



Government Sector Employment Rules 2014

under the

Government Sector Employment Act 2013

I, Graeme Head, Public Service Commissioner of New South Wales, in pursuance of the *Government Sector Employment Act 2013*, make the following Rules.

Dated 2013

Public Service Commissioner

consultation draft

Government Sector Employment Rules 2014

Contents

	Page
Part 1 Preliminary	
1 Name of Rules	4
2 Commencement	4
3 Definitions	4
Part 2 General provisions	
4 Guidance by Commissioner	5
5 Limitation on power of delegation by Public Service agency heads	5
Part 3 General Public Service employment provisions	
6 Probation periods	6
7 Citizenship or residency requirements	6
8 Formal qualifications	7
9 Security and other clearances	7
10 Health assessment	7
11 Maximum period of temporary employment	8
12 Termination of employment	8
Part 4 Merit-based employment	
13 Application of Part and definitions	9
14 Merit principles to be applied in employment decisions	9
15 Comparative assessment	10
16 Suitability assessment	10
17 Talent pools	11
18 Ongoing employment	11
19 Temporary or term employment (up to 6 months)	11
20 Temporary or term employment (more than 6 months)	12
21 Converting to ongoing employment	12
22 At-level temporary secondments	12
23 Above-level temporary secondments (up to 6 months)	12
24 Above-level temporary secondments (more than 6 months)	13
25 Transfers at-level	13
Part 5 Review of promotion decisions	
26 Request for review of promotion decision	14
27 Conduct and findings of review	14

consultation draft

Government Sector Employment Rules 2014

Contents

	Page
Part 6 Workforce diversity	
28 Employment of eligible persons	16
29 Information relating to workforce diversity	16
Part 7 Transfers and temporary secondments	
30 Transfer of employees between government sector agencies	17
31 Temporary secondment of employees between government sector agencies	17
32 Review of employer-initiated transfers or temporary secondments	18
Part 8 Performance management	
33 Core requirements of performance management systems	20
34 Dealing with unsatisfactory performance	20
Part 9 Misconduct—procedural requirements	
35 Application of Part	21
36 Initial stage for dealing with allegations of misconduct	21
37 Inquiries	22
38 Findings by agency head	22
39 Records relating to misconduct	23
Part 10 Additional provisions relating to Public Service senior executives	
40 Report on termination of employment of Public Service senior executives	24
41 Model contract of employment for Public Service senior executives	24
42 Requirement to comply with contract of employment	24
43 Contract of employment subject to conditions of engagement being satisfied	24
44 On-going conditions of employment	25
45 Assignment to other role—payment of allowances	25
46 Part-time work	25
47 Performance management	25
48 Capability assessments	26
49 Certain leave or payments not available	26
Schedule 1 Model contract of employment for Public Service senior executives (other than agency heads)	27

consultation draft

Clause 1 Government Sector Employment Rules 2014

Part 1 Preliminary

Government Sector Employment Rules 2014

under the

Government Sector Employment Act 2013

Part 1 Preliminary

1 Name of Rules

These Rules are the *Government Sector Employment Rules 2014*.

2 Commencement

These Rules commence on 24 February 2014 and are required to be published on the NSW legislation website.

3 Definitions

(1) In these Rules:

agency head 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.

government sector employee means a person who is employed in a government sector agency.

Public Service non-executive employee means an employee referred to in Division 5 of Part 4 of the Act.

the Act means the *Government Sector Employment Act 2013*.

(2) Notes included in these Rules do not form part of these Rules.

consultation draft

Government Sector Employment Rules 2014

Clause 4

General provisions

Part 2

Part 2 General provisions

4 Guidance by Commissioner

- (1) The Commissioner is to provide guidance to government sector agencies and Public Service agency heads to assist them in exercising functions under the Act, the regulations and these rules.
- (2) Without limiting the generality of subclause (1), the Commissioner is to provide guidance to Public Service agency heads in relation to the termination of employment of Public Service non-executive employees on any of the grounds referred to in section 47 of the Act.

5 Limitation on power of delegation by Public Service agency heads

The head of a Public Service agency cannot delegate the following functions:

- (a) the assignment of a Public Service senior executive to a different role under section 38 of the Act,
- (b) the termination of the employment of a Public Service senior executive under section 41 of the Act,
- (c) the termination of the employment of a Public Service senior executive for unsatisfactory performance under section 68 of the Act,
- (d) the termination of the employment of a Public Service senior executive for misconduct under section 69 of the Act.

