

House of Representatives
Supplementary Order Paper

Thursday, 13 September 2001



Hon Trevor Mallard, in Committee, to move the following amendments:

Clause 4

To add to *new section 30A*, (after line 29 on page 2) as *subsection (2)*, the following subsection:

- “(2) To avoid doubt, this section does not limit the need for a Department that has been established by an Act of Parliament to be abolished or have its name changed by an Act of Parliament.

To omit *new sections 30B and 30C* (line 30 on page 2 to line 19 on page 4), and substitute the following sections:

“**30AB Effect of reorganisations within Public Service on employees**

A transfer of functions from one Department (**Department A**) to another Department (**Department B**) does not transfer a chief executive or employee of Department A to Department B, despite **sections 30D(2) and (3) and 30E(2) and (3)**.

“**30AC Application of employee provisions to reorganisations**

Each of **sections 30B to 30C** applies to a transfer of functions from Department A to Department B only if the Governor-General, by Order in Council, declares that that section applies to that transfer of functions.

“30B Restriction of compensation for technical redundancy arising from reorganisations

- “(1) An employee is not entitled to receive any payment or other benefit on the ground that his or her position in Department A has ceased to exist if—
- “(a) the position ceases to exist as a result of a transfer of functions from Department A to Department B; and
 - “(b) in connection with that transfer of functions,—
 - “(i) the employee is offered equivalent employment in Department B (whether or not the employee accepts the offer); or
 - “(ii) the employee is offered, and accepts, other employment in Department B.
- “(2) **Equivalent employment** to the employee’s employment in Department A is employment in Department B—
- “(a) in substantially the same position; and
 - “(b) in the same general locality; and
 - “(c) on terms and conditions of employment that are no less favourable than those that apply to the employee immediately before the offer of equivalent employment (including any service-related, redundancy, and superannuation conditions); and
 - “(d) on terms that treat the period of service with Department A (and any other period of service recognised by Department A as continuous service) as if it were continuous service with Department B.

“30BA Reappointment of employees following reorganisations

Sections 60 to 61B and 65 do not apply to the appointment of an employee of Department A to a position in Department B if the employee’s position in Department A ceases to exist as a result of a transfer of functions from Department A to Department B.

“30C Application of collective agreements to employees following reorganisations

- “(1) This section limits which employees may be bound by a collective agreement that—
- “(a) binds the chief executive of Department A before a transfer of functions from Department A to Department B and that, as a consequence of **sections 30D and 30E**, binds the chief executive of Department B after that transfer of functions (**collective agreement A**); or
 - “(b) binds the chief executive of Department B before that transfer of functions (**collective agreement B**).
- “(2) After that transfer of functions,—
- “(a) the only employees of Department B who are entitled to be bound by or enforce collective agreement A are

those employees who are appointed to a position in Department B that has been established (whether or not previously existing in Department A) to enable Department B to perform the transferred functions; and

- “(b) the only employees of Department B who are entitled to be bound by or enforce collective agreement B are those employees who hold, or are appointed to, a position other than a position referred to in **paragraph (a)**.
- “(3) **Subsection (2)** does not bind an employee to a collective agreement, or entitle an employee to be bound by or enforce a collective agreement, if the employee would not otherwise be bound by, or be entitled to be bound by or enforce, that agreement.
- “(4) This section limits which employees may be bound by collective agreements (including collective employment contracts), and the coverage of those agreements, under Part VI of this Act and sections 56(1), 57, 62(3), 63(3), and 243 of the Employment Relations Act 2000.
- “(5) This section does not apply to a collective agreement to the extent that the parties agree otherwise.

To insert, after *new section 30F(1)* (after line 32 on page 5), the following subsections:

- “(1A) Regulations made under **section 30G** may apply **sections 30D and 30E** to things also coming into force, entered into, or created during a transitional period after the relevant name change, abolition, or transfer of functions that is specified in those regulations.
- “(1B) To avoid doubt, **sections 30D and 30E** do not limit the need for a Department that has been established by an Act of Parliament to have its name changed, be abolished, or have statutory functions transferred by an Act of Parliament, and **sections 30D and 30E** apply in respect of that name change, abolition, or transfer only on and after that Act has given effect to it.

To omit from *new section 30F(3)* the expression “**30C**” (line 37 on page 5), and substitute the expression “**30AB**”.

Clause 8

To omit the expression “State Sector Act 1988” (line 7 on page 7), and substitute the words “principal Act”.

New clause 8A

To insert, after *clause 8* (after line 13 on page 7), the following clause:

8A Effect of reorganisation on employees

The transfer of functions from the Department of Social Welfare to the Ministry of Social Development does not transfer the chief executive or an employee of the Department of

Social Welfare to the Ministry of Social Development, despite section 13.

