PUBLIC SECTOR EMPLOYMENT AND MANAGEMENT AMENDMENT BILL 2012

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Bill introduced on motion by Mr Barry O'Farrell.

Agreement in Principle

Mr BARRY O'FARRELL (Ku-ring-gai—Premier, and Minister for Western Sydney) [12.26 p.m.]: I move:

That this bill be now agreed to in principle.

The Public Sector Employment and Management Amendment Bill 2012 proposes to update the State's primary public sector employment legislation to improve performance management in the public sector and to ensure that the provisions relating to excess employees are clear and practical to implement. As I have said before, the Government is determined to make the New South Wales public sector the best in the nation and a leader in the world, with unambiguous goals, clear policy directions, transparent processes and consistent accountability. Establishing strong performance management systems is part of this task. Performance management systems should not focus solely on poor or unsatisfactory performance. The emphasis also should be on recognising achievements, providing training and, importantly, giving feedback on results.

The bill requires the Public Service Commissioner to develop and issue guidelines to public sector agencies on the essential elements of performance management systems. The commissioner will be able to issue a direction to public sector agencies about performance management systems. Public sector agencies also will be required, under proposed section 101A, to develop and implement performance management systems for their staff. We recognise that public sector agencies need to tailor their systems to reflect their organisational environment and operational priorities if they are to achieve a better outcome and deliver improved services to their customers, the taxpayers and residents of this State.

The bill also seeks to amend sections 56 and 57 of the Act. As members would be aware, the Government introduced a new policy for the management of excess employees from 1 August 2011, abolishing Labor's "no forced redundancies" policy. The Government introduced the new policy in line with our election commitment. The "no forced redundancies" policy allowed excess employees to drift in a kind of limbo—in some cases for up to ten years—without securing a permanent job. That is simply a waste of taxpayers' dollars. Make no mistake, this Government wants to help public servants who lose their jobs as a result of changing priorities or structural reforms, but employees who cannot be redeployed cannot be kept on the books indefinitely.

Under the Government's new policy, excess employees are asked to choose between a generous voluntary redundancy package and a three-month retention period in which to pursue redeployment. If an excess employee declines voluntary redundancy and cannot find a new job within three months, he or she will be made redundant. For public servants, this means termination under section 56 of the Public Sector Employment and Management Act 2002. Our policy applies to those public sector agencies in the New South Wales government service. Essential front-line employees, working under separate industrial arrangements, are not subject to the new policy. For example, it does not apply to nurses, ambulance officers, schoolteachers, police officers, firefighters or rail workers. Disappointingly, the unions challenged the new arrangements in the Industrial Court of New South Wales and in November last year the court handed down its decision. While the new policy is unaffected by the judgement, the Industrial Court proposed an interpretation of section 56 of the Act that significantly broadened its application and has made this section impractical and onerous to apply.

The court indicated that an excess employee cannot be made redundant as long as "useful work" of any kind exists anywhere across the entire public sector. Under the court's broad interpretation, "useful work" would include all work undertaken on a temporary, casual and contractual basis, as well as that performed on an ongoing basis. If this interpretation of section 56 were to be applied, I am advised it would be almost impossible to satisfy the requirements in the current provision and proceed to terminate an excess employee who could not be found a new permanent position. In fact, the court's "useful work" test would result in a de facto return to the "no forced redundancies" policy.

The Government's intention is to return the application of section 56 to the previous practice undertaken by departmental heads. The Government wants to retain the requirement that before terminating an excess employee a departmental head must be satisfied there is no vacant permanent position for that person, not only in his or her department but in all other departments and all other agencies of the public sector. This is a fair obligation which must be discharged before a decision is taken to make a person redundant, but it is only fair that the search for a job across the whole of the public sector is for an ongoing public sector position. For consistency, section 57 of the Act—covering public servants on excessive salaries relative to the position they are currently occupying–will be amended as well. This will ensure that the search for a job at the same salary level is limited to an ongoing public sector position and not just any type of work.

This legislation is also intended to clarify that the Public Sector Employment and Management Act 2002 is the principal legislation governing the employment of public servants. The bill proposes to exclude the application of the unfair contracts provisions in division 2 of part 9 of chapter 2 of the Industrial Relations Act to arrangements for dispensing with excess employees. It will apply to the government service and to all other public sector agencies. Excess employee arrangements include how and when a staff member becomes excess, issues concerning redeployment, the retention period, salary maintenance,

redundancy payments and termination—this is made clear in proposed section 103A (2).

The amendments are necessary to avoid lengthy and ongoing court proceedings that are not brought under the principal Act relating to the employment of public servants, the Public Sector Employment and Management Act, but under the unfair contracts provisions of the Industrial Relations Act. These proceedings under the unfair contracts provisions seek to prevent agencies from implementing reasonable changes to their excess employee policies that are consistent with the Public Sector Employment and Management Act and are rightly a matter for the Government to determine through policy decisions from time to time. It is important to note; however, that redundancy arrangements in industrial instruments will not be displaced and the amendments do not affect any orders of the Industrial Court that were made prior to the commencement of the legislation. The amendments that exclude the unfair contract provisions take effect upon the date that notice was given in Parliament for the introduction of this bill and include any relevant proceedings commenced on or after that date.

While the changes will mean that the Industrial Court cannot deal with these matters, individual excess employee disputes and unfair dismissal matters will still be able to be heard and determined by the Industrial Relations Commission. The proposed changes will support the Government's fair and reasonable policy for managing excess employees and improve agencies' ability to deliver better public services in line with community expectations. I commend the bill to the House.

Debate adjourned on motion by Dr Andrew McDonald and set down as an order of the day for a future day.