consultation draft

Clause 6 Government Sector Employment Rules 2014

Part 3 General Public Service employment provisions

Part 3 General Public Service employment provisions

6 Probation periods

- (1) This clause applies to a Public Service employee whose engagement in ongoing employment in a Public Service agency is made subject to the condition that the employee is required:
 - (a) to serve a period of probation on commencing his or her employment, and
 - (b) to satisfy the requirements for the role in which the person is employed during that period of probation.
- (2) The period of probation:
 - (a) for a Public Service senior executive is to be no more than 3 months, or
 - (b) for a Public Service non-executive employee is to be 6 months or such longer period as the agency head directs.
- (3) A period of probation for a Public service non-executive employee may, before the period expires, be extended for such further period as the agency head directs.
- (4) However, the probation period for a Public Service non-executive employee cannot exceed 12 months.
- (5) If a Public Service employee is required to serve a period of probation, the employer may, at any time during or at the end of the probation period:
 - (a) confirm the person's employment, or
 - (b) in the case of a Public Service senior executive—terminate the person's employment under section 41 of the Act, or
 - (c) in the case of a Public Service non-executive employee—terminate the person's employment under section 47 of the Act on the ground that the person has not satisfied the requirements for the role in which the person is employed.

7 Citizenship or residency requirements

- (1) A person is not to be engaged as a Public Service employee unless the person is:
 - (a) an Australian citizen, or
 - (b) a permanent resident of Australia, or
 - (c) a New Zealand citizen with a current New Zealand passport, or
 - (d) a citizen of another country with a current visa that allows the person to work in Australia.

consultation draft

Government Sector Employment Rules 2014

Clause 8

General Public Service employment provisions

Part 3

- (2) A person is not to be offered employment in the Public Service for a period that exceeds any limitation imposed by or in accordance with law as to the time that the person is permitted to work in Australia.

8 Formal qualifications

- (1) This clause applies to a Public Service employee whose engagement in a Public Service agency is made subject to a condition that the person is required to have such qualifications as the employer may determine to be necessary for performing the duties of the role to which the person is to be assigned.
- (2) A person who is required to have any such qualifications but who has not provided evidence of the qualifications may be engaged on the condition that the person provides that evidence in the time and manner determined by the employer.

9 Security and other clearances

- (1) This clause applies to a Public Service employee whose engagement in a Public Service agency is made subject to a condition that the person is required to have such security or other clearances as the employer determines are necessary for performing the duties of the role to which the person is to be assigned.
- (2) A person who is required to have any such security or other clearances must ensure that those clearances are maintained.

10 Health assessment

- (1) This clause applies to a Public Service employee whose engagement in a Public Service agency is made subject to a condition that the person's fitness to perform the duties of the role to which the person is assigned has been confirmed by a health assessment.
- (2) For the purposes of this clause, *fitness to perform the duties of a role* includes the ability to carry out the role without endangering the health and safety of the public, of other persons employed in the Public Service agency or of the person concerned.
- (3) The form of the health assessment may include (but is not limited to) any one or more of the following:
- (a) a declaration (which may be a statutory declaration if required) provided by the person concerning any illness, disability or condition of which the person is aware that might make the person unfit to carry out the role,
 - (b) a medical examination by an approved medical practitioner,
 - (c) an examination, by an approved medical practitioner, optometrist or other appropriately qualified health care professional, of a

consultation draft

Clause 11 Government Sector Employment Rules 2014

Part 3 General Public Service employment provisions

particular aspect of the person's health likely to detrimentally affect the person's capacity to carry out the role.

- (4) The employer is to give the health care professional providing a health assessment referred to in subclause (3) (b) or (c) any requested information about the role concerned that is reasonably required for the purpose of providing the assessment.
- (5) In this clause, *approved* means approved by the Commissioner.

11 Maximum period of temporary employment

- (1) A person may not be employed in temporary employment as a Public Service non-executive employee for a period of more than 4 years.
- (2) The maximum period of 4 years may, with the approval of the Commissioner, be extended for a further period of up to 12 months.

12 Termination of employment

- (1) The employment of a Public Service non-executive employee may not be terminated under section 47 of the Act unless:
 - (a) the employee is, to the extent that it is reasonably practicable to do so, notified of the proposed termination and given a reasonable opportunity to make submissions in relation to the proposed termination, and
 - (b) the agency head has taken any such submissions into consideration.
- (2) This clause does not limit any of the other requirements under these Rules that relate to the termination of employment of a Public Service non-executive employee.

consultation draft

Government Sector Employment Rules 2014

Clause 13

Merit-based employment

Part 4

Part 4 Merit-based employment

Note for consultation draft:

Rules relating to assignment to roles and acting in other roles, and the application of merit principles to assignments and acting roles, are still to be developed.

13 Application of Part and definitions

(1) This Part applies to employment in the Public Service.

(2) In this Part:

capability-based assessment means a process that assesses a person's capabilities against those required for a role.

comparative assessment—see clause 15.

employment decision means a decision relating to any of the following:

- (a) the engagement of persons in any kind of employment,
- (b) the transfer or temporary secondment of an employee,
- (c) the conversion of an employee's temporary or term employment to ongoing employment,
- (d) the conversion of an employee's temporary secondment to the transfer of the employee.

pre-established standards for a role means the capability, knowledge and experience standards for the role.

performance management system means a performance management system under section 67 of the Act.

role includes a type of role.

suitability assessment—see clause 16.

talent pool—see clause 17.

