

Public Sector Management and Parliamentary Officers (Amendment) Bill

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

Clause 1 explains the purposes of the Bill.

Clause 2 is the commencement provision. All provisions operate from the date of Royal Assent aside from clause 30 (4) which operates retrospectively, commencing from 16 November 1993.

PART 2—AMENDMENT OF THE PUBLIC SECTOR MANAGEMENT ACT 1992

Clause 3 amends section 4 of the **Public Sector Management Act 1992** (the definition section) to add a definition of “prerogative office”.

Clause 4 concerns sections 24 and 29 of the Public Sector Management Act.

Section 24 requires that Department Heads base appointments to positions on merit while section 29 requires that vacancies for positions are notified in a manner sufficient to enable suitably qualified persons to apply for the position.

The clause adds three provisions to the Public Sector Management Act which apply section 24 to the employment of fixed term employees, temporary employees and casual employees employed under Divisions 4A, 5 and 5A of Part 2 respectively.

One of those provisions (proposed section 34A (5)) also applies section 29 to the employment of fixed term employees.

Clause 5 amends the period of notice provisions concerning fixed term employees, temporary employees and Executive Officers.

The effect of the clause is that the period of notice for:

fixed term employees and executive officers will be the greater of:

4 weeks; or

the minimum period of notice required by Part 6 of Schedule 1 to the **Employee Relations Act 1992**.

temporary employees will be the greater of:

2 weeks; or

the minimum period of notice required by Part 6 of Schedule 1 to the **Employee Relations Act 1992**.

Clause 6 amends section 49 of the Public Sector Management Act to remove approved leave with pay from the definition of “employment benefit”, the effect of which is that the cost of leave is not to be part of the remuneration of executive officers. The clause also amends section 60 to remove the requirement that before payments are made to executive

officers in lieu of taking leave, the cost of that leave must be included in the contract of employment as an employment benefit.

Clause 7 makes provisions for the holders of prerogative offices and allows those offices to be declared authorities under Part 8 of the **Public Sector Management Act 1992**. It does this by:

- amending the definition of “authority” in section 89 (1) to include prerogative offices (clause 7 (6));
- amending sections 90 (3) and (4) to add references to prerogative offices so that:
 - references in provisions applied to declared authorities to officers or staff members are taken, in relation to the prerogative office, to be references to the holder of that office (clause 7 (7)); and
 - provisions of the Public Sector Management Act which are applied to the prerogative office as a declared authority prevail over inconsistent provisions of other Acts, regulations instruments or other document applying to the prerogative office (clause 7 (8));
- amending section 50 (1) (*ba*) so that the employer of the holder of a prerogative office which has been declared as a declared authority is the person specified in Column 2 of Schedule 2 (Clause 7 (1)).

The clause also:

- amends section 54 (1) to ensure that the senior executive service includes any person holding a prerogative office which is a declared authority (Clause 7 (2));
- provides that section 55 (5) (which allows the contract of employment of an executive officer to be terminated on the provision of notice) does not apply to the holder of a prerogative office (Clause 7 (3));
- adds section 63 (4) which has the effect that the retirement or removal of the holder of a prerogative office terminates that office holder’s contract of employment (Clause 7 (4)); and
- adds section 81 (6), the effect of which is that sub-sections 81 (2), (3) and (4) do not apply to the holder of a prerogative office unless an Order in Council is made and published in the Government Gazette declaring that those sub-sections apply (Clause 7 (5)).

Clause 8 amends section 64 (5) (*b*) (ii) of the Public Sector Management Act to substitute for the reference to “Administrative Officer (AM8)”, “Victorian Public Service Officer (VPS4)”. Sub-clause (2) makes it clear, however, that this alteration only affects elections made under section 64 to retain a right to return to the public sector made after the commencement of clause 8.

Clause 9 amends and simplifies section 79 of the Public Sector Management Act, which deals with officers who are being paid excessive salaries.

