**PUBLIC SECTOR MANAGEMENT BILL 1994**

**Legislative Assembly, 2 November 1994, pages 913-20**

Second reading

 **The Hon. DEAN BROWN (Premier)** obtained leave and introduced a Bill for an Act to make provision for the Public Service of the State and its management and for certain general public sector management matters. Read a first time.

The Hon. DEAN BROWN: I move:

That this Bill be now read a second time.

It is a Bill to repeal the Government Management and Employment Act and to establish new management arrangements for the State Public Service. It is a Bill which will have a defining impact upon the future of South Australia. It is not simply a new way of managing the public sector in South Australia—it is the most significant and long overdue 914 HOUSE OF ASSEMBLY Wednesday 2 November 1994 recognition that the men and women of the public sector have a role far greater than just the provision of essential services—they are actually partners, with the Government of the day, in the future of this State.

And in giving that recognition, the Government maintains the employment safeguards necessary for an independent public sector and gives far greater responsibility for outcomes to chief executives and executives. This is a new era for an organisation whose traditions are proud and strong. It is the essential re-focussing towards the twenty-first century, for a State still trailing a heavy debt, as we line up in the race for new and expanded overseas markets against competing nations which have already enthusiastically embraced the challenge of change.

It will help us to ensure that South Australia will not be left behind, unable to compete with other States and other nations, in the global marketplace in which our future lies. This State is blessed with resourceful people, hard working people prepared to have a go, creative, inventive men and women and young people wanting a start. This Bill is about their future. As the provider of the essential services for the community and for industry, public sector performance must be the best because we are in competition with the best.

Positioning for the challenges of change means building on the great traditions of the public sector in South Australia. Building on the traditions, not discarding them. One of those great traditions of the public sector has been its willingness to move with the times and to implement the reforms necessary to meet present challenges. The Government now wishes to focus those strengths on the future by improving its performance orientation and giving the men and women of the public sector the opportunity to be a full and dynamic part of the South Australia of the future. This Bill will ensure a strong public sector for today, and the future, playing a leading role in the rebuilding of South Australia.

This Bill has not been imposed upon the public sector from above. There has been an extensive and extended consultation period. And it has not been consultation for consultation’s sake. The Government values the wealth of experience and the potential of the ideas in the public sector, just waiting to be utilised for the benefit of South Australia.

One of the questions put during the consultation period was why new legislation was needed when the Government Management and Employment Act was so ‘recent’. Frankly, the old Act was not on the pace for the twenty-first century. When we look at the Commission of Audit and then look at just how much had to be done to fix the problems and address the urgent needs identified by the commission, it is quite obvious that a new Act is required. Nor did the old Act capture the spirit of the reform and management accountability required to take our public sector into the next century.

Quite simply, since the Government Management and Employment Act was introduced in 1985, there has been a period of major development in general management practice. In 1985 we had yet to hear to any degree of total quality management, continuous improvement, customer service, benchmarking, quality circles, adding value and business reengineering. In the public sector we had yet to hear to any degree of downsizing, customer service, ‘re-inventing Government’, corporatisation, and performance culture. The number and extent of amendments required to reflect the needs of 1994 and beyond would have been so extensive that the Act would have become ridiculously cumbersome. It would also have lost the essential thrust of public sector reform. The Public Sector Management Bill focuses clearly on enabling public sector reform. It is shorter and more easily understood.

General aims of the Bill.

The Bill has two quite specific aims. The first is greater management flexibility while maintaining the traditional and necessary independence of the Public Service. The second is responsive and effective service to the South Australian community through greater performance orientation and emphasis on accountability and outcomes.

 Major changes contained in the Bill.

The specific major changes contained in this Bill are as follows. The present principles have been rewritten as aims and standards. And they have been styled in plain English to be more accessible and relevant to a contemporary public sector. Responsibility for general employment determinations has been moved from the Commissioner for Public Employment to the Minister responsible for the Act. It is appropriate for the employing authority, the Government, to be responsible for setting the general personnel and industrial relations framework for the Public Service. This is consistent with other States. At present the Commissioner for Public Employment is involved in the day-to-day operational tasks of agencies in selection and appointment, classification, and executive officer employment. This will change with the Commissioner’s primary functions being to develop guidelines on personnel management, provide advice, and monitor and review agency performance against the general public sector aims and standards contained in the Act.

The role of chief executives has been expanded to include increased responsibilities in personnel management, including for executive employment and for resolution of grievances. Chief executives will be employed on performance contracts, while contracts for executives will be phased in. Contracts will specify the terms of employment, grounds for termination and will allow for termination without cause subject to four weeks notice and a termination payment. Appointment arrangements for non-executive employees have been simplified and allow for appointment with tenure or under contract. It is intended that most Public Service employees will continue to be employed with tenure.

The Bill provides, as did the Government Management and Employment Act, for termination as a last resort in cases of excess, of misconduct, and of mental or physical incapacity. Where the Government Management and Employment Act allowed for termination under an unspecified general heading of ‘incompetent employees’, this Bill provides for a category of ‘unsatisfactory performance’. It is intended that clear performance standards will be defined for each agency and work unit as part of performance management in agencies. This is an important element in the Government’s priority for a greater performance orientation in the public sector. In any of the above cases of termination the processes of assessment will have protections for due process as under the Government Management and Employment Act. Employees will still have the right to appeal against administrative decisions directly affecting them but these appeals will be handled in a simpler, less legalistic manner.

