
exposure draft

The Hon G R Torbay, MP

New South Wales

Parliamentary Members' Staff Bill 2010

Explanatory note

Overview of Bill

The object of this Bill is to provide for the following:

- (a) the employment of staff by a member of Parliament to assist in the exercise of the member's functions (such as electorate staff for members of the Legislative Assembly),
- (b) the employment of additional staff by members of Parliament who hold certain Parliamentary offices (such as the office of Speaker of the Legislative Assembly, President of the Legislative Council and Whip),
- (c) the terms and conditions of employment, and the termination of employment, of the staff of members of Parliament,
- (d) the continuation of the role of the Parliamentary Remuneration Tribunal in determining the number of staff that may be employed by a member of Parliament,
- (e) the determination of terms and conditions of employment and other matters in relation to the staff by the Speaker of the Legislative Assembly and the President of the Legislative Council.

Currently, the Speaker and the President are responsible for the employment and termination of staff of members of Parliament.

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Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act. The *relevant Presiding Officer* means:

- (a) in relation to a person employed by a member of the Legislative Council—the President of the Legislative Council, or
- (b) in relation to a person employed by a member of the Legislative Assembly—the Speaker of the Legislative Assembly.

Part 2 Staff of members of Parliament

Clause 4 provides that a member of Parliament may employ staff to assist the member in exercising his or her functions as a member of Parliament. The proposed section extends to a member of Parliament who is also a Minister or Parliamentary Secretary, but does not authorise the employment of staff by such a member to assist the member in exercising his or her functions as a Minister or Parliamentary Secretary. The proposed section will not apply to a member of the Legislative Council who is also a Minister.

Clause 5 provides that a member of Parliament who holds a Parliamentary office specified in Schedule 1 of the proposed Act may, in addition to the entitlement to employ staff under proposed section 4, employ staff, under a written agreement, to assist the person in exercising the functions of that office. The proposed section will not apply to the office of Minister, Parliamentary Secretary or Leader of the Opposition in the Legislative Assembly. Schedule 1 may be amended by regulation on the joint recommendation of the Presiding Officers.

Clause 6 provides that the written agreement by which a person is employed under the proposed Act is to be in the terms of the model agreement that has been approved by the relevant Presiding Officer. However, the Presiding Officer may approve different or additional terms in a particular agreement.

Clause 7 provides that the number of staff that a member of Parliament is entitled to employ under proposed section 4, and that a Parliamentary officer holder is entitled to employ under proposed section 5, is to be determined by the Parliamentary Remuneration Tribunal. The type and grade of staff are to be determined by the relevant Presiding Officer.

Clause 8 enables the Presiding Officers to make determinations fixing the conditions, benefits and remuneration for persons employed under the proposed Act.

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Clause 9 enables the Presiding Officers to enter into industrial agreements with associations and organisations representing persons employed under this Act.

Clause 10 provides that the relevant Presiding Officer is taken to be the employer of a person employed under the proposed Act in any proceedings relating to the person in an industrial tribunal (other than in proceedings for unfair dismissal, in which case the member of Parliament is taken to be the employer).

Clause 11 provides that the employment of a person under the proposed Act terminates if:

- (a) in the case of a person employed by a member of Parliament under proposed section 4—the member ceases to be a member of Parliament, or
- (b) in the case of a person employed by a member of the Legislative Council under proposed section 4—the member becomes a Minister, or
- (c) in the case of a person employed by a member of Parliament in his or her capacity as a Parliamentary office holder under proposed section 5—the member of Parliament ceases to hold the Parliamentary office or ceases to be a member of Parliament.

The relevant Presiding Officer may suspend the termination of the employment of a person in those circumstances, to cover a situation where the person may subsequently be employed by a different member of Parliament. During the period of suspension, the relevant Presiding Officer may exercise the functions of the employer of the person. A person's employment may also be terminated by the giving of 2 weeks' notice by either the member of Parliament or the person.

Part 3 Miscellaneous

Clause 12 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 13 provides for the review of the proposed Act in 5 years.

Schedule 1 Parliamentary offices

Schedule 1 specifies certain Parliamentary offices. A person who holds one of these offices is entitled to employ staff to assist the person in exercising the functions of that office.

Schedule 2 Savings, transitional and other provisions

Clause 1 enables savings and transitional regulations to be made consequent on the enactment of the proposed Act.

Clause 2 provides that the *Crown Employees (Parliamentary Electorate Officers) Award 2010* (other than clause 20.1) continues to apply to any person to whom it applied immediately before the commencement of the proposed Act. However, the

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proposed Act prevails to the extent of any inconsistency with a provision of that Award.

Clause 3 provides that the Order made under section 47 of the *Constitution Act 1902* published in the Gazette on 2 May 1952 does not apply in relation to the employment of persons under the proposed Act. The Order gives the Presiding Officers power to appoint staff to the service of both Houses of Parliament.

Schedule 3 Amendment of Acts

Schedule 3.1 amends the *Industrial Relations Act 1996* so that provisions in that Act relating to promotion and disciplinary appeals apply to persons employed under the proposed Act.