Clauses 9 and 10

To omit these clauses (line 14 on page 7 to line 35 on page 8), and substitute the following clauses:

- 9 Restriction of compensation for technical redundancy arising from reorganisation**
- (1) An employee is not entitled to receive any payment or other benefit on the ground that his or her position in the Department of Social Welfare has ceased to exist if—
- (a) the position ceases to exist as a result of the transfer of the Department of Social Welfare's functions to the Ministry of Social Development; and
 - (b) in connection with that transfer of functions,—
 - (i) the employee is offered equivalent employment in the Ministry of Social Development (whether or not the employee accepts the offer); or
 - (ii) the employee is offered, and accepts, other employment in the Ministry of Social Development.
- (2) **Equivalent employment** to the employee's employment in the Department of Social Welfare is employment in the Ministry of Social Development—
- (a) in substantially the same position; and
 - (b) in the same general locality; and
 - (c) on terms and conditions of employment that are no less favourable than those that apply to the employee immediately before the offer of equivalent employment (including any service-related, redundancy, and superannuation conditions); and
 - (d) on terms that treat the period of service with the Department of Social Welfare (and any other period of service recognised by the Department of Social Welfare as continuous service) as if it were continuous service with the Ministry of Social Development.
- 9A Reappointment of employees following reorganisation**
- Sections 60 to 61B and 65 of the principal Act do not apply to the appointment of an employee of the Department of Social Welfare to a position in the Ministry of Social Development if the employee's position in the Department of Social Welfare ceases to exist as a result of the transfer of its functions to the Ministry of Social Development.

10 Application of collective agreements to employees following reorganisation

- (1) This section limits which employees may be bound by a collective agreement that—
 - (a) binds the chief executive of the Department of Social Welfare before the transfer of its functions to the Ministry of Social Development and that, as a consequence of **section 13**, binds the chief executive of the Ministry of Social Development after that transfer of functions (**collective agreement A**); or
 - (b) binds the chief executive of the Ministry of Social Development before that transfer of functions (**collective agreement B**).
- (2) After that transfer of functions,—
 - (a) the only employees of the Ministry of Social Development who are entitled to be bound by or enforce collective agreement A are those employees who are appointed to a position in the Ministry of Social Development that has been established (whether or not previously existing in the Department of Social Welfare) to enable the Ministry of Social Development to perform the transferred functions; and
 - (b) the only employees of the Ministry of Social Development who are entitled to be bound by or enforce collective agreement B are those employees who hold, or are appointed to, a position other than a position referred to in **paragraph (a)**.
- (3) **Subsection (2)** does not bind an employee to a collective agreement, or entitle an employee to be bound by or enforce a collective agreement, if the employee would not otherwise be bound by, or be entitled to be bound by or enforce, that agreement.
- (4) This section limits which employees may be bound by collective agreements (including collective employment contracts), and the coverage of those agreements, under Part VI of this Act and sections 56(1), 57, 62(3), 63(3), and 243 of the Employment Relations Act 2000.
- (5) This section does not apply to a collective agreement to the extent that the parties agree otherwise.

Clause 14

To omit *subclause (1)(a)* (lines 32 to 35 on page 9), and substitute the following paragraph:

- (a) apply to things that are in force or existing at the time of the name change or abolition or that come into force, are entered into, or are created during the transitional period (whether coming into force, entered into, or

created before or after the commencement of this section); and

To omit from *subclause (2)* (line 2 on page 10) the expression “10”, and substitute the expression “8A”.

To add (after line 2 on page 10) the following subclauses:

- (3) The **transitional period** ends on 1 April 2003 unless it is extended under **subsection (4)**.
- (4) The Governor-General may, by Order in Council, extend the transitional period to any date specified in the order.

Explanatory note

This Supplementary Order Paper proposes to clarify and make minor changes to the State Sector Amendment Bill as follows:

- the SOP will amend *sections 30A and 30F* so that it is clear that an Act of Parliament is still needed to abolish, change the name of, or transfer statutory functions of a Department that has been established by an Act of Parliament (eg, the Department of Conservation under section 5 of the Conservation Act 1987):
- the SOP will clarify that a transfer of functions from one Department to another does not transfer the chief executive or an employee (despite changes to references to Departments in employment agreements under *sections 30D and 30E*). This was the intent of the previous *section 30C(2) and (3)* (now *section 30AB*):
- the SOP will make minor changes to the restriction on technical redundancy so that *section 30B* more clearly specifies the elements of an offer of equivalent employment and that an offer of non-equivalent employment will only override an entitlement to technical redundancy if the employee accepts that offer. The SOP will also omit *subsection (3)* because the section will restrict technical redundancy without it:
- the SOP will amend the previous *section 30C* to better give effect to its intent and to extend it to cases where there are 1 or more collective agreements in either or both Departments involved in the reorganisation or there is a mixture of collective agreements and collective employment contracts (preserved under section 243 of the Employment Relations Act 2000):
- the SOP will enable regulations to be made so that references to Departments and chief executives in contracts, etc, that are entered into during a transitional period following the reorganisation will also be changed as a result of the reorganisation:
- the SOP proposes equivalent changes be made to the provisions relating to the reorganisation resulting in the Ministry of Social Development.