Existing appeals tribunals will be replaced by a process where, in the first instance, the chief executive will try to resolve grievances. Depending upon the circumstances, appeals will then be handled by chief executives, the Commissioner for Public Employment, or independent persons nominated by the Commissioner. The employee can still be represented by a union, if he or she wishes. However, the legislative requirement for consultation will be removed. Wednesday 2 November 1994 HOUSE OF ASSEMBLY 915 I think the other matters in this explanation can be dealt with by simply inserting them. I seek leave to have the remainder of my explanation inserted in Hansard without my reading it.

Leave granted.

Consultation on the draft Bill.

Consultation on the draft Bill has been taken very seriously by the Government. In return, it has received substantial and thoughtful feedback from employees. The Government expresses its appreciation for those comments. As will be detailed later, they have helped considerably in the redrafting of this Bill.

Because consultation has been a very important part of the process of developing this Bill, and because of the enthusiastic participation by public sector employees, at all levels, the Government wishes to respond to a comment made by some unions that the consultation period was not long enough.

Knowledge of this Bill has been current for some months now, with newspaper articles and union comment first appearing back in August. The Government provided formally for a one month period of consultation on the draft Bill.

The key issue here is that those likely to be affected by the legislation have had the opportunity to reflect and comment. In the month of consultation on this Bill the Government has provided more assistance for employees to consider the draft Bill than has ever been provided before. It is a measure of the importance we place upon reform of the public sector that we have been determined to offer the widest possible opportunity for comment.

I wrote to all Public Service employees advising of consultation channels and welcoming comment, through a government hot line and through briefings provided in each agency. And, of course, the public sector unions played their part by providing information and a hot line of their own.

Proof for Government that the consultation has successfully identified the major issues lies in the fact that, for some time now, there has been a very clear focus on areas of potential concern, each of which has been considered at length. The Government would like to make clear its response to these major issues.

Major issues raised in consultation.

Independence of the Public Service was a major concern and arose from a provision in the draft Bill for Ministers to be able to direct their Chief Executives in relation to personnel matters affecting individual employees in their portfolio.

The intent of that provision had been to enable direct resolution of personnel matters at portfolio level. However, strong concern was expressed by employees about the possibility of Ministers responding personally and inappropriately to individual employees in their portfolios. As a result of the consultation process and the concerns expressed, this provision has been withdrawn.

The Government believes that it is appropriate for the employing authority, in this case Government, to be directly responsible for the establishment of the general personnel and industrial relations framework for its employees. This arrangement is consistent with those presently in place in other States.

In regard to contract employment, the concern was that it presents a degree of risk to Public Service independence in that those employed on contract might be reluctant to offer frank and fearless advice which may offend, and find themselves facing termination. The Government believes that, in line with general business practice in today’s competitive environment, good managers or employers will not reject frank and fearless advice, even if uncomfortable, if it truly impacts on the effectiveness of their business.

In the view of the Government, the great problem, historically in the public sector has been with advice that is neither frank or fearless because with jobs for life at the senior levels, there have often been no real consequences for not getting it right. The Government believes that it is in keeping with employment practices elsewhere in both public and private sectors that Chief Executives and executives are not guaranteed jobs for life, but that they take responsibility for their performance in leading and managing their organisations.

Even so, the Bill has balanced this concern through monitoring, appeal and review functions of the Commissioner for Public Employment.

 A second area of concern was over tenure for non-executive employees. It was suggested that the Bill will allow Government to introduce contract employment widely for non-executive employees. This will not be the case. There is no intent to vary current employment practices for non-executive employees. As I said earlier, it is intended that most employees will continue not to be employed under fixed term contracts.

A related concern was that the draft Bill’s provision to appoint employees to a remuneration level rather than a position will in some way adversely affect the employment rights of employees.Employee rights to tenure and conditions of employment will remain unaltered under the Bill. The change will simply reduce considerably the administrative work associated with the appointment of employees.

A third area of concern was that the change from the Governor to the chief executive being responsible for termination of excess employees would somehow reduce employee protections. The protections are in fact essentially the same as at present for retirement of excess employees. They ensure that employees will only be terminated as a last resort and only after the agreement of the Commissioner for Public Employment. It has also to be stressed that the Government presently has a no retrenchment policy.

A fourth area of concern was about appeal rights. Employee rights of appeal are still maintained; the concern is really with the change in the avenues for appeal. There is concern that the new process of handling appeals against administrative decisions without an independent tribunal will not guarantee natural justice.

The appeal process has been changed so that Chief Executives must take prime responsibility for resolving grievances in the workplace, and through a process developed in collaboration with employees according to guidelines. And the Bill provides a further step. The Commissioner for Public Employment will hear appeals in more serious cases, or in cases where a Chief Executive has been personally involved. The Commissioner for Public Employment can also delegate this role to an independent body. The Government believes that natural justice has been protected, with less administrative cost.

Summary.

