

# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
<b>Part 1</b>	<b>Preliminary</b>		
<b>1</b>	<p><b>Name of Regulation</b> This Regulation is the <i>Government Sector Employment Regulation 2014</i>.</p>		
<b>2</b>	<p><b>Commencement</b> This Regulation commences on 24 February 2014 and is required to be published on the NSW legislation website.</p>		
<b>3</b>	<p><b>Definitions</b> (1) In this Regulation: <b>agency head</b> means: (a) in relation to a Public Service employee—the head of the Public Service agency in which the employee is employed, or (b) in relation to an employee of a government sector agency (other than a Public Service agency)—the head of that agency. <b>Note.</b> Section 3 of the Act provides that the head of any such government sector agency that is not a Public Service agency is the person who exercises employer functions in relation to the employees concerned. Accordingly, the following are relevant agency heads: (a) the Teaching Service—the Secretary of the Department of Education and Communities, (b) the NSW Police Force—the Commissioner of Police, (c) the NSW Health Service—the Secretary of the Ministry of Health, (d) the Transport Service of New South Wales—the Secretary of the Department of Transport. <b>former Act</b> means the <i>Public Sector Employment and Management Act 2002</i>. <b>government sector employee</b> means a person who is employed in a government sector agency.</p>		

# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	<p><b>Industrial Relations Secretary</b> has the same meaning as in section 49 of the Act.</p> <p><b>Public Service non-executive employee</b> means an employee referred to in Division 5 of Part 4 of the Act.</p> <p><b>State industrial instrument</b> means an industrial instrument within the meaning of the <i>Industrial Relations Act 1996</i>.</p> <p><b>the Act</b> means the <i>Government Sector Employment Act 2013</i>.</p> <p>(2) Notes included in this Regulation do not form part of this Regulation.</p>		
<b>Part 2</b>	<b>Public Service employment</b>		
<b>4</b>	<p><b>Acting in other roles</b> (2002 Act, s 24)</p> <p>(1) An agency head may arrange for a person who is employed in the Public Service agency to act in another role in that agency or in a related agency if:</p> <p>(a) the person who is usually assigned to that other role is unavailable for any reason, or</p> <p>(b) there is no person performing duties in that role for the time being.</p> <p><b>Note.</b> Clauses 18 and 19 provide for allowances in the case where acting in another role involves higher duties.</p> <p>(2) Any such arrangement to act in another role in a Public Service agency may be terminated at any time by the agency head.</p> <p>(3) Any such arrangement to act in a role in a related agency may not be made without the agreement of the head of that related agency.</p> <p><b>Note for consultation purposes:</b> The government sector employment rules may include further requirements relating to acting in a role.</p>	<p><b>PSEMA s 24. Acting appointments to positions</b></p> <p>(1) The appropriate Department Head may appoint to act in a position in the Department that is vacant or the holder of which is suspended, sick or absent:</p> <p>(a) a member of staff the Department, or</p> <p>(b) a member of staff of another Department.</p> <p>(2) A person, while acting in a position under this section, has all the functions of the holder of the position. However, a person who is not a senior executive officer does not become a senior executive officer for the purposes of Part 3.1 when acting in a senior executive position.</p> <p>(3) The appropriate Department Head may, at any time, terminate the appointment of a person to act in a position under this section.</p> <p>(4) This section does not prevent the payment of an allowance to a member of staff of a Department for exercising all or any of the functions of a position if a person is not appointed to act in the position under this section.</p>	<p>The Association is concerned that GSE Regulation omits the element of s24(2) in relation to a person, while acting in a position under this clause, having all the functions of the holder of the position.</p> <p>While this is an administrative issue, including the provision removes uncertainty about delegation of authority if the person acting is performing all the functions of the role they are acting in.</p>
<b>5</b>	<p><b>Employees not to undertake other paid work without permission</b> (2002 Act, s 59)</p> <p>(1) A Public Service employee is not to undertake any other paid work without the permission of the agency head.</p> <p>(2) This clause does not apply to a person who is:</p>	<p><b>PSEMA s 59. Departmental staff not to undertake other paid work without permission</b></p> <p>(1) A person employed in the Public Service is not to undertake any other paid work without the permission of the appropriate Department Head.</p> <p>(2) This section does not apply:</p>	

# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	(a) employed in casual employment, or (b) working part-time, during the period that the person is not required to perform duties in the Public Service, but only if the performance of those duties is not adversely affected and no conflict of interest arises.	(a) to a casual employee, or (b) to a person working part-time, during the period that the person is not required to discharge duties in the Public Service, but only if the discharge of those duties is not adversely affected and no conflict of interest arises.	
6	<p><b>Reporting charges and convictions for serious offences</b> (2009 Reg, cl 27)</p> <p>(1) A Public Service employee who is charged with, or is convicted of, a serious offence must immediately report that fact in writing to the agency head.</p> <p>(2) If the manager of a Public Service employee has reason to believe that the employee:</p> <p>(a) has been charged with, or has been convicted of, a serious offence, and</p> <p>(b) has not reported the matter to the agency head, the manager must immediately inform the agency head in writing that the manager has reason to believe that the employee has been charged with, or has been convicted of, the serious offence.</p> <p>(3) If the employee required to report under subclause (1) is the head of a Public Service agency, subclause (1) applies as if references to the agency head were references to a Minister to whom the agency is responsible.</p> <p>(4) In this clause:</p> <p><b>convicted</b> of an offence includes being found guilty of the offence without the court proceeding to a conviction.</p> <p><b>manager</b> of a Public Service employee means the manager of the branch or other part of the Public Service agency in which the employee is employed.</p> <p><b>serious offence</b> has the same meaning as in section 69 of the Act.</p>	<p><b>PSEM Reg cl 27. Report of charges and convictions for serious offences</b></p> <p>(1) A member of staff who is charged with having committed, or is convicted of, a serious offence must immediately report that fact in writing to the appropriate Department Head.</p> <p>(2) If the senior officer has reason to believe that a member of staff:</p> <p>(a) has been charged with having committed, or has been convicted of, a serious offence, and</p> <p>(b) has not reported the matter to the appropriate Department Head in accordance with subclause (1), the senior officer must immediately inform the appropriate Department Head in writing that the senior officer has reason to believe that the member of staff has been charged with having committed, or has been convicted of, a serious offence.</p> <p>(3) In this clause:</p> <p><b>senior officer</b>, in relation to a member of staff, means the senior officer in the branch or section of the Department in which the member of staff is employed.</p> <p><b>serious offence</b> means an offence referred to in section 48 of the Act.</p>	
7	<p><b>Employee to report bankruptcy etc</b> (2002 Act, s 58)</p> <p>(1) If a Public Service employee (other than a person employed in casual employment) becomes bankrupt or makes a composition, arrangement or assignment for</p>	<p><b>PSEMA s 58. Officer to report bankruptcy etc</b></p> <p>(1) If an officer becomes bankrupt or makes a composition, arrangement or assignment for the benefit of the officer's creditors, the officer must:</p>	

# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	<p>the benefit of the employee's creditors, the employee must:</p> <p>(a) immediately notify the agency head in writing of the bankruptcy, composition, arrangement or assignment, and</p> <p>(b) within such period as the agency head specifies, provide the agency head with such further information with respect to the cause of the bankruptcy or of the making of the composition, arrangement or assignment as the agency head requires.</p> <p>(2) If any such employee is the head of a Public Service agency, subclause</p> <p>(1) applies as if references to the agency head were references to a Minister to whom the agency is responsible.</p> <p>(3) An agency head may, as a condition of the engagement of a person in a role in the Public Service agency relating to financial management in the agency, require the person to declare, before the person is engaged in that role, whether or not the person has at any time been declared bankrupt or made a composition, arrangement or assignment for the benefit of the person's creditors.</p>	<p>(a) immediately give to the appropriate Department Head notice of the bankruptcy, composition, arrangement or assignment, and</p> <p>(b) within such period as the Department Head specifies, provide that Department Head with such further information with respect to the cause of the bankruptcy or of the making of the composition, arrangement or assignment as that Department Head requires.</p> <p>(2) If any such officer is the Department Head, subsection (1) applies as if references to the appropriate Department Head were references to the Minister responsible for the Department.</p>	
8	<p><b>Excess non-executive employees—termination of employment</b></p> <p>(1) The head of a Public Service agency may determine a person who is employed in ongoing employment in the agency to be excess to the requirements of the relevant part of the agency in which the person is employed.</p> <p>(2) Such a determination is to be made in accordance with any guidance provided by the Commissioner.</p> <p>(3) The employment of a person who is determined to be excess cannot be terminated under section 47 of the Act unless the agency head has taken reasonable steps over a period of at least 3 months to transfer the person to some other on-going employment in the government sector.</p>	<p><b>PSEMA s 56. Excess officers of Departments</b></p> <p>(1) If the appropriate Department Head is satisfied that the number of officers employed in the Department or in any part of the Department exceeds the number that appears to be necessary for the effective, efficient and economical management of the functions and activities of the Department or part of the Department:</p> <p>(a) the Department Head is to take all practicable steps to secure the transfer of the excess officers to on-going public sector positions, and</p> <p>(b) the Department Head may, with the approval of the Commissioner, dispense with the services of any such excess officer who is not transferred to an on-going public sector position.</p> <p>(2) An officer does not cease to be an excess officer</p>	<p>In essence cl 8 is trying to capture <i>PSEMA</i> s 56.</p> <p>Unlike the existing provisions at Section 56, there is no test for determining if an employee is excess. The Association is concerned that a person can simply be made excess and that this process is arbitrary and subverts the other elements of the Rules around termination.</p> <p>Cl 8(2) stipulates that a decision is to be made in accordance with any guidance. The Association is concerned that there will be no guidance available prior to the commencement of the Act. This guidance should be the subject of consultation with the Association.</p>

# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	(4) This clause does not apply to Public Service senior executives.	merely because the officer is engaged (on a temporary basis) to carry out other work in a public sector agency. (3) In this section: <b>on-going public sector position</b> means a position in a Department, or in any other public sector service, that is not temporary.	<p>Cl 8(3) represents a diminution of the requirements for agencies to engage in an active process of trying to redeploy excess staff. The change is from previous requirement to have 'taken all practicable steps' to 'taken reasonable steps'.</p> <p>Consistent with previous representations made by the Association around this issue, the Association supports a more flexible approach that allows for a longer retention period and the capacity to redeploy excess employees to temporary roles.</p> <p>The Association maintains that the policy approach of the employer on the issue of excess employees is wrong. That the policy emphasis should be on redeployment and not on encouraging exit from the sector which is the current policy setting. The current approach also conflicts with the objectives of the Commission to foster mobility and remove the notion that employees own positions.</p>
9	<b>Application of Division (2009 Reg, cl 8)</b> The provisions of this Division are subject to any State industrial instrument.	<b>PSEM Reg cl 8. Application of Part</b> The provisions of this Part: (a) are subject to any State industrial instrument, and (b) unless the contrary intention appears, apply to all members of staff, and (c) in the case of executive officers—are subject to the contract of employment under Part 3.1 of the Act between the executive officer and the executive officer's employer.	
10	<b>Public holidays (2009 Reg, cl 10)</b> A Public Service employee is entitled to be absent from	<b>PSEM Reg cl 10. Public and local holidays</b> (1) In this clause:	

# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	<p>duty on the following days unless the employee is required to attend for duty by the agency head or by a person authorised by the agency head:</p> <p>(a) a day that is a public holiday throughout the State,                      (b) a day (or part of a day) that is a public holiday under the <i>Public Holidays Act 2010</i> in that part of the State at or from which the employee is working,                      (c) a day between Boxing Day and New Year's Day determined by the agency head.</p>	<p><b>local holiday</b> means a public holiday that is not a public holiday throughout the State.</p> <p><b>public holiday</b> means a bank or public holiday under the <a href="#">Banks and Bank Holidays Act 1912</a>, but does not include:</p> <p>(a) a Saturday that is such a holiday by virtue of section 15A of that Act, and                      (b) 1 August or such other day that is a bank holiday instead of 1 August.</p> <p>(2) A member of staff is entitled to be absent from duty on the following days unless the member of staff is required to attend for duty by the appropriate Department Head or by a person authorised by the appropriate Department Head:</p> <p>(a) a day that is a public holiday throughout the State,                      (b) a day that is a local holiday in that part of the State at or from which the member of staff performs duty,                      (c) a day between Boxing Day and New Year's Day determined by the appropriate Department Head.</p> <p>(3) A member of staff who is required under this clause to attend for duty on a local holiday is not entitled to overtime or time in lieu on that account.</p> <p>(4) If a local holiday falls during a staff member's absence on leave, the member of staff is not to be credited with the holiday.</p>	
11	<p><b>Absence from duty</b> (2009 Reg, cl 11)</p> <p>(1) A Public Service employee must not be absent from duty unless reasonable cause is shown.                      (2) If a Public Service employee is absent from duty because of illness or other emergency, the employee must, as soon as practicable, provide an explanation for the absence.                      (3) If the Public Service employee fails to provide that explanation to the satisfaction of the agency head, the agency head is to cause to be deducted from the pay of the employee the amount paid to the employee for the period of absence.                      (4) Nothing in this clause affects the taking of any action</p>	<p><b>PSEM Reg cl 11. Absence from duty</b></p> <p>(1) A member of staff must not be absent from duty unless reasonable cause is shown.                      (2) If a member of staff is absent from duty because of illness or other emergency, the member of staff must, as soon as practicable, provide an explanation for the absence.                      (3) If the member of staff fails to provide that explanation to the satisfaction of the appropriate Department Head, the Department Head is to cause to be deducted from the pay of the member of staff the amount paid to the member of staff for the period of absence.</p>	

# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	under section 69 of the Act in relation to a Public Service employee who is absent from duty without authorised leave.	(4) Nothing in this clause affects the taking of any action under Part 2.7 of the Act in relation to a member of staff who is absent from duty without authorised leave.	
12	<p><b>Increments</b> (2009 Reg, cl 12)</p> <p>(1) The payment to any Public Service employee of an increment in accordance with any State industrial instrument or determination by the Industrial Relations Secretary under section 52 of the Act is, unless otherwise provided by the instrument or determination, to be made only with the prior approval of the agency head.</p> <p>(2) The payment of an increment to a Public Service employee is subject to:</p> <p>(a) performance requirements under the agency's performance management system, and</p> <p>(b) the satisfactory conduct of the employee, as determined by the agency head.</p> <p>(3) The payment of an increment may be deferred from time to time, but may not be deferred for more than 12 months at any one time.</p> <p>(4) A Public Service employee must be promptly notified in writing by the agency head of any decision to defer payment of an increment.</p> <p>(5) This clause does not apply to Public Service senior executives.</p>	<p><b>PSEM Reg cl 12. Increments</b></p> <p>(1) This clause does not apply to executive officers.</p> <p>(2) The payment to any member of staff of an increment in accordance with any State industrial instrument or public service determination is, unless otherwise provided by the instrument or determination, to be made only with the prior approval of the appropriate Department Head.</p> <p>(3) The payment of an increment to a member of staff is subject to the satisfactory conduct of, and the satisfactory performance of duties by, the member of staff as determined by the appropriate Department Head.</p> <p>(4) A member of staff must be promptly notified in writing by the appropriate Department Head of any decision to defer payment of an increment.</p> <p>(5) The payment of an increment may be deferred from time to time, but may not be deferred for more than 12 months at any one time.</p>	<p>The Association is concerned by the lack of detail on how the system is proposed to operate at an agency level. The Association is also concerned by the lack of clarity around the mechanism to determine satisfactory conduct or performance within the performance management system.</p> <p>The Association is concerned that clause 12(4) requires an employee to be notified of a decision to defer an increment but not the reasons why.</p> <p>The Association is also concerned that the lack of a consistent approach to performance development across the sector may lead to inequities and disparities in the way the system of incremental progression operates across the sector.</p> <p>The Public Service Commission needs to provide advice to agencies, consistent with its undertaking, to ensure that an employee is not disadvantaged in incremental progression where the performance management system has not applied for the relevant period during the transition.</p>
13	<p><b>Fitness for duty</b> (2009 Reg, cl 13)</p> <p>(1) For the purposes of this clause, a Public Service employee is not fit for duty if the health of the employee:</p> <p>(a) may render the employee a risk to the health and safety of other Public Services employees or the general public, or</p>	<p><b>PSEM Reg cl 13. Health and safety</b></p> <p>(1) For the purposes of this clause, a member of staff is not fit for work if the health of the member of staff:</p> <p>(a) may render the member of staff a danger to other members of staff or to the public, or</p> <p>(b) is likely to be seriously affected by the staff member</p>	

# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	<p>(b) is likely to be seriously affected by the employee remaining on duty or, if the employee is absent from duty, by the employee resuming duty.</p> <p>(2) If the agency head has reason to believe that a Public Service employee is not fit for duty, the agency head may direct the employee to submit to such medical examination or other health assessment as the agency head may, on the advice of a nominated medical assessor, consider necessary.</p> <p>(3) A Public Service employee to whom an agency head gives a direction under subclause (2):</p> <p>(a) must, if on duty, cease duty immediately, and</p> <p>(b) must not resume duty until the completion of the medical examination or other health assessment concerned unless the concurrence of a nominated medical assessor is first obtained or a certificate is furnished by a medical practitioner that the employee is fit for duty.</p> <p>If the agency head receives a health assessment from a nominated medical assessor that a Public Service employee is fit for duty and the employee is absent from duty, the agency head is to direct in writing that the employee must resume duty.</p> <p>(5) If the agency head receives a health assessment from a nominated medical assessor that a Public Service employee is not fit for duty:</p> <p>(a) the agency head is to direct in writing that the employee must cease duty immediately or, if absent from duty, must not resume duty, and</p> <p>(b) the employee must not resume duty unless the agency head, on the advice of a nominated medical assessor, approves the resumption of duty in writing.</p> <p>(6) If a direction has been given to a Public Service employee under subclause (4) or (5), the nature of the leave, if any, to be granted to the employee during the absence from duty is to be determined by the agency head after consideration of any relevant advice of the nominated medical assessor.</p> <p>(7) The agency head is to give the health care</p>	<p>remaining on duty or, if the member of staff is absent from duty, by the staff member resuming duty.</p> <p>(2) If the appropriate Department Head has reason to believe that a member of staff is not fit for work, he or she may direct the member of staff to submit to such medical examination or other health assessment as the Department Head may, on the advice of a nominated medical assessor, consider necessary.</p> <p>(3) If the appropriate Department Head has issued a direction under subclause (2) to a member of staff, the member of staff:</p> <p>(a) must, if on duty, cease duty immediately, and</p> <p>(b) must not resume duty until the completion of the medical examination or other health assessment concerned unless the concurrence of a nominated medical assessor is first obtained or a certificate is furnished by a medical practitioner that the member of staff is fit for work.</p> <p>(4) If the appropriate Department Head receives a health assessment from a nominated medical assessor that a member of staff:</p> <p>(a) is fit for work, the Department Head is to direct in writing that the member of staff, if absent from duty, must resume duty, or</p> <p>(b) is not fit for work, the Department Head is to direct in writing that the member of staff must cease duty immediately or, if absent from duty, must not resume duty.</p> <p>(5) If a direction has been given to a member of staff under subclause (4), the nature of the leave, if any, to be granted to the member of staff during the absence from duty is to be determined by the appropriate Department Head after consideration of any relevant advice of the nominated medical assessor.</p> <p>(6) A member of staff to whom a direction has been given under subclause (4) (b) must not resume duty unless the appropriate Department Head, on the advice of a nominated medical assessor, approves in writing.</p> <p>(7) The appropriate Department Head is to give the health care professional providing a health assessment</p>	



# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	<p>professional providing a health assessment of a Public Service employee under this clause any requested information about the employment of the employee that is reasonably required for the purpose of providing the assessment.</p> <p>(8) In this clause: <b>nominated medical assessor</b> means a person or body, or a person who is a member of a class of persons, nominated by the Public Service Commissioner for the purposes of this clause.</p>	<p>of a member of staff under this clause any requested information about the duties of the staff member's position that is reasonably required for the purpose of providing the assessment.</p> <p>(8) In this clause: <b>nominated medical assessor</b> means a person or body, or a person who is a member of a class of persons, nominated by the Public Service Commissioner for the purposes of this clause.</p>	
14	<p><b>Extended leave entitlements</b> (2002 Act, s 55 and Schedule 3) Schedule 1 applies to Public Service employees other than persons employed in casual employment.</p> <p><b>Notes for consultation purposes:</b></p> <p><b>1.</b> It is proposed that this Regulation will provide that Schedule 1 will not apply to Public Service employees who, immediately before the commencement of the new Act, were employed in a non-Public Service Division of the Government Service (ie a Division specified in Part 2 of Schedule 1 to the former Act) and who were not entitled to extended leave under Schedule 3 to the former Act (whether directly or by application of that Schedule). Transitional regulations will preserve any existing extended leave entitlements of these employees and provide for accrued leave to be carried over.</p> <p><b>2.</b> In the case of Public Service employees who were entitled to extended leave under the former Act, clause 5 (3) of Schedule 4 to the new Act provides that the repeal of the former Act does not affect any accrued rights to leave under the former Act. Accordingly, any such accrued leave will be carried over.</p>	<p><b>PSEMA s 55. Extended leave for Departmental staff</b></p> <p>Schedule 3 has effect in relation to officers and temporary employees of a Department.</p> <p><b>PSEMA Schedule 3</b></p>	
15	<p><b>Other leave entitlements for senior executives and certain other employees</b> (2009 Reg, cl 22)</p> <p>(1) The clause applies to:</p> <p>(a) Public Service senior executives, and</p> <p>(b) Public Service non-executive employees whose</p>	<p><b>PSEM Reg cl 22. Leave</b></p> <p>(1) The provisions of this clause apply:</p> <p>(a) to members of staff who are executive officers or special temporary employees employed under Part 2.5 of the Act, and</p>	

# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	<p>leave entitlements are not covered by a State industrial instrument.</p> <p>(2) The provisions of the <i>Crown Employees (Public Service Conditions of Employment) Award 2009</i> that relate to leave are taken to apply to a Public Service employee to whom this clause applies and any such employee is entitled to leave in accordance with that award subject to any conditions or limitation set out in that award as if the employee were covered by that award.</p>	<p>(b) to any other members of staff not covered by a State industrial instrument.</p> <p><b>Note.</b> Leave entitlements for members of staff covered by a State industrial instrument are set out in the <i>Crown Employees (Public Service Conditions of Employment) Award 2009</i>.</p> <p>(2) The provisions of the <i>Crown Employees (Public Service Conditions of Employment) Award 2009</i> that relate to leave are taken to apply to a member of staff to which this clause applies and any such person is entitled to leave in accordance with that award subject to any conditions or limitation set out in that award as if the person were covered by that award.</p> <p>(3) The amount of leave of any kind which may be granted to a member of staff and the conditions on which it may be granted is, subject to this clause, to be as determined by the Director-General of the Department of Premier and Cabinet from time to time.</p>	
16	<p><b>Accrued leave of non-executive employees who become Public Service senior executives</b> (2002 Act, s 80)</p> <p>(1) This clause applies to a person who, immediately before being employed as a Public Service senior executive, was employed as a Public Service non-executive employee.</p> <p>(2) If the person:</p> <p>(a) had a right to accrued extended or annual leave with pay immediately before being employed as a Public Service senior executive, and</p> <p>(b) has not taken that leave before taking up duties as the executive, the person is entitled, on taking up those duties, to be paid instead of that leave (or any part of that leave) the money value of that leave (or part) as a gratuity if the person so elects.</p> <p>(3) An election under this clause is to be made within the time and in the manner determined by the head of the Public Service agency in which the person is to be employed as a Public Service senior executive.</p>	<p><b>PSEMA s 80. Incumbent officers—accrued leave</b></p> <p>(1) A person who:</p> <p>(a) was engaged in the public sector when appointed to an executive position, and</p> <p>(b) had a right to accrued extended or annual leave with pay immediately before that appointment, and</p> <p>(c) has not taken that leave before taking up duties in the executive position,</p> <p style="padding-left: 40px;">is entitled, on taking up those duties, to be paid instead of that leave (or any part of that leave) the money value of that leave (or part) as a gratuity if the person so elects.</p> <p>(2) An election under this section is to be made within the time and in the manner determined by the Minister.</p> <p>(3) The money value of leave is to be calculated at the rate of pay of the person immediately before appointment to the executive position.</p> <p>(4) A person who was engaged in the public sector when appointed to an executive position retains any right to extended, annual, sick or other leave accrued or</p>	

# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	<p>(4) The money value of leave is to be calculated at the rate of pay of the person immediately before employment as a Public Service senior executive.</p> <p>(5) A person who was employed in the public sector when employed as a Public Sector senior executive retains any right to extended, annual, sick or other leave accrued or accruing to the person immediately before the employment as a Public Sector senior executive (except any accrued leave which is paid out by a gratuity under subclause (2)).</p> <p>(6) A reference in this clause to <b>employment in the public sector</b> has the same meaning as it has for the purposes of section 41 of the Act.</p>	<p>accruing to the person immediately before the appointment (except any accrued leave which is paid out by a gratuity under subsection (1)).</p> <p>(5) A reference in this section to an engagement in the public sector has the same meaning as it has for the purposes of section 78.</p>	
17	<p><b>Application of Division</b> (2009 Reg, cl 14) The provisions of this Division are subject to any State industrial instrument.</p> <p><b>Note.</b> Other allowances are set out in the <i>Crown Employees (Public Service Conditions of Employment) Award 2009</i></p>	<p><b>PSEM Reg cl 14. Application of Part</b> The provisions of this Part are subject to any State industrial instrument.</p> <p><b>Note.</b> Other allowances are set out in the <i>Crown Employees (Public Service Conditions of Employment) Award 2009</i>.</p>	
18	<p><b>Higher duties allowance for acting in non-executive role</b> (2009 Reg, cll 17, 18 &amp; 20)</p> <p>(1) A Public Service non-executive employee who is acting in another non-executive role under clause 4 (the <b>acting employee</b>) is entitled to be paid an allowance under this clause if the other non-executive role is at a higher grade or level than the role usually performed by the acting employee (whether it is within the same or a different classification of work).</p> <p>(2) The amount of the allowance to be paid to the acting employee is the difference between the salary of the employee's usual role and the salary of the other role in which the employee is acting.</p> <p>(3) However, any such amount is proportionate to the duties to be performed by the acting employee and is to be determined by the agency head before the employee starts acting in the other role.</p> <p>(4) An allowance under this clause is not to be paid:</p>	<p><b>PSEM Reg cl 17. Entitlement to allowance when relieving in other positions</b></p> <p><b>PSEM Reg cl 18. Allowance for acting or temporary appointments</b></p> <p><b>PSEM Reg cl 20. Provisions relating to executive positions</b></p> <p>Cll 17, 18 &amp; 20 are outlined below.</p>	

# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	<p>(a) for acting in another role for a single period of less than 5 ordinary working days (except where the agency head otherwise determines), or</p> <p>(b) for any unbroken period of leave, exceeding 5 ordinary working days, taken by an employee during any period that the employee acts in another role.</p>		
19	<p><b>Higher duties allowance for acting in executive role</b> (2009 Reg, cl 17, 18 &amp; 20)</p> <p>(1) A Public Service employee who is acting in a Public Service senior executive role under clause 4 (the <b>acting employee</b>) is entitled to be paid an allowance under this clause:</p> <p>(a) if the acting employee is a Public Service non-executive employee, or</p> <p>(b) if the acting employee is a Public Service senior executive acting in an executive role that is at a higher level within a band, or in a higher band, than the role usually performed by the acting employee.</p> <p>(2) The amount of the allowance to be paid to the acting employee is the difference between the salary of the employee's usual role and a salary that is determined by the agency head within the remuneration range for the role in which the employee is acting.</p> <p>(3) However, any such amount is proportionate to the duties to be performed by the acting employee and is to be determined by the agency head before the employees starts acting in the other role.</p> <p>(4) An allowance under this clause is not to be paid:</p> <p>(a) for acting in another role for a single period of less than 5 ordinary working days (except where the agency head otherwise determines), or</p> <p>(b) for any unbroken period of leave, exceeding 5 ordinary working days, taken by an employee during any period that the employee acts in another role.</p> <p>(5) For the purpose of this clause, the salary of an acting employee who is a Public Service senior executive is the employee's notional salary (being the total amount of the remuneration package for the person as last determined before the employee starts</p>	<p><b>PSEM Reg cl 17. Entitlement to allowance when relieving in other positions</b></p> <p>(1) This clause applies when the appropriate Department Head directs that the duties of a position which is vacant, or the holder of which is suspended, sick or absent, are to be performed by one or more other members of staff.</p> <p>(2) A member of staff who, during a period of relief in another position, satisfactorily performs, in the opinion of the appropriate Department Head, the whole of the duties and assumes the whole of the responsibilities of that position is to be paid by allowance any difference between the staff member's present salary or wage and the salary or wage to which the member of staff would have been entitled if appointed to that position.</p> <p>(3) A member of staff who, during a period of relief in another position, does not perform the whole of the duties or assume the whole of the responsibilities of that position is to be paid that proportion of the allowance referred to in subclause (2) that the duties satisfactorily performed and responsibilities assumed bear to the whole of the duties and responsibilities of that position. The amount of the allowance so paid is to be as determined by the appropriate Department Head.</p> <p>(4) In this clause, a reference to the duties and responsibilities of a position is a reference to those duties and responsibilities that, during the period of relief, the member of staff appointed to the position would ordinarily have performed or assumed.</p> <p>(5) Except where the Director-General of the Department of Premier and Cabinet otherwise determines, an allowance is not to be paid under this clause in respect of a single period of relief in another</p>	<p>The Association is concerned about the removal of part time arrangements for higher duties outlined in the existing PSEM Regulation at cl 17(7) to pay part-time staff a pro-rata amount for higher duties.</p> <p>There is also a concern with cl 19(2) with the salary that is determined by the agency head within the remuneration range for the role in which the employee is acting particularly in respect of senior executive employees.</p> <p>There is a lack of clarity around which executive band rate the acting employee is paid. The term remuneration range needs definition if it is intended to allow for staff to be paid in the same way as currently applies.</p>

# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	<p>acting in the other role, less the superannuation guarantee amount payable in respect of the employee).</p> <p>(6) In subclause (5):</p> <p><b>superannuation guarantee amount</b> means the minimum amount payable to a superannuation fund or scheme in respect of a person that is sufficient to avoid an individual superannuation guarantee shortfall, within the meaning of the <i>Superannuation Guarantee (Administration) Act 1992</i> of the Commonwealth, in respect of the person.</p>	<p>position of less than 5 ordinary working days.</p> <p>(6) An allowance is not to be paid under this clause in respect of any unbroken period of leave, exceeding 5 ordinary working days, taken by the member of staff during any period of relief in another position.</p> <p>(7) Despite subclause (6), if a member of staff affords part-time relief in a position on a continuing basis, an allowance is to be paid under this clause calculated as though the member of staff were relieving on a full-time basis but the amount of the allowance is to be calculated in the same proportion as the ordinary weekly hours actually worked bear to the weekly hours required to be worked by a full-time member of staff appointed to the position.</p> <p>(8) A member of staff appointed to a position the principal purpose of which is to provide relief in certain other positions is not, unless otherwise determined by the appropriate Department Head, to be paid an allowance under this clause except in respect of so much of a single period of relief in the same position as exceeds 13 weeks.</p> <p><b>18. Allowance for acting or temporary appointments</b></p> <p>(1) This clause applies when an officer is appointed to act in another position, or is temporarily appointed to another position, which is vacant or the holder of which is suspended, sick or absent.</p> <p>(2) Any such officer is to be paid by allowance any difference between the officer's present salary or wage and the salary or wage to which the officer would have been entitled if appointed to that position (other than on an acting or temporary basis).</p> <p><b>20. Provisions relating to executive positions</b></p> <p>(1) For the purposes of this Division, the salary or wage of an executive officer is, subject to this clause, the amount of the remuneration package for the executive position concerned.</p> <p>(2) If the remuneration package for an executive</p>	

# GSE REGULATION

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		<p>position consists of a range of amounts, the salary or wage is the amount within that range to which the officer is entitled (in the case of the officer's present salary or wage) or the amount within that range determined by the officer's employer (in the case of the salary or wage to which the officer would have been entitled if appointed to the executive position concerned).</p> <p>(3) If an officer who is not an executive officer relieves or acts in an executive position, the salary or wage to which the officer would have been entitled if appointed to the executive position is to be reduced by the superannuation guarantee amount payable in respect of the officer.</p> <p>(4) In this clause, <b>executive position</b> and <b>remuneration package</b> have the same meanings they have in Part 3.1 of the Act.</p>	
20	<p><b>Payment where allowance not adequate or available</b> (2009 Reg, cl 16)</p> <p>(1) If the agency head is satisfied that, but for this clause, the actual expenses properly and reasonably incurred by a Public Service employee in the performance of official duties:</p> <p>(a) are not adequately covered by an allowance to which the employee is entitled under this Regulation, or</p> <p>(b) are not covered by any allowance payable under this Regulation or under any State industrial instrument, the employee is to be paid an allowance equivalent to the amount of those additional expenses or the amount of those expenses (as the case requires).</p> <p>(2) An allowance is not payable under this clause unless the employee produces official receipts for the expenses incurred by the employee.</p> <p>(3) An allowance under this clause may be reduced if it exceeds without good cause any limit approved in advance by the agency head for the expenses concerned.</p>	<p><b>PSEM Reg cl 16. Payment where allowance not adequate or available</b></p> <p>(1) If the appropriate Department Head is satisfied that, but for this clause, the actual expenses properly and reasonably incurred by a member of staff in the performance of official duties:</p> <p>(a) are not adequately covered by an allowance to which the member of staff is entitled under this Part, or</p> <p>(b) are not covered by any allowance payable under this Part or under any State industrial instrument, the member of staff is to be paid an allowance equivalent to the amount of those additional expenses or the amount of those expenses, as the case may be.</p> <p>(2) An allowance is not payable under this clause unless the member of staff produces official receipts for the expenses incurred by the member of staff.</p> <p>(3) An allowance under this clause may be reduced if it exceeds without good cause any limit approved in advance by the appropriate Department Head for the expenses concerned.</p>	

# GSE REGULATION

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21	<p><b>Contract of employment—additional matters to be dealt with in contract</b></p> <p>The following matters are prescribed for the purposes of section 39 (4) (i) of the Act:</p> <p>(a) matters relating to confidentiality and intellectual property,</p> <p>(b) capability assessments,</p> <p>(c) matters of an administrative or ancillary nature that, in the opinion of the Commissioner, are necessary or convenient to be dealt with in the contract of employment.</p>		
22	<p><b>Election to be paid money value of accrued leave</b></p> <p>A Public Service senior executive may elect at any time to be paid the whole or part of the money value of the executive's accrued annual or extended leave.</p> <p><b>Note.</b> The right to cash out leave is subject to the award requirement (as applied by clause 15) to take 10 days of annual leave each year.</p>		
23	<p><b>Allowances for Public Service senior executives</b> (2002 Act, s 75 and 2009 Reg, cl 21)</p> <p>A Public Service senior executive is entitled to be paid:</p> <p>(a) such travelling and subsistence allowances, and</p> <p>(b) such allowances in relation to reasonable relocation expenses (whether at the time of being selected for the executive role or during the term of the executive's employment), and</p> <p>(c) such other allowances in relation to expenses incurred in the discharge of the executive's duties, as the executive's employer may from time to time determine in respect of the executive.</p>	<p><b>PSEMA s 75. Travelling and subsistence allowances etc</b></p> <p>(1) An executive officer is entitled to be paid:</p> <p>(a) such travelling and subsistence allowances, and</p> <p>(b) such allowances in relation to relocation expenses, and</p> <p>(c) such other allowances in relation to expenses incurred in the discharge of the officer's duties, as the officer's employer may from time to time determine in respect of the officer.</p> <p>(2) An executive officer's contract of employment:</p> <p>(a) may provide for the payment to the officer of allowances of the kind referred to in this section, and</p> <p>(b) may regulate the payment of allowances to the officer under this section.</p> <p><b>PSEM Reg cl 21. Procurement arrangements for other public bodies</b></p> <p>(1) The Board may enter into agreements with public bodies that are not government agencies relating to the</p>	