14 Merit principles to be applied in employment decisions

(1) Any employment decision relating to a role in the Public Service is to be based on an assessment of the capabilities, experience and knowledge of the person concerned against the pre-established standards for the role to determine the person best suited to the requirements of the role and the needs of the Public Service agency in which the person is to be employed.

(2) Without limiting subclause (1), the following principles apply in relation to employment decisions:

- (a) any recruitment action (whether for ongoing, temporary, casual or contingent employment purposes) is to take into account:
 - (i) long and short term capability needs to meet the objectives of the agency concerned, and

consultation draft

Clause 15 Government Sector Employment Rules 2014

Part 4 Merit-based employment

- (ii) existing workforce capabilities,
 - (b) pre-established standards for a role are to be expressed as levels against each capability or other requirement for the role,
 - (c) any assessment for a role is to include appropriate methods to assess different requirements,
 - (d) a person may only be included in a talent pool or employed in a role if the person meets the pre-established standards for the role,
 - (e) any employment decision is to be made on balance taking into account all the results provided by the assessment process,
 - (f) more than one assessor must be involved in the assessment process.
- (3) Subclause (2) (d) does not apply in the case of an at-level temporary secondment provided as a development opportunity.

15 Comparative assessment

- (1) A *comparative assessment* for a role is the process of assessing an individual's claim against:
- (a) the pre-established standards for the role, and
 - (b) the claims of other persons for the role.
- (2) The process is to include the following:
- (a) screening for essential requirements such as a qualification or licence,
 - (b) application and resume review,
 - (c) at least 3 capability-based assessments, one of which is an interview,
 - (d) referee checks against the pre-established standards for the role.

16 Suitability assessment

- (1) A *suitability assessment* is the process of assessing an individual against the pre-established standards for a role (and not against other persons).
- (2) The process is to include the following:
- (a) screening for essential requirements such as a qualification or licence,
 - (b) resume review,
 - (c) at least 2 capability-based assessments, one of which is an interview,
 - (d) referee checks against the pre-established standards for the role.

consultation draft

Government Sector Employment Rules 2014

Clause 17

Merit-based employment

Part 4

17 Talent pools

- (1) The *talent pool* for a role is a list of those persons (whether or not existing Public Service employees) who have satisfied the pre-established standards for the role through external advertising and a comparative assessment.
- (2) A talent pool may apply in relation to a role in any one or more Public Service agencies and the head of any Public Service agency may employ persons from the pool.
- (3) A person may be included in a talent pool for no longer than the period of 12 months following the completion of the comparative assessment that entitled the person to be included in the talent pool.

18 Ongoing employment

- (1) The decision to employ a person in ongoing employment in a role must be based on a comparative assessment.
- (2) A person may be employed in ongoing employment only if the person is selected from:
 - (a) a list established as a result of an external recruitment process in which the role was advertised, or
 - (b) the talent pool for the role.

19 Temporary or term employment (up to 6 months)

- (1) A person cannot be employed in temporary or term employment in a role for a period of up to 6 months unless the person is selected:
 - (a) from the talent pool for the role, or
 - (b) from another list established as a result of expressions of interest being called on a sector wide basis, or
 - (c) on the basis of a suitability assessment.
- (2) In the case of a person whose employment in any such temporary or term employment is based on a suitability assessment, the person cannot continue in that employment after 6 months unless a comparative assessment, based a list established as result of expressions of interest being called on a sector wide basis, for the role is completed.
- (3) In the case of any such person who was not comparatively assessed on entry, action to undertake the additional requirements of the comparative assessment should commence after 3 months of the person's temporary or term employment.

consultation draft

Clause 20 Government Sector Employment Rules 2014

Part 4 Merit-based employment

20 Temporary or term employment (more than 6 months)

- (1) The decision to employ a person in temporary or term employment for a period of more than 6 months must be based on a comparative assessment and an externally advertised recruitment process.
- (2) A person may be employed in any such temporary or term employment only if the person is selected:
 - (a) from the talent pool for the role, or
 - (b) as a result of a separate recruitment process in which the role was advertised.

21 Converting to ongoing employment

- (1) An agency head may:
 - (a) convert the employment of a person in temporary or term employment in a role to ongoing employment in that role if the person has been employed in the temporary or term employment for a period of at least 12 months, or
 - (b) convert an above-level temporary secondment to ongoing employment at the same level as the temporary secondment if the person has been in that secondment for a period of at least 12 months.
- (2) Such a conversion is subject to:
 - (a) the outcome of the employee's comparative assessment for the role based on an externally advertised recruitment process, and
 - (b) the results of a performance assessment under a performance management system demonstrating that the person is able to perform at the required level of capabilities for the role.