Sub-clause (1) substitutes a new sub-section (2). The effect of the new sub-section is that, once a Department Head is taking steps to assign the officer who is being paid an excessive salary with work of class appropriate to the officer’s salary pursuant to

sub-section (1), the Department Head is only obliged to take such steps as are practicable to secure the officers transfer to any other Department at the officer's existing salary if the officer is unfit to perform work appropriate to the officer's salary which is available in the Department.

Sub-clause (2) amends sub-section (3) to remove the alternative requirement that before salary of an officer who is being paid an excessive salary is reduced, the officer is unfit or incapable to perform work appropriate to the officer's salary.

Clause 10 introduces a new provision, section 81AA. This provision provides that where an officer is transferred to another Department as a result of sections 77, 78, 79 or 81, the officer and the employer (which is the Department Head, or, where the officer is a Department head, the Minister) are bound by an individual agreement with the same terms and conditions and with the same accrued and accruing entitlements as those that applied to the officer immediately before the transfer.

The terms and conditions of this agreement include the officer's existing salary or remuneration except when the transfer is made at a reduced salary as a result of the operation of section 78 or 79.

This agreement does not apply once the officer and the employer enter into a new agreement.

Clause 11 amends section 83 of the Public Sector Management Act. This section deals with the officers and employees who are subject to, and the extent of the coverage of, the Employee Relations Act. This clause adds "judicial employees" to sub-sections (1), (4) and (5).

Clause 12 adds Part 9B to the Public Sector Management Act to create a new employment category—Judicial Employees. The new Part contains the following provisions:

Proposed section 95C defines "judicial employees".

Proposed section 95D:

- allows the Department Head to employ any person as a judicial employee;
applies section 24 to the employment of judicial employees; and
- applies Schedule 4 (which deals with holidays and leave of absence) and the regulations which deal with leave of absence and long service leave to judicial employees.

Proposed section 94E:

allows for the employment of judicial employees to be terminated by a period of notice;

preserves the accrued or accruing rights to leave of judicial employees who were, immediately before their employment as judicial employees, officers or fixed term or temporary employees;

provides a right of re-entry to the public service for former judicial employees who were, immediately before employment as judicial employees, officers, or fixed term

employees who were, immediately before employment as a fixed term employees, officers;

- provides that judicial employees are not entitled to compensation for termination of employment.

Clause 13 amends section 105 to provide that it is the intent of the proposed section to vary section 85 of the **Constitution Act 1975** to prevent the Supreme Court entertaining proceedings for compensation in respect of which the Public Sector Management Act, as amended by the proposed Act, provides that no compensation is payable.

PART 3—AMENDMENT OF THE PARLIAMENTARY OFFICERS ACT 1975

Clause 14 amends section 3 of the Parliamentary Officers Act (the definition provision) to:

- amend the definition of “Officers of the Parliament”; and
- add a new definition of “employee”.

Clause 15 repeals sections 5 and 6 and replaces them with new sections 5, 6 and 6A. Those provisions are to have the following effect:

Proposed section 5 establishes the office of the Clerk of the Parliaments, the holder of which is to be either the Clerk of the Legislative Council or the Clerk of the Legislative Assembly and is to be appointed by the Governor in Council on the recommendation of the President of the Legislative Council and the Speaker of the Legislative Assembly.

Proposed section 6:

- specifies the five department heads and departments;
- provides that the department heads are appointed by the Governor in Council;
- allows the Governor in Council to fix the remuneration of department heads; and
- provides that the remuneration of department heads must be equivalent to the remuneration attached to offices or positions of equivalent work value in the public service.

Proposed section 6A allows the President, in relation to the Council, the department of the Parliamentary Library and the department of the Reporting Staff of the *Victorian Parliamentary Debates* and the Speaker, in relation to the Assembly and the department of the House Committee, to create, abolish or otherwise deal with any office other than department head and determine the work value and remuneration applicable to each office.

That provision also provides that the remuneration of offices must be equivalent to the remuneration attached to offices or positions of equivalent work value in the public service.

Clause 16 repeals section 7 of the Parliamentary Officers Act and replaces it with a new section 7. The new provision provides that officers of the Parliament other than department heads shall be appointed by the relevant Presiding Officer on the recommendation of the relevant department head. The provision, in addition, allows the

Presiding Officers to request a new recommendation and if no new recommendation is made, an appointment can be made without a recommendation.