In summary, in moving to the clause by clause description, I reiterate the Government’s strong desire to return our Public Service to the leadership position in Australia that it has occupied in the past. The many hard working and genuinely public spirited people that make up our public sector will welcome these moves to make the Service more vibrant and robust, and better placed to play its key role in a prosperous future for this State. I seek the full support of this House for the second reading of this Bill.

PART 1

PRELIMINARY

 *Clause 1: Short title*

*Clause 2: Commencement Clauses 1 and 2 are formal.*

Clause 3: Interpretation

This clause sets out the definitions required for the measure. The definitions correspond closely to definitions in the current Act.

PART 2

GENERAL PUBLIC SECTOR MANAGEMENT AIMS AND STANDARDS

*Clause 4: General management aims*

This clause contains the general management aims for public sector agencies. Agencies are to aim to—

(a) provide responsive, effective and competitive services to the community and the Government; and

(b) maintain structures, systems and processes that work without excessive formality and that can adapt quickly to changing demands; and

(c) recognise the importance of their people through training, ongoing development and appropriate remuneration; and

(d) manage all resources effectively, prudently and in a fully accountable manner; and

(e) continuously improve their performance in delivering services.

*Clause 5: Personnel management standards*

This clause contains personnel management standards for public sector agencies. Agencies are to—

(a) base all selection decisions on a proper assessment of merit; and

(b) treat employees fairly; and

(c) afford equal employment opportunities and use to advantage diversity in their work forces; and

(d) provide safe and healthy working conditions; and

(e) prevent nepotism, patronage and unlawful discrimination.

*Clause 6: Employee conduct standards*

This clause contains the standards of conduct expected of public sector employees. Public sector employees are expected to—

(a) treat the public and other employees with respect and courtesy; and

(b) utilise resources at their disposal in an efficient, responsible and accountable manner; and

(c) deal with information of which they have knowledge as a result of their work only in accordance with the requirements of the Government and their agencies; and

(d) endeavour to give their best to meet performance standards and other organisational requirements; and

(e) conduct themselves in public in a manner that will not reflect adversely on the public sector, their agencies and other employees.

PART 3

PUBLIC SERVICE STRUCTURE

*Clause 7: Public Service structure*

The Public Service is to consist of administrative units. The Governor may establish and abolish administrative units, transfer employees or a group of employees from one administrative unit to another, incorporate public sector employees (not forming part of the Public Service) into an administrative unit, exclude from the Public Service public sector employees previously incorporated into an administrative unit and make any appointment or transitional or ancillary provision that may be necessary or expedient in the circumstances.

*Clause 8: Crown employees to be employed in Public Service*

This clause provides that all persons employed by or on behalf of the Crown must be employed in the Public Service unless excluded from the Public Service under schedule 1.

PART 4

CHIEF EXECUTIVES

*Clause 9: Administrative units to have Chief Executives*

This clause provides for there to be a Chief Executive of each administrative unit, appointed by the Governor. When a temporary vacancy occurs the Minister may assign an employee to act in the position or the Minister responsible for the unit may assign an employee in the unit to act in the position.

*Clause 10: Conditions of Chief Executive’s appointment*

The conditions of appointment to a position of Chief Executive are to be subject to a contract made between the Chief Executive and the Premier in consultation with the Minister responsible for the administrative unit.

The contract must specify—

* that the Chief Executive is appointed for a term not exceeding five years and is eligible for reappointment;
* that the Chief Executive is to meet performance standards as set from time to time by the Premier and the Minister responsible for the administrative unit;
* that the Chief Executive is entitled to remuneration and other benefits specified in the contract;
* the sums representing the values of the benefits (other than remuneration);
* the total remuneration package value of the position under the contract.

The decision whether to reappoint the Chief Executive to the position at the end of a term of appointment must be made and notified to the Chief Executive not less than three months before the end of the term. If the contract so provides, the Chief Executive will be entitled to some other specified appointment in the Public Service (without any requirement for selection processes to be conducted) if not reappointed or in other specified circumstances.

*Clause 11: Contract overrides other provisions*

The contract may make any other provision and will override other inconsistent provisions (but not provisions contained in this Part).

*Clause 12: Termination of Chief Executive’s appointment*

A Chief Executive’s appointment may be terminated by the Governor by not less than four weeks notice in writing to the Chief Executive or on the ground that the Chief Executive—

* has been guilty of misconduct; or
* has been convicted of an offence punishable by imprisonment; or
* has engaged in any remunerative employment, occupation or business outside the duties of the position without the consent of the Minister responsible for the administrative unit; or
* has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors; or
* has, because of mental or physical incapacity, failed to carry out duties of the position satisfactorily or to the performance standards specified in his or her contract; or
* has, for any other reason, in the opinion of the Premier and the Minister responsible for the administrative unit, failed to carry out duties of the position satisfactorily or to the performance standards specified in his or her contract.

A Chief Executive’s appointment is terminated if the Chief Executive becomes a member of, or a candidate for election to, the Parliament of the State or the Commonwealth or is sentenced to imprisonment for an offence.

A Chief Executive may resign from the position by not less than three months notice in writing to the Minister responsible for the administrative unit (unless notice of a shorter period is accepted by that Minister).