22 At-level temporary secondments

An at-level temporary secondment must, unless it is provided as a development opportunity, be based on a suitability assessment.

23 Above-level temporary secondments (up to 6 months)

Note for consultation draft: Above-level assignments (the rules for which are still being developed) will require the same assessment processes as above-level temporary secondments under this and the following clause.

- (1) An above-level temporary secondment of up to 6 months must, at a minimum, be based on a suitability assessment.
- (2) An above-level secondment cannot continue beyond 6 months unless a comparative assessment for the role is completed.

consultation draft

Government Sector Employment Rules 2014

Clause 24

Merit-based employment

Part 4

- (3) In the case of any such person who has not completed a comparative assessment for the role, action to undertake the additional requirements of the comparative assessment should commence after 3 months into the secondment.

24 Above-level temporary secondments (more than 6 months)

An above-level temporary secondment for a period of more than 6 months must be based on a comparative assessment from a sector-wide or externally advertised recruitment process.

25 Transfers at-level

An at-level transfer under section 64 of the Act must be based on a suitability assessment.

consultation draft

Clause 26 Government Sector Employment Rules 2014

Part 5 Review of promotion decisions

Part 5 Review of promotion decisions

26 Request for review of promotion decision

- (1) A Public Service non-executive employee (the *relevant employee*) may request a review of the decision (a *promotion decision*) to offer, following a selection process, another Public Service non-executive employee ongoing employment in a role for which the relevant employee has unsuccessfully applied (being a role that has a higher remuneration level than the level paid to the both the relevant employee and the other employee immediately before the promotion decision was made).
- (2) A request for the review of a promotion decision may only be made on the ground that the whole or any part of the selection process for the role concerned was irregular or improper. The review is not a review of the merit of the relevant employee for the role.
- (3) A request for the review of a promotion decision must be made:
 - (a) in writing to the head of the Public Service agency in which the role to which the promotion decision relates is to be carried out, and
 - (b) no later than 5 business days after the day on which the relevant employee is notified of the decision.
- (4) If a request for the review of a promotion decision is made, the engagement of the other employee in the role to which the decision relates cannot be implemented until the review is completed.

27 Conduct and findings of review

- (1) The review of a promotion decision is to be conducted by a Public Service senior executive (the *reviewer*) who was not involved in the selection process for the role to which the decision relates and who is appointed by the agency head to whom the request for the review is made.
- (2) The reviewer is to conduct the review within 10 business days after the request for the review is made.
- (3) The reviewer may make the following findings in conducting a review of a promotion decision:
 - (a) the reviewer may, if satisfied that the selection process was not in any way improper or irregular, confirm the promotion decision,
 - (b) the reviewer may, if satisfied that the selection process was in any way improper or irregular, make a recommendation to the agency head that the agency head revoke the promotion decision and carry out another selection process for the role concerned.

consultation draft

Government Sector Employment Rules 2014

Clause 27

Review of promotion decisions

Part 5

- (4) The decision of the reviewer in respect of the review is final.

consultation draft

Clause 28 Government Sector Employment Rules 2014

Part 6 Workforce diversity

Part 6 Workforce diversity

28 Employment of eligible persons

- (1) An eligible person may be employed as a Public Service non-executive employee by the head of a Public Service agency.
- (2) The agency head must be satisfied that the eligible person employed in a role under this clause is suitable for the role and have the greatest merit of the eligible persons seeking to be employed in the role. For that purpose, Part 4 applies but with such modifications as are necessary to facilitate the employment of eligible persons.
- (3) In this clause:
eligible person means any of the following:
 - (a) an Aboriginal person,
 - (b) a person with a disability,
 - (c) a person under the age of 25 years,
 - (d) a person who belongs to a group of persons designated by the Commissioner as being disadvantaged in employment.

29 Information relating to workforce diversity

The head of a government sector agency is to ensure that information relating to workforce diversity within the agency is collected and is able to be provided to the Commissioner if required to do so under section 16 of the Act.

Note. Under section 16 of the Act, the Commissioner may require the head of a government sector agency (which for the purposes of that section includes SOCs and universities) to provide reports and information relating to workforce diversity in the agency).

consultation draft

Government Sector Employment Rules 2014

Clause 30

Transfers and temporary secondments

Part 7

Part 7 Transfers and temporary secondments

Note for consultation draft:

The transfer and temporary secondment rules for the services excluded by section 5 of the Act and for senior executives are still to be developed.

30 Transfer of employees between government sector agencies

- (1) A government sector employee may be transferred to the service of another government sector agency by agreement between the agency heads.
- (2) A government sector employee may only be transferred to another agency at the same or equivalent grade or level.
- (3) A government sector employee who requests a transfer must do so in writing to the head of the agency in which the person is employed.
- (4) The person (other than the employee) who initiates a transfer must:
 - (a) provide reasonable notice to the employee of the transfer, and
 - (b) advise the employee that the employee may request a review of the transfer within 10 business days after the employee is notified of the transfer.

