

CLAUSE NOTES

North West Maternity (Employee Entitlements) Bill 2023

Part 1 - Preliminary

- Clause 1 The Short Title states that the Act is to be cited as the North West Maternity (Employee Entitlements) Act 2023.
- Clause 2 Provides for the Act to commence on Royal Assent.
- Clause 3 This clause contains the interpretive provisions for the Bill.

Part 2 – Transfer Process

- Clause 4 This clause sets out the process for determining the employees of the North West Private Hospital who will transfer their employment to the new public maternity service at the North West Public Hospital. The provision allows the Minister for Health, or a delegate of the Minister (see clause 13), to give notice to a person, who is employed by the North West Private Hospital, that they are eligible to transfer to the Department of Health. A notice given under this clause may specify the terms and conditions that may apply to the transfer of that person and may specify the time in which a person has to make an election to accept the transfer of employment.

Once a person receives a notice in accordance with this clause, they are then defined as an eligible employee for the remaining provisions of the Bill.

A notice given by the Minister under this clause may be given at any time leading up to the transfer period and at any time during the transfer period, which is the period commencing on 4 December 2023 and ending on 31 May 2024.

The Minister has the ability to withdraw a notice given to a person under this clause, such as in the event that the person is no longer employed by the North West Private Hospital.

Clause 5 This clause provides that an eligible employee, who receives a notice from the Minister stating that they are eligible to transfer their employment to the Department of Health in accordance with clause 4, may elect to transfer their employment. An eligible employee must make this election in writing to the Minister in the manner specified in the notice.

If an employee of the North West Private Hospital elects not to take up employment with the Department of Health by advising the Minister in writing, this does not affect that persons' employment with that employer. It also does not prevent the Minister from issuing a subsequent notice either prior to or during the transfer period.

This clause also sets out the requirements that must be included in a notice made by the Minister.

Clause 6 Before an eligible employee can be transferred to employment under the State Service Act 2000, this clause sets out the consultation process that must occur with that employee. The employee may elect, at the consultation, to have a support person present, as well as a representative of a union or a legal practitioner.

Clause 7 This clause provides that, following consultation with the eligible employee and other relevant persons, the Minister may, by notice in writing, notify the eligible employee that the employee is a State Service employee of the Department of Health on the terms and conditions as specified in the notice.

The effect of this provision is that the eligible employee is taken to be a State Service employee of the Department of Health on the commencement date, and on any terms and conditions, specified in the notice given to the eligible employee and provides legislative certainty to an employee that the employment processes in the State Service Act 2000 are not required in these circumstances.

The Minister has the ability to withdraw a notice given under this clause, such as in the case that the person ceases to be an employee of the North West Private Hospital in the lead up to the transfer of that persons' employment with the Department of Health or the circumstances of that employee change such that the employee no longer wishes to take up employment with the Department of Health. This clause also clarifies that nothing prevents the Minister from issuing another notice to that employee either prior to or during the transfer period.

Part 3 – Effect of Transfer

Clause 8 This clause defines the terms “employee transfer date” and “transferred employee” for the purposes of interpreting Part 3. For the purposes of Part 3, “continuous service” has the same meaning as in the Long Service Leave (State Employees) Act 1994, which is defined in section 10 of that Act.

Clause 9 This clause provides that the period of time that a transferred employee accrued while continuously employed by Health Care Burnie is taken to form part of the transferred employee’s continuous service for the purposes of calculating leave or other entitlements of that employment as at the date that employee commences employment in the State Service. This means that the period of service that transfers to the Department of Health on the commencement of the eligible employee’s employment is that period of service that recorded by Health Care Burnie immediately prior to the employee transfer date.

The period of time transferred as continuous service is to be used to calculate leave and other entitlements of the employee under the State Service Act 2000. Other entitlements include maternity leave, paternity leave, adoption leave and redundancy payments.

Clause 10

This clause provides that a transferred employee, from the transfer date in respect to that employee, is taken to be employed on the same terms and conditions that applied to that employee immediately before the transfer date and that are specified in the transfer notice given to the employee under clause 7. These terms and conditions are those that apply specifically to that transferred employee and include registration requirements, scope of practice, including any conditions that apply to the employees' practice such as continuing education requirements. Other conditions may include human resource matters, such as probation, performance management or supervision requirements and working hours.

This clause also provides that a transferred employee retains all leave and other entitlements that that employee accrued while employed by the former employer, Health Care Burnie, as if they were accrued under the State Service Act 2000. This does not extend to entitlements that are not specified in the transfer notice nor leave accrued as time in lieu or from participating in an on-call roster as these forms of leave are not recognised in the industrial instruments made under the State Service Act 2000.

The period of long service leave a transferred employee is entitled to retain is that which the employee is entitled to take under the Long Service Leave Act 1976, as at the transfer date. These provisions recognise the differences between the rates at which long service leave accrues in the private sector under the Long Service Leave Act 1976 and that under the Long Service Leave (State Employees) Act 1994. Accordingly, subclause (4) provides the formula and the basis for determining the equivalent long service leave entitlement.

A transferred employee is not entitled to a period of long service leave if, as at the transfer date, that employee is not yet entitled to take that leave under the Long Service Leave Act 1976.

A transferred employee, on and from their commencement in the Department of Health, is entitled to claim their accrued leave and other entitlements in accordance with the State Service Act 2000.

This clause clarifies that a transferred employee is not entitled to any form of compensation or payment as a result of that employees' transfer to the Department of Health. In addition, a transferred employee is not entitled to seek compensation, or other payment, from the Department of Health in respect of actions taken by the North West Private Hospital before the employee transfer date for that employee.

In addition, a transferred employee is not entitled to commence legal proceedings against the Department of Health in respect to matters that were in existence prior to the employee transfer date in respect to that employee.

Clause 11 This clause provides that the State Service Act 2000 applies to a transferred employee as at the transfer date applicable to that employee and that person becomes an employee of the Department of Health.

Part 4 - Miscellaneous

Clause 12 This clause provides that, in the event of a dispute arising under the provisions of the Bill, that the Minister is to determine all such disputes. In determining a dispute under the Bill, the Minister is to consult with the North West Private Hospital and any other person considered appropriate in respect to the circumstances of the dispute. A decision of the Minister is final.

Clause 13 This clause provides that the Minister may delegate their functions and powers under the Bill to any person by an instrument in writing.

Clause 14 This clause provides the Department of Health the ability to obtain employee information, including employment and payroll records, from the North West Private Hospital in respect to employees who are eligible, or may be eligible, to transfer their employment to the Department of Health.

This clause clarifies that, by virtue of sharing information in accordance with this section, neither an employee of the Department of Health nor the North West Private Hospital will be in breach of any Act, such as the Personal Information Protection Act 1994, where that person has acted in good faith.

Clause 15 This clause provides that the Rules Publication Act 1953 does not apply to notices made under the Bill.

Clause 16 This clause provides a head of power for regulations to be made under the Bill.

Clause 17 Provides that administration of the Bill is assigned to the Minister for Health and the Department responsible to that Minister in respect to the administration of the Bill is the Department of Health.