Subject to this clause and any provision in the contract relating to the Chief Executive’s appointment, if a Chief Executive’s appointment is terminated by the Governor by four weeks notice in writing, the Chief Executive is entitled to a termination payment of an amount equal to three months remuneration (as determined for the purpose under the contract) for each uncompleted year of the term of appointment (with a pro rata adjustment in relation to part of a year) up to a maximum of 12 months remuneration. This is not payable if the Chief Executive is appointed to some other position in the Public Service in accordance with his or her contract.

*Clause 13: Provision for statutory office holder to have powers, etc., of Chief Executive*

This clause provides that the Minister may declare that the person holding or acting in a specified statutory office established under an Act will have the powers and functions of Chief Executive in relation to an administrative unit.

*Clause 14: Chief Executive’s general responsibilities*

This clause sets out the responsibilities of the Chief Executive of an administrative unit to the Minister responsible for the unit.

*Clause 15: Extent to which Chief Executive is subject to Ministerial direction*

This clause provides that, except in relation to appointment, assignment, transfer, remuneration, discipline or termination of a particular employee, the Chief Executive of an administrative unit is subject to direction by the Minister or by the Minister responsible for the unit.

*Clause 16: Delegation*

This clause allows the Chief Executive to delegate powers or functions.

*Clause 17: Chief Executive to disclose pecuniary interests*

The Chief Executive of an administrative unit must make a disclosure of pecuniary interests to the Minister responsible for the unit in accordance with the regulations on appointment and on acquiring further such interests. If a pecuniary or other personal interest of the Chief Executive conflicts or may conflict with his or her official duties, the Chief Executive must disclose the nature of the interest and the conflict or potential conflict to that Minister and not take action or further action in relation to the matter except as authorised by that Minister.

The Minister responsible for the unit may direct the Chief Executive to resolve a conflict between a pecuniary or other personal interest and an official duty. Failure to comply with this clause or a direction under this clause constitutes misconduct unless due to inadvertence only.

PART 5

COMMISSIONER FOR PUBLIC EMPLOYMENT

*Clause 18: Commissioner for Public Employment*

This clause provides that there is to be a Commissioner for Public Employment appointed by the Governor. The Minister may assign an employee to act as Commissioner during a vacancy in the position of Commissioner or when the Commissioner is absent from, or unable to discharge, official duties.

*Clause 19: Conditions of Commissioner’s appointment*

The Commissioner is to be appointed for a maximum of five years on conditions determined by the Governor and is eligible for reappointment.

*Clause 20: Termination of Commissioner’s appointment*

The Commissioner’s appointment may be terminated by the Governor on the ground that the Commissioner—

* has been guilty of misconduct; or
* has been convicted of an offence punishable by imprisonment; or
* has engaged in any remunerative employment, occupation or business outside the duties of the position without the consent of the Minister;
* or has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors; or
* has, because of mental or physical incapacity, failed to carry out duties of the position satisfactorily; or
* is incompetent or has neglected the duties of the position.

The Commissioner’s appointment is terminated if the Commissioner becomes a member of, or a candidate for election to, the Parliament of the State or the Commonwealth or is sentenced to imprisonment for an offence.

The Commissioner may resign from the position by not less than three months notice in writing to the Minister (unless notice of a shorter period is accepted by the Minister).

*Clause 21: Functions of Commissioner*

The functions of the Commissioner are—

* to develop and issue guidelines relating to personnel management matters in the Public Service;
* to provide advice on personnel management issues;
* to monitor and review personnel management practices;
* to make binding determinations as to the cases or classes of cases in which selection processes will not be required to be conducted for appointments to positions in the Public Service;
* to conduct reviews of personnel management practices as required by the Minister or on the Commissioner’s own initiative;
* to investigate or assist in the investigation of matters in connection with the conduct or discipline of employees;
* to perform any other functions assigned to the Commissioner under the measure or by the Minister.

*Clause 22: Extent to which Commissioner is subject to Ministerial direction*

The Commissioner is not subject to Ministerial direction except in the exercise of delegated powers.

*Clause 23: Investigative powers of Commissioner*

This clause sets out the investigative powers of the Commissioner and when they may be exercised.

*Clause 24: Delegation by Commissioner*

This clause allows the Commissioner to delegate powers and functions.

*Clause 25: Commissioner to disclose pecuniary interests*

This clause provides that the Commissioner must disclose pecuniary interests in the same manner as Chief Executives must disclose their pecuniary interests under clause 17.

*Clause 26: Annual report*

The Commissioner must present an annual report to the Minister on personnel management in the Public Service and the Minister must lay copies before both Houses of Parliament.

PART 6

GENERAL EMPLOYMENT DETERMINATIONS AND POSITIONS

*Clause 27: General employment determinations*

This clause gives the Minister the responsibility of determining Public Service remuneration structures, employment conditions and other general employment matters.

*Clause 28: Positions*

This clause provides that the Chief Executive of an administrative unit may fix or vary the duties, titles and remuneration levels of all positions in the unit including executive positions.

PART 7

PUBLIC SERVICE APPOINTMENTS (APART FROM CHIEF EXECUTIVES)

DIVISION 1—EXECUTIVE POSITIONS

*Clause 29: Appointment of executives*

The Chief Executive of an administrative unit may appoint persons as executives of the unit.

