Second Reading

The Hon. MICHAEL GALLACHER (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [11.12 a.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

I am pleased to introduce the Public Sector Employment and Management Amendment Bill 2012.

This bill 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, this 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.

To drive this vision for the public sector the Government has established a Public Service Commission in New South Wales—the centrepiece of our plans for the public sector. On 1 November 2011 the Public Service Commission commenced operation with Mr Graeme Head, a public servant with more than 30 years experience, including 18 years in executive positions in New South Wales and the Commonwealth, as the inaugural Public Service Commissioner

We know the community has high expectations of our public services.

Better management of our public sector workforce, at all levels, will help to achieve long overdue improvements in service delivery and productivity.

The New South Wales Commission of Audit, led by Dr Kerry Schott, has recently issued its Interim Report on Public Sector Management. The Commission has found that, in the New South Wales public sector, "low importance has been attached to financial, people and asset management".

The Commission of Audit also notes that many managers do not perceive performance management as an integral part of their job. Managers see it as a human resources [HR] activity, rather than a continuing process of skills development and workforce planning.

The Commission of Audit recommends the Public Service Commissioner should, amongst other things, "develop a program to promote the importance of performance management, set minimum standards and encourage each supervisor to understand that performance management, especially conducting appraisals, is an integral part of their job".

This Government knows performance management systems are absolutely essential if

agencies are to identify areas for improvement, set career goals for individuals, highlight where greater investment or training is required, and acknowledge superior performance.

Performance management systems should not focus solely on poor or unsatisfactory performance. The emphasis should also be on recognising achievements, providing training, and, importantly, giving feedback on results.

Therefore, this bill amends the Public Sector Employment and Management Act 2002 to require the 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 will also be required, under the proposed section 101A, to develop and implement performance management systems for their staff.

Let me be clear, I am not asking the commissioner to dictate a one-size-fits-all performance management system. We recognise that public sector agencies need to tailor their systems to reflect their organisational environment and operational priorities if they are to achieve better outcomes and deliver improved services to their customers.

However, properly designed performance management systems in public sector agencies will contribute to the Government's aim to make the New South Wales public sector an employer of choice.

Working in the public service is more than a simply a job. Our employees understand this and they show a strong commitment to making life better for everyone in our community. We have a responsibility to ensure that public servants are provided with clear performance targets and opportunities for improving the way they do their jobs.

This bill also seeks to amend sections 56 and 57 of the Act.

As honourable 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 "no forced redundancies" policy allowed excess employees to drift in a kind of limbo—in some cases for 10 years—without securing a permanent job. That is simply a waste of taxpayer's money.

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.

After fifteen years of ineffective management of excess employees—to their detriment, the detriment of the public service, and most significantly, the taxpayers of New South Wales—I am pleased to say the situation has now been remedied.

Under this 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, they 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, school teachers, police officers, fire fighters 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.

Significantly, the new policy is unaffected by the judgment and it continues to apply to employees made excess on or after 1 August 2011.

However, in comments contained in its decision, 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.

In its comments, the court indicated that an excess employee—that is an employee without a permanent position, without a real job, but still being paid—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.

At any one time there is usually some work that needs to be done in some public sector agency, even if only for a very short period. It is simply not practicable for public service employers to be required to constantly seek such short-term work, at any and every level and of any kind, for an excess employee.

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 department heads.

The Government wants to retain the requirement that a department head, before terminating an excess employee, must be satisfied there is no vacant permanent position for that person, not only in their own department but in all other departments and all other agencies of the public sector.

This is a very fair obligation which must be discharged before a decision is taken to make a person redundant. Such an obligation certainly does not exist in the private sector.

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—and not the unrealistic "useful work" obligation, as proposed by the Industrial Court.

In addition to the changes to section 56, it is appropriate for consistency and fairness to

amend the requirement in section 57 of the Act concerning public servants on excessive salaries relative to the position they are currently occupying.

This will ensure that the search for a job at the same salary level continues to be across the whole of the public sector but is limited to an ongoing public sector position within either departments or public sector agencies—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 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) of the bill.

Such an approach is consistent with arrangements in the general community where access to rights under the unfair contracts provisions of the Industrial Relations Act is not widely available.

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.

The amendments will clarify that the court will no longer have the power to unilaterally determine the provisions that apply to excess employees in the public sector.

It is important to note, however, that redundancy arrangements in industrial instruments will not be displaced.

The bill also makes it clear that 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 Industrial Relations Commission will still have an important role to play by ensuring that excess employees are treated fairly, receive their entitlements at law and under the policy,

and have access to relief for unfair dismissal.

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.