

**PUBLIC AND HEALTH SECTOR LEGISLATION AMENDMENT (RIGHT OF RETURN) BILL 2018**

*Receipt and First Reading*

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Leader of the House)**, read a first time.

*Second Reading*

**HON SUE ELLERY (South Metropolitan — Leader of the House)** [6.07 pm]: I move —

That the bill be now read a second time.

Since coming to government in 2017, the McGowan Labor government has taken major steps to reform and remodel the public sector. The Western Australian public sector is one of our most important assets, filled with capable and passionate people. Government has a responsibility to ensure that the sector has the ability to address the challenges of the modern world while continuing to meet community expectations regarding employment, fairness and cost. The Public and Health Sector Legislation Amendment (Right of Return) Bill 2018 proposes a number of amendments to the principal legislation to contemporise the employment arrangements for senior executives within the public sector, to deliver on the government's workforce renewal agenda, and to assist in the much-needed task of budgetary repair.

Established under part 3 of the Public Sector Management Act 1994, the purpose of the senior executive service is to provide for a group of executive officers capable of furnishing high-level policy advice and undertaking managerial responsibilities; and being deployed within and between agencies to best promote the efficiency of the public sector and individual agencies. The SES cohort comprises public service officers whose salary exceeds the prescribed level—currently level 8—and includes chief executive officers appointed under section 45 of the Public Sector Management Act.

Although the original concept of the SES predates the passage of the Public Sector Management Act, that act shifted the fundamental nature of executive employment from permanent tenure to fixed-term contracts of employment, with those contracts being terminable by either party on four weeks' notice. However, an ongoing right of return was able to be retained by those officers who had been permanently employed in a department or organisation for a continuous period of six months immediately prior to their appointment to the SES.

Under the Public Sector Management Act as it stands, an executive officer who retains a right of return and whose contract ceases by the effluxion of time or early termination becomes entitled to employment in a department or organisation at the classification level that they held immediately prior to their appointment. Although not stipulated, that ongoing employment has typically been within the agency in which the officer was last employed as an executive officer. Section 60 of the Public Sector Management Act also provides that an executive officer may elect to surrender this entitlement to ongoing employment and instead take compensation in accordance with section 59 of the act.

The bill proposes to abolish the right of return for executive officers, with the exception of those who are currently on, or will enter into, their initial executive engagement, who will retain it for the first two years of their contract's duration. The right of return under this circumstance has been retained so as not to disadvantage new entrants to the SES, thus providing a minimum level of security whereby an officer is entitled to revert to their former status while they determine whether movement into the SES aligns with their career aspirations.

For continuing SES officers who hold a right of return under non-initial contracts of executive employment, the bill provides for a transitional period of six months from commencement of the bill, or for the remaining term of their contract, if that is a lesser period. Within this time, they may elect to exercise their right and return to permanent tenure, after which their right of return will expire. If an executive officer elects to exercise their right of return, the bill confirms that the employment will be with the agency in which they were last employed as an executive officer, except in the case of CEOs appointed under section 45 of the Public Sector Management Act, who will be provided with ongoing employment within the Public Sector Commission. This reflects that in all possibility it is no longer feasible for the officer to be placed directly in their last tenured position and formalises the arrangements that are already undertaken administratively in this regard. If an executive officer has no right of return, should their appointment be brought to an end prior to the contract's expiry date, they will continue to be entitled to such compensation as the Public Sector Commissioner determines in accordance with section 59 of the Public Sector Management Act. The bill proposes a small but significant amendment in this regard, which will limit the potential compensation payable to 12 months of the officer's salary, as opposed to total remuneration. This amendment, along with a recent change in the methodology applied by the Public Sector Commissioner when determining the quantum of compensation payments within the statutory limit, will ensure compensation payments for early termination of contract are more reflective of the remaining duration of the officer's contract and align with the expectations of the community.

Finally, the Health Services Act 2016 contains right of return and compensation payment provisions for its executive officers, modelled on the provisions of the Public Sector Management Act. In order to provide for the

equal treatment of executives across both employment regimes, the bill makes mirror amendments to the Health Services Act. Therefore, the right of return for health executives will now be limited to officers with permanent status who are appointed on a contract in the health executive service for the first time, and they will retain it for the first two years of their contract. The effect of the bill is that all persons appointed to executive positions in the public service will eventually transition to a consistent tenure of employment, regardless of whether they were a permanent public servant before appointment to the position; that is, candidates for senior executive positions who currently have permanent status in the public service will be afforded the same entitlements as external appointees following the expiry of their initial contract's two year right-of-return period.

In conclusion, the bill will provide employing authorities with greater flexibility in the employment and deployment of employees at the senior echelons of the public service. For employees, it will encourage increased mobility and the sharing of knowledge and skills across the public sector. As a consequence, the bill is an important element of the government's reform agenda to drive cultural change and high performance across the public sector.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper 1776.]

**The PRESIDENT:** Minister, I might just alert you to the fact that there seems to be some difficulty with copies of the second reading speech that have been provided. They differ substantially from what you have read into the house. I hope that perhaps tomorrow, a corrected version might be provided to members in due course. There appears to be a page missing from the second reading speech. I am sure it will be found and adjusted at a later stage.

Debate adjourned, pursuant to standing orders.