Subject to a determination of the Commissioner under Part 5, an appointment may only be made as a result of selection processes conducted on the basis of merit.

*Clause 30: Conditions of executive’s employment*

The conditions of employment in an executive position are to be subject to a contract made between the executive and the Chief Executive. The contract must specify—

* that the executive is employed for a term not exceeding five years and is eligible for reappointment to the position;
* that the executive is to meet performance standards as set from time to time by the Chief Executive;
* that the executive is entitled to remuneration and other benefits specified in the contract;
* the sums representing the values of the benefits (other than remuneration);
* the total remuneration package value of the position under the contract;
* that three months written notice is required for resignation (unless shorter notice is accepted).

The contract may provide that the executive will have a right of appeal under Division 9 of Part 8 against a decision under Division 4, 5, 6 or 8 of that Part to terminate the executive’s employment (other than such a decision made because the executive has been convicted of an indictable offence).

The decision whether to reappoint the executive to the position at the end of a term of employment must be made and notified to the executive not less than three months before the end of the initial term. If the contract so provides, the executive will be entitled to some other specified appointment in the Public Service (without any requirement for selection processes to be conducted) if not reappointed or in other specified circumstances.

This clause is not to apply to an employee who is an executive only as a result of temporary promotional assignment.

*Clause 31: Contract overrides other provisions*

The contract may make any other provision that the Chief Executive considers appropriate and will override other provisions of this measure (other than this Division).

*Clause 32: Termination of executive’s employment by notice*

The Chief Executive of the administrative unit in which an executive is employed may terminate the executive’s employment by not less than four weeks notice in writing to the executive. Subject to this clause and any provision in the contract relating to the executive’s employment, if an executive’s employment is terminated by the Chief Executive by four weeks notice in writing, the executive is entitled to a termination payment of an amount equal to three months remuneration (as determined for the purpose under the contract) for each uncompleted year of the term of employment (with a pro rata adjustment in relation to part of a year) up to a maximum of 12 months remuneration. An executive is not entitled to a termination payment if the executive is appointed to some other position in the Public Service in accordance with his or her contract.

The power of termination conferred by this clause is in addition to the powers of termination conferred by Part 8.

This clause is not to apply to an employee who is an executive only as a result of temporary promotional assignment.

*Clause 33: Executive’s general responsibilities*

This clause sets out the responsibilities of an executive to the Chief Executive of the administrative unit in which he or she is employed.

DIVISION 2—OTHER POSITIONS

*Clause 34: Division applies to positions other than executive positions*

This clause states that the Division applies to positions other than executive positions.

*Clause 35: Appointment*

The Chief Executive of an administrative unit may appoint a person to a position in the unit. Subject to a determination of the Commissioner under Part 5 and except in the case of appointment to a temporary or casual position, an appointment may only be made as a consequence of selection processes conducted on the basis of merit in accordance with the regulations.

*Clause 36: Conditions of employment*

The conditions of an employee’s employment in a position in an administrative unit may be left to be governed by the provisions of the measure or, subject to the directions of the Minister, be made subject to a contract between the employee and the Chief Executive of the administrative unit.

The contract provision allows for the same forms of Public Service appointments as under the current Act, that is, temporary, casual, fixed term and negotiated conditions.

Accordingly, a contract may do one or more of the following:

* provide that the employee is employed for a term not less than 12 months (except in the case of a casual or temporary position) and not exceeding five years;
* provide that the employee is, at the end of a term of employment eligible for reappointment, or entitled to some other appointment in the Public Service, without any requirement for selection processes to be conducted;
* provide that the employee is entitled to remuneration and other benefits specified in the contract;
* provide for a right of appeal under Division 9 in respect of decisions to terminate the person’s employment (other than such a decision made because the person has been convicted of an indictable offence);
* in the case of a temporary or casual position, provide that the Chief Executive may terminate the employee’s employment at any time;
* make any other provision that the Chief Executive considers appropriate, including provision excluding or modifying a provision of the measure.

A contract will prevail, to the extent of any inconsistency, over the provisions of the measure.

Temporary and casual positions are defined in the same terms as under the current Act except that a temporary appointment may not continue for more than 12 months rather than the current limit of two years.

*Clause 37: Probation*

This clause provides that a person who is not already employed in the Public Service is on probation when first appointed to a position in an administrative unit.

PART 8

GENERAL PUBLIC SERVICE EMPLOYMENT PROVISIONS

DIVISION 1—ASSIGNMENT BETWEEN POSITIONS

*Clause 38: Assignment*

Subject to this clause, the Chief Executive of an administrative unit may assign an employee from one position in the unit to another position in the unit or an employee may be assigned from a position in one administrative unit to a position in another administrative unit jointly by the Chief Executives of the units. The assignment power of Chief Executives applies to all positions including executive positions.

If the Chief Executives of two administrative units cannot reach agreement as to a proposed assignment between positions in the units, the Minister may determine the matter after consultation with the Commissioner.

If an employee is promoted through assignment, the promotion is temporary and may only continue for three years, or, in the case of promotion from a non-executive position to an executive position, for six months or such longer period as may be allowed by the Minister.