Note. Section 64 (2) of the Act also requires the employee to be consulted.

- (5) The transfer of a government sector employee to another agency has effect only if it is confirmed in writing by the agency heads concerned. A copy of the confirmation is to be provided to the employee.
- (6) The head of the government sector agency to which a government sector employee is transferred is to ensure that the employee is subject to a suitability assessment (as referred to in Part 4) for the role, position or work to be assigned to the employee in the other agency.

31 Temporary secondment of employees between government sector agencies

- (1) A government sector employee may be seconded, for a period not exceeding 2 years, to the service of another government sector agency by agreement between the agency heads.
- (2) Any such agreement is to set out the following:
 - (a) the period of the temporary secondment,
 - (b) the financial responsibilities of the agencies in relation to the employee's entitlements,
 - (c) the procedure to be followed on completion of the temporary secondment,

consultation draft

Clause 32 Government Sector Employment Rules 2014

Part 7 Transfers and temporary secondments

- (d) the circumstances in which the secondment may be terminated and the form of notice to be given to terminate the temporary secondment before the end of the agreed period.
 - (3) A copy of the agreement must be provided to the employee concerned.
 - (4) A government sector employee who requests a temporary secondment must do so in writing to the head of the agency in which the person is employed.
 - (5) The person (other than the employee) who initiates a temporary secondment must:
 - (a) provide reasonable notice to the employee of the secondment, and
 - (b) advise the employee that the employee may request a review of the secondment within 10 business days after the employee is notified of the secondment.
- Note.** Section 64 (2) of the Act also requires the employee to be consulted.
- (6) The head of the government sector agency to which a government sector employee is seconded is, unless the secondment is provided as a development opportunity, to ensure that the employee is suitable for the role, position or work to be assigned to the employee in the other agency.
 - (7) A government sector employee who is seconded to another agency is, on completion of the secondment, entitled to return to a suitable role, position or work in the agency from which the employee was seconded.

32 Review of employer-initiated transfers or temporary secondments

- (1) This clause applies in relation to the transfer or temporary secondment of a government sector employee that has not been initiated by the employee (referred to in this clause as an *employer-initiated transfer or secondment*).
- (2) The government sector employee in respect of whom an employer-initiated transfer or secondment applies may apply to the head of the government sector agency in which the person is employed for a review of the transfer or secondment.
- (3) If an application is made for the review of an employer-initiated transfer or secondment, the transfer or temporary secondment (as the case requires) of the employee to the service of another government sector agency does not have effect until the review is completed.
- (4) An application by an employee for the review of an employer-initiated transfer or secondment must be made:

consultation draft

Government Sector Employment Rules 2014

Clause 32

Transfers and temporary secondments

Part 7

- (a) in writing to head of the government sector agency in which the person is employed, and
 - (b) no later than 10 business days after the day on which the employee is notified of the transfer or secondment.
- (5) The review of an employer-initiated transfer or secondment is to be conducted by a senior executive (the *reviewer*) who was not involved in the decision to transfer or temporarily second the employee to another government sector agency.
- (6) The reviewer is to conduct a review of the employer-initiated transfer or secondment within 10 business days after the application for review is made.
- (7) The employee may make submissions to the reviewer, including reasons why the proposed transfer or temporary secondment would cause undue hardship to the employee.
- (8) In conducting a review, the reviewer is:
 - (a) to determine whether or not the employer-initiated transfer or secondment was appropriate having regard to all relevant circumstances (including any submissions provided by the employee), and
 - (b) to make such findings as the reviewer thinks appropriate.
- (9) Any such findings are to be notified to the agency head and the employee concerned.
- (10) The decision of the reviewer in respect of the matter subject to the review is final.

consultation draft

Clause 33 Government Sector Employment Rules 2014

Part 8 Performance management

Part 8 Performance management

33 Core requirements of performance management systems

The performance management system required to be implemented under section 67 of the Act with respect to the employees of a government sector agency is:

- (a) to establish and clarify expectations for employees, and
- (b) to monitor employee performance, and
- (c) to provide for planning and review of employee performance, and
- (d) to provide for employee development, and
- (e) to recognise the achievements of employees, and
- (f) to provide mechanisms for resolving unsatisfactory performance of employees.

34 Dealing with unsatisfactory performance

The head of a government sector agency may not take any action under section 68 (2) of the Act in relation to an employee unless:

- (a) the employee's performance is determined by the agency head to be unsatisfactory in accordance with the agency's performance management system, and
- (b) reasonable steps have been taken to advise the employee that the employee's performance is unsatisfactory and the basis on which it is unsatisfactory, and
- (c) the employee is notified that the agency head is proposing to take specified action under section 68 (2) of the Act in respect of the employee, and
- (d) the employee is given a reasonable opportunity to respond to the notice, and
- (e) the agency head has taken any such response into consideration.

