

INDUSTRIAL RELATIONS AMENDMENT (PUBLIC SECTOR CONDITIONS OF EMPLOYMENT) BILL 2011

Page: 889

Bill introduced, by leave, and read a first time and ordered to be printed on motion by the Hon. Greg Pearce.

Second Reading

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [5.03 p.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Industrial Relations Amendment (Public Sector Conditions of Employment) Bill 2011. The New South Wales Government has made a commitment to its citizens to rebuild the economy, return quality services, renovate infrastructure, restore accountability, and protect the local environment and communities. We are rebuilding a strong New South Wales economy through lower taxes and supporting businesses to grow and create jobs. The Government is returning quality services in areas such as health, transport, education and community safety. This includes 900 additional teachers under the Literacy and Numeracy Action Plan and opening 1,390 beds and providing 2,475 extra nurses under the Better Hospitals and Healthcare Plan.

The Government is building the infrastructure that will make a difference to both the economy and people's lives including the commencement of work on planning and budgeting for the North West Rail Link. The Government is deeply committed to its core purpose of delivering the high-quality front-line services that New South Wales citizens deserve by a highly skilled and effective public sector. To this end we have announced the establishment of the Public Sector Commission to provide advice on public sector reform. In order to deliver on this plan and ensure that the commitments will be funded, action needs to be taken to control government expenditure. Employee-related costs are the largest component of government expenditure, accounting for almost half of government expenses. In 2010-2011 approximately half of government expenses will be employee-related and are projected to be \$28 billion. Managing this expenditure is a major challenge, given that front-line services such as education, health care and policing are labour intensive. Each 1 per cent increase in wages permanently increases government expenses by around \$277 million per annum.

Underpinning the need for fiscal restraint is the Government's wages policy. The policy was first introduced by the previous Labor Government in 2007, but that Government failed to implement it. The New South Wales Coalition Government will continue the key provisions of the wages policy introduced by the former Labor Government. However, the Coalition Government has proposed changes to the way the wages policy operates to ensure that the key requirements of the wages policy are actually followed. Our policy and legislative response will ensure that wage increases of 2.5 per cent are available each year to our hard-working public sector employees. Increases in excess of 2.5 per cent are available but will be required to be funded through employee-related savings.

Key elements of the policy require that any increases to employee-related expenses exceeding 2.5 per cent per annum, including wages, allowances, superannuation and conditions of employment, must be funded through employee-related cost savings that have been achieved. Details of the savings measures used to fund increases in excess of 2.5 per cent are to be detailed in the award or agreement where that is appropriate. New awards or agreements should not predate the expiry of existing instruments, back-payment of wage increases is not to occur other than in exceptional circumstances, and awards and agreements must contain clear and comprehensive no extra claims clauses.

Some people seem to take the view that government has a bottomless pit of money to pay for any or all hoped-for pay increases. It does not. The policy intention is to ensure an appropriate balance between public sector wage increases and the availability of funds for the delivery of the Government's commitments and value for money for New South Wales taxpayers. Where agencies and unions are able to identify agreed employee-related savings, these will be able to be passed on in higher wages. However, this balance has been skewed by years of a lack of commitment by successive Labor governments to rigorously follow their own policy, and this has led to a blowout in unfunded public sector wage cost increases.

The Industrial Relations Commission has rejected key aspects of the 2007 wages policy on a number of occasions. In the 2008 public servants salaries case the Government accepted the Industrial Relations Commission's strong recommendation for the settlement of the Public Service Association's claim. The recommendation provided for increases of 4 per cent per annum over three years and committed the Government and the union to achieving a range of employee-related cost offsets that were not identified at the time. The Government and the union then reflected the commission's recommendations in a memorandum of understanding. A subsequent decision by the commission in 2010 regarding the interpretation of the memorandum constrained the areas of employee-related cost savings the Government was able to pursue, severely limiting the opportunity for public sector agencies to pursue significant savings through industrial reforms.

In the December 2010 State Wage Case decision the Full Bench of the Industrial Relations Commission specifically rejected the basis for the Government's wage policy requirement to limit wage increases that did not contain additional offsets to 2.5 per cent. At the same time the commission also created a new productivity and efficiency wage fixing principle to allow unions to seek potential wage increases independent of the need to identify employee-related savings, and that is directly at odds with the former Government's policy and our Government's policy. Presently, the Industrial Relations Act 1996 provides the Industrial Relations Commission with broad discretion to determine public sector wage outcomes that do not accord with government wages policy.

I now turn to elements of the bill. The primary amendment to be made to the Industrial Relations Act is the insertion of a new section 146C containing the explicit requirement that when making or varying awards or orders the commission must give effect to the Government's policy on conditions of employment for the public sector as declared under the regulations. The reference to the Government's policy on conditions of employment is intended to be broad enough to enable all relevant elements of the public sector wages policy to be included in the declaration made under the regulations. It will be appreciated that while the focus of the wages policy is on ensuring appropriate restraints on the quantum of pay increases, as outlined above, in order to do so the policy may also refer to other relevant conditions of employment, such as increased leave entitlements or a new classification structure. The commission will be required to give effect to the Government's policy only where any such declared policy applies to the matter before it. These will be matters arising in the public sector. Clearly, this requirement will not apply to, for example, matters relating to local government employers and employees.