Schedule 3.2 amends the *Public Sector Employment and Management Act 2002* so that provisions in that Act relating to staff mobility and recognition of prior service apply to persons employed under the proposed Act.

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New South Wales

Parliamentary Members' Staff Bill 2010

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New South Wales

Parliamentary Members' Staff Bill 2010

No. , 2010

A Bill for

An Act to provide for the employment of staff by members of Parliament.

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Clause 1 Parliamentary Members' Staff Bill 2010

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Parliamentary Members' Staff Act 2010*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act:

function includes a power, authority or duty and **exercise** a function includes perform a duty.

member of Parliament means a member of the Legislative Council or a member of the Legislative Assembly.

Parliamentary office holder means a member of Parliament who holds a Parliamentary office specified in Schedule 1.

Presiding Officer means the President of the Legislative Council or the Speaker of the Legislative Assembly.

relevant Presiding Officer means:

- (a) in relation to a person employed by a member of the Legislative Council—the President of the Legislative Council, or
- (b) in relation to a person employed by a member of the Legislative Assembly—the Speaker of the Legislative Assembly.

(2) Notes included in this Act do not form part of this Act.

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Parliamentary Members' Staff Bill 2010

Clause 4

Staff of members of Parliament

Part 2

Part 2 Staff of members of Parliament

4 Members of Parliament may employ staff

- (1) A member of Parliament may, on behalf of the Crown, employ staff, under a written agreement, to assist the member in exercising his or her functions as a member of Parliament.
- (2) This section extends to a member of Parliament who is also a Minister or Parliamentary Secretary, but does not authorise the employment of staff by such a member of Parliament to assist the member in exercising his or her functions as a Minister or Parliamentary Secretary.
Note. Under Part 2.5 of the *Public Sector Employment and Management Act 2002*, staff can be employed by the Director-General of the Department of Premier and Cabinet to carry out work for Ministers, Parliamentary Secretaries and the Leader of the Opposition in the Legislative Assembly.
- (3) However, this section does not apply to a member of the Legislative Council who is also a Minister.

5 Members of Parliament who hold Parliamentary offices may employ additional staff

- (1) A member of Parliament who holds a Parliamentary office specified in Schedule 1 may, on behalf of the Crown, in his or her capacity as a Parliamentary office holder, and in addition to the entitlement to employ staff under section 4, employ staff, under a written agreement, to assist the person in exercising the functions of that office.
- (2) The regulations may amend Schedule 1 by inserting, altering or omitting the description of a Parliamentary office held by a member of Parliament.
- (3) A regulation under subsection (2) may be made only on the joint recommendation of the Presiding Officers.
- (4) This section does not apply to the office of Minister, Parliamentary Secretary or Leader of the Opposition in the Legislative Assembly.

6 Terms of written employment agreement

- (1) The written agreement by which a person is employed under this Act must be in the terms of the model agreement that has been approved by the relevant Presiding Officer for the purposes of this Act.
- (2) However, a written agreement may, with the written approval of the relevant Presiding Officer, contain different or additional terms.

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Clause 7 Parliamentary Members' Staff Bill 2010

Part 2 Staff of members of Parliament

7 Number, type etc of staff

- (1) The number of staff:
 - (a) that a member of Parliament is entitled to employ under section 4, and
 - (b) that a Parliamentary office holder is entitled to employ under section 5,is to be determined in accordance with a determination by the Parliamentary Remuneration Tribunal.
- (2) The type and grade of staff that a member of Parliament or a Parliamentary officer holder is entitled to employ are to be determined by the relevant Presiding Officer.

8 Determination of terms and conditions of employment

- (1) The relevant Presiding Officer may from time to time make determinations fixing the conditions and benefits of employment and the remuneration of persons employed under this Act. Such a determination can provide for redundancy and severance payments and for remuneration packaging.
- (2) The conditions, benefits and remuneration of a person employed under this Act are, except in so far as provision is otherwise made by law or in the written agreement of employment, such as may be fixed by a determination made under this section.
- (3) A person employed under this Act may sue for and recover the amount of remuneration of the person that is determined under this section. For that purpose, the determination is taken to be a State industrial instrument.

9 Presiding Officers may enter into industrial agreements

- (1) The relevant Presiding Officer may enter into an agreement with any association or organisation representing all or any class of persons employed under this Act with respect to industrial matters.
- (2) Any such agreement binds all the persons affected by the agreement, and no such person (whether a member of the association or organisation with which the agreement was entered into or not) has any right of appeal against the terms of the agreement.
- (3) An agreement under this section is not an enterprise agreement within the meaning of the *Industrial Relations Act 1996*. However, the relevant Presiding Officer (or any delegate of the Officer) may enter into such an enterprise agreement as the employer of the persons employed under this Act.

