

**PUBLIC SECTOR EMPLOYMENT AND MANAGEMENT AMENDMENT (ETHICS  
AND PUBLIC SERVICE COMMISSIONER) BILL 2011**

**Second Reading**

**The Hon. MICHAEL GALLACHER** (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [11.32 a.m.]: I move:  
That this bill be now read a second time.

I am pleased to introduce the Public Sector Employment and Management Amendment (Ethics and Public Service Commissioner) Bill 2011. It is a fundamental principle of our democracy that the role of government is to serve its citizens, not the other way around, and to deliver on their behalf those things that people delegate in limited ways to government, such as regulation, compliance, the provision of public infrastructure and the delivery of certain services. The more than 300,000 men and women engaged in public service around our State are in many cases meeting some of the most challenging issues that the market or voluntary exchanges cannot or will not meet. For many, their choice is a vocation, not simply a job, because they want to make a difference.

Public service is a unique specialisation in our nation's work spectrum. But I believe that too often our public service is characterised as a faceless cohort, an anonymous workforce—an approach which demeans and undervalues the uniqueness of each employee and their contribution. So when we talk about a culture of public service integrity and independence we know that the culture of the whole relies on the strength and commitment of the individuals who create that culture. Individuals in public service set the tone of trust and dependability in our civil domain—the basis on which we sustain mature and honest democracy. It is about good people, and I believe the way to motivate outstanding innovation and customer service to citizens is to foster a public service in which individuals are truly visible and meaningful, regardless of the size of the team of which they are a part.

In our Westminster system the government of the day will look to public service leaders, as well as to the middle and front lines, for frank and fearless advice. My Government believes that Westminster traditions and processes established in the nineteenth century are our strongest resources to take the New South Wales public service into a brand new era of innovation. It is by honouring the institutions of an independent public service and the maturity of its systems and unique specialisations that we have a solid foundation from which to confidently innovate.

Government responsibilities are diverse and complex. The people we look to for these services require and deserve a highly professional, strategic and independent champion to lead the New South Wales public service into the future. The champion must understand the strength, appeal and opportunities of public service, and equally understand that the best public service is focused in all its efforts on the needs of the citizen, the taxpayer and the customer. As service needs change, what matters will be the shape, not the size, of government, and the outcomes it delivers for citizens and customers. My Government has made a commitment to rebuild the economy, return quality services, renovate infrastructure, restore accountability and strengthen our local environment and communities. As part of our commitment we need the New South Wales public sector to do this with and for us. I have been impressed by the professionalism and work ethic of our State's public servants and the goodwill and energy brought to the task of delivering and implementing our reforms.

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. We are determined to create a new customer service culture underpinned by value and choice in public services, with public sector employees increasingly collaborating with the private and not-for-profit sectors to help shape innovative, relevant and modern public services that are responsive to the needs of our citizens. To drive this vision for the public sector the Government committed to establish a Public Service Commission in New South Wales. We are encouraged by public service professionals keen to see overdue reform to strengthen the integrity of their profession.

Members may recall that in November 2008 the Government argued that the then role of the Department of Premier and Cabinet as both the "poacher and gamekeeper" in public sector employment was not in the public interest. It was said that to improve the integrity, impartiality, performance and accountability of the State's public sector workforce we would, if elected, establish a Public Service Commission. It is a position that has been put by various representatives of government, from the Premier right through to other members of the Government, and it is one that we have continued to pursue. We have arrived at a historic moment in the history of our State's public service.

The Premier and I genuinely invite the Opposition, which has taken a different view in the past about a Public Service Commission, to support these important reforms. It is important that the Legislative Council have the opportunity, as it has, to ensure that in areas such as delivery of services to the people of New South Wales we put aside our political differences and look at working in a bipartisan manner to support an independent Public Service Commission. That would be seen as a positive step in the evolution of the public sector. It would be a powerful signal to the New South Wales public sector if parliamentarians of all sides endorsed this reform, and by doing so strengthened the Westminster traditions of our parliamentary democracy in New South Wales—as indeed has already occurred in the Commonwealth, the States of Queensland, South Australia, and Victoria, and other Commonwealth jurisdictions such as Canada, New Zealand and the United Kingdom.