Note. Section 68 of the Act does not apply to that part of the NSW Police Force comprising police officers.

consultation draft

Government Sector Employment Rules 2014

Clause 35

Misconduct—procedural requirements

Part 9

Part 9 Misconduct—procedural requirements

35 Application of Part

This Part applies in relation to government sector agencies within the meaning of section 69 of the Act.

Note. At present only Public Service agencies and administrative employees in the NSW Police Force are covered.

36 Initial stage for dealing with allegations of misconduct

- (1) An allegation of misconduct by an employee of a government sector agency (the *affected employee*) may be made by any person to the agency head.
- (2) After making an initial assessment of the allegation, the agency head may decide not to proceed with the matter if the agency head is satisfied that:
 - (a) the allegation is vexatious or trivial, or
 - (b) the incident or conduct concerned does not amount to misconduct, or
 - (c) there is likely to be difficulty in establishing the facts of the matter.
- (3) If, after making an initial assessment, the agency head decides to proceed with the matter, the affected employee is to be advised:
 - (a) of the details of the allegation of misconduct, and
 - (b) of the action that may be taken under section 69 (4) of the Act against the employee.
- (4) The affected employee is to be given a reasonable opportunity to make a statement in relation to the allegation.
- (5) The agency head may, as a result of any such statement by the affected employee:
 - (a) decide to proceed to deal with the matter in accordance with this Part, or
 - (b) decide not to proceed any further with the matter.The affected employee is to be notified of the agency head's decision.
- (6) The person making an allegation of misconduct is to be informed of any decision by the agency head under this clause not to proceed with the matter.

consultation draft

Clause 37 Government Sector Employment Rules 2014

Part 9 Misconduct—procedural requirements

37 Inquiries

- (1) An agency head may, in dealing with an allegation of misconduct by an employee of the agency, conduct such inquiries as the agency head thinks appropriate for the purposes of determining whether the misconduct has occurred.
- (2) A formal hearing involving the legal representation of the affected employee or any other person and the calling and cross-examination of witnesses is not to be held in relation to an allegation of misconduct and the taking of any action with respect to the employee.

38 Findings by agency head

- (1) An agency head may, in dealing with an allegation of misconduct:
 - (a) make a finding of misconduct by the affected employee (in which case the employee is to be notified of the finding in writing), or
 - (b) make a finding that misconduct by the affected employee has not occurred (in which case the agency head is to dismiss the allegation and advise the affected employee in writing).
- (2) The agency head may not take any action under section 69 (4) of the Act in relation to an employee unless:
 - (a) the employee is notified of the proposed action to be taken, and
 - (b) the employee is given a reasonable opportunity to make submissions in relation to the proposed action, and
 - (c) the agency head has taken any such submissions into consideration.
- (3) If the agency head makes a finding of misconduct in relation to an employee, the agency head may, instead of taking action under section 69 (4) of the Act, require the conduct of the employee to be monitored over a specified period notified to the employee.
- (4) If, during that specified period, the agency head is satisfied that the employee has engaged in misconduct of the same kind as the misconduct the subject of the previous finding, the agency head may take any action under section 69 (4) of the Act in respect of the employee.
- (5) In that case, the employee is not required to be given an opportunity to make submissions in relation to the action proposed to be taken by the agency head.

consultation draft

Government Sector Employment Rules 2014

Clause 39

Misconduct—procedural requirements

Part 9

39 Records relating to misconduct

- (1) The head of a government sector agency is to keep a written record of the proceedings and action taken in respect of any allegation of misconduct by an employee of the agency.
- (2) Any personal file kept by the agency head on such an employee is to include information about any finding of misconduct by the employee that is, in the opinion of the agency head, in the public interest to be included. In forming that opinion, the agency head is to have regard to the nature and seriousness of the misconduct and the need to minimise any unnecessary or prejudicial information being kept on a person's file.

consultation draft

Clause 40 Government Sector Employment Rules 2014

Part 10 Additional provisions relating to Public Service senior executives

Part 10 Additional provisions relating to Public Service senior executives

40 Report on termination of employment of Public Service senior executives

- (1) If the employment of a Public Service senior executive is terminated by the executive's employer under section 41 of the Act, the employer is, as soon as practicable after terminating the executive's employment, to provide a written report to the Commissioner on the termination.
- (2) The report is to be signed by the agency head and include the following:
 - (a) a summary of the process taken by the employer in terminating the employment,
 - (b) the reasons for terminating the employment.
- (3) For the purposes of this clause, the *employer* of a Public Service senior executive does not include a Minister.