An employee may not be assigned from a position to another position with a lower remuneration level except with the employee’s consent or in order to return an employee to his or her former remuneration level at the end of a temporary promotion.

If an employee whose employment is subject to a contract is assigned to another position, the provisions of the contract continue to apply in relation to the employee’s employment in the new position subject to any necessary modifications or further agreement between the employee and the Chief Executive.

DIVISION 2—REMUNERATION

*Clause 39: Remuneration*

This clause provides that, subject to this measure, an employee is entitled to remuneration at the rate appropriate to the remuneration level of the position occupied by the employee.

*Clause 40: Additional duties allowance*

Where an employee performs duties in addition to those on which the remuneration level of the employee’s position is based, the Chief Executive may authorise payment of an allowance.

*Clause 41: Reduction in salary arising from refusal or failure to carry out duties*

If, due to industrial action, an employee refuses or fails to carry out duties, the employee must not, if the Minister so directs, be paid for each day or part of a day on which duties are not undertaken.

*Clause 42: Payment of remuneration on death*

On the death of an employee, the Chief Executive of the administrative unit in which the employee was employed may, if of the opinion that it is appropriate to do so, direct that an amount payable in respect of the employee’s remuneration be paid to dependants of the employee and not to the personal representative.

DIVISION 3—HOURS OF DUTY AND LEAVE

*Clause 43: Hours of duty and leave*

An employee’s hours of duty and right to holidays and leave are governed by schedule 2.

DIVISION 4—EXCESS POSITIONS

*Clause 44: Excess positions*

If the Chief Executive of an administrative unit is satisfied that a position occupied by an employee is excess to the requirements of the unit and it is not practicable to assign the employee under Division 1 to another position, the Chief Executive must consult with the Commissioner about the matter.

If the Commissioner agrees that it is not practicable to assign the employee under Division 1 to another position, the following provisions apply:

* the Commissioner and the Chief Executive must examine whether it is practicable to transfer the employee to another position (whether in the same or another administrative unit);
* if it is practicable to do so, the employee may be transferred by the Chief Executive to another position in the same unit, or may be transferred to a position in another unit jointly by the Chief Executive and the Chief Executive of the other unit, or by the Minister;
* if the Commissioner and the Chief Executive are satisfied that it is not practicable to transfer the employee, the Chief Executive may terminate the employee’s employment in the Public Service.

An employee who is transferred under this clause from a position to another position with a lower remuneration level is entitled to be maintained at the former remuneration level for a period and subject to conditions determined by the Minister.

 An employee whose employment is terminated under this clause is entitled to a termination payment of an amount determined by the Minister.

DIVISION 5—MENTAL OR PHYSICAL INCAPACITY

*Clause 45: Mental or physical incapacity*

This clause provides for a similar process to be undertaken to establish a person’s mental or physical incapacity as under section 60 of the current Act. If the Chief Executive of an administrative unit is satisfied that an employee is mentally or physically incapable of performing the duties of his or her position satisfactorily, and it is not practicable to assign the employee under Division 1 to another position with duties within the employee’s capacity, the Chief Executive must consult with the Commissioner about the matter.

If the Commissioner agrees that it is not practicable to assign the employee under Division 1 to another position, the same provisions apply as apply in relation to excess positions under clause 44.

The termination of an employee’s employment under this clause may, with the consent of the employee, have effect from a date earlier than the date of the decision to terminate the employee’s employment.

DIVISION 6—UNSATISFACTORY PERFORMANCE

*Clause 46: Unsatisfactory performance*

If the Chief Executive of an administrative unit is satisfied that an employee in the unit is not performing duties of his or her position satisfactorily or to performance standards specified in a contract relating to his or her employment or has lost a qualification that is necessary for the proper performance of duties of his or her position and it is not practicable to assign the employee under Division 1 to another position with duties suited to the employee’s capabilities or qualifications, the Chief Executive must consult with the Commissioner about the matter.

If the Commissioner agrees that it is not practicable to assign the employee under Division 1 to another position, the same provisions apply as apply in relation to excess positions under clause 44.

The Chief Executive may not take action under this clause on the ground that an employee is not performing duties satisfactorily or to applicable performance standards unless the employee has first been advised of his or her unsatisfactory performance and been allowed a reasonable opportunity to improve. The Chief Executive must give an employee not less than 14 days written notice of a decision to transfer the employee or terminate the employee’s employment under this clause.

This clause does not apply where an employee’s unsatisfactory performance is due to mental or physical illness or disability.

DIVISION 7—RESIGNATION AND RETIREMENT

*Clause 47: Resignation*

An employee may resign from the Public Service by not less than 14 days notice in writing to the Chief Executive of the administrative unit in which the employee is employed (unless a shorter notice period is accepted). As under the current Act, if an employee is absent, without authority, from employment in the Public Service for a period of 10 working days and gives no proper written explanation or excuse for the absence to the Chief Executive before the end of that period, the employee will, if the Chief Executive so determines, be taken to have resigned from the Public Service.

*Clause 48: Reappointment of employee who resigns to contest election*

This clause provides for the reappointment of an employee who resigns to contest an election. It is similar to section 62 of the current Act.

*Clause 49: Retirement*

An employee who has attained the age of 55 years is entitled to retire from the Public Service.

