

Explanatory note

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

Overview of Bill

The objects of this Bill are:

(a) to amend the Industrial Relations Act 1996 (the IR Act) to provide for the Industrial Relations Commission (the Commission) to review decisions concerning the promotion and discipline of public sector employees instead of the Government and Related Employees Appeal Tribunal, and

(b) to consequentially repeal the Government and Related Employees Appeal Tribunal Act 1980 (the GREAT Act) and the regulation made under that Act, and

(c) to amend the Transport Appeal Boards Act 1980 and the Industrial Relations Act 1996 to provide for the President of the Commission to review decisions concerning the promotion and discipline of officers and employees of the State Transit Authority, Sydney Ferries, the Roads and Traffic Authority and RailCorp instead of Transport Appeal Boards, and

(d) to make consequential amendments to various other Acts and a regulation.

Explanatory note page 2

Industrial Relations Amendment (Public Sector Appeals) Bill 2010

Explanatory note

Outline of provisions

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 1 July 2010.

Clause 3 repeals the Government and Related Employees Appeal Tribunal Act 1980, the Government and Related Employees Appeal Tribunal (Education Ancillary Staff) Amendment Act 1987 and the Government and Related Employees Appeal Tribunal Regulation 2005.

Schedule 1 Amendment of Industrial Relations Act

1996 No 17

Schedule 1 [1] inserts a new Part 7 (sections 91–100H) into Chapter 2 of the IR Act.

New section 91 defines terms and expressions for the purposes of new Part 7. The definitions of public sector employee and public sector employer are substantially the same as the definitions of employee and employer in section 4 (1) of the GREAT Act. Some changes have been made to update the definitions in line with recent amendments to the Public Sector Employment and Management Act 2002.

New section 92 excludes public sector employees who (because of industrial agreements or other arrangements) are currently unable to appeal to the Government and Related Employees Appeal Tribunal from the application of the new Part 7 and provides for the exclusion of public sector employees from the application of that Part 7 after the commencement of the section by industrial agreements made or approved by the Commission.

New sections 93–100B are substantially the same as sections 19–26, 28 and 29 of the GREAT Act. They specify the grounds on which public sector employees to which new Part 7 applies may appeal against decisions relating to their promotion and discipline and outline the procedures relating to giving notice of, and lodging, appeals.

New sections 100C and 100D are substantially the same as sections 48 and 48A, respectively, of the GREAT Act. They specify the general powers that will be able to be exercised by the Commission in relation to the determination of appeals under new Part 7.

The procedures for hearing of appeals currently contained in Part 4 of the GREAT Act are largely replaced by provisions of the IR Act governing proceedings of the Commission (see in particular sections 162 and 163 of the IR Act). However, new sections 100E and 100F require the Commission to endeavour to settle disciplinary

appeals by conciliation. Section 100E is substantially the same as section 36A of the GREAT Act. New section 100G (1) requires an employer to present the employer's case in a disciplinary appeal at least 7 days before any hearing of the appeal. New section 100G (2) and (3) require the employer's case to be presented first at the Explanatory note page 3

Industrial Relations Amendment (Public Sector Appeals) Bill 2010

Explanatory note

hearing of an appeal. Section 100G (2) and (3) are substantially the same as section 42 of the GREAT Act.

New section 100H requires promotion appeals to be heard informally, subject to the rules of the Commission and any practice notes. It specifies the persons entitled to be present and prevents those persons from being represented by an Australian legal practitioner, agent or otherwise. Schedule 1 [4] makes a consequential amendment. Schedule 1 [6] amends section 185 of the IR Act to enable the making of rules of the Commission with respect to the giving of evidence in appeals under new Part 7 by persons having specialised knowledge of matters relevant to promotion or disciplinary appeals.

Schedule 1 [3] amends section 166 of the IR Act so that parties in proceedings under new Part 7 may only be represented by an Australian legal practitioner or industrial agent with the leave of the Commission.

Schedule 1 [5] amends section 181 of the IR Act so that costs will not be able to be awarded in proceedings under new Part 7.

Schedule 1 [7] and [8] amend sections 185 and 185A, respectively, of the IR Act as a consequence of the amendments to the Transport Appeal Boards Act 1980 made by Schedule 2. They extend the powers to make rules of the Commission and for the President of the Commission to issue practice notes with respect to promotion and disciplinary appeals under that Act.

Schedule 1 [9] inserts new section 197B to enable appeals on questions of law to the Full Bench of the Commission in Court Session against any decision of the Commission in proceedings under new Part 7. Schedule 1 [2] makes a consequential amendment to section 153.

Schedule 1 [10] and [11] are consequential amendments.

Schedule 1 [12] and [13] amend Schedule 4 to the IR Act to enable the making of savings and transitional regulations and to make savings provisions.

Schedule 2 Amendment of Transport Appeal Boards Act 1980 No 104

Schedule 2 amends the Transport Appeal Boards Act 1980 (the Boards Act) to achieve the object described in paragraph (c) of the Overview above.

Under the Boards Act as amended, the grounds on which officers and employees of the State Transit Authority, Sydney Ferries, the Roads and Traffic Authority and RailCorp may appeal against decisions relating to their promotion and discipline will remain the same and the entitlement to be present at formal hearings is retained (new section 11A as inserted by Schedule 2 [12]). However, the functions in relation to appeals currently exercised by a Transport Appeal Board consisting of a Chairperson and 2 other members will instead be exercised by the President of the Commission

Explanatory note page 4

Industrial Relations Amendment (Public Sector Appeals) Bill 2010

Explanatory note

(or another member of the Commission to whom the President has delegated this function) (Schedule 2 [8] and [13]).

Schedule 2 [2] enables regulations to be made to exclude the application of the Boards Act to persons or classes of persons prescribed by the regulations.

Schedule 2 [6] provides for the Industrial Registrar under the IR Act to be the secretary of the transport appeal boards.

Schedule 2 [9]–[11] replace the procedures for hearing of appeals currently contained in the Boards Act with the provisions contained in the IR Act governing proceedings of the Commission (see in particular sections 162 and 163 of the IR Act). Schedule 2 [17] provides that costs cannot be awarded in appeal proceedings under the Boards Act.

Schedule 2 [20] provides for appeals against decisions of boards on questions of law to the Full Bench of the Commission.

Schedule 2 [3], [5], [12], [14]–[16], [18], [19] and [21]–[27] make consequential amendments.

Schedule 2 [28] and [29] amend Schedule 2 to the Boards Act to enable the making of savings and transitional regulations and to make savings provisions.

Schedule 2 [1], [4] and [7] are amendments by way of statute law revision.

Schedule 3 Amendment of other Acts and regulation

Schedule 3 contains consequential amendments to various Acts and a regulation.