Clause 17 repeals and replaces section 8. The new provision specifies that persons recommended for appointment must be the best qualified and entitled on the basis of merit.

Clause 18 amends section 9 to remove the words “any other department of”.

Clause 19 repeals and replaces section 10. The new provision allows the Public Service Commissioner to determine all questions relating to the conditions of an officer transferred to the public service, providing that such determinations do not affect accrued or accruing rights.

Clause 20 repeals and replaces section 11. The new provision ensures that officers are not dismissed or penalised concerning their service under the Act except in accordance with the Parliamentary Officers Act or regulations. The section also provides that if an office is abolished, the officer’s services may be dispensed with.

Clause 21 amends section 12 to remove the reference to the Parliamentary Offices Committee.

Clause 22 adds five new provisions. The effect of these provisions is as follows:

Proposed section 12A provides the Presiding Officers with the power to delegate functions to the department heads

Proposed section 12B applies the Employee Relations Act to officers and to persons employed under section 12.

Proposed section 12C provides that questions concerning the appointment or failure to appoint are not industrial matters or industrial disputes within the meaning of the Employee Relations Act.

Proposed section 12D provides that if a right of review is available under the Parliamentary Officers Act and a right of complaint under the **Equal Opportunity Act 1995**, an officer may exercise only one of those rights.

Proposed section 12E provides that it is the intention of the proposed Act to vary section 85 of the **Constitution Act 1975** to prevent the Supreme Court entertaining:

applications for prohibition, certiorari or mandamus orders or for declarations or injunctions or other applications prohibited by the Parliamentary Officers Act;

actions concerning complaints under the **Equal Opportunity Act 1995** where a person has chosen another avenue of review under section 12D of the Parliamentary Officers Act.

Clause 23 amends section 13 of the Parliamentary Officers Act, the provision which defines the scope of regulations which can be made under the Act. The amendments to section 13 include adding additional provisions allowing regulations to be made concerning procedures for dealing with personal grievances and discipline.

The clause also provides that until regulations are first made following the enactment of this Bill, Parts 11 and 12 of the Public Sector Management Regulations 1992, with appropriate modifications, apply to officers and employees other than department heads.

Clause 24 repeals sections 14, 15 and 16 and replaces them with four provisions which establish a discipline procedure for department heads.

Clause 25 repeals sections 20 and 21.

Clause 26 is a transitional provision.

PART 4—AMENDMENT OF THE OMBUDSMAN ACT 1973

Clause 27 amends sections 6 and 6c of the **Ombudsman Act 1973** to allow for the appointment of an acting Ombudsman where there is a vacancy in the office and to allow for the appointment of an acting Deputy Ombudsman (Police Complaints) where there is a vacancy in that office.

Clause 28 adds section 6F to the Ombudsman Act to vest the responsibilities, powers, authorities and duties of the Deputy Ombudsman in the Ombudsman during any period in which there is a vacancy in the office of Deputy Ombudsman and no Acting Deputy Ombudsman has been appointed.

PART 5—AMENDMENT OF THE PARLIAMENTARY SALARIES AND SUPERANNUATION ACT 1968

Clause 29 amends the reference to the Parliamentary Secretary in section 7 (4) of the **Parliamentary Salaries and Superannuation Act 1968** to refer to the “Parliamentary Secretary of the Cabinet”.

PART 6—AMENDMENT OF THE EMPLOYEE RELATIONS ACT 1992

Clause 30 makes a number of consequential amendments to section 7 of the **Employee Relations Act 1992** which include the addition of:

- Ministerial officers and Parliamentary advisers to section 7 (4) (Clause 30 (1)). This clause is to operate retrospectively to operate from 16 November 1993, the operative date of the provisions of the **Public Sector Management (Amendment) Act 1993** which added this employment category to the **Public Sector Management Act 1992**;
- judicial employees to section 7 (4) (Clause 30 (2));
- a new provision, section 7 (4A), which will apply the provisions of the Employee Relations Act to officers and employees under the Parliamentary Officers Act (Clause 30 (3)).