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Parliamentary Members' Staff Bill 2010

Clause 10

Staff of members of Parliament

Part 2

10 Role of Presiding Officers in industrial proceedings

- (1) The relevant Presiding Officer is, for the purposes of any proceedings relating to a person employed under this Act held before a competent tribunal having jurisdiction to deal with industrial matters, taken to be the employer of the person.
- (2) This section does not apply to proceedings relating to the unfair dismissal or termination of employment of a particular person employed by a member of Parliament.

Note. Part 7 of Chapter 2 of the *Industrial Relations Act 1996* provides that proceedings in the Industrial Relations Commission for unfair dismissal are to be taken by a person employed under this Act against the member of Parliament as the employer.

11 Termination of employment

- (1) The employment of a person under this Act terminates if:
 - (a) in the case of a person employed by a member of Parliament under section 4—the member ceases to be a member of Parliament, or
 - (b) in the case of a person employed by a member of the Legislative Council under section 4—the member becomes a Minister, or
 - (c) in the case of a person employed by a member of Parliament in his or her capacity as a Parliamentary office holder under section 5—the member of Parliament ceases to hold the Parliamentary office or ceases to be a member of Parliament.
- (2) For the purposes of subsection (1):
 - (a) a member of Parliament is not taken to have ceased to be a member of Parliament while the member continues to be entitled to the salary that was payable to him or her as a member of Parliament, and
 - (b) a member of Parliament who is a Parliamentary office holder is not taken to have ceased to hold the office while the office holder continues to be entitled to the allowance that was payable to him or her as the holder of that office.
- (3) If the employment of a person under this Act would (but for this subsection) be terminated because of subsection (1), the relevant Presiding Officer may direct that the termination of the employment of the person is suspended until such time as the relevant Presiding Officer determines. During the period the termination of employment is suspended, the functions as employer of the member of Parliament who had employed the person are exercisable by the relevant Presiding Officer.

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Clause 11 Parliamentary Members' Staff Bill 2010

Part 2 Staff of members of Parliament

- (4) A member of Parliament may, at any time by giving 2 weeks' notice in writing to a person employed by the member under this Act, terminate the employment of the person.
- (5) A person employed by a member of Parliament under this Act may, at any time by giving 2 weeks' notice in writing to the member, terminate the person's employment.

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Parliamentary Members' Staff Bill 2010

Clause 12

Miscellaneous

Part 3

Part 3 Miscellaneous

12 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

13 Review of Act

- (1) The Presiding Officers are to jointly review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act and a report on the outcome of the review is to be provided to the Minister and tabled in each House of Parliament within 12 months after the end of that period of 5 years.

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Parliamentary Members' Staff Bill 2010

Schedule 1 Parliamentary offices

Schedule 1 Parliamentary offices

(Section 5)

Government Whip

Opposition Whip

Whip of a recognised party with 10 or more members in the Legislative Assembly
(other than the Government or Opposition Whip)

Speaker of the Legislative Assembly

Deputy Speaker of the Legislative Assembly

President of the Legislative Council

Deputy President of the Legislative Council

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Parliamentary Members' Staff Bill 2010

Savings, transitional and other provisions

Schedule 2

Schedule 2 Savings, transitional and other provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Existing employees of members of Parliament and Parliamentary office holders

- (1) A person who is employed immediately before the commencement of this Act to assist a member of Parliament or a Parliamentary office holder to exercise the member's or office holder's functions is taken to be employed under this Act.
- (2) The *Crown Employees (Parliamentary Electorate Officers) Award 2010* (other than clause 20.1) continues to apply to any person to whom it applied immediately before the commencement of this Act. However, this Act prevails to the extent of any inconsistency with a provision of that Award.

3 Application of Order made under Constitution Act 1902

The Order made under section 47 of the *Constitution Act 1902* and published in the Gazette on 2 May 1952 does not apply in relation to the employment of persons under this Act.

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Parliamentary Members' Staff Bill 2010

Schedule 3 Amendment of Acts

Schedule 3 Amendment of Acts

3.1 Industrial Relations Act 1996 No 17

[1] Section 91 Interpretation

Insert after paragraph (d) of the definition of *public sector employee* in section 91 (1):

- (d1) employed under the *Parliamentary Members' Staff Act 2010*, or

[2] Section 91 (1), definition of “public sector employer”

Insert after paragraph (d):

- (d1) for a public sector employee of the class referred to in paragraph (d1) of that definition—the member of Parliament who employed the person, or

3.2 Public Sector Employment and Management Act 2002 No 43

[1] Section 3 Definitions

Insert after paragraph (e) of the definition of *public sector service* in section 3 (1):

- (e1) persons employed under the *Parliamentary Members' Staff Act 2010*,

[2] Section 4 Act not to apply to judicial or parliamentary officers

Insert after section 4 (b):

- (c) any position of staff member employed by a member of Parliament under the *Parliamentary Members' Staff Act 2010*.

[3] Section 4, Note

Insert “and staff of members of Parliament” after “Parliamentary officers”.

[4] Section 33 Employment of special temporary employees

Insert “(including, without limitation, under the *Parliamentary Members' Staff Act 2010*)” after “manner” in section 33 (5).