



22 January 2008

Hon Jay Weatherill MP
Minister Assisting the Premier in Cabinet Business and Public Sector Management
GPO Box 2269
ADELAIDE SA 5001

Dear Minister

REVIEW OF THE PUBLIC SECTOR MANAGEMENT ACT 1995

Thank you for the opportunity to provide comment on the draft Public Sector Bill 2008, as provided with your letter of 29 November 2007.

Rather than propose specific proposals for redrafting at this point, the following issues of concern are identified. PSA would like the opportunity to meet with you regarding these matters. Specific drafting changes to the proposed Bill can then be considered in the context of the outcomes of those discussions.

Preliminary comments re key concerns

Appeals

Division 4 provides for a new process for reviewing employment decisions.

It is vital that an independent and effective appeal process exist to maintain the integrity of the public sector. This is even more important in the context of your proposals to give extensive increased powers to Chief Executives.

An “in house” Internal Appeals process within agencies (s. 60) does not satisfy the requirement for independence and is inappropriate. Chief Executives and senior management teams are all likely to have had prior involvement in agency discipline proceedings, and to delegate Chief Executives to deal with appeals within an agency provides no independence in the process, denying members natural justice.

Clarification is sought about the mechanisms proposed in the Bill. In particular, the proposal for appeals to the SA Industrial Relations Commission without a “lower level” intermediary process is regarded by PSA as unacceptable.

Powers to Chief Executives

Employment directly by Chief Executives (s.29) rather than the Commissioner raises concerns which require greater clarification.

Issues of process, employment status across the public sector, remuneration and terms and conditions of employment are potentially affected. The degree to which PSA concerns are realized or otherwise will depend upon the clarification provided.

The ability of CEs to hire, fire and discipline, while at the same time being responsible for internal appeals process, is not acceptable.

The PSA's experience dealing with a number of Chief Executives leads to a lack of confidence that such authority would be used appropriately, in the absence of extensive safeguards.

Whilst the principles contained in the Bill are generally appropriate, there is no real connection between principles and decisions, particularly with inadequate appeal mechanisms.

PSA's experience is that mobility across the Public Sector is currently limited because of the unwillingness of CEs to take staff from other Agencies. Despite the intent of the Bill to provide for a whole of government approach, actual experience indicates that this is unlikely to be successful in a totally devolved regime.

Reduced power Commissioner for Public Sector Employment

Providing Human Resource related authority directly to Chief Executives raises serious concerns that there will no longer be a single authority to address public sector wide HR issues and policy.

The gutting of the current Office of the Commissioner of Public Employment has already had detrimental effects and the extension of this in the draft Bill will further exacerbate problems.

PSA is concerned that s.13 removes the provision of the Commissioner to act on own initiative, with provision of advice now being on the request of an agency.

The independence of the Commissioner to conduct reviews and investigations or to recognise an employee organisation have been removed. It is also of concern that references in the current Act requiring consultation with a recognised organisation prior to changes affecting a significant number of employees have been removed.

Fragmentation and inconsistency across the Public Sector are very likely outcomes of the Government proposals to vest authority with CEs, and further reduce the role of the Commissioner.

Part 4 makes no provision for a Deputy Commissioner and significantly reduces the role of the Commissioner as an Independent Office holder.

The lack of a Deputy allows for a Chief Executive to act, potentially undermining the role further by providing for a selection of a CE to meet “political” needs of the time.

Assignment and Redeployment

PSA is concerned that provisions for the assignment of staff to a lower remuneration level without their agreement have been removed (s.46).

The new provision (s.52) for reduction in remuneration level is unacceptable. It does not offer sufficient protection for employees, having removed the requirement for reference to the Commissioner and instead requiring only “reasonable endeavors” to have been made to try and find alternative work at level.

Most agencies do not have a good record for accepting surplus staff from other agencies, and this whole part of the Bill requires extensive negotiation if it is to become even potentially acceptable.

PSA will not regard “reasonable endeavors” to have been undertaken for so long as any temporary or contract staff exist at the level of a surplus unplaced employee. How can an employee be regarded as genuinely surplus if agencies are employing temporary or contract staff?

PSA further objects to the capacity to reduce an employee’s remuneration level as a preliminary step to assigning or transferring an employee to other duties.

Removal reference to “recognised organisations”

Part 3, S.7 of the current Public Sector Management Act 1995 provides for specific consultation with “a recognised organisation” where matters affect a significant number of employees. The removal of this provision in the draft Bill is a concern.

Executive employment.

Executive employment is now proposed to be untenured (s. 41). This goes further than even the current unsatisfactory arrangement whereby Chief Executives at least nominally have the power to offer tenured fall back. Removal of such tenure for Executives is, in effect, constructive dismissal.

Greater use of Regulations

An overarching concern is the degree to which Regulations are proposed in the Bill, rather than specific references in the legislation. By definition Regulations are subordinate legislation and potentially avoid direct Parliamentary consideration of important issues unless they arise in the context of a disallowance motion in either House.

Further, in the absence of proposed Regulations any comment on the Bill itself cannot be complete. PSA requests that the Regulations be provided for consideration along with the draft Bill, not after it has been introduced into Parliament.

General

This response provides initial comments only, and PSA expects to provide ongoing input into the draft Bill as negotiations get underway.

A related issue of importance is the understanding that Government is considering changes to legislation for other public sector employment categories, such as police, nurses and teachers.

Should this be so, in view of the common underpinning principles affecting all public sector workers, PSA recommends that all such legislation be dealt with at the same time.

PSA looks forward to the opportunity to enter into meaningful discussions with you regarding the draft Bill.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jan McMahon', written in a cursive style.

**JAN MCMAHON
GENERAL SECRETARY**

cc Public Sector Bill
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