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The establishment of a Public Service Commissioner is the centrepiece of our plans for the public sector. People have sometimes asked why we call it the Public Service Commission rather than the public sector commission. By definition, the public service refers to those 20 per cent of people who comprise particular departments under the Public Sector Employment and Management Act; the public sector includes a broader group of public employees, mostly in primary service delivery. The responsibilities of the New South Wales Public Service Commissioner will include the entire sector, and the word "service" in the title is a significant and active choice to recognise the value and intent of the public service ethic in the concept of public service.

In fulfilling the role and responsibilities the commissioner will be expected to use innovation to put the citizen, the customer, at the centre of public services, deliver improved outcomes and value for money, promote and embed independence and integrity, provide advice and make recommendations on how to implement contemporary practice in public administration, create capability for performance and targeted service delivery, attract and retain a new generation of our best and brightest to the public service, define the public service as an admired and competitive career choice, develop a cadre of young professional thinkers and, finally, to build and retain public confidence and trust.

Investment in public sector workforce management is critical to achieving productivity gains and improving service to customers. Effective management of our human resources at all levels and in service contexts will achieve improvements to service delivery and productivity and lead to positive budget outcomes. The Government made another key election

commitment to introduce a Public Sector Ethics Act. I do not seek to provoke a political debate on this occasion in this historic context, but it is important to be honest about the challenge this Parliament faces to rebuild confidence in our public institutions, as people called for in March. We must acknowledge the uncomfortable truth of the recent past that trust in public institutions has been broken.

The Premier has spoken regularly about the need to restore trust between public servants and government through clear plans and mandates, between people and elected representatives through devolution and accountability, and between government and communities through a strong customer service and accountability culture. Including a public sector ethics framework in this bill will give strength to these important networks in our civil domain, whose success depends on trust. Clear rules, boundaries and standards are necessary to ensure appropriate separation between the political and administrative arms of that civil domain. In a recent speech to the Australia and New Zealand School of Government [ANZSOG] about trust in government the Director General of the New South Wales Department of Premier and Cabinet noted research that showed a decline in trust since the late 1960s in the most advanced industrialised democracies.

He noted that in a 2005 survey Canadians linked trust and confidence in government to public organisations that provide good leadership and management, equal and ethical treatment, and quality services that meet citizens' and community needs. These are important signals for self-aware and honest democracies, amongst which we surely must count ourselves. That is why it is important to provide our public service with effective tools to make good ethical decisions internally and in relation to their stakeholders, and to defend their independence if it is under external threat. The promotion of integrity, impartiality and accountability is one of the principal objectives of the commissioner. It is for this reason that the ethical framework is part and parcel of this bill.

Creating the Public Service Commissioner and establishing the new public sector ethical framework are significant changes that impact on employment and management in the New South Wales public sector. This bill amends the main employment legislation for the New South Wales public service, the Public Sector Employment and Management Act 2002. The Act does not apply to employees in local councils as they are not part of the New South Wales public sector. Separate legislation, the Local Government Act 1993, provides for the staffing of local councils whilst employment arrangements and conditions are included in the Local Government State Award.

The bill contains three main amendments: the ethical framework, the Public Service Commissioner and the Public Service Commission Advisory Board. The Government undertook consultation in recent months on the creation of the public sector ethics legislation as committed to in the 100 Day Action Plan. The Government has drawn up a draft ethical framework for the New South Wales public sector based around the four pillars of integrity, trust, service and accountability. To develop this framework the Government sought comment from individuals who are users and customers of public services, taxpayers and individual public servants across the occupations in the public sector.

A government website encouraged people to have their say about public sector ethics. Consultation was held with stakeholders, including government agencies, the Auditor-General, the New South Wales Business Chamber, the Council of Social Service of New South Wales, the National Disability Service and the New South Wales branch of the Institute of Public Administration Australia. Consultation was held also with Unions NSW and briefings were conducted for the Independent Commission Against Corruption and the

New South Wales Ombudsman. Professor Peter Shergold, Chairman of the Public Service Commission Advisory Board, also contributed to the framework. The feedback gathered during the consultation process helped to refine the ethical framework and the development of the bill.

Part 1.2 of the bill establishes an ethical framework for the public sector with the twin objectives of, first, recognising the role of the public sector and preserving the public interest, defending public value and adding professional quality and value to the commitments of the government of the day and, second, establishing an ethical framework for a merit-based apolitical and professional public sector that implements the decisions of the government of the day. Embedded in the legislation is the single set of values that flow through the principles and standards of behaviour that we believe can reside either in legislation or in supporting policy documents.