41 Model contract of employment for Public Service senior executives

- (1) This clause applies in relation to a Public Service senior executive other than the Secretary of a Department or the head of any other Public Service agency.
- (2) The contract of employment specified in Schedule 1 is, for the purposes of section 39 (3) of the Act, prescribed as the model contract of employment for a Public Service senior executive (the *senior executive model contract*).
- (3) All the provisions of the senior executive model contract are mandatory (except any provisions that are not applicable as indicated in the model contract).

42 Requirement to comply with contract of employment

A Public Service senior executive must comply with any of the obligations imposed on the executive under the executive's contract of employment.

43 Contract of employment subject to conditions of engagement being satisfied

The contract of employment of a Public Service senior executive is subject to all the conditions to which the engagement of the executive is subject being satisfied.

consultation draft

Government Sector Employment Rules 2014

Clause 44

Additional provisions relating to Public Service senior executives

Part 10

44 On-going conditions of employment

- (1) A Public Service senior executive must ensure that the executive at all times holds and maintains:
 - (a) the citizenship or other residency requirements for employment as a Public Service employee, and
 - (b) the formal qualifications or clearances (if any) required for his or her role.
- (2) The employer of a Public Service senior executive may attach a specific condition of employment to a particular role.
- (3) If the Public Service senior executive assigned to a role to which any such condition is attached is assigned to a different role that does not have the condition of employment attached to it, the condition no longer applies in relation to the executive.

45 Assignment to other role—payment of allowances

If an allowance of a particular kind is payable in relation to the role of a Public Service senior executive and the senior executive is assigned to another role in respect of which the allowance is not payable, the senior executive is no longer entitled to the allowance.

46 Part-time work

- (1) The employer of a Public Service senior executive may approve a request by the executive to undertake work on a part-time basis (namely, that the executive is not available for duty during the whole or part of a normal working day).
- (2) An agreement between the employer and the Public Service senior executive about part-time work must specify the days or parts of days when the executive is available for duty.
- (3) The remuneration of the executive is to be calculated on a pro-rata basis (excluding allowances in the nature of reimbursement where the part-time employee will receive the same amount as a full-time employee in the same circumstances).

47 Performance management

A Public Service senior executive must, in accordance with the performance management system applying to the executive under section 67 of the Act:

- (a) enter into a performance agreement with his or her employer, and
- (b) have his or her performance reviewed at least annually.

consultation draft

Clause 48 Government Sector Employment Rules 2014

Part 10 Additional provisions relating to Public Service senior executives

48 Capability assessments

A Public Service senior executive must participate in:

- (a) periodic capability assessments, and
- (b) any assessment relating to the technical requirements of the executive's role.

49 Certain leave or payments not available

A Public Service senior executive is not entitled to any flex leave for working flexible hours or to be paid for working overtime.

consultation draft

Government Sector Employment Rules 2014

Model contract of employment for Public Service senior executives (other than agency heads) Schedule 1

Schedule 1 Model contract of employment for Public Service senior executives (other than agency heads)

(Clause 41)

Contract of employment under Government Sector Employment Act 2013

This contract of employment is made

on the _____ day of _____ 20____

Between

THE GOVERNMENT OF NEW SOUTH WALES

and

[*Insert full name*] (the “Senior Executive”)

Parties

1.1 This contract of employment is between the Senior Executive and the Government of New South Wales.

Commencement

2.1 The employment of the Senior Executive under this contract commences on [*insert date*].

Definitions

3.1 In this contract:

“Employer” of the Senior Executive means the person who exercises the employer functions of the Government of New South Wales in relation to the Senior Executive (being the [*insert head of agency in which the Senior Executive is employed*] on the making of this contract).

“GSE Act” means the Government Sector Employment Act 2013.

“GSE Regulations” means the regulations made under the GSE Act.

“GSE Rules” means the government sector employment rules made under the GSE Act.

3.2 Terms used in this contract have the same meaning as they have in the GSE Act.

Band

4.1 The Senior Executive is employed in Band [*specify band*].

Role

5.1 The role in the Public Service assigned to the Senior Executive is described in Appendix A.

5.2 The Employer may vary the description of the role assigned to the Senior Executive at any time.

consultation draft

Government Sector Employment Rules 2014

Schedule 1 Model contract of employment for Public Service senior executives (other than agency heads)

5.3 The Senior Executive acknowledges that he or she may be assigned to another role in any Public Service agency in the band in which the Senior Executive is employed.

5.4 The Senior Executive must perform the duties and responsibilities of the role to which the Senior Executive is duly assigned.

Core values

6.1 The Senior Executive agrees to perform the duties and responsibilities of the assigned role in accordance with the government sector core values under section 7 of the GSE Act.

Probation period

7.1 The Senior Executive's employment is subject to a probation period of [*insert number of months—not exceeding 3 months*].

[OR]

The Senior Executive's employment is not subject to a probation period.

