



New South Wales

Members of Parliament Staff Bill 2013

Explanatory note

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

This Bill is cognate with the *Government Sector Employment Bill 2013*.

Overview of Bill

The object of this Bill is to provide for new arrangements under which the following persons may be employed:

- (a) the staff of political office holders (which includes Ministers and the Leader of the Opposition in the Legislative Assembly),
- (b) the staff who assist members of Parliament in their electorate and Parliamentary duties.

At present, the staff of political office holders are employed as special temporary employees under the *Public Sector Employment and Management Act 2002* in the Department of Premier and Cabinet and the staff who assist members of Parliament in their electorate and Parliamentary duties are employed by the relevant Presiding Officers pursuant to a long standing delegation of the Governor's employment powers under the *Constitution Act 1902*. Under the new arrangements, political office holders will be authorised to employ their own staff and members of Parliament will be authorised to employ staff to assist those members in their electorate and Parliamentary duties.

The Bill does not cover the officers and employees of either House of Parliament or those officers or employees under the separate or joint control of the relevant Presiding Officers.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act. A *political office holder* means a Minister, the Leader of the Opposition in the Legislative Assembly or the holder of a Parliamentary office determined by the Premier (see proposed section 4). The *relevant Presiding Officer* means, in relation to persons employed by a member of the Legislative Council, the President of the Legislative Council or, in relation to persons employed by a member of the Legislative Assembly, the Speaker of the Legislative Assembly.

Clause 4 enables the Premier to determine that, having regard to the duties associated with a Parliamentary office held by a member of Parliament, the holder of that office is entitled to employ staff in the member's capacity as a political office holder.

Part 2 Staff of political office holders

Clause 5 authorises a political office holder to employ a person as a member of the office holder's staff. The power to employ staff under the proposed Part is subject to arrangements approved by, and to the conditions determined by, the Premier (including the number of staff that a political office holder may employ).

Clause 6 provides that the written agreement by which a person is employed under the proposed Part is to be in the terms of the model agreement that has been approved by the Premier.

Clause 7 enables the Premier to make determinations fixing the conditions of employment of persons employed under the proposed Part.

Clause 8 specifies the circumstances in which the employment of a person under the proposed Part terminates. The services of a person employed by a political office holder may be dispensed with at any time by that office holder.

Clause 9 enables the staff employed by a political office holder to be temporarily assigned to carry out work for another political office holder.

Clause 10 provides for the provision of administrative and other support services for political office holders and their staff.

Clause 11 enables the Premier to delegate any of the Premier's functions under the proposed Part.

Clause 12 enables a political office holder to delegate his or her power to employ staff to a member of the office holder's staff.

Clause 13 provides that the committing or incurring of money appropriated out of the Consolidated Fund for the purposes of the employment of staff under the proposed Part may be delegated to a member of staff of a political office holder.

Part 3 Staff of members of Parliament

Clause 14 authorises a member of Parliament to employ staff to assist the member in exercising his or her functions as a member of Parliament. A member of Parliament who is a political office holder may also employ staff under the proposed section to assist the member in his or her function as a member of Parliament.

Clause 15 provides that a member of Parliament who holds an office specified in Schedule 1 to the proposed Act (a *special office holder*) may, in addition to the entitlement to employ staff under proposed section 14, employ staff to assist the member in exercising the functions of that special office. A political office holder is not authorised to employ staff under the proposed section.

Clause 16 provides that the power to employ staff under the proposed Part is subject to arrangements approved by, and to the conditions determined by, the relevant Presiding Officer.

Clause 17 provides that the written agreement by which a person is employed under the proposed Part is to be in the terms of the model agreement that has been approved by the relevant Presiding Officer.

Clause 18 provides that the number of staff that a member of Parliament is entitled to employ under proposed section 14, and that a special office holder (other than the President or Deputy President of the Legislative Council or the Speaker or Deputy Speaker of the Legislative Assembly) is entitled to employ under proposed section 15, is to be determined by the Parliamentary Remuneration Tribunal.

Clause 19 enables the relevant Presiding Officers to make determinations fixing the conditions of employment of persons employed under the proposed Part.

Clause 20 specifies the circumstances in which the employment of a person under the proposed Part terminates. The services of a person employed by a member of Parliament may be dispensed with at any time by that member.

Clause 21 provides for the provision of administrative and other support services in relation to staff employed by members of Parliament.

Clause 22 enables the relevant Presiding Officers to delegate their functions under the proposed Part.

Clause 23 makes it clear that political office holders may also employ staff under proposed Part 3 in their capacity as members of Parliament except in certain circumstances.

Clause 24 deals with vicarious liability in respect of torts committed by members of Parliament in relation to staff employed under the proposed Part.

Clause 25 deals with the liability of members of Parliament as employers of staff.

Part 4 Miscellaneous

Clause 26 provides that industrial proceedings may not be taken in relation to the employment of staff under the proposed Act.

Clause 27 enables the Governor to make regulations for the purposes of the proposed Act.

Schedule 1 Special office holders

Schedule 1 specifies certain Parliamentary offices as special offices for the purposes of Part 3 of the proposed Act. A person who holds one of these offices is entitled to employ additional staff to assist the person in exercising the functions of that office.

Schedule 2 Savings, transitional and other provisions

Clause 1 enables savings and transitional regulations to be made consequent on the enactment of the proposed Act.

Clause 2 provides that existing staff employed under Part 2.5 of the *Public Sector Employment and Management Act 2002* as special temporary employees in the office of a Minister or the Leader of the Opposition are taken to be employed under Part 2 of the proposed Act.

Clause 3 provides that existing staff of members of Parliament (other than those employed under Part 2.5 of the *Public Sector Employment and Management Act 2002*) are taken to be employed under Part 3 of the proposed Act.

Clause 4 provides that existing staff members retain their accrued leave but are not entitled to severance pay or to cash out their leave because of the new employment arrangements.

Clause 5 ensures that the annual appropriation in respect of the Department of Premier and Cabinet for the year in which the proposed Act commences includes an appropriation for the employment of staff by political office holders under Part 2 of the proposed Act.

Clause 6 provides that the Order made under section 47 of the *Constitution Act 1902* which gave the relevant Presiding Officers power to appoint staff to the service of both Houses of Parliament will no longer apply in relation to the employment of staff under Part 3 of the proposed Act.

Clauses 7 and 8 deal with the retention and transfer of records of information created or received by political office holders and their staff.

Schedule 3 Amendment of Acts

Schedule 3 amends the Acts specified in the Schedule. The amendments are mostly consequential on the change of status of the staff of political office holders and other members of Parliament (as the staff will no longer be employed in the service of the Crown or as part of a Department of the Public Service but by the particular political office holder or member of Parliament on behalf of the State).