Under the current framework of the Industrial Relations Act, the Industrial Relations Commission is required to have regard to a range of matters in the exercise of its functions. These include the objects of the Act in section 3, the instruction in section 10 to make awards setting fair and reasonable conditions of employment for employees, the public interest provisions in section 146, and the state of the economy of New South Wales and the likely

effect of its decisions on that economy, also in section 146. That is already in the Act. The commission also applies a set of wage fixing principles that set out the circumstances in which wage increases can be awarded. These are applied when the commission deals with public sector awards, which are not affected by the minimum wage increase set in the general State Wage Case.

As can be seen, the commission exercises a broad-ranging discretion when it comes to wage fixing. This environment is conducive to submissions that the Government's wages policy should be disregarded or that other considerations are more significant than the wages policy. As outlined earlier, the Government's wages policy is designed to ensure fiscal discipline and to protect the budget bottom line, therefore ensuring that services and other commitments of the Government to the citizens of this State are able to be delivered. It is not a good outcome for New South Wales when government wages policy is disregarded. That is why the bill includes the new requirement in section 146C (1) that in public sector matters the Industrial Relations Commission's prime objective is to give effect to the Government's wages policy. This will support the achievement of the Government's budgetary objectives.

The objective is supported and strengthened by subsection (3) of proposed section 146C, which provides that any award or order that is inconsistent with the declared wages policy of the Government will be of no effect. The amendment also includes very specific words to ensure that its intention may not be subverted by reference to section 146 or any other provisions of the Act. This is found in proposed subsection (7). In order to make it clear to the commission what the amendment requires it to do, the relevant elements of the policy will be declared in the regulations. Proposed subsection (2) provides some flexibility in how the regulation may be made. The regulations may declare particular aspects of government policy on public sector conditions of employment, or they may adopt an existing policy set out in a relevant document.

The commission will be left in no doubt about the matters to which it must give effect when it makes or varies awards or orders relevant to public sector employment. For example, where a public sector union has filed a wages claim in the commission and seeks that the commission conciliate and/or arbitrate to achieve an outcome, the commission will be bound to ensure that, in accordance with the declared wages policy, any increase in excess of 2.5 per cent will only be awarded where employee-related savings sufficient to fund such an increase have been both identified and implemented.

Similarly, where a claim has been filed to create an additional condition of employment, such as increased leave entitlements or a new classification structure, this too has to be assessed by the commission in accordance with the terms of the declared government wages policy. These matters were subject to the Labor Government's 2007 wages policy, which covered both wages and conditions of employment. The Government is mindful of concerns about the independence of the judiciary. In light of such concerns, subsection (5) of the proposed new section provides that the requirement to give effect to government wages policy does not apply to the Commission in Court Session, also known as the Industrial Court.

The requirement to give effect to government wages policy will only apply when the commission is exercising its non-judicial functions of making or varying awards and orders. The definition of "award or order" in subsection (8) of proposed new section 146C makes clear the activities that will be subject to the new requirement. These functions include setting remuneration and other conditions of employment and resolving industrial disputes. They include the consideration of whether to flow on national wage decisions or to make State-based general decisions. They also include approving enterprise agreements, which set wages

and conditions for particular workplaces. These are precisely the kinds of functions that are likely to involve the need to give effect to the government wages policy.

The intent of the amendment is to ensure that the wages policy or the Government's fiscal strategy is not rendered ineffective by decisions of the Industrial Relations Commission. The proposed amendments will ensure that the commission makes decisions that properly take account of and give effect to wages policy, so minimising pressure on the State's budget. Honourable members may be aware that several public sector unions filed claims in the Industrial Relations Commission in the dying days of the previous Government. Proposed subsection (6) ensures that the new section 146C requirements will apply to all matters pending before the commission. This will include appeals from any matters already decided. In other words, the amendment is intended to have immediate effect on commencement in relation to all matters not yet concluded before the commission.

When considering the proposed amendments to the Industrial Relations Act it is important to note that the Industrial Relations Commission will continue to play an important role in the ongoing need for public sector workplace reform, promoting efficiency and productivity in the economy of the State, providing for the resolution of industrial disputes by conciliation and encouraging and facilitating cooperative industrial relations. Under the proposed amendments the commission will continue to assist New South Wales public sector agencies and unions to identify and reach agreement on wage outcomes, albeit within the confines of the Government's wages policy. This discretion will include determining the quantum of wage increases, consideration of changes to conditions of employment, ensuring the corresponding level of employee-related savings has been achieved, and identifying future workplace reform.

This is similar to the assistance provided by the commission in 2009 to resolve the long-running dispute in the TAFE teachers wages case. In this case the parties had agreed to submit to arbitration by the commission in the event they could not agree on cost savings. In the event, the commission decided that arbitration was necessary after considerable efforts at conciliation, which, on a number of occasions, appeared to come close to reaching agreement but which was disrupted by a number of instances of industrial action. The commission's arbitration was crucial to settling the matter.

The amendments in this bill will ensure that the Industrial Relations Commission of New South Wales has a central role in providing New South Wales public sector workers with fair and reasonable wage increases, while also ensuring that the New South Wales Government contains expenses, provides efficient service delivery and invests taxpayers' money wisely. I commend the bill to honourable members.