DIVISION 8—CONDUCT AND DISCIPLINE

*Clause 50: Conflict of interest*

If an employee has a pecuniary or other personal interest in a matter and the interest conflicts or may conflict with the employee’s official duties, the employee must disclose the nature of the interest to the Chief Executive of the administrative unit in which the employee is employed. The Chief Executive may direct the employee to resolve the conflict.

*Clause 51: General rules of conduct*

This clause provides that an employee is liable to disciplinary action on similar grounds to those in section 67 of the current Act.

*Clause 52: Inquiries and disciplinary action*

This clause provides that if the Chief Executive of an administrative unit suspects on reasonable grounds that an employee in the unit may be liable to disciplinary action, the Chief Executive may hold an inquiry to determine whether the employee is liable to disciplinary action. The process to be undertaken is similar to section 68 of the current Act.

*Clause 53: Suspension or transfer where disciplinary inquiry or serious offence charged*

This clause sets out the process to be undertaken when an employee is charged with an offence punishable by imprisonment or is given notice of a disciplinary inquiry under this Division. It is similar to section 69 of the current Act.

*Clause 54: Disciplinary action on conviction of offence*

If an employee is convicted of an offence punishable by imprisonment, the Chief Executive of the administrative unit in which the employee is employed may transfer the employee to some other position in the administrative unit or, jointly with the Chief Executive of another administrative unit transfer the employee to a position in that other unit or terminate the employee’s employment in the Public Service.

*Clause 55: Payments where employee has liability to Crown*

This clause provides that if an employee or former employee is alleged to have misappropriated or damaged property of the Crown or to have incurred a liability to the Crown, a payment that would otherwise be required to be made to the person in respect of his or her employment in the Public Service may be withheld pending the determination of criminal or other proceedings in respect of the matter and may be applied in or towards satisfaction of any liability of the person to the Crown.

DIVISION 9—APPEAL AGAINST ADMINISTRATIVE DECISIONS

*Clause 56: Chief Executive’s responsibility to conciliate grievances*

Despite the provisions of the Division, the Chief Executive of an administrative unit is required to endeavour to resolve by conciliation any grievance that an employee in the unit may have in respect of his or her employment.

*Clause 57: Lodging of appeals*

Subject to this clause, an employee in an administrative unit may appeal to the Chief Executive of the unit against an administrative decision directly affecting the employee in his or her employment.

The appeal processes encompass the separate reclassification, promotion, discipline and grievance appeals under the current Act.

An appeal may not be lodged against an executive appointment, a decision under Division 4, 5, 6 or 8 to terminate an employee’s employment in the Public Service or a decision in relation to disciplinary action under Division 8 resulting from conviction of an employee of an indictable offence or by an executive or if the appeal is of a kind excluded by regulation.

*Clause 58: Conciliation not prevented*

A Chief Executive or the Commissioner may attempt to resolve by conciliation a matter the subject of an appeal prior to the commencement of proceedings.

*Clause 59: Appellate authority*

Clause 59 sets out the provisions that apply for the purpose of determining who is to hear an appeal (the "appellate authority").

*Clause 60: Suspension of administrative decision subject to review*

An appellate authority must, unless it is not possible to do so, suspend the operation of the administrative decision subject to appeal.

*Clause 61: Conduct of proceedings*

This clause provides that an appeal is to be heard with a minimum of formality and that rules of evidence and legal technicalities need not be observed. It also sets out the rights of a party to an appeal.

*Clause 62: Appellate authority may decline to entertain certain appeals*

An appellate authority may decline to hear an appeal if of the opinion that the application is frivolous or vexatious.

*Clause 63: Orders of appellate authority*

Clause 63 sets out the orders an appellate authority may make on determining an appeal.

*Clause 64: Appeal in respect of process*

Where an appeal is heard by a Chief Executive or a person or panel appointed by a Chief Executive the appellant may, if dissatisfied with the appeal process, appeal against the process. The appellate authority may remit the matter to the Chief Executive for reconsideration and/or make recommendations as to proper appeal processes.

*Clause 65: Reasons for decision*

If requested by a party to the proceedings, the appellate authority must provide that party with a statement of reasons for the decision.

*Clause 66: Restriction on other appeals, etc.*

This clause provides that the provisions of this Division operate in relation to an administrative decision affecting an employee in his or her employment to the exclusion of any other right of appeal or review or remedy under another Act or at law. The clause does not apply in relation to a decision under Division 4, 5, 6 or 8 to terminate a person’s employment in the Public Service and does not, for example, prevent a person from making an application for relief under the Industrial and Employee Relations Act 1994 in respect of a decision under Division 4, 5, 6 or 8 to terminate the person’s employment.

PART 9

MISCELLANEOUS

*Clause 67: Preservation of powers of Governor to appoint, transfer and dismiss*

This clause preserves the power of the Governor to appoint a person to, or dismiss a person from, a position in the Public Service and to transfer a person to a Public Service position at the same or a higher remuneration level.

*Clause 68: Annual reports by public sector agencies*

Each public sector agency must present an annual report to the Minister responsible for the agency on the operations of the agency and the Minister must lay copies of the report before both Houses of Parliament.