As identified in the bill at clause 3C (4), the ethical framework and values will apply to the public sector as defined in the Public Sector Employment and Management Act. In the case of special temporary employees, an ethical framework reflecting the same values and high standards of behaviour will be included in any relevant code of conduct under which they work. The Public Service Commissioner's role will be to promote the core values of integrity, trust, service and accountability by articulating outcomes rather than prescribing or imposing complex processes. This will allow the New South Wales public sector to develop approaches that deliver decisions and outcomes that respond strongly to the customer focus, accountability and diverse service delivery models.

The Public Service Commission will assist departments to draft tailored codes of conduct that align with and expand on the values and principles outlined in the ethical framework. Therefore, as outlined in the bill, the four pillars upon which the ethical framework is built are the core values of integrity, trust, service and accountability. These values provide a nucleus that reflects most of the ethical concepts in current use. A set of supporting principles also has been formulated and translates each of the four values into behaviours and actions. These too are included in the legislation. The key to achieving the required culture change in the sector hinges on each public sector agency adopting this framework as a central stimulus for the shaping of the culture of that agency and individual employees considering and applying the values and principles of the framework in their daily work.

I believe that the ethical framework outlined in the bill will create and nurture a culture of integrity and independence in the New South Wales public sector, and will translate to a capable and ethical public sector committed to continuous improvement and worthy of people's trust and confidence. I refer now to the Public Service Commissioner. Part 1.3 of the bill provides for the appointment and functions of the Public Service Commissioner and are detailed in clauses 3D to 3P. These provisions outline how the commissioner is to be appointed, the principal objectives and general functions of that role, and the requirement to report annually to the Premier on, first, the work and activities of the commissioner and, second, the state of the public sector.

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After receiving these reports the Premier will cause them to be tabled in both Houses of Parliament as soon as practicable. The Public Service Commissioner is a statutory appointee with a non-renewable term of office not exceeding seven years. Terms of up to seven years will provide sufficient scope for the commissioner to articulate and implement a range of strategic initiatives and priorities. The bill allows for the commissioner to be appointed for a combination of terms as long as the total period does not exceed seven years. For example,

this combination could be two terms of three and four years respectively.

New section 3G also identifies that the commissioner reports to the Premier in connection with the exercise of the commissioner's functions but is not subject to the control and direction of the Premier in the exercise of these functions. This recognises both the independence of the commissioner in providing advice and reports to the Government as well as the responsibility of the commissioner to the Premier to deliver on the Government's key policy objectives for the New South Wales public sector. The commissioner's role will include, to varying degrees, responsibility for the entire New South Wales public sector including the public service proper, police, health, firefighters, transport, education and State-owned corporations.

New section 3E outlines the principal objectives of the commissioner as being: to promote and maintain the highest levels of integrity, impartiality, accountability and leadership across the public sector; to improve the capability of the public sector to provide strategic and innovative policy advice; to implement the decisions of the Government and meet public expectations; to attract and retain a high-calibre professional public sector workforce; to ensure that public sector recruitment and selection processes comply with the merit principle and adhere to the professional standards; to foster a public service culture in which customer service, initiative, individual responsibility and the achievement of results are strongly valued; to build public confidence in the public sector; and, to support the Government in achieving positive budget outcomes through strengthening the capability of the public sector workforce.

New section 3F identifies the general functions of the commissioner with the key focus of identifying reform opportunities for the public sector work force and to advise the Government on policy innovations and strategy for these areas of reform. The inaugural Public Service Commissioner is Graham Head, a public servant with more than 30 years experience, including more than 18 years in executive positions both in New South Wales and more recently as the deputy secretary in the Commonwealth Department of Health and Ageing.

I now turn to the Public Service Commission Advisory Board. Part 1.4 and schedule 2B provide for the members and procedure of the Public Service Commission Advisory Board. In confirming our commitment to establish a public service commission the Government made clear that the commissioner would be assisted and supported by an advisory board. The advisory board comprises an independent chair, the Public Service Commissioner, Director General Department of Premier and Cabinet, and four other external members appointed by the Premier. The board members appointed by the Premier are to be persons who have expertise in human resource management, probity and accountability, strategic planning, budget and performance management and service delivery in the public, private, tertiary and not-for-profit sectors.

