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Practice Group:

*Labour, Employment
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NSW State Government Introduces New Legislation for Public Sector Employment

By Bryan Belling and Matthew Parker

Australia's largest employer is the State Government of New South Wales and its agencies. It represents AUD60 billion of the economy in New South Wales. Any reform in the public sector is, therefore, important to us all.

On 23 May 2013, the NSW State Premier Barry O'Farrell introduced into State Parliament the *Government Sector Employment Bill 2013* (GSE Bill) and the *Members of Parliament Staff Bill 2013* (MPS Bill). These Bills represent a substantial overhaul of the regulation of public sector employment and, once passed, will repeal and replace the current *Public Sector Employment and Management Act 2002* (NSW) (PSEMA).

History

Historically, the New South Wales public service was, conceptually at least, a replica of the Westminster model where a centralised agency recruited, nurtured, deployed and disciplined members of the civil service. Politicians came and went and the civil service mantra is simply to support the government of the day.

This model can be contrasted with that in the United States. The US model is one in which political change engenders administration change, certainly in the public sector bureaucracy at the senior level. Public service as a civil servant in the US means that public servants come and go with political change.

Reforms commencing with the New South Wales Government in the 1980s moved away from the Westminster model. Expressed broadly, these new bills will revitalise the Westminster model in New South Wales except for staff directly serving ministers and members of Parliament. Those staff will, in effect, be employed by ministers and members of Parliament directly pursuant to the MPS Bill, assuming it becomes law.

During the 2011 election campaign, Premier O'Farrell stated that, if elected, his State Government would, among other things, seek to appoint a New South Wales Public Service Commissioner (Commissioner) to act as an "independent leader of reform" and "restore the integrity, performance and accountability of the State's public sector". In January 2012, the Commission of Audit issued a series of recommendations for the reform of public sector employment. Many of these recommendations were also the subject of the Commissioner's State of the Public Sector Report which found that government departments and agencies employed "poorly designed, outdated and rigid" workforce arrangements. These findings invited a comprehensive review of the current the PSEMA regime.

The GSE Bill

The GSE Bill is designed to reduce the complexity of the structure found in the PSEMA, namely by establishing a system with only two distinct structures, being the government sector and the public

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service, as opposed to the current system which consists of the government service, the public sector, the public sector services and the public service.

The GSE Bill creates this new public service by combining the current government and public services and consists of persons employed by the Government in the service of the Crown. All employees, including senior executive employees, will be assigned a classification and role within a particular agency, however, the flexibility of the GSE Bill will allow them to then be assigned to a different role to satisfy the needs of a department or agency as required.

The new government sector will encompass the majority of New South Wales' Government employees including:

- the public service
- the teaching service
- the NSW Police Force
- the NSW Health Service
- any other service of the Crown.

A further reform will act to align the NSW Police Force Senior Executive Service, the Health Executive Service and the Transport Senior Service. The new public service executive arrangements will allow the senior executive structure to absorb the current Chief Executive Service, Senior Executive Service and award based executive positions. Beyond the new arrangements concerning award based executives, the GSE Bill will not affect current public sector industrial instruments.

Interestingly, the GSE Bill also provides for specific grounds for dismissal of non-executive employees under section 47, a provision not contained in the PSEMA. These grounds include both poor performance and misconduct, and create a more efficient process for the removal of public sector employees who fail to competently perform their duties.

The GSE Bill removes the ability of public sector employees to appeal against promotions to the Industrial Relations Commission in favour of stronger internal review mechanisms. This aspect of the reform resonates with the role of the Public Service Board as it was prior to the changes commencing in the early 1980s.

The MPS Bill

The proposed MPS Bill will apply to the employees of political office holders with office holders being Ministers and the Leader of the Opposition in the Legislative Assembly, and employees that assist members of State Parliament in their electoral and parliamentary duties.

The MPS Bill proposes that each member of State Parliament is to be the employer of his or her own staff while the Parliamentary Remuneration Tribunal will continue to determine the number of staff each member is able to employ. These arrangements are reflective of the structure currently in place in the Commonwealth for employees of members of Federal Parliament.

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Authors:

Bryan Belling

bryan.belling@klgates.com

+61.2.9513.2541

Matthew Parker

matthew.parker@klgates.com

+61.2.9513.2491

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