

A1482413

Ms A Gardiner
General Secretary
Public Service Association of New South Wales
GPO Box 3365
SYDNEY NSW 2001


Dear Ms Gardiner

Thank you for meeting with me on Friday 24 May 2013.

Please find attached a detailed response to the issues raised by the PSA at Friday's meeting. As you will appreciate a number of matters will be further detailed in the regulations and in the government sector employment rules to be finalised following passage of the legislation.

Yours sincerely


28.5.13

Graeme Head
Public Service Commissioner

PSA CONSULTATION 24 MAY 2013

RESPONSE TO QUERIES

1. School Administrative Support Staff

Should School Administrative Staff also be referred to in the Bill in the same way that Police Administrative Staff are referred to on page 66 as an amendment to the Constitution Act 1902 (Part 7 Administrative arrangements? Are there any other groups of staff which should be referred to in a similar way?

School Administrative Support Staff are employed under the *Education (School and Administrative Support Staff) Act 1987* by the Director-General of the Department of Education and Communities. This authority for employment is not impacted by the Bill.

There is no intention to bring these staff into the public service and they will remain as part of the broader government sector.

The inclusion of the administrative staff of Police reflects the status quo in relation to Police (s 107(2) PSEM Act). There is no intention to expand the scope of administrative order powers.

2. Enforcement of government sector employment rules

Regulations may be enforced under Clause 88(4) which provides that a regulation may create an offence punishable by a penalty not exceeding 10 penalty points. How will government sector employment rules be enforced? Will there be any legal mechanism to compel enforcement?

It will be mandatory for employers and employees in the Government sector to comply with the Government Sector Employment Rules established by the Public Service Commissioner.

The rules are not conditions of employment and do not confer additional rights on employees. State industrial instruments will continue to deal with the conditions of employment.

The Commissioner has the role of ensuring compliance with the rules. This is not a matter for the Industrial Relations Commission. Rather the Bill establishes a clear framework for the Public Service Commissioner which sets out the objectives, general functions, rule making power, capacity to give directions to ensure compliance by a government sector agency, and powers to require provision of a report by the head of government sector agency on matters relating to its employees or its employment policies.

3. Usual Basis of Employment as an Officer

Why has Section 7(3) which states "the usual basis for the employment of staff in a Department is to be the employment of officers" been removed? As this provision is conceptually about ensuring that the workforce will not be "casualised", can it be retained?

The Bill provides for three categories of staff including ongoing employment, temporary employment and casual employment. The concept of 'officers' has been removed from the Act including the reference at Section 7(3) of the *PSEM Act 2002* as it is no longer required.

4. Excess Officers and Redeployment

How will the new process for determining excess officers work as it will be different from the existing system based on positions? Will 'roles' provide a greater potential for redeployment.

Under clause 47(1)(j) of the Bill, the head of a Public Service agency will determine instances in which an ongoing employee (other than a senior executive) becomes excess to the requirements of the relevant part of the agency in which he or she is employed, because the role performed by that employee is no longer required.

The excess employee policy as it applies to positions will apply to roles in much the same way. 'Roles' represent the sets of duties potentially available for placement of employees. The fact that the new legislation introduces greater provision for mobility through removing the concept of position ownership has no effect on the nature or number of available roles.

The agency will manage those excess employees under provisions aligned with the Managing Excess Employees policy that commenced in August 2011.

5. Extended and Other Leave

Why are extended leave provisions being moved out of the Act and into the Regulations? What does reference to "other leave" mean in Clause 54 of the Bill? Does this cover maternity leave, sick leave, parental leave, and other types of leave?

One of the key reform goals is to have a simplified Government Sector Employment Act, and to achieve this, detailed provisions contained in the *PSEM Act 2002* will be relocated to Regulations (in the case of employee leave entitlements, for example) or rules (in the case of procedural matters).

Extended leave entitlements (currently in s.55 and Schedule 3 of the *PSEM Act*) will be preserved and continued in the Regulations (see s54 of the Bill).

It is not intended to change the status quo and an employee's current entitlements will be retained. Schedule 4(5)(1) and 4(5)(3) of the Bill achieve this by providing for the continued employment of persons moving from the government service into the public service and recognising any accrued leave rights and continuity of service under the former Act. Transitional provisions will be included within the Regulations that provide for leave entitlements to continue as they applied under the former Act.

The regulations will also continue to prescribe leave matters including *annual leave, maternity leave, sick leave, and other types of leave* that are currently located in ss92-99 of the *PSEM Act 2002*. The leave entitlements under the relevant awards are not being altered.

6. Appointment of Long Term Temporary Employees to officer positions

What is happening to the current provisions set out in section 31 of the PSEM Act regarding employment of temporary employees with a continuous employment of at least two years? Will this be included in the regulations?

The transitional regulations will provide that existing temporary employees who have at least two years service will have their "accrued" status and entitlements recognised under this existing provision.

It is intended to retain a scheme for the conversion of temporary employees to ongoing employment in appropriate circumstances.

7. Conditions of Employment - Schedule 4 – Clause (9)(2) (Repeal not to affect conditions or contracts unless inconsistent with this Act)

What is intended by Schedule 4 Clause (9)(2)?

The provisions at Schedule 4(9)(2) are declarative in nature and they have the effect of continuing in force contracts of employment and industrial instruments which applied under the old Act.

At a general level, and in the context of the principle given at s85(1) of the Bill, the terms of the previous instruments give way to the express words in the new Act. This is the case because government sector employment must be regulated by the express words of the new Act.