On Thursday 14 April 2011 the Premier announced that Professor Peter Shergold, AC had been appointed as the incoming chair of the advisory board of the Public Service Commission. With a long and distinguished record as a public servant and an academic, combined with experience in the private sector and social enterprises, Professor Shergold demonstrates the very qualities the Government is seeking to build in this State's public sector: professionalism, innovation, independence and capability. The objective of the board is to provide the Public Service Commissioner and the Premier with strategic, independent and expert advice concerning the management and performance of the public sector workforce. Professor Shergold has already provided valuable input through the course of the

development of the roles and functions of the commission and we are confident that in his role as the founding chair he will continue to articulate a vision and clear direction for the commission and the public sector. Schedule 2B also provides for arrangements for the members of the board including the term and disclosure of pecuniary and other interests and some of the procedural arrangements and processes for conducting meetings. These provisions are common across legislation where an advisory board is established.

I now turn to other amendments. A number of other amendments to the Act result from establishing the position of Public Service Commissioner. A significant number of amendments are as a result of omitting references to the Director of Public Employment, a role currently held by the Director General of the Department of Premier and Cabinet, and replacing the references with the "Commissioner" where the function is one falling within the roles and functions of the Public Service Commissioner and with the "Director General" where the function is one remaining with the roles and functions of the Director General of the Department of Premier and Cabinet. The Director General of the Department of Premier and Cabinet will continue to exercise all functions in relation to public sector industrial relations as identified in new part 6.2.

There is one change to the existing legislative provisions unrelated to establishing a Public Service Commissioner. It relates to combining the textures of different cultures to stimulate new ideas and healthy competitive thinking. The Premier has been a longstanding advocate of encouraging and developing two-way secondments between the public sector, the tertiary sector and the not-for-profit sector as well as other public sector jurisdictions. The Act is to be amended to expand the mobility powers to allow for temporary assignments beyond the New South Wales public sector as outlined in new section 88A.

The important change will facilitate the temporary assignment of staff between the New South Wales public sector, other Australian public sectors, universities and the private sector, including the not-for-profit sector. This amendment will greatly expand the opportunities for employers and their employees to explore joint projects and collaborative arrangements, including temporary placements or staff exchanges between employers, whether they are public sector, private sector, universities or not-for-profit organisations. Without this amendment exchanges are limited to local councils, local authorities and the New South Wales public sector only. The change will contribute to the Government's aim to enhance collaboration with the not-for-profit, academic and private sectors in shaping public sector policy and delivery. It will contribute to developing the public sector workforce through increasing career experience and development opportunities and improved understanding of other sectors and their needs.

There is a great appetite for engagement amongst the business and non-government sectors and, critically, a real and genuine willingness to make a contribution that will enhance the performance of the New South Wales public sector. These new mobility arrangements will encourage flexible and innovative joint ventures, collaborative projects with the New South Wales public sector and either universities or other Australian public sector agencies. The private sector and not-for-profit sector could exchange staff for development purposes and the sharing of skills and expertise in providing services to our customers, the citizens of New South Wales. Sharing ideas between sectors can lead to innovation in service delivery. Innovation is the great driver of reform and key to shaping a better future. We must encourage new models and ideas and not be limited by existing paradigms. Innovation can be used to create opportunity and inform the way the Government delivers more convenient, effective, relevant and reliable services to people.

Mobility is a great promotion asset for the New South Wales public sector as an employer. It demonstrates that a public sector career can present a diversity of opportunities and a scope for the development of a range of skills. This can be attractive to employees and potential employees who seek variety, challenges and diverse career experiences. Expanding the arrangements for temporary assignments will allow this to happen very effectively. We have asked the Public Service Commissioner to embark on a challenge. This challenge is to establish and enforce high ethical standards. The commissioner will set clear expectations regarding ethical behaviour that will strengthen public sector performance by making the New South Wales public sector an employer of choice. The commissioner will ensure public servants are appointed on merit, that citizens are the centre of service delivery, and ensure that the public sector collaborates with not-for-profit sector in providing services.

This bill puts the necessary arrangements in place to help the commissioner meet these challenges. Our public sector must have confidence that its independence and integrity is strengthened by a Public Service Commissioner, who also understands that an effective and valued public sector is there to serve its citizens. The commissioner will build upon the professionalism, innovation, independence and credibility of our public servants so that our New South Wales public sector is the envy of other States and a model for other jurisdictions. I commend the bill to the House.