

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [4.14 p.m.]: I move:

That this bill be now read a second time.

The Industrial Relations Amendment (Public Sector Appeals) Bill replaces and repeals the Government and Related Appeals Tribunal Act 1980 and makes amendments to the Transport Appeals Boards Act 1980 and Industrial Relations Act 1996 to facilitate a transfer of public sector appeals processes to the Industrial Relations Commission of New South Wales. The establishment of the national industrial relations system for the private sector has created an opportunity for the New South Wales Government to implement a number of practical administrative changes to streamline the public sector appeals process and facilitate a more efficient use of existing resources.

I emphasise that the Government is not seeking to dilute or reduce public sector employees' entitlement to question or challenge promotional or disciplinary decisions made by public sector employers. All existing eligibility criteria will be preserved. Rather, the purpose and intent of this amending legislation is to transfer the jurisdiction of the Government and Related Employee Appeals Tribunal to the Industrial Relations Commission of New South Wales and to confer the functions of the transport appeal boards on the president of the commission. This shift forms part of a broader strategy implemented by the New South Wales Government to consolidate public sector employment matters within a single, specialist tribunal.

The Government recognises that public sector promotional and disciplinary appeals are unique issues, quite distinct from general industrial disputes, and that resolution of these matters requires a tailored approach. For this reason, the bill will not affect the fundamental principles which underpin the existing public sector appeals framework. Nor will it alter the format and style of hearing practices that have been refined over time and which public sector employees, employers and their representatives are familiar with.

The bill preserves current hearing processes for both informal and formal appeals under the Government and Related Appeals Tribunal Act and the Transport Appeals Boards Act, while granting the commission sufficient flexibility to make adjustments to suit prevailing operational and administrative requirements. However, it will introduce some procedural changes to ensure consistency with well established procedures contained in the Industrial Relations Act 1996.

I turn now to the detail and practical effects of the bill. A key element is the creation of a new part 7 to be inserted into the Industrial Relations Act 1996. The new part 7 will give the commission jurisdiction to hear promotional and disciplinary appeals currently heard by the Government and Related Employees Appeals Tribunal relating to Crown employees employed throughout the general public sector and some statutory authorities. Importantly, it will maintain the current exclusions for temporary employees and officers above clerk grade 11/12 and recognise current agreements and arrangements negotiated between public sector employers and unions that remove appeal rights for certain workers.

Following commencement, all future exclusions under the new part 7 must be formalised in the form of an industrial instrument approved by the commission. The new part 7 gives the commission the same general powers that Government and Related Employees Appeals Tribunal currently has for the hearing of promotional and disciplinary appeals. It will also adopt current requirements under the Government and Related Employees Appeal Tribunal Act relating to the publication of notices and lodgement of appeals. This will provide consistency and continuity for industrial parties.

Longstanding evidentiary procedures contained in the Industrial Relations Act 1996 will replace existing procedures relating to the production of evidence, discovery of documents, and attendance of witnesses—with the exception of the following important areas. Firstly, the bill will preserve informal hearings of promotional appeals and will amend section 185 of the Industrial Relations Act to allow the commission to make rules and practice notes and to continue this practice. This is designed to give the commission maximum flexibility in the form and structure of hearings for informal appeals. Secondly, the bill sustains the requirement for attempted conciliation of disciplinary appeals prior to informal hearings taking place. Thirdly, the bill continues the existing procedural practice of requiring a public sector employer to present their case at least seven days before a scheduled disciplinary hearing as well as the established and customary order for the presentation of cases.

To ensure that public sector appeals remain a no cost jurisdiction, the bill will amend section 181 of the Industrial Relations Act so that it will not be possible for the commission to award costs for proceedings conducted under the new part 7. A number of minor consequential amendments have been included in the bill to amend references to the Government and Related Employees Appeal Tribunal Act in other legislation in order to preserve current appeal rights following the repeal of the Government and Related Employees Appeal Tribunal Act.

I now turn to the amendments relating to the transport appeal boards. The transport appeal boards determine appeals lodged by public sector employees in relation to disciplinary and promotion decisions made by public sector transport authorities, such as the State Transit Authority, Sydney Ferries, the Roads and Traffic Authority, and RailCorp. Currently appeals lodged under the Transport Appeal Boards Act are required to be heard by a tripartite panel comprising the chairperson or a vice chairperson, an authorised representative of the employing transport authority and a nominated member of the relevant union. The bill will amend the Act to abolish the positions of chairperson and vice chairperson and remove the requirement to constitute a three-person panel. Instead, the president of the commission will be authorised to hear and determine appeals. The president may delegate these functions to another member of the commission.

Consistent with the changes to the Government and Related Employees Appeal Tribunal appeal processes for general public sector employees, the bill will maintain existing appeal rights for public sector transport authority workers. Longstanding procedures contained in the Industrial Relations Act will replace existing protocols relating to the production of evidence, discovery of documents and attendance of witnesses. The only exception will be that existing time limits for the lodgement and hearing of appeals under the current Transport Appeal Boards Act will continue to apply. Again, consistent with the bill's provisions in relation to general public sector workers covered by Government and Related Employees Appeal Tribunal, the bill will amend section 185 of the Industrial Relations Act 1996 to enable the president to issue rules and practice notes relating to the appeals process. This provision will give the commission maximum flexibility in the form and structure of transport appeal boards hearings.

To ensure that the public sector appeals jurisdiction remains cost free, the bill will amend section 20 of the Transport Appeal Boards Act to make certain that it will not be possible to award costs. Further, in relation to all promotional and disciplinary appeal matters, amendments to section 185 will authorise the commission to make rules and practice directions regarding evidentiary requirements, including the option for calling on expert witnesses with specialist knowledge to assist appeal proceedings heard under the new part. It is intended that appeals on questions of law in relation to decisions made by the commission will be heard by a Full Bench of the Commission in Court Session. This is consistent with standard appeal processes as outlined in the Industrial Relations Act 1996.

Folding the Government and Related Employees Appeal Tribunal and transport appeal boards functions within the commission will deliver a number of new administrative efficiencies by ensuring greater consistency in the administration and conduct of all proceedings, eliminating an unnecessary duplication of services and guarantee optimum use of government resources and infrastructure. The Industrial Relations Commission has a long and illustrious history as an independent umpire for the settlement of industrial issues and disputes in the New South Wales private and public sectors. Its commissioners and judicial members have significant skills, knowledge and expertise in all facets of the employment relationship and have contributed to the fair, equitable and productive working environment that exists throughout the State.

The Government has moved some amendments that are of a technical nature and are designed to preserve current promotional appeal rights for officers of departments. The inclusion of these amendments will ensure that officers of departments who unsuccessfully apply for vacant positions in other departments are notified by divisional heads to enable promotional appeals to be lodged within the required time frames. The amendments will also ensure closure of the recruitment process, thereby giving certainty to departments and applicants. That consolidation of the public sector appeal framework within its jurisdiction is a practical and sensible move, which will deliver tangible benefits to everyone from public sector employees to public sector employers, their representatives and, of course, taxpayers. I commend the bill to the House.