service and in any other public sector service), enabling a Department Head to make use of the services of a member of the Education Teaching Service, providing for leave of absence for public sector employees who contest State elections and providing for public sector employees who resign to contest Federal elections to be re-appointed if they are not elected.

Chapter 4 Administrative changes

Chapter 4 (**clauses 104–113**) enables the Governor, by order, to establish a Department and make other changes in relation to a Department (including making changes to the list of Departments in Schedule 1 to the proposed Act). Orders may also be made in connection with administrative changes in relation to Ministers, Departments and officers. Chapter 4 also contains general requirements in relation to orders made under the Chapter.

Chapter 5 Statutory officers

Chapter 5 (**clauses 114–120**) contains provisions relating to the removal by the Governor of term appointees to statutory offices, including provision for the re-appointment in certain cases to the public sector and compensation following removal.

Chapter 6 Public Employment Office

Chapter 6 (**clauses 121–134**) continues the constitution of the Public Employment Office and provides for its management, responsibilities and functions (which include the determination of employment conditions for members of staff in the Public Service). The requirement that certain “declared” authorities must comply with directions of the Public Employment Office on industrial matters is continued.

Chapter 7 Goods and services

Chapter 7 (**clauses 135–157**) contains provisions relating to the establishment of the State Contracts Control Board (which is currently established by the *Public Sector Management (Goods and Services) Regulation 2000*) and to its functions and membership. The regulations under the proposed Act may make provision for or with respect to the acquisition or disposal of goods and services for the Public Service. Chapter 7 also replicates the existing provisions of Part 10 of the *Public Sector Management Act 1988* on competitive neutrality in tendering.

Chapter 8 Miscellaneous

Chapter 8 (**clauses 158–170**) contains a number of miscellaneous provisions, including provisions that bind the Crown to the proposed Act, authorise the Minister to direct the conducting of special inquiries, enable the delegation of the Minister’s functions under the

proposed Act, enable the making of regulations for the purposes of the proposed Act, repeal the *Public Sector Management Act 1988* and require the proposed Act to be reviewed after 5 years.

Schedules

Schedule 1 specifies the Departments of the Public Service and the respective Department Head positions.

Schedule 2 specifies executive positions for the purposes of the proposed Act. The list does not include senior executive service positions that are currently listed in Part 1 of Schedule 3B to the *Public Sector Management Act 1988*. These positions will from now on be listed on the Premier's Department website.

Schedule 3 contains provisions relating to extended (ie long service) leave for Departmental staff.

Schedule 4 contains savings and transitional provisions, including the continuation of regulations made under the former Act.

Schedule 5 contains a number of machinery and consequential amendments to the *Government and Related Employees Appeal Tribunal Act 1980*. The amendments are designed to facilitate the making and determination of promotion and disciplinary appeals to GREAT. In particular, the Act is amended to make it clear that a decision to dismiss a public sector employee (which includes dispensing with the services of such an employee) is subject to an appeal to GREAT regardless of whether it is for disciplinary reasons. Section 26 of the Act, which currently "stays" the operation of an appealable decision until such time as the appeal is determined, is replaced by a provision that enables an appealable decision to be carried into effect at any time.

Schedule 6 contains a number of machinery and consequential amendments to the *Transport Appeal Boards Act 1980*, including making provision similar to the GREAT Act for the hearing of appeals to be formal or informal.

Schedule 7 contains amendments to a number of other Acts and regulations as a consequence of the enactment of the proposed Act.