HOUSE OF ASSEMBLY

WEDNESDAY 21ST SEPTEMBER 2016

STATUTES AMENDMENT (SOUTH AUSTRALIAN EMPLOYMENT TRIBUNAL) BILL

Second Reading

Adjourned debate on second reading.

(Continued from 4 August 2016.)

Mr PEDERICK (Hammond) (16:25): Thank you, Madam Deputy Speaker, for noticing me. I rise to speak to the Statutes Amendment (South Australian Employment Tribunal) Bill, and note that last year the Attorney-General's Department released the Transforming Employment Dispute Resolution, which outlined the rationale for establishing the one-stop shop for employment-related disputes—one being the South Australian Employment Tribunal.

It was back on 4 August this year that both the Statutes Amendment (South Australian Employment Tribunal) Bill and the Statutes Amendment (SACAT) Amendment Bill were concurrently introduced into the parliament, and my understanding is that the SACAT bill is consequential on this bill. The bill intends to amend the SAET Act, and a number of other acts—quite a few acts, in fact—and bring extra employment-related jurisdiction into the South Australian Employment Tribunal. These acts cover dust diseases. Jurisdictions that already exist are the Industrial Relations Court of South Australia and the Industrial Relations Commission of South Australia.

There are a whole range of acts, which include: the Construction Industry Long Service Leave Act 1987; the Fair Work Act 1994; the Fire and Emergency Services Act 2005; the Industrial Referral Agreements Act 1986; the Long Service Leave Act 1987; the Public Sector Act 2009; the Training and Skills Development Act 2008; and the Work, Health and Safety Act 2012. In education, there is the teachers appeal board and teachers classification review panels, which involve the Education Act 1972, and the Technical and Further Education Act 1975.

I know that this is about employees' rights, but it is a fascinating process, especially in the education sector, not so much with teachers generally, but with how principals and deputy principals apply for appointments and get appointed. It is an interesting process, which I believe certainly does not take into account in some of the cases put before me the wishes of local communities, especially in the country, and especially in country electorates like mine in Hammond.

I believe actions have not been conducted in the appropriate manner, and I have witnessed that, because you get people cherrypicking roles. We had a situation in my electorate where, unbeknown to a school, a teacher had recently taken up a principal's position, and I believe it was for six years. It only lasted a term because the role they really wanted came up for the interview process, and the other hiring processes, and they accepted that role.

It was very unfair on that community. I was pretty close to this. It really makes you wonder about the role of schoolteachers—and there are many excellent schoolteachers, do not get me wrong. It just seemed to me that in this case, and certainly in other cases I have come across, people could pick and choose where they worked. They can sign a contract for six years but then just walk away with no penalty.

I relate that to what happens when you are an employer, even in this role in the parliament when you employ people. When you first come into this place, you find out that the standard practice is to employ someone for the life of a member. That could be four years or 24 years and anything in between, and even longer, perhaps 40 years. That puts on a lot of constraints if you have a problem with a staff member—and these things do happen, I can assure members. It would happen on both sides of the house and, I am sure, in crossbench offices.

As agreements change over time, you have to be very aware, as the direct employer. The Department of Treasury and Finance is actually the lead employer in this case but, as the direct employer, you need to be well aware of what you are signing up for. I became aware, when I had an issue I needed to deal with, that you do not have that three-month trial period at the start of a full-time person's employment. Sure, employees have rights, but the concern I had was that all my rights had gone out the window because I was not aware that the practice of the three-month trial period had gone away.

What happens now—and I am sure I am not the only one doing it—is that if you want to put someone on and try them out, because you have just gone through an interview process and they obviously look like they can do the job and interviewed very well (and people can school themselves pretty well), you put them on a three-month contract, or you can even put them on a two-month contract or one-month contract. You have to do that in case there is a problem. Even with proven staff, once I have got them through the first few months I put them on the initial contract for 12 months. They know why; we have these discussions. It is a two-way street: you need to look after your staff, but I believe they have an obligation as well. As an employer, you just have to be aware of your rights and obligations.

This bill also affects the Equal Opportunity Tribunal, the Equal Opportunity Act 1984, the Police Review Tribunal, the Police Act 1998, the Public Sector Grievance Review Commission, the Public Sector Act 2009, the criminal jurisdiction summary and minor indictable offences Summary Procedure Act 1921 and the common law civil jurisdiction contractual disputes between employer and employee and common law claims for damages, and this is in part 5 of the Return to Work Act 2014.

The government has made it clear that its intention in drafting the bill was that, where provisions in the act conferring jurisdiction on the South Australian Employment Tribunal replicate measures in the SAET Act, the conferring act's provisions would be deleted. Therefore, the Return to Work Act 2014, the SAET Act and the relevant conferring acts, as amended by this bill, would operate concurrently in the respective jurisdiction. The government has made the point that the bill preserves, in each of the conferring acts, specific functions, processes and powers that are unique or necessary to the respective jurisdiction.

For example, the Police Review Tribunal, although no longer having jurisdiction over terminations and transfers, would continue to have jurisdiction over promotion reviews. If special arrangements or powers are preserved by the amendments to the conferring acts, and these differ from the provisions of the South Australian Employment Tribunal Act, existing provisions in the conferring act will prevail.

From what I understand, the government intends that the relevant provisions of the employment tribunal bill will commence on 1 July 2017, and what will happen, in what I believe is consequential legislation, is that the SACAT Bill will seek to repeal part 12 of the statutes amendment act 2014 to avoid the Public Sector Grievance Review Commission being conferred on SACAT automatically in December this year.

It is to be noted that Business SA supports the principle of this bill, welcoming simplifying processes and supposedly the reduction of red tape and the achievement of cost-effective outcomes, although they are concerned about the loss of expertise, the lack of stakeholder consultation and the increasingly legalistic approach to employment disputes. One fear they have is whether the practical outcomes of this bill that are sought by employers will come.

There are also concerns (and I talked about some employers' concerns a little while ago) that the bill appears to water down employers' representation rights as are current at the moment. It is noted that the Australian Industry Group opposes the bill's intention to extend the Industrial Relations Court of South Australia's jurisdiction to deal with damages claims regarding alleged breaches of a contract for employment, including claims for reasonable notice where employment is terminated. Currently, such claims need to be pursued in a state court, such as the District Court. The Australian Industry Group is concerned that, if this bill were passed in its present form, there would be significant risk of such jurisdiction quickly becoming a de facto unfair dismissal jurisdiction for senior managers at great cost to employers.

I also note that some amendments have just been tabled by the government. As we go into more debate on this bill in the committee stage, it will be interesting to see how those arrangements and amendments will work and how the bill is supposed to improve on the practices we have in this place at the moment. I note that we are not opposing the bill, but we will be having a look at it between the houses on how it comes through the House of Assembly before it heads to the other place.