*Clause 69: Equal employment opportunity programs*

The Minister may publish in the Gazette equal employment opportunity programs designed to ensure that persons of a defined class have equal opportunities in relation to employment in the public sector with persons not of that class.

*Clause 70: Transfers of employees within public sector*

This clause provides for employees to be transferred from the Public Service to a position in a public sector agency outside the Public Service and for an employee of a public sector agency to be transferred to a position in the Public Service or to a position in another public sector agency.

*Clause 71: Appointment of Ministerial staff*

The Premier may appoint a person as a member of a Minister’s personal staff on conditions determined by the Premier. Such a person will not be an employee in the Public Service. This provision avoids the need for such an appointment to be made by the Governor as would otherwise be required under the Constitution Act.

*Clause 72: Minister may approve arrangements for multiple appointments, etc.*

The clause allows the Minister to approve arrangements under which a person is employed in the Public Service and continues to hold a position outside the Public Service or a person employed in the Public Service continues to remain in that employment whilst engaged in some employment outside the Public Service.

*Clause 73: Extension of operation of certain provisions of Act*

This clause provides for the Governor to extend the operation of any provisions of the measure to any specified class of public sector employees to whom those provisions do not apply.

*Clause 74: Operation of Industrial and Employee Relations*

Act A determination or decision under this measure affecting remuneration or conditions of employment is subject to an award, determination or enterprise or industrial agreement in force under the Industrial and Employee Relations Act 1994.

*Clause 75: Freedom of association for employees*

This clause provides that no employee may be compelled to become, or remain, a member of an industrial or professional association and no employee who is eligible for membership of an industrial or professional association may be prevented (except by the association itself acting in accordance with its rules) from becoming or remaining a member of the association.

*Clause 76: Immunity from liability*

No civil liability attaches to an employee or other person holding an office or position under the measure for an act or omission in the exercise or purported exercise of official powers or functions. Such an action will instead lie against the Crown.

*Clause 77: Temporary exercise of statutory powers*

If an employee is unable to exercise a statutory power or function it may be exercised by the Chief Executive of the administrative unit or some other employee nominated by the Chief Executive.

*Clause 78: Obsolete references*

If the title of an administrative unit or position in the Public Service is altered, a reference in an Act or statutory instrument to the administrative unit or position under an earlier title is to be read as a reference to the administrative unit or position under its new title.

*Clause 79: Evidentiary provision*

This clause provides that a certificate signed by the Minister certifying that an administrative unit referred to in the certificate existed as an administrative unit of the Public Service at a time or over a period referred to in the certificate, or that a person named in the certificate occupied a specified position in the Public Service at a time or over a period referred to in the certificate, will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the matter so certified.

*Clause 80: War Service (Preference in Employment)*

Act Nothing in this measure is to derogate from the War Service (Preference in Employment) Act 1943.

*Clause 81: Service of notices*

 A notice or document required or authorised by the measure to be given to or served on an employee may be given to or served on the employee personally or by post addressed to the employee at the address last notified by the employee in accordance with the regulations.

*Clause 82: Delegation by Minister*

This clause provides that the Minister may delegate powers or functions under the measure.

*Clause 83: Regulations*

This clause empowers the Governor to make regulations for the purposes of the measure.

SCHEDULE 1

Persons Excluded from Public Service This schedule lists the persons who are excluded from the Public Service. It is consistent with the corresponding schedule under the current Act.

SCHEDULE 2

Hours of Attendance, Holidays and Leave of Absence The clauses of this schedule confer the same leave rights as under the current Act with the exception that, under clause 11, a Chief Executive or an executive has a new right to be paid the monetary value of an accrued long service leave entitlement instead of taking the leave.

SCHEDULE 3

*Repeal and Transitional Provisions*

Clause 1: Repeal The current Act is repealed.

Clause 2: Commissioner The current Commissioner is continued in office.

Clause 3: Administrative units continued All current administrative units are continued in existence.

 Clause 4: Positions continued All current positions are continued in existence in the same administrative units. Positions classified as senior positions continue as executive positions subject to the measure.

Clause 5: Employees continued in positions All current employees are continued in the same positions.

Clause 6: Basis of employment Current probationary employees are continued on probation. Current temporary, casual, fixed term and negotiated conditions appointments are continued as contract appointments under the corresponding provisions of the measure.

Clause 7: Executives Employees occupying senior positions may come under the new contract provisions by agreement only. Remuneration may vary for executives at the same level according to whether or not their appointments are subject to a contract.

Clause 8: Chief Executives Existing Chief Executives are brought under the new contract provisions.

Clause 9: Temporary promotional reassignments Provision is made for an employee subject to a temporary promotional assignment to be assigned back to his or her former position or an equivalent position within three years.

Clause 10: Classification and remuneration levels of positions Existing classification levels are converted to remuneration levels.

Clause 11: Classification reviews, promotion appeals and grievance appeals Appeals lodged but not commenced may be proceeded with under the new provisions.

Clause 12: Leave rights Leave rights are preserved.

Clause 13: Directions, etc., continued Existing administrative directions, instructions, determinations and decisions are continued.

Clause 14: Acts Interpretation Act applies The Acts Interpretation Act is to apply except to the extent of any inconsistency with this schedule.

 Mr CLARKE secured the adjournment of the debate.