

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

PUBLIC SECTOR MANAGEMENT AMENDMENT BILL 2003

EXPLANATORY STATEMENT

**Circulated by authority of
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CHIEF MINISTER**

OUTLINE

This Bill amends the *Public Sector Management Act 1994* (the Act) to provide for the transfer of Totalcare staff to the ACT Public Service.

The ACT Legislative Assembly is considering a resolution, under section 16 of the *Territory Owned Corporations Act 1990* to dispose of all of the undertakings of Totalcare Industries Limited. If this resolution is passed, it is proposed that Totalcare businesses and staff will be progressively transferred to the ACT Public Service.

The arrangements proposed by this Bill, which are one part of a process to wind-down Totalcare, will enable the progressive transfer of Totalcare staff to the ACT Public Service. As staff will be transferred by business unit, the Bill provides a mechanism for the Commissioner for Public Administration to transfer staff at different times.

The Bill permits the Commissioner to transfer Totalcare staff to equivalent positions in the ACT Public Service without a formal merit process, which is generally required before employment in the Service.

Some Totalcare staff are public servants on loan to Totalcare. The Bill will confirm the public service status of those staff.

The Bill also excludes general actions relating to employment in the ACT Public Service, such as gazette notifications of appointments and pre-employment medicals, to validate the employment action taken in relation to employment by Totalcare. In the case of temporary employment, the Bill excludes certain criteria designed to restrict temporary employment to specialist or urgent services or where no permanent officer is otherwise available.

The Bill provides, as far as possible, that staff are transferred at level and on the same tenure arrangements, noting that probationary staff would continue on probation. The Bill also provides, as far as possible, for the retention of leave entitlements, unless paid out; recognition of prior service with Totalcare; and provides for entitlements that are no less favourable than immediately before transfer.

This approach supports the maintenance of terms and conditions insofar as they are set by the Act. This approach is adopted as most terms and conditions for staff are provided through industrial instruments, such as Certified Agreements. As industrial instruments operate with the force of Commonwealth law, they override inconsistent ACT laws. The approach under the Bill also reflects the continued operation of Totalcare Certified Agreements under the Commonwealth *Workplace Relations Act 1996* transmission of business rules.

While the Bill effects the transfer of staff on the same tenure, the Bill will also permit the Commissioner, after the transfer, to convert temporary employees to permanent tenure in certain circumstances. This includes where Totalcare has employed staff on a temporary basis for at least five years, reflecting the limit of fixed term employment under the Act and in other circumstances where the Commissioner considers it is appropriate.

The Bill will also provide that the Commissioner for Public Administration, with the advance approval of the Chief Minister, may make Public Sector Management Standards for matters incidental to the Totalcare transfers, and individual determinations to address anomalies arising from the transfer.

Further, the Bill provides a Regulation making power to modify provisions in Part 14, if the Executive considers that it is not adequately dealt with in this Part, and to make transitional Regulations.

The Bill provides for expiry in December 2005 – the anticipated date for the completion of the wind-down. However, the Bill also provides that the Regulations may specify a date later than December 2005, if the wind-down of Totalcare is not completed by that date.

Financial Implications

Transitional and operational costs will be confirmed as part of the due diligence process and taken into consideration in formulating the 2004 budget.

INTRODUCTION

Introduction	This clause sets out the Bill's title, date of commencement and operations.
Name of Act and commencement Clauses 1 and 2	These clauses are formal requirements. They refer to the name of the Act, and the commencement of the Bill, which is the day after its notification day.
Act amended Clause 3	This Act amends the <i>Public Sector Management Act 1994</i> .
Insert new note Clause 4	Section 67 of the Act is amended to insert a new note to provide that new Part 14 makes provision for certain employees of Totalcare to be employed in the ACT Public Service.
Insert new Part Clause 5	Clause 5 inserts new Part 14 dealing with provisions relating to Totalcare.