Duration of employment

8.1 The employment of the Senior Executive under this contract is ongoing employment (that is, employment that continues until the Senior Executive resigns or the Senior Executive's employment is terminated).

[OR]

The employment of the Senior Executive under this contract is, unless the Senior Executive sooner resigns or the Senior Executive's employment is sooner terminated, for the period of [*specify period*] [OR] for the duration of [*specify task*].

Annual performance agreement

9.1 The Senior Executive is required to enter into an annual performance agreement with the Employer setting out the performance obligations of the Executive, and reviews of performance, for the year. The performance agreement continues until a new agreement is signed.

9.2 A copy of the current annual performance agreement is set out in Appendix B.

Capability assessments

10.1 The Senior Executive agrees to participate in periodic capability assessments.

10.2 The Senior Executive agrees to the release of these assessments for workforce planning purposes, including passing them on to a new employer of the Executive in the government sector.

Total remuneration package and allowances

Note: The total remuneration package is for full-time work. Under the GSE Regulations, pro-rata remuneration is payable for part-time work.

11.1 The total remuneration package (comprising monetary remuneration and employment benefits) of the Senior Executive is specified in Appendix C.

consultation draft

Government Sector Employment Rules 2014

Model contract of employment for Public Service senior executives (other than agency heads) Schedule 1

11.2 The Senior Executive may elect from time to time to allocate the total remuneration package as between monetary remuneration and employment benefits in accordance with the GSE Act.

11.3 The Senior Executive is entitled to the allowances specified in Appendix C and any allowances conferred under the GSE Act and GSE Regulations.

11.4 The Employer may, subject to the GSE Act, vary the total remuneration package and allowances of the Senior Executive from time to time.

Progression

12.1 If the Senior Executive receives an outstanding or superior rating in a performance review, the Senior Executive's total remuneration package may be increased within the range of remuneration applicable to the assigned role of the Senior Executive.

12.2 This clause does not limit the Employer's power to vary the Senior Executive's total remuneration package in accordance with the GSE Act.

Hours of duty

13.1 The Senior Executive must work the hours necessary to perform the duties and responsibilities of the Senior Executive's role.

13.2 The Senior Executive's total remuneration package compensates the Senior Executive for any hours worked.

Part-time work

14.1 If the Employer agrees to the Senior Executive undertaking work on a part-time basis, the Senior Executive must work the agreed hours.

Leave

15.1 The Senior Executive is entitled to leave in accordance with the GSE Act, the GSE Regulations and the GSE Rules.

Notice of resignation

16.1 The Senior Executive may resign his or her employment by providing 4 weeks written notice to the Employer.

Compensation for termination

17.1 The Senior Executive is entitled to the payment of compensation, on the termination of employment by the Employer, as determined by and under the GSE Act 2013.

17.2 If the Senior Executive's employment is terminated with compensation, the Senior Executive agrees that if the Senior Executive is re-employed in the public sector within the period to which the compensation relates the Senior Executive will repay the proportionate amount, as calculated in accordance with the regulations under the GSE Act, before the commencement of that employment. This obligation continues even though the contract of employment is terminated.

consultation draft

Government Sector Employment Rules 2014

Schedule 1 Model contract of employment for Public Service senior executives (other than agency heads)

Confidentiality

18.1 During his or her employment, the Senior Executive will not disclose, without lawful authority, any confidential or secret information acquired as a consequence of the employment.

18.2 On termination of employment the Senior Executive will not, without lawful authority, disclose or make [*commercial*] use of any confidential or secret information acquired by the Senior Executive as a consequence of his or her employment.

Employment policies

19.1 The Senior Executive agrees to act in accordance with any applicable employment policies of the Employer.

19.2 However, those employment policies do not form part of this contract and do not create any express or implied contractual rights or obligations between the Senior Executive and the Employer.

Variation

20.1 This contract may only be varied in accordance with the GSE Act and this contract.

APPENDICES

The Appendices to this contract may be substituted by the Employer.

Appendix A—Assigned role

[*insert description of assigned role*]

Appendix B—Performance agreement

[*attach copy of current performance agreement*]

Appendix C—Remuneration package and allowances

The total remuneration package of the Senior Executive is [*insert \$value of package*], comprising:

The Senior Executive is entitled to the allowance under the GSE Regulations and the following additional allowances [*insert any additional allowances*]:

consultation draft

Government Sector Employment Rules 2014

Model contract of employment for Public Service senior executives (other than agency heads) Schedule 1

Signatures

The Employer

Signed

Date

Name

[Insert job title and office]

pursuant to the GSE Act on behalf of the Government of NSW.

Witnessed by

Witness name in full *[printed]*

Witness address

consultation draft

Government Sector Employment Rules 2014

Schedule 1 Model contract of employment for Public Service senior executives (other than agency heads)

The Senior Executive

Signed

Date

Name in full [*printed*]

Witnessed by

Witness name in full [*printed*]

Witness address