# GSE REGULATION

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		<p>procurement of goods and services by and for those bodies.</p> <p>(2) The Board may do so by allowing those bodies to have access to the procurement arrangements for government agencies or by making separate arrangements.</p> <p>(3) The Board may establish criteria for the exercise of the Board's functions under this clause, including but not limited to the circumstances in which, and the public bodies to which, access to the arrangements for government agencies will not be given.</p> <p>(4) The Director-General of the Department of Finance and Services may charge a fee in connection with any agreement entered into between a public body and the Board under this clause.</p> <p>(5) In this clause:</p> <p><b>community non-profit organisation</b> does not include an industry association or similar body the activities of which are intended to promote the interests of a particular industry or sector of an industry.</p> <p><b>public body</b> includes the following:</p> <p>(a) a private hospital,</p> <p>(b) a local council or other local authority,</p> <p>(c) a charity or other community non-profit organisation,</p> <p>(d) a private school or college,</p> <p>(e) a university,</p> <p>(f) a public authority of the Commonwealth, any other State or Territory,</p> <p>(g) a public authority of any other jurisdiction (but only if it carries on activities in this State),</p> <p>(h) a contractor to a public authority (but only in respect of things done as such a contractor).</p>	
<b>Part 3</b>	<b>Employment in Public Service and other government sector agencies</b>		
<b>24</b>	<b>Repayment of severance or redundancy payments for non-executives on re-employment in public</b>		This provision is captured in 5.3 of the Premier's <i>Managing Excess Employees (MEE)</i>



# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	<p><b>sector: section 88 (3)</b>            (1) A government sector employee who receives a severance or redundancy payment because of a cessation of employment is not to be employed in the public sector during the period to which the payment relates unless arrangements have been made for a refund of the proportionate amount of the payment.            (2) This clause does not apply to a Public Service senior executive.  <b>Note.</b> See section 41 (3) of the Act for Public Service senior executives.            (3) In this clause:  <b>employment</b> of a former government sector employee in the public sector includes:            (a) engagement of the former employee as a consultant or contractor to the employer, and            (b) engagement of the former employee through a labour hire arrangement with the employer, and            (c) engagement of a company or partnership that provides the services of the former employee to the employer.  <b>public sector</b> means the government sector, the service of a State owned corporation (or a subsidiary), any service excluded by section 5 of the Act or a statutory office.</p>		<p>policy. It is not clear what benefit there is in incorporating these provisions in the Regulation.</p> <p>The Association opposes this provision in its entirety. The provision may have had validity where the policy only provided for voluntary redundancy. In the context of a policy of forced retrenchment the justification is removed. Retrenchment payments are designed to compensate in part for lost leave credits – particularly sick leave. Where an employee is retrenched against their will the severance payment will have compensated for a loss of entitlements that cannot be restored in the event that the employee gains re-employment in the sector. In this circumstance the repayment requirement imposes an unfair and unreasonable restriction on the capacity of an employee to be reemployed in the sector.</p> <p>The restriction is also particularly unfair for those working in state owned corporation – which is not crown service. These employees, in light of more limited redeployment options, should not have this restriction placed on them in respect of seeking employment in the Government Sector as normally constituted.</p> <p>The Association recommends that the repayment requirement only apply to ongoing employees in the Government Sector who elect to take a voluntary redundancy and have been engaged in employment in a an ongoing role.</p>
25	<p><b>Calculation of proportionate amount to be refunded on re-employment in public sector</b>            (1) This clause applies in relation to the payment of refund under any of the following provisions:            (a) section 41 (3) of the Act,</p>	<p><b>Clause 5.3 MEE Policy</b></p> <p>Employees who accept a voluntary redundancy cannot be re-employed or re-engaged in any capacity in any NSW public sector agency within the period covered by</p>	<p>Clause 5.2 of the MEE policy defines the <b>severance payment</b> to mean the three weeks per year of continuous service to a maximum of 39 weeks. The other elements of the package</p>

# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	<p>(b) clause 24.                      (2) The proportionate amount of a payment to be refunded under any such provision is to be calculated on the basis of the number of weeks (if any) that:                      (a) in the case of a Public Service senior executive—remain as part of the period to which the payment relates under Division 2, or                      (b) in the case of a government sector employee other than a Public Service senior executive—remain as part of the period to which the payment relates under clause 24.</p>	<p>their severance payment, without first repaying the relevant proportion of their severance pay. This requirement applies to employment or engagement in any capacity as staff members, contractors, consultants or employees or principals of companies engaged in contracting to a public sector agency</p>	<p>are not part of the severance payment.</p> <p>Clause 5.3 of the MEE outlines the existing repayment arrangements. It limits the amount and the relevant period to the maximum 39 weeks:</p> <p><i>Employees who accept a voluntary redundancy cannot be re-employed or re-engaged in any capacity in any NSW public sector agency within the period covered by their <b>severance payment</b>, without first repaying the relevant proportion of their <b>severance pay</b>. This requirement applies to employment or engagement in any capacity as staff members, contractors, consultants or employees or principals of companies engaged in contracting to a public sector agency</i></p> <p>The proposed arrangements represent a change in the policy approach which increases the amount and time required before re-engagement is permitted without requiring repayment.</p> <p>In the case of Forced Retrenchment the maximum amount should be 20 weeks if the above logic is consistently applied as the additional 4 or 5 weeks' pay referred to in the policy and derived from the Employment protection regulation is a payment in lieu of notice and not part of the severance payment.</p> <p>It may be beneficial to include a table in the Rules setting out the time/ repayment amounts.</p>
26	<p><b>Employment pending cessation of employment</b>                      [2002 Act, s 100A]                      (1) If a person who is employed in a government sector agency (the <b>incumbent employee</b>) notifies the</p>	<p><b>PSEMA s 100A. Appointment may be made to position pending vacation of position</b>                      (1) This section applies in relation to:                      (a) a chief executive position or senior executive</p>	

# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	<p>person's employer in writing that the person:</p> <p>(a) intends to resign or retire from the employment on a specified date, or</p> <p>(b) does not intend to seek re-employment on completion of the current term of employment, the employer may, before the person ceases to be employed, take action to recruit and employ another person (the <b>new employee</b>) in that employment.</p> <p>(2) The employment of the new employee may, if the instrument of employment so provides, take effect before the incumbent employee ceases to be employed.</p> <p>(3) In any such case, the incumbent employee and the new employee:</p> <p>(a) are both employed in the same role or position, and</p> <p>(b) may jointly exercise the functions of that role or position.</p> <p>(4) If in the joint exercise of any statutory function of that role or position any inconsistency arises in connection with the exercise of that function, the decision of the incumbent employee in relation to the matter prevails.</p>	<p>position (whether or not in the Government Service), or</p> <p>(b) any other position in the Government Service.</p> <p>(2) If a person who holds any such position (<b>the incumbent officer</b>) notifies the person's employer in writing that the person:</p> <p>(a) intends to resign or retire from the position on a specified date, or</p> <p>(b) does not intend to seek re-appointment to the position on completion of the current term of employment, the employer may, before the position becomes vacant, take action to recruit and appoint another person (<b>the new officer</b>) to the position.</p> <p>(3) The appointment of the new officer may, if the instrument of appointment so provides, take effect before the incumbent officer vacates the position.</p> <p>(4) In any such case, the incumbent officer and the new officer:</p> <p>(a) both hold the same position, and</p> <p>(b) may jointly exercise the functions of the position.</p> <p>(5) If in the joint exercise of any statutory function of the position any inconsistency arises in connection with the exercise of that function, the decision of the incumbent officer in relation to the matter prevails.</p> <p>(6) In this section:</p> <p><b>employer</b> means:</p> <p>(a) in the case of a person who is a chief executive officer or senior executive officer—the person's employer as referred to in section 63 (2), or</p> <p>(b) in any other case—the appropriate Division Head.</p>	
27	<p><b>Public Service senior executives—compensation for termination of employment</b></p> <p>(1) The contract of employment of a Public Service senior executive is to provide for the payment of the following compensation to the executive on the termination of the executive's employment by the employer:</p> <p>(a) if the employment is terminated under section 41 of the Act during or at the end of any period of probation imposed as a condition of the executive's</p>		

# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	<p>engagement—an amount equal to the executive’s remuneration package for a period of 4 weeks, or</p> <p>(b) if the employment is otherwise terminated under section 41 of the Act—an amount equal to the executive’s remuneration package for a period of 38 weeks, or</p> <p>(c) if the employment is terminated under section 68 of the Act for unsatisfactory performance—an amount equal to the executive’s remuneration package for a period of 13 weeks.</p> <p>(2) No compensation is payable if the executive’s employment is terminated under section 69 of the Act for misconduct.</p>		
28	<p><b>Amount of compensation for part-time Public Service senior executives</b></p> <p>The amount of compensation payable in accordance with this Division to a Public Service senior executive on the termination of the executive’s employment by the employer is, in the case of a senior executive who is employed part-time, to be calculated on a pro-rata basis.</p>		
29	<p><b>Definition</b> (2002 Act, s 92)</p> <p>In this Division:</p> <p><b>cessation</b> of employment includes cessation of employment by resignation, retirement or otherwise.</p>	<p><b>PSEMA s 92. Definitions</b></p> <p>In this Division:</p> <p><b>employee</b> means a person who is employed in any public sector service.</p> <p><b>cessation</b> of employment includes cessation of employment by resignation, retirement or otherwise.</p>	
30	<p><b>State industrial instruments</b> (2002 Act, s 93)</p> <p>This Division applies in addition to any State industrial instrument.</p>	<p><b>PSEMA s 93. Division applies despite State industrial instruments</b></p> <p>This Division has effect despite any provision of any State industrial instrument.</p>	
31	<p><b>Recognition of prior service for extended leave</b> (2002 Act, s 94)</p> <p>Schedule 2 applies to government sector employees.</p>	<p><b>PSEMA s 94. Recognition of prior government service for purpose of calculating extended leave</b></p> <p>Schedule 3A has effect in relation to employees.</p>	

# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
32	<p><b>Annual leave</b> (2002 Act, s 95)</p> <p>(1) A government sector employee who ceases to be employed in a government sector agency and immediately commences employment in another government sector agency may elect:</p> <p>(a) to be paid the whole or part of the money value of the employee's accrued annual leave, or</p> <p>(b) to retain the entitlement to that accrued annual leave.</p> <p><b>Note.</b> The right to cash out leave is, in the case of a Public Service employee, subject to the award requirement to take 10 days of annual leave each year.</p> <p>(2) A government sector employee who elects to retain the entitlement to accrued annual leave is taken to have, on commencing employment in the other government sector agency, the amount of accrued annual leave to which the employee was entitled immediately before the end of his or her previous employment. This leave is in addition to any annual leave which accrues after that commencement.</p> <p>(3) For the purpose of calculating an entitlement under this clause, the money value of accrued annual leave owing to a Public Service senior executive is to be determined on the basis of the person's notional salary.</p> <p>(4) In this clause:</p> <p><b>accrued annual leave</b> means annual leave owing to a government sector employee (but not taken), and includes any such leave accrued because of the operation of this clause.</p> <p><b>notional salary</b>, in relation to a Public Service senior executive, means the total amount of the remuneration package for the person as last determined before the time of payment, less the superannuation guarantee amount payable in respect of the person.</p> <p><b>superannuation guarantee amount</b> means the minimum amount payable to a superannuation fund or scheme in respect of a person that is sufficient to avoid an individual superannuation guarantee shortfall, within the meaning of the <i>Superannuation Guarantee</i></p>	<p><b>PSEMA s 95. Annual leave</b></p> <p>(1) An employee who ceases to be employed in a public sector service and immediately commences employment in another public sector service may elect:</p> <p>(a) to be paid the money value of the employee's accrued annual leave, or</p> <p>(b) to retain the entitlement to that accrued annual leave.</p> <p>(1A) Such an election cannot be made by an employee if the employee is only moving between different Departments of the Public Service.</p> <p>(1B) However, such an election may, without limiting subsection (1), be made by:</p> <p>(a) an employee in a Division of the Government Service referred to in Part 2 or 3 of Schedule 1 who is moving to another Division (including a Department) or to any other public sector service, or</p> <p>(b) an employee in a Department who is moving to a Division of the Government Service referred to in Part 2 or 3 of Schedule 1.</p> <p>(1C) Subsection (1B) has effect despite anything to the contrary in the or the <a href="#">Long Service Leave Act 1955</a>.</p> <p>(2) An employee who elects to retain the entitlement to accrued annual leave is taken to have, on commencing employment in the other public sector service, the amount of accrued annual leave to which the employee was entitled immediately before the end of his or her previous employment. This leave is in addition to any annual leave which accrues after that commencement.</p> <p>(3) For the purpose of calculating an entitlement under this section, the money value of accrued annual leave owing to a chief executive officer or senior executive officer is to be determined on the basis of the officer's notional salary.</p> <p>(4) In this section:</p> <p><b>accrued annual leave</b> means annual leave owing to an employee (but not taken), and includes any such leave accrued because of the operation of this section.</p> <p><b>notional salary</b>, in relation to a chief executive officer</p>	

# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	<i>(Administration) Act 1992</i> of the Commonwealth, in respect of the person.	<p>or a senior executive officer, means the total amount of the remuneration package for the officer as last determined before the time of payment, less the superannuation guarantee amount payable in respect of the officer.</p> <p><b>superannuation guarantee amount</b> means the minimum amount payable to a superannuation fund or scheme in respect of an officer that is sufficient to avoid an individual superannuation guarantee shortfall, within the meaning of the <a href="#">Superannuation Guarantee (Administration) Act 1992</a> of the Commonwealth, in respect of the officer.</p> <p>(5) This section is taken to have applied on and from 3 May 1993.</p>	
33	<p><b>Sick leave</b> (2002 Act, s 96)</p> <p>(1) A government sector employee who ceases to be employed in a government sector agency and immediately commences employment in another government sector agency is taken to have, on commencing that employment, the amount of accrued sick leave to which the employee was entitled before that commencement. This leave is in addition to any sick leave which accrues after that commencement.</p> <p>(2) The eligibility of a government sector employee for sick leave that includes any period of accrued sick leave is to be determined in accordance with the conditions relating to the granting of sick leave in the employee's current employment.</p> <p>(3) In this clause: <b>accrued sick leave</b> means the amount of sick leave to which the employee would have been entitled in the event of illness, and includes any such leave accrued because of the operation of this clause.</p>	<p><b>PSEMA s 96. Sick leave</b></p> <p>(1) An employee who ceases to be employed in a public sector service and immediately commences employment in another public sector service is taken to have, on commencing that employment, the amount of accrued sick leave to which the employee was entitled before that commencement. This leave is in addition to any sick leave which accrues after that commencement.</p> <p>(2) The eligibility of an employee for sick leave that includes any period of accrued sick leave is to be determined in accordance with the conditions relating to the granting of sick leave in the employee's current employment.</p> <p>(3) In this section: <b>accrued sick leave</b> means the amount of sick leave to which the employee would have been entitled in the event of illness, and includes any such leave accrued because of the operation of this section.</p> <p>(4) This section is taken to have applied on and from 3 May 1993.</p>	
34	<p><b>Maternity leave etc</b> (2002 Act, s 97)</p> <p>(1) This clause applies for the purposes of determining whether a government sector employee who ceases to</p>	<p><b>PSEMA s 97. Maternity leave etc</b></p> <p>(1) This section applies for the purposes of determining whether an employee who ceases to be employed in a</p>	

# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	<p>be employed in a government sector agency and immediately commences employment in another government sector agency is entitled to maternity leave, partner leave, adoption leave or any other leave (other than extended leave) for which a condition of eligibility is a minimum period of service.</p> <p>For the purposes of determining a government sector employee's entitlement to leave referred to in this clause:</p> <p>(a) service with the employee's previous employer is taken to be service with the employee's current employer, if the previous employment was in another government sector agency and if that period of service was continuous with the employee's current employment, and</p> <p>(b) service with any other former employers is taken to be service with the person's current employer, if the service was in other government sector agencies and the periods of service with those agencies were continuous with each other and the employee's previous employment in a government sector agency.</p> <p>(3) Except as provided by this clause, the eligibility of a government sector employee for leave referred to in this clause is to be determined in accordance with the conditions applying to that leave in the employee's current employment.</p> <p>(4) A reference in this clause to service with a previous or former employer extends to include a reference to any such service before the commencement of this Regulation.</p>	<p>public sector service and immediately commences employment in another public sector service is entitled to maternity leave, partner leave, adoption leave or any other leave (other than extended leave) for which a condition of eligibility is a minimum period of service.</p> <p>(2) For the purposes of determining an employee's entitlement to leave referred to in this section:</p> <p>(a) service with the employee's previous employer is taken to be service with the employee's current employer, if the previous employment was in another public sector service and if that period of service was continuous with the employee's current employment, and</p> <p>(b) service with any other former employers is taken to be service with the person's current employer, if the service was in other public sector services and the periods of service with those bodies were continuous with each other and the employee's previous employment in a public sector service.</p> <p>(3) Except as provided by this section, the eligibility of an employee for leave referred to in this section is to be determined in accordance with the conditions applying to that leave in the employee's current employment.</p> <p>(4) A reference in this section to service with a previous or former employer extends to include a reference to any such service before the commencement of this section.</p> <p>(5) This section is taken to have applied on and from 3 May 1993.</p>	
35	<p><b>Access to forfeited sick leave—transitional arrangements</b> (2002 Act, s 98)</p> <p>(1) If a government sector employee is eligible for sick leave for any absence from duty but has exhausted his or her sick leave entitlement, the employee's employer may grant to the employee any of the employee's forfeited sick leave as sick leave for the absence.</p> <p>(2) An employee's <b>forfeited sick leave</b> is the total amount of sick leave that the employee ceased to be</p>	<p><b>PSEMA s 98. Access to forfeited sick leave—transitional arrangements</b></p> <p>(1) If an employee is eligible for sick leave for any absence from duty but has exhausted his or her sick leave entitlement, the employee's employer may grant to the employee any of the employee's forfeited sick leave as sick leave for the absence.</p> <p>(2) An employee's <b>forfeited sick leave</b> is the total amount of sick leave that the employee ceased to be</p>	

# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	<p>entitled to up to 13 October 1995, being sick leave that he or she would presently be entitled to had clause 33 been in force from when the employee was first employed in a government sector agency.</p> <p>(3) Once any period of a government sector employee's forfeited sick leave has been granted as sick leave under this clause, it is no longer regarded as forfeited sick leave for the purposes of any further grant of sick leave to the employee under this clause (whether by the same or a different employer).</p> <p>(4) In determining whether or not a government sector employee is entitled to sick leave, all the employee's entitlements to sick leave are to be taken into account, including special sick leave and sick leave to which the employee is entitled by operation of clause 33.</p> <p>(5) The Commissioner may provide guidance to government sector employers as to the circumstances in which, and the matters to be taken into account in determining whether, forfeited sick leave should or should not be granted as sick leave under this clause.</p>	<p>entitled to up to 13 October 1995 (the date of commencement of Schedule 5A to the <a href="#">Public Sector Management Act 1988</a>), being sick leave that he or she would presently be entitled to had section 96 been in force from when the employee was first employed in a public sector service.</p> <p>(3) Once any period of an employee's forfeited sick leave has been granted as sick leave under this section, it is no longer regarded as forfeited sick leave for the purposes of any further grant of sick leave to the employee under this section (whether by the same or a different employer).</p> <p>(4) For the purposes of this section, the employer of an employee is the person who exercises the functions of chief executive officer in relation to the public sector service in which the employee is employed (being the appropriate Division Head in the case of a member of the Government Service for example).</p> <p>(5) In determining whether or not an employee is entitled to sick leave, all the employee's entitlements to sick leave are to be taken into account, including special sick leave and sick leave to which the employee is entitled by operation of section 96.</p> <p>(6) The Commissioner may issue guidelines to employers of employees as to the circumstances in which, and the matters to be taken into account in determining whether, forfeited sick leave should or should not be granted as sick leave under this section.</p>	
36	<p><b>Funding of leave entitlements</b> (2002 Act, s 99)</p> <p>The Treasurer may give directions requiring the transfer of funds between government sector employers for the purpose of making due allowance and appropriate adjustments for liabilities incurred by reason of the operation of this Division and Schedule 1, or liabilities with respect to extended or long service leave.</p>	<p><b>PSEMA 99. Funding of leave entitlements</b></p> <p>The Treasurer may give directions and issue guidelines requiring the transfer of funds between public sector employers for the purpose of making due allowance and appropriate adjustments for liabilities incurred by reason of the operation of this Division and Schedule 3, or liabilities with respect to extended or long service leave.</p>	
37	<p><b>Prescribed agencies for purposes of workplace</b></p>		



# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	<p><b>diversity</b> The following universities or agencies are prescribed for the purposes of the definition of <b>government sector agency</b> in section 63 of the Act:</p> <ul style="list-style-type: none"> <li>(a) Charles Sturt University,</li> <li>(b) Macquarie University,</li> <li>(c) Southern Cross University,</li> <li>(d) University of New England,</li> <li>(e) University of New South Wales,</li> <li>(f) University of Newcastle,</li> <li>(g) University of Sydney,</li> <li>(h) University of Technology, Sydney,</li> <li>(i) University of Western Sydney,</li> <li>(j) University of Wollongong,</li> <li>(k) Internal Audit Bureau,</li> <li>(l) Treasury Corporation.</li> </ul> <p><b>Note.</b> See also clause 41.</p>		
38	<p><b>Existing EEO plans</b> For the period of 12 months after the commencement of this Regulation, the head of a government sector agency is taken to have complied with the requirements of section 63 of the Act in relation to workforce diversity within the agency if the agency head complies with an equal employment opportunity management plan in force under Part 9A of the <i>Anti-Discrimination Act 1977</i> immediately before that commencement.</p>		
<b>Part 4</b>	<b>Miscellaneous</b>		
39	<p><b>Decisions under Regulation to be notified</b> (2009 Reg, cl 24)</p> <p>(1) Any decision by a relevant person under this Regulation is to be published or notified in such manner as the person considers necessary in order to bring the decision to the notice of the government sector employees to whom it applies.</p> <p>(2) In this clause: <b>relevant person</b> means any of the following:</p> <ul style="list-style-type: none"> <li>(a) the Public Service Commissioner,</li> <li>(b) the Industrial Relations Secretary,</li> </ul>	<p><b>PSEM Reg cl 24. Determinations and approvals</b></p> <p>(1) A determination or an approval of a relevant person under this Regulation is to be published or notified in such manner as the person considers necessary in order to bring the determination or approval to the notice of the members of staff to whom it applies.</p> <p>(2) A determination or an approval of a relevant person under this Regulation may do either or both of the following:</p> <ul style="list-style-type: none"> <li>(a) apply generally or be limited in its application by reference to specified exceptions or factors,</li> </ul>	

# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	(c) the head of a government sector agency.	(b) apply differently according to different factors of a specified kind. (3) In this clause: <b>relevant person</b> means any of the following: (a) the Public Service Commissioner, (b) the Director-General of the Department of Premier and Cabinet, (c) a Department Head.	
40	<p><b>Deductions for rent in certain cases</b> (2009 Reg, cl 25)</p> <p>(1) If a Public Service employee is allowed to use, for residential purposes, any premises belonging to the Government, the Industrial Relations Secretary may direct that a fair and reasonable sum as rent for the premises be deducted from the salary of the employee.</p> <p>(2) In giving any such direction, the Industrial Relations Secretary is to either fix the amount of rent to be deducted or specify a person by whom the amount of rent to be deducted is to be fixed.</p> <p>(3) If a Public Service employee is allowed to use, for residential purposes, any premises or any land vested in or managed by the Teacher Housing Authority of New South Wales, an amount fixed by that Authority in respect of rent is to be deducted from the salary of the employee and paid to that Authority.</p> <p>(4) This clause is subject, in the case of a Public Service senior executive, to the contract of employment of the executive.</p> <p>(5) In this clause: <b>rent</b> includes payment for board and lodging.</p>	<p><b>PSEM Reg cl 25. Deductions for rent in certain cases</b></p> <p>(1) Except as provided in subclause (3), if any member of staff of a Department is allowed to use, for residential purposes, any premises belonging to the Government, the Director-General of the Department of Premier and Cabinet may direct that a fair and reasonable sum as rent for the premises be deducted from the salary of the member of staff.</p> <p>(2) When giving a direction under subclause (1), the Director-General of the Department of Premier and Cabinet is to either fix the amount of rent to be deducted or specify a person by whom the amount of rent to be deducted is to be fixed.</p> <p>(3) If a member of staff of a Department is allowed to use, for residential purposes, any premises or any land vested in or managed by the Teacher Housing Authority of New South Wales, an amount fixed by that Authority in respect of rent is to be deducted from the salary of the member of staff and paid to that Authority.</p> <p>(4) In this clause, <b>rent</b> includes payment for board and lodging.</p> <p>(5) This clause is subject, in the case of an executive officer, to the contract of employment entered into by the executive officer under Part 3.1 of the Act.</p>	
41	<p><b>Statutory bodies included as part of the government sector for certain purposes</b></p> <p>(1) Each of the following is prescribed as a government sector agency for the purposes of section 16 of the Act</p>		

# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	<p>(Provision of reports and information by agencies):</p> <p>(a) a State owned corporation,</p> <p>(b) the Internal Audit Bureau,</p> <p>(c) the Treasury Corporation,</p> <p>(d) a university referred to in clause 37 (but only in relation to the provision of reports and information relating to workforce diversity).</p> <p>(2) For the purposes of section 16 of the Act:</p> <p>(a) the head of a body referred to in subclause (1) (a)–</p> <p>(c) is the person holding office as the chief executive (however described) of the body, and</p> <p>(b) the head of any such university is the Vice Chancellor of the university.</p> <p>(3) Landcom is prescribed for the purposes of paragraph (g) of the definition of <b>government sector</b> in section 3 (1) of the Act but only in relation to section 73 of the Act (Appointment to position in government sector not affected by additional appointment). This subclause does not limit the operation of subclause (1) to the extent that it applies to Landcom.</p>		
Sch 1	<b>Public Service extended leave entitlements</b>	<b>PSEMA Schedule 3 - Extended leave entitlements for officers and temporary employees in the Public Service</b>	
1	<p><b>Meaning of “service”</b></p> <p>For the purposes of this Schedule, <b>service</b> includes service occurring before the commencement of this Regulation.</p> <p><b>Note.</b> See also Schedule 2 as to the recognition of former service with certain government agencies.</p>	<p><b>1 Definition of “service”</b></p> <p>(1) For the purposes of this Schedule, <b>service</b> includes:</p> <p>(a) in the case of an officer or temporary employee who has completed at least 10 years’ service—any period of leave without pay, not exceeding 6 months, taken after 13 December 1963, and</p> <p>(b) service occurring before the commencement of this Schedule, including service of the kind referred to in paragraph (a).</p> <p><b>Note.</b> See also Schedule 3A as to the recognition of former service with certain Government agencies.</p> <p>(2) Subject to clauses 2 (3) and 3 (3), for the purpose of determining whether or not an officer or temporary employee has completed at least 10 years’ service, as</p>	

# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
		<p>referred to in subclause (1) (a), the officer's or temporary employee's period of service is taken:</p> <p>(a) to include any period of leave without pay taken before 13 December 1963, and</p> <p>(b) to exclude any period of leave without pay taken after 13 December 1963.</p> <p><b>Note.</b> 13 December 1963 was the date of assent to the <i>Public Service and Other Statutory Bodies (Extended Leave) Amendment Act 1963</i>.</p>	
2	<p><b>Extended leave entitlements generally</b></p> <p>(1) After service for 7 years or more but not more than 10 years, a Public Service employee is entitled to extended leave, proportionate to his or her length of service, calculated at the rate of:</p> <p>(a) 2 months on full pay, or</p> <p>(b) 4 months on half pay, or</p> <p>(c) one month on double pay, for 10 years served.</p> <p>(2) After service for more than 10 years, a Public Service employee is entitled to extended leave under subclause (1) in respect of the first 10 years and additional extended leave, proportionate to his or her length of service, calculated at the rate of:</p> <p>(a) 5 months on full pay, or</p> <p>(b) 10 months on half pay, or</p> <p>(c) 2.5 months on double pay, for each 10 years served after the first 10 years.</p>	<p><b>2 Leave entitlements generally</b></p> <p>(1) After service for 7 years or more but not more than 10 years, an officer or temporary employee is entitled to extended leave, proportionate to his or her length of service, calculated at the rate of:</p> <p>(a) 2 months on full pay, or</p> <p>(b) 4 months on half pay, or</p> <p>(c) one month on double pay, for 10 years served.</p> <p>(2) After service for more than 10 years, an officer or temporary employee is entitled to extended leave under subclause (1) in respect of the first 10 years and additional extended leave, proportionate to his or her length of service, calculated at the rate of:</p> <p>(a) 5 months on full pay, or</p> <p>(b) 10 months on half pay, or</p> <p>(c) 2.5 months on double pay, for each 10 years served after the first 10 years.</p> <p>(3) For the purposes of this clause, <b>service</b> includes any period of leave without pay taken before 13 December 1963</p>	
3	<p><b>Entitlement to extended leave if employment terminated in special circumstances</b></p> <p>(1) This clause applies to a Public Service employee with at least 5 years' service but less than 7 years' service whose services are terminated:</p> <p>(a) by the employee for reasons of illness, incapacity or domestic or other pressing necessity, or</p> <p>(b) by the employer for reasons other than for</p>	<p><b>3 Entitlement to leave if employment terminated in special circumstances</b></p> <p>(1) This clause applies to an officer or temporary employee with at least 5 years' service but less than 7 years' service whose services are terminated:</p> <p>(a) by the officer or temporary employee, for reasons of illness, incapacity or domestic or other pressing necessity, or</p>	

# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	<p>misconduct.</p> <p>(2) The Public Service employee is entitled to:</p> <p>(a) for 5 years' service—one month's leave on full pay, and</p> <p>(b) for further service in excess of 5 years—additional leave proportionate to the employee's length of service (up to but not including 7 years), calculated at the rate of 3 months' leave for 15 years' service.</p>	<p>(b) by the Crown, the Governor or the appropriate Department Head, for reasons other than the officer's or temporary employee's serious and intentional misconduct.</p> <p>(2) The officer or temporary employee is entitled to:</p> <p>(a) for 5 years' service, one month's leave on full pay, and</p> <p>(b) for further service in excess of 5 years, additional leave proportionate to the officer's or temporary employee's length of service (up to but not including 7 years), calculated at the rate of 3 months' leave for 15 years' service.</p> <p>(3) For the purposes of this clause, <b>service</b> does not include any period of leave without pay, whether taken before, on or after 13 December 1963.</p>	
4	<p><b>Payment of accrued leave on termination of employment</b></p> <p>(1) If a Public Service employee has acquired a right to extended leave and his or her services are terminated, the employee may not take the extended leave but is instead to be paid the money value of the extended leave.</p> <p>(2) Any pension to which any such Public Service employee is entitled under the <i>Superannuation Act 1916</i> commences from and including the date on which the employee's extended leave, if taken, would have commenced.</p>	<p><b>4 Payment of accrued leave on termination of employment</b></p> <p>(1) If an officer or temporary employee has acquired a right to extended leave and his or her services are terminated, the officer or temporary employee may not take the extended leave but is instead to be paid the money value of the extended leave.</p> <p>(2) Any pension to which any such officer or temporary employee is entitled under the <a href="#">Superannuation Act 1916</a> commences from and including the date on which the officer's or temporary employee's extended leave, if taken, would have commenced.</p>	
5	<p><b>Leave to be paid out to dependants in cases of death</b></p> <p>(1) If a Public Service employee has acquired a right to extended leave and dies before starting it, or after starting it dies before completing it:</p> <p>(a) the employee's spouse, or</p> <p>(b) if there is no such spouse, the employee's children, or</p> <p>(c) if there is no such spouse or child, the person who, in the opinion of the agency head, was, at the time of the employee's death, a dependent relative of the</p>	<p><b>5 Leave to be paid out to dependants in cases of death</b></p> <p>(1) If an officer or temporary employee has acquired a right to extended leave and dies before starting it, or after starting it dies before completing it:</p> <p>(a) the officer's or temporary employee's spouse, or</p> <p>(b) if there is no such spouse, the officer's or temporary employee's children, or</p> <p>(c) if there is no such spouse or child, the person who, in the opinion of the appropriate Department Head, was, at the time of the officer's or temporary</p>	

# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	<p>employee, is entitled to receive the money value of the extended leave not taken or not completed.</p> <p>(2) If a Public Service employee with at least 5 years' service but less than 7 years' service dies:</p> <p>(a) the employee's spouse, or</p> <p>(b) if there is no such spouse, the employee's children, or</p> <p>(c) if there is no such spouse or child, the person who, in the opinion of the agency head, was, at the time of the employee's death, a dependent relative of the employee, is entitled to receive the money value of the extended leave that would have accrued to the employee had his or her services terminated as referred to in clause 3 (1).</p> <p>(3) If there is a guardian of any child referred to in subclause (1) (b) or (2) (b), the payment to which the child is entitled may be made to the child's guardian for the child's maintenance, education and advancement.</p> <p>(4) If:</p> <p>(a) no person is entitled to receive a payment under subclause (1) or (2), or</p> <p>(b) it appears to the agency head that more than one person is entitled as a spouse to a payment under subclause (1) or (2), the payment must instead be made to the employee's personal representatives.</p> <p>(5) Any payment under this clause is in addition to any payment due under any Act under which superannuation benefits are paid.</p> <p>(6) In this clause, <b>spouse</b> of a Public Service employee includes a de facto partner of the employee at the time of his or her death.</p> <p><b>Note.</b> "De facto partner" is defined in section 21C of the <i>Interpretation Act 1987</i>.</p>	<p>employee's death, a dependent relative of the officer or temporary employee, is entitled to receive the money value of the extended leave not taken or not completed.</p> <p>(2) If an officer or temporary employee with at least 5 years' service but less than 7 years' service dies:</p> <p>(a) the officer's or temporary employee's spouse, or</p> <p>(b) if there is no such spouse, the officer's or temporary employee's children, or</p> <p>(c) if there is no such spouse or child, the person who, in the opinion of the appropriate Department Head, was, at the time of the officer's or temporary employee's death, a dependent relative of the officer or temporary employee,</p> <p>is entitled to receive the money value of the extended leave that would have accrued to the officer or temporary employee had his or her services terminated as referred to in clause 3 (1).</p> <p>(3) If there is a guardian of any child referred to in subclause (1) (b) or (2) (b), the payment to which the child is entitled may be made to the child's guardian for the child's maintenance, education and advancement.</p> <p>(4) If:</p> <p>(a) no person is entitled to receive a payment under subclause (1) or (2), or</p> <p>(b) it appears to the appropriate Department Head that more than one person is entitled as a spouse to a payment under subclause (1) or (2),</p> <p>the payment must instead be made to the officer's or temporary employee's personal representatives.</p> <p>(5) Any payment under this clause is in addition to any payment due under any Act under which superannuation benefits are paid.</p> <p>(6) In this clause, <b>spouse</b> of an officer or temporary employee includes a de facto partner of the officer or temporary employee at the time of his or her death.</p> <p><b>Note.</b> "De facto partner" is defined in section 21C of the <a href="#">Interpretation Act 1987</a>.</p>	
6	<b>Calculation of money value of extended leave</b>	<b>6 Calculation of money value of extended leave</b>	The reference to clause 30 appears to be

## GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	For the purpose of calculating the amount of an entitlement under this Schedule, the money value of extended leave accrued or payable to a Public Service senior executive is to be determined on the basis of the person's notional salary within the meaning of clause 30 of this Regulation.	For the purpose of calculating the amount of an entitlement under this Schedule, the money value of extended leave accrued or payable to a chief executive officer or senior executive officer is to be determined on the basis of the officer's notional salary within the meaning of section 95.	incorrect. The correct reference to notional salary is found at clause 32(4).
7	<p><b>Certain periods to be disregarded</b></p> <p>Any period during which a Public Service employee is not employed, as referred to in clause 3 (2) of Schedule 2, is to be disregarded for the purpose of calculating his or her extended leave entitlement.</p>	<p><b>7 Certain periods to be disregarded</b></p> <p>Any period during which an officer or temporary employee is not employed, as referred to in clause 3 (2) of Schedule 3A, is to be disregarded for the purpose of calculating his or her extended leave entitlement.</p>	
8	<p><b>Leave entitlement reduced by leave already taken or paid out</b></p> <p>(1) The following amounts of extended leave are to be deducted from a Public Service employee's extended leave entitlement:</p> <p>(a) for each period of extended leave taken on full pay—the number of days (or parts of a day) so taken,</p> <p>(b) for each period of extended leave taken on half pay—half the number of days (or parts of a day) so taken,</p> <p>(c) for each period of extended leave taken on double pay—twice the number of days (or parts of a day) so taken,</p> <p>(d) for each period of extended leave in respect of which the employee has been paid the money value—the number of days of extended leave on full pay that is equivalent to the money paid.</p> <p>(2) If a public holiday occurs while a Public Service employee is taking extended leave, the amount of extended leave to be deducted is to be reduced by the length of the holiday (one day or half a day, as the case requires).</p> <p>(3) In subclause (2), <b>public holiday</b> means any special or public holiday for which the Public Service employee is entitled to payment.</p>	<p><b>8 Leave entitlement reduced by leave already taken or paid out</b></p> <p>(1) The following amounts of extended leave are to be deducted from an officer's or temporary employee's extended leave entitlement:</p> <p>(a) for each period of extended leave taken on full pay—the number of days (or parts of a day) so taken,</p> <p>(b) for each period of extended leave taken on half pay—half the number of days (or parts of a day) so taken,</p> <p>(c) for each period of extended leave taken on double pay—twice the number of days (or parts of a day) so taken,</p> <p>(d) for each period of extended leave in respect of which the officer or temporary employee has been paid the money value—the number of days of extended leave on full pay that is equivalent to the money paid.</p> <p>(2) If a public holiday occurs while an officer or temporary employee is taking extended leave, the amount of extended leave to be deducted is to be reduced by the length of the holiday (one day or half a day, as the case may be).</p> <p>(3) In subclause (2), <b>public holiday</b> means any special or public holiday for which the officer or temporary employee is entitled to payment.</p>	
9	<b>Extended leave may be postponed for employees</b>	<b>9 Extended leave may be postponed for temporary</b>	

# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	<p><b>not employed in ongoing employment</b>                      If, in the case of a Public Service employee who is not employed in ongoing employment, the period of extended leave to which the employee is entitled under this Schedule exceeds the period for which the employee is employed in the Public Service, the balance of the period of extended leave may be taken during subsequent periods of employment in the Public Service, but only if each subsequent period of employment commences on the termination of a previous period of employment in the Public Service.</p>	<p><b>employees</b>                      If the period of extended leave to which a temporary employee is entitled under this Schedule exceeds the period for which the employee is employed under this Act, the balance of the period of extended leave may be taken during subsequent periods of employment in the Public Service, but only if each subsequent period of employment commences on the termination of a previous period of employment in the Public Service.</p>	
Sch 2	<b>Government sector employees extended leave entitlements-recognition of prior government service</b>	<b>PSEMA Schedule 3A Recognition of prior government service for public sector employees extended leave entitlements</b>	
Part 1	<b>Preliminary</b>	<b>Part 1 - Preliminary</b>	
1	<p><b>Definitions</b>                      In this Schedule:  <b>Australian Defence Force</b> includes the armed forces of the Commonwealth, however described.  <b>Commonwealth or interstate agency</b> means:                      (a) a body that:                      (i) is established under an Act of the Commonwealth or another State or Territory, and                      (ii) is under the control of a Minister of the Commonwealth or other State or Territory, and                      (iii) is part of the public service (however described) of the Commonwealth or other State or Territory, and                      (iv) is a body in which persons are employed under conditions substantially equivalent to the conditions under which Public Service employees are employed under this Act, or                      (b) a body that is declared to be a Commonwealth or interstate agency for the purposes of this Schedule pursuant to an order under clause 2, but, subject to paragraph (b), does not include:                      (c) a local government authority, or                      (d) a university or the governing body of a university, or</p>	<p><b>1 Definitions</b>                      In this Schedule:  <b>Australian Defence Force</b> includes the armed forces of the Commonwealth, however described.  <b>Commonwealth or interstate agency</b> means:                      (a) a body that:                      (i) is established under an Act of the Commonwealth or another State or Territory, and                      (ii) is under the control of a Minister of the Commonwealth or other State or Territory, and                      (iii) is part of the public service (however described) of the Commonwealth or other State or Territory, and                      (iv) is a body in which persons are employed under conditions substantially equivalent to the conditions under which officers are employed under this Act, or                      (b) a body that is declared to be a Commonwealth or interstate agency for the purposes of this Schedule pursuant to an order under clause 2, but, subject to paragraph (b), does not include:                      (c) a local government authority, or                      (d) a university or the governing body of a university, or                      (e) a corporation owned by the Commonwealth or</p>	



# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	<p>(e) a corporation owned by the Commonwealth or another State or Territory, or by the Crown in right of the Commonwealth or another State or Territory, or</p> <p>(f) a body that is declared not to be a Commonwealth or interstate agency for the purposes of this Schedule pursuant to an order under clause 2.</p> <p><b>continuous</b>—see clause 3.</p> <p><b>government sector employee</b> means a person who is employed in a government sector agency.</p> <p><b>immediately follows</b>—see clause 4.</p> <p><b>recognised service</b>, in relation to a government sector employee, means service that is recognised service in relation to the employee pursuant to Part 2.</p> <p><b>related government service</b> means any service excluded by section 5 of the Act.</p>	<p>another State or Territory, or by the Crown in right of the Commonwealth or another State or Territory, or</p> <p>(f) a body that is declared not to be a Commonwealth or interstate agency for the purposes of this Schedule pursuant to an order under clause 2.</p> <p><b>continuous</b> is defined in clause 3.</p> <p><b>immediately follows</b> is defined in clause 4.</p> <p><b>judicial officer</b> has the meaning it has in the <a href="#">Judicial Officers Act 1986</a>.</p> <p><b>public sector agency</b> has the same meaning as public sector service.</p> <p><b>public sector employee</b> means a person who is employed in a public sector agency.</p> <p><b>recognised service</b>, in relation to a public sector employee, means service that is recognised service in relation to the employee pursuant to Part 2.</p>	
2	<p><b>Declarations concerning Commonwealth or interstate agencies</b></p> <p>(1) The Public Service Commissioner may, by order in writing, declare that a specified body is, or is not, a Commonwealth or interstate agency for the purposes of this Schedule.</p> <p>(2) An order under this clause:</p> <p>(a) takes effect on such day as is specified in the order, being a day occurring before, on or after the day on which the order is made, and</p> <p>(b) may be subject to specified limitations, but not so as to operate to the prejudice of any person who was a government sector employee immediately before the order took effect.</p> <p>(3) There are to be made publicly available on a website provided and maintained by the Public Service Commissioner:</p> <p>(a) a list of the names of each body that is declared under this clause to be a Commonwealth or interstate agency, and</p> <p>(b) a list of the names of each body that is declared under this clause not to be a Commonwealth or</p>	<p><b>2 Declarations concerning Commonwealth or interstate agencies</b></p> <p>(1) The Commissioner may, by order in writing, declare that a specified body is, or is not, a Commonwealth or interstate agency for the purposes of this Schedule.</p> <p>(2) An order under this clause:</p> <p>(a) takes effect on such day as is specified in the order, being a day occurring before, on or after the day on which the order is made, and</p> <p>(b) may be subject to specified limitations, but not so as to operate to the prejudice of any person who was a public sector employee immediately before the order took effect.</p> <p>(3) There are to be made publicly available at the Public Service Commission:</p> <p>(a) a list of the names of each body that is declared under this clause to be a Commonwealth or interstate agency, and</p> <p>(b) a list of the names of each body that is declared under this clause not to be a Commonwealth or interstate agency.</p>	

# GSE REGULATION

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	interstate agency		
3	<p><b>Meaning of “continuous”</b></p> <p>(1) For the purposes of this Schedule, a person’s employment by an employer is <b>continuous</b> in relation to a period if the person remains employed by that employer for the whole of the period.</p> <p>(2) The person is taken to remain employed by the employer for the whole of any period even if, during that period, the person’s employment is terminated by the employer on the grounds that the person is an excess employee but is re-employed by the employer within the next 12 months.</p>	<p><b>3 Definition of “continuous”</b></p> <p>(1) For the purposes of this Schedule, a person’s employment by an employer is <b>continuous</b>, in relation to a period, if the person remains employed by that employer for the whole of the period.</p> <p>(2) The person is taken to remain employed by the employer for the whole of any period even if, during that period, the person ceases to be employed by the employer on the grounds of retrenchment or reduction of work but is re-employed by the employer within the next 12 months.</p>	<p>The change to the wording in Clause 3(2) from the existing Clause 3(2) of Schedule 3A of the <i>PSEMA</i> has the consequence of reducing the entitlement for existing temporary staff who are retrenched or terminated because of a reduction in work. As the policy intent is to preserve the existing entitlement the existing wording should be retained, namely:</p> <p><i>“the person ceases to be employed by the employer on the grounds <b>of retrenchment or reduction of work</b> but is re-employed by the employer within the next 12 months”</i></p>
4	<p><b>Meaning of “immediately follows”</b></p> <p>(1) For the purposes of this Schedule, a person’s period of employment <b>immediately follows</b> another period of employment if:</p> <p>(a) the later period commences:</p> <p>(i) except as provided by subparagraph (ii), within 2 months after the end of the earlier period, or</p> <p>(ii) if the earlier period comprises full-time war service as a member of the Australian Defence Force, within 12 months after the end of the earlier period, and</p> <p>(b) the earlier period ends otherwise than by reason of the person’s dismissal for disciplinary reasons.</p> <p>(2) For the purposes of subclause (1) (a) (ii), <b>war service</b> means:</p> <p>(a) service occurring during, or partly during, a period of war in which the Australian Defence Force is engaged, or</p> <p>(b) service of a kind referred to in subclause (3).</p> <p>(3) The following kinds of service are declared to be war service:</p> <p>(a) war service within the meaning of Division 8 of Part III of the <i>Repatriation Act 1920</i> of the Commonwealth,</p> <p>(b) service outside Australia as a member of the Interim Forces within the meaning of the <i>Interim Forces Benefits Act 1947</i> of the</p>	<p><b>4 Definition of “immediately follows”</b></p> <p>(1) For the purposes of this Schedule, a person’s period of employment <b>immediately follows</b> another period of employment if:</p> <p>(a) the later period commences:</p> <p>(i) except as provided by subparagraph (ii), within 2 months after the end of the earlier period, or</p> <p>(ii) if the earlier period comprises full-time war service as a member of the Australian Defence Force, within 12 months after the end of the earlier period, and</p> <p>(b) the earlier period ends otherwise than by reason of the person’s dismissal for disciplinary reasons.</p> <p>(2) For the purposes of subclause (1) (a) (ii), <b>war service</b> means:</p> <p>(a) service occurring during, or partly during, a period of war in which the Australian Defence Force is engaged, or</p> <p>(b) service of a kind declared by the regulations to be war service for the purposes of this clause.</p>	

# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	Commonwealth, (c) Malayan service within the meaning of the <i>Repatriation (Far East Strategic Reserve) Act 1956</i> of the Commonwealth, (d) special service within the meaning of the <i>Repatriation (Special Overseas Service) Act 1962</i> of the Commonwealth, as those Acts were in force immediately before their repeal on 22 May 1986.		
<b>Part 2</b>	<b>Recognition of former government service for government sector employees generally</b>	<b>Part 2 – Recognition of former government service for public sector employees generally</b>	
<b>5</b>	<p><b>Object of Part</b> The object of this Part is to provide for the recognition of former government service in the calculation of a government sector employee's extended leave entitlement, whether such an entitlement arises:</p> <p>(a) under Schedule 1 (in the case of a Public Service employee), or (b) under some other Act or law, such as an award or industrial agreement (in any other case).</p>	<p><b>5 Object of Part</b> The object of this Part is to provide for the recognition of former government service in the calculation of a public sector employee's extended leave entitlement, whether such an entitlement arises:</p> <p>(a) under Schedule 3 (in the case of an officer or temporary employee), or (b) under some other Act or law, such as an award or industrial agreement (in any other case)</p>	
<b>6</b>	<p><b>Recognition of former government service</b> (1) For the purpose of calculating a government sector employee's extended leave entitlement, the government sector employee's service with his or her current employer is taken to include his or her recognised service. (2) The person's employment in a government sector agency or a Commonwealth or interstate agency or in a related government service (<b><i>the former agency</i></b>) is <b><i>recognised service</i></b> in relation to the person's subsequent employment in a government sector agency (<b><i>the current agency</i></b>) if:</p> <p>(a) the period of employment in the former agency has been continuous, and (b) either: (i) the person's employment in the current agency has immediately followed the person's employment in the</p>	<p><b>6 Recognition of former government service</b> (1) For the purpose of calculating a public sector employee's extended leave entitlement, the public sector employee's service with his or her current employer is taken to include his or her recognised service. (2) The person's employment in a public sector agency or a Commonwealth or interstate agency (<b><i>the former agency</i></b>) is <b><i>recognised service</i></b> in relation to the person's subsequent employment in a public sector agency (<b><i>the current agency</i></b>) if:</p> <p>(a) the period of employment in the former agency has been continuous, and (b) either: (i) the person's employment in the current agency has immediately followed the person's employment in the former agency, or</p>	

# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	<p>former agency, or</p> <p>(ii) the person is entitled, by law or administrative practice, to have the service in the former agency form part of the service in the current agency for the purpose of calculating the person's extended leave entitlement.</p> <p>(3) A period of recognised service may not be counted more than once for the purpose of calculating the person's extended leave entitlement.</p>	<p>(ii) the person is entitled, by law or administrative practice, to have the service in the former agency form part of the service in the current agency for the purpose of calculating the person's extended leave entitlement.</p> <p>(3) A period of recognised service may not be counted more than once for the purpose of calculating the person's extended leave entitlement</p>	
7	<p><b>Exclusion of leave already taken, paid or deemed to have been taken</b></p> <p>(1) The following amounts of leave are to be deducted from a government sector employee's extended leave entitlement:</p> <p>(a) the amount of any extended leave taken by the government sector employee in relation to recognised service,</p> <p>(b) the amount of any extended leave in respect of which the government sector employee has elected to be paid the money value under clause 8 in respect of recognised service,</p> <p>(c) the amount of any extended leave that the government sector employee is deemed to have taken under clause 9 in respect of recognised service.</p> <p>(2) For the purposes of subclause (1) (a), the government sector employee is deemed to have taken extended leave if he or she has been paid the money value of that leave.</p> <p>(3) A period of extended leave is not to be deducted more than once under this clause.</p>	<p><b>7 Leave already taken, paid or deemed to have been taken excluded</b></p> <p>(1) The following amounts of leave are to be deducted from a public sector employee's extended leave entitlement:</p> <p>(a) the amount of any extended leave taken by the public sector employee in relation to recognised service,</p> <p>(b) the amount of any extended leave in respect of which the public sector employee has elected to be paid the money value under clause 8 in respect of recognised service,</p> <p>(c) the amount of any extended leave that the public sector employee is deemed to have taken under clause 9 in respect of recognised service.</p> <p>(2) For the purposes of subclause (1) (a), the public sector employee is deemed to have taken extended leave if he or she has been paid the money value of that leave.</p> <p>(3) A period of extended leave is not to be deducted more than once under this clause.</p>	
8	<p><b>Government sector employee may elect to be paid money value of accrued leave if commencing work in another agency</b></p> <p>(1) A government sector employee who ceases to be employed in a government sector agency and immediately commences employment in another government sector agency or in a related government agency may elect:</p>	<p><b>8 Public sector employee may elect to be paid money value of accrued leave if former employer a public sector agency</b></p> <p>(cf s 95)</p> <p>(1) A public sector employee who ceases to be employed in a public sector agency (<i>the prior employment</i>) and immediately commences employment in another public sector agency (<i>the</i></p>	

# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	<p>(a) to be paid the whole or part of the money value of the government sector employee's accrued extended leave, or</p> <p>(b) to retain the entitlement to that accrued extended leave.</p> <p>(2) This clause does not apply to a Public Service employee who has been paid the money value of his or her accrued extended leave under clause 5 of Schedule 1.</p> <p><b>Note.</b> Whichever election the government sector employee makes, his or her service with the current employer will, pursuant to clause 6, be deemed to include service with the former employer.</p>	<p><b>current employment</b>) may elect:</p> <p>(a) to be paid the money value of the public sector employee's accrued extended leave, or</p> <p>(b) to retain the entitlement to that accrued extended leave.</p> <p>(1A) Such an election cannot be made by a public sector employee if the employee is only moving between different Departments of the Public Service.</p> <p>(1B) However, such an election may, without limiting subclause (1), be made by:</p> <p>(a) an employee in a Division of the Government Service referred to in Part 2 or 3 of Schedule 1 who is moving to another Division (including a Department) or to any other public sector service, or</p> <p>(b) an employee in a Department who is moving to a Division of the Government Service referred to in Part 2 or 3 of Schedule 1.</p> <p>(1C) Subclause (1B) has effect despite anything to the contrary in the <a href="#">Annual Holidays Act 1944</a> or the <a href="#">Long Service Leave Act 1955</a>.</p> <p>(2) This clause does not apply to an officer or temporary employee who has been paid the money value of his or her accrued extended leave under clause 4 of Schedule 3.</p> <p><b>Note.</b> Whichever election the public sector employee makes, his or her service with the current employer will, pursuant to clause 6, be deemed to include service with the former employer.</p>	
9	<p><b>Employee who has recognised Commonwealth or interstate service and was entitled to take leave in former agency deemed to have taken leave</b></p> <p>(1) For the purposes of clause 7 (1) (c), a government sector employee:</p> <p>(a) whose employment in a government sector agency (<b>the current agency</b>) immediately follows employment in a Commonwealth or interstate agency (<b>the former agency</b>), or</p> <p>(b) who is entitled, by law or administrative practice, to</p>	<p><b>9 Employee who has recognised interstate service and was entitled to take leave in former agency deemed to have taken leave</b></p> <p>(1) For the purposes of clause 7 (1) (c), a public sector employee:</p> <p>(a) whose employment in a public sector agency (<b>the current agency</b>) immediately follows employment in a Commonwealth or interstate agency (<b>the former agency</b>), or</p> <p>(b) who is entitled, by law or administrative practice, to</p>	

# GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
	<p>have the service in the former agency form part of the service in the current agency, and who, at any time during his or her employment in the former agency, has been entitled under the relevant Commonwealth or interstate law to take extended leave or be paid the money value of extended leave is deemed to have taken the leave.</p> <p>(2) The amount of extended leave that the government sector employee is deemed to have taken is calculated as if:</p> <p>(a) leave had accrued in relation to his or her service in the former agency at the same rate as leave accrues in relation to his or her service in the current agency, and</p> <p>(b) the service in the former agency in respect of which leave accrued was the whole of the service recognised by the former agency for the purpose of calculating his or her extended leave entitlement, and</p> <p>(c) the amount of leave taken before the calculation of the entitlement was nil, and</p> <p>(d) the money value of leave paid before the calculation of the entitlement was nil.</p>	<p>have the service in the former agency form part of the service in the current agency,</p> <p>and who, at any time during his or her employment in the former agency, has been entitled under the relevant Commonwealth or interstate law to take extended leave or be paid the money value of extended leave is deemed to have taken the leave.</p> <p>(2) The amount of extended leave that the public sector employee is deemed to have taken is calculated as if:</p> <p>(a) leave had accrued in relation to his or her service in the former agency at the same rate as leave accrues in relation to his or her service in the current agency, and</p> <p>(b) the service in the former agency in respect of which leave accrued was the whole of the service recognised by the former agency for the purpose of calculating his or her extended leave entitlement, and</p> <p>(c) the amount of leave taken before the calculation of the entitlement was nil, and</p> <p>(d) the money value of leave paid before the calculation of the entitlement was nil.</p>	
<b>Part 3</b>	<b>Additional provisions for former members of Australian Defence Force and for holders of certain statutory offices</b>	<b>Part 3 - Additional provisions for former members of Australian Defence Force and for holders of certain statutory offices</b>	
<b>10</b>	<p><b>Recognition of service with Australian Defence Force</b></p> <p>For the purposes of this Schedule:</p> <p>(a) a government sector employee who has previously been employed, on a full-time basis, as a member of the Australian Defence Force is taken to have been employed in a Commonwealth or interstate agency during the period for which he or she was so employed, and</p> <p>(b) the Australian Defence Force is taken to have been the government sector employee's employer during that period.</p>	<p><b>10 Recognition of service with Australian Defence Force</b></p> <p>For the purposes of this Schedule:</p> <p>(a) a public sector employee who has previously been employed, on a full-time basis, as a member of the Australian Defence Force is taken to have been employed in a Commonwealth or interstate agency during the period for which he or she was so employed, and</p> <p>(b) the Australian Defence Force is taken to have been the public sector employee's employer during that period.</p>	

## GSE REGULATION

Cl.	GSE Regulation clause	Previous Provision	Comment
11	<p><b>Recognition of service in certain statutory offices</b></p> <p>(1) For the purposes of this Schedule:</p> <p>(a) a person who:</p> <p>(i) in relation to a body referred to in the Table to this clause, holds or acts in an office specified in that Table, on a full-time basis, and</p> <p>(ii) has previously been a government sector employee, is taken to be employed in a government sector agency during the period for which the person holds or acts in that office, and</p> <p>(b) the body concerned is taken to be the person's employer during that period.</p> <p>(2) For the purposes of this Schedule:</p> <p>(a) a government sector employee who, in relation to a body referred to in the Table to this clause, has previously held or acted in an office specified in that Table, on a full-time basis, is taken to have been employed in a government sector agency during the period for which he or she held or acted in that office, and</p> <p>(b) the body concerned is taken to have been the government sector employee's employer during that period.</p> <p>(3) Without limiting any other law preserving rights to extended leave, a person who, in relation to a body referred to in the Table to this clause, holds an office specified in that Table, on a full-time basis, is entitled to have his or her recognised service as a government sector employee recognised as service for the purposes of the law or arrangement that provides for his or her entitlement, as the holder of the office, to extended leave.</p>	<p><b>11 Recognition of service in certain statutory offices</b></p> <p>(1) For the purposes of this Schedule:</p> <p>(a) a person who:</p> <p>(i) in relation to a body referred to in the Table to this clause, holds or acts in an office specified in that Table, on a full-time basis, and</p> <p>(ii) has previously been a public sector employee, is taken to be employed in a public sector agency during the period for which the person holds or acts in that office, and</p> <p>(b) the body concerned is taken to be the person's employer during that period.</p> <p>(2) For the purposes of this Schedule:</p> <p>(a) a public sector employee who, in relation to a body referred to in the Table to this clause, has previously held or acted in an office specified in that Table, on a full-time basis, is taken to have been employed in a public sector agency during the period for which he or she held or acted in that office, and</p> <p>(b) the body concerned is taken to have been the public sector employee's employer during that period.</p> <p>(3) Without limiting any other law preserving rights to extended leave, a person who, in relation to a body referred to in the Table to this clause, holds an office specified in that Table, on a full-time basis, is entitled to have his or her recognised service as a public sector employee recognised as service for the purposes of the law or arrangement that provides for his or her entitlement, as the holder of the office, to extended leave.</p>	