PART 14 –TOTALCARE

- Introduction** This Part sets in place arrangements to effect the transfer of Totalcare staff to the ACT Public Service.
- Definitions**
Section 252 New section 252 provides a definitions clause for Part 14.
- Employee* of Totalcare includes a public servant whose functions are to work for Totalcare.
- Totalcare* means Totalcare Industries Limited.
- Transfer*, of an employee, means an appointment or engagement under this Act.
- Transfer of employees**
Section 253 New section 253(1) provides that the Commissioner for Public Administration may declare that a person employed by Totalcare is appointed permanently or engaged as a temporary or casual employee ('transferred') under the Act and is no longer employed by Totalcare.
- Section 253(2) requires that the declaration made by the Commissioner include the office to which the person is appointed; the term of the probation period; the period of engagement for a temporary employee, other than a casual employee and the person's classification.
- Section 253(3) provides that the Commissioner, in making the declaration, must ensure as far as possible, that a person is transferred with the same tenure and classification as immediately before the transfer; and that a person appointed on probation, the term of the probation is for the remaining period of the agreed probationary period with Totalcare.
- Section 253(4) and 253(5) provides that a declaration by the Commissioner may create an office for the purposes of the appointment and that a classification under a declaration is taken to be an approved classification under the Act.
- Section 253(6) provides that the Commissioner may make a declaration in relation to a person who is already employed under this Act but whose functions are to work for Totalcare.

How rest of Act applies Section 254	<p>New section 254(1) provides that certain provisions relating to the appointment or engagement under the Act do not apply in relation to the transfer. This includes:</p> <ul style="list-style-type: none">• section 65; dealing with the application of the merit principle;• section 66; dealing with notification of certain matters relating to appointment, transfer or promotion;• section 68; dealing with appointments generally;• section 69; dealing with the classification of unattached officers;• sections 70(1), (2) and (3); dealing with appointments on probation; and• section 106; dealing with the power to engage employees. <p>Section 254(2) provides that for the removal of doubt and following the engagement under new Part 14, section 108 dealing with temporary employment applies in relation to a person engaged under this Part.</p>
Employees appointed on probation Section 255	<p>New section 255 makes provision for those persons transferred to the ACT Public Service with a remaining probationary period to be confirmed at any time after the end of the probationary period. The section also provides for the application of termination provisions during a person's probationary period, in certain circumstances set out in the Act.</p>
Entitlements of transferred employees Section 256	<p>New section 256 provides for, as far as possible, the retention of leave entitlements not paid out; recognition of prior service for the purposes of calculating maternity, personal and long service leave under the Act and entitlements no less favourable than the person had immediately before transfer.</p>
Later appointment of temporary employees Section 257	<p>New section 257 provides that the Commissioner, in certain circumstances, may permanently appoint a person to the ACT Public Service, following engagement as a temporary employee under this Part. This includes where a person has been employed by Totalcare for at least five years or the Commissioner considers it otherwise appropriate to permanently appoint the person.</p>
Transfer of personnel files Section 258	<p>New section 258 provides for the transfer and use of personnel files.</p>

Management Standards Section 259	<p>New section 259 provides that Management Standards may be made for any matter arising from or connected with the transfer of Totalcare employees under this Part, including that the Standards may be made to apply to individual employees.</p> <p>This section supplements existing provisions under section 251 of the Act for the making of Management Standards, including that the Commissioner, with the advance approval of the Chief Minister (except in certain circumstances) makes Management Standards.</p>
Transitional Regulations Section 260	<p>New section 260 provides that Regulations may be made for transitional matters necessary or convenient to be prescribed for the purposes of this Part, where they operate concurrently with the Act.</p>
Modification of Part 14 operation Section 261	<p>New section 261 provides that Regulations may modify new Part 14 where, in the opinion of the Executive, is not adequately dealt with in this Part.</p>
Regulation-making power Section 262	<p>New section 262 provides that Regulations may be made for this Part.</p>
Expiry of Part 14 Section 263	<p>New section 263 provides for the expiry of new Part 14 on 31 December 2005, or on a later date set by the Regulations.</p>