



# Government Sector Employment Regulation 2014

under the

Government Sector Employment Act 2013

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Government Sector Employment Act 2013*.

Premier

## **Explanatory note**

The object of this Regulation is to make provision for matters that are authorised to be made by regulation under the *Government Sector Employment Act 2013*.

This Regulation is made under the *Government Sector Employment Act 2013*, including section 88 (the general regulation-making power).

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# consultation draft

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Clause 1 Government Sector Employment Regulation 2014

Part 1 Preliminary

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## Government Sector Employment Regulation 2014

under the

Government Sector Employment Act 2013

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Government Sector Employment Regulation 2014*.

#### 2 Commencement

This Regulation commences on 24 February 2014 and is required to be published on the NSW legislation website.

#### 3 Definitions

(1) In this Regulation:

**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.

**Note.** 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.

**former Act** means the *Public Sector Employment and Management Act 2002*.

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

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***Industrial Relations Secretary*** has the same meaning as in section 49 of the Act.

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

***State industrial instrument*** means an industrial instrument within the meaning of the *Industrial Relations Act 1996*.

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

- (2) Notes included in this Regulation do not form part of this Regulation.

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Clause 4 Government Sector Employment Regulation 2014

Part 2 Public Service employment

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## Part 2 Public Service employment

### Division 1 General provisions

#### 4 Acting in other roles (2002 Act, s 24)

- (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:
  - (a) the person who is usually assigned to that other role is unavailable for any reason, or
  - (b) there is no person performing duties in that role for the time being.

**Note.** Clauses 18 and 19 provide for allowances in the case where acting in another role involves higher duties.

- (2) Any such arrangement to act in another role in a Public Service agency may be terminated at any time by the agency head.
- (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.

**Note for consultation purposes:** The government sector employment rules may include further requirements relating to acting in a role.

#### 5 Employees not to undertake other paid work without permission (2002 Act, s 59)

- (1) A Public Service employee is not to undertake any other paid work without the permission of the agency head.
- (2) This clause does not apply to a person who is:
  - (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.

#### 6 Reporting charges and convictions for serious offences (2009 Reg, cl 27)

- (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.
- (2) If the manager of a Public Service employee has reason to believe that the employee:
  - (a) has been charged with, or has been convicted of, a serious offence, and

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- (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.
- (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.
- (4) In this clause:  
*convicted* of an offence includes being found guilty of the offence without the court proceeding to a conviction.  
*manager* 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.  
*serious offence* has the same meaning as in section 69 of the Act.

## **7 Employee to report bankruptcy etc (2002 Act, s 58)**

- (1) If a Public Service employee (other than a person employed in casual employment) becomes bankrupt or makes a composition, arrangement or assignment for the benefit of the employee's creditors, the employee must:
- (a) immediately notify the agency head in writing of the bankruptcy, composition, arrangement or assignment, and
  - (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.
- (2) If any such employee 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.
- (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.

## **8 Excess non-executive employees—termination of employment**

- (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

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requirements of the relevant part of the agency in which the person is employed.

- (2) Such a determination is to be made in accordance with any guidance provided by the Commissioner.
- (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.
- (4) This clause does not apply to Public Service senior executives.

## **Division 2 General conditions of employment**

### **9 Application of Division** (2009 Reg, cl 8)

The provisions of this Division are subject to any State industrial instrument.

### **10 Public holidays** (2009 Reg, cl 10)

A Public Service employee is entitled to be absent from 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:

- (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 *Public Holidays Act 2010* 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.

### **11 Absence from duty** (2009 Reg, cl 11)

- (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 under section 69 of the Act in relation to a Public Service employee who is absent from duty without authorised leave.



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## **12 Increments** (2009 Reg, cl 12)

- (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.
- (2) The payment of an increment to a Public Service employee is subject to:
  - (a) performance requirements under the agency's performance management system, and
  - (b) the satisfactory conduct of the employee, as determined by the agency head.
- (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.
- (4) A Public Service employee must be promptly notified in writing by the agency head of any decision to defer payment of an increment.
- (5) This clause does not apply to Public Service senior executives.

## **13 Fitness for duty** (2009 Reg, cl 13)

- (1) For the purposes of this clause, a Public Service employee is not fit for duty if the health of the employee:
  - (a) may render the employee a risk to the health and safety of other Public Services employees or the general public, or
  - (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.
- (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.
- (3) A Public Service employee to whom an agency head gives a direction under subclause (2):
  - (a) must, if on duty, cease duty immediately, and
  - (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.

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- (4) 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.
- (5) If the agency head receives a health assessment from a nominated medical assessor that a Public Service employee is not fit for duty:
  - (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
  - (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.
- (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.
- (7) The agency head is to give the health care 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.
- (8) In this clause:  
*nominated medical assessor* 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.

### Division 3 Leave

#### 14 Extended leave entitlements (2002 Act, s 55 and Schedule 3)

Schedule 1 applies to Public Service employees other than persons employed in casual employment.

**Notes for consultation purposes:**

1. 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.

2. 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.

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**15 Other leave entitlements for senior executives and certain other employees** (2009 Reg, cl 22)

- (1) The clause applies to:
  - (a) Public Service senior executives, and
  - (b) Public Service non-executive employees whose leave entitlements are not covered by a State industrial instrument.
- (2) The provisions of the *Crown Employees (Public Service Conditions of Employment) Award 2009* 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.

**16 Accrued leave of non-executive employees who become Public Service senior executives** (2002 Act, s 80)

- (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.
- (2) If the person:
  - (a) had a right to accrued extended or annual leave with pay immediately before being employed as a Public Service senior executive, and
  - (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.
- (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.
- (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.
- (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)).
- (6) A reference in this clause to *employment in the public sector* has the same meaning as it has for the purposes of section 41 of the Act.

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## **Division 4          Allowances**

### **17    Application of Division** (2009 Reg, cl 14)

The provisions of this Division are subject to any State industrial instrument.

**Note.** Other allowances are set out in the *Crown Employees (Public Service Conditions of Employment) Award 2009*.

### **18    Higher duties allowance for acting in non-executive role** (2009 Reg, cll 17, 18 & 20)

- (1) A Public Service non-executive employee who is acting in another non-executive role under clause 4 (the *acting employee*) 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).
- (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.
- (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.
- (4) An allowance under this clause is not to be paid:
  - (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
  - (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.

### **19    Higher duties allowance for acting in executive role** (2009 Reg, cll 17, 18 & 20)

- (1) A Public Service employee who is acting in a Public Service senior executive role under clause 4 (the *acting employee*) is entitled to be paid an allowance under this clause:
  - (a) if the acting employee is a Public Service non-executive employee, or
  - (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.

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- (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.
- (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.
- (4) An allowance under this clause is not to be paid:
  - (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
  - (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.
- (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 acting in the other role, less the superannuation guarantee amount payable in respect of the employee).
- (6) In subclause (5):  
***superannuation guarantee amount*** 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 *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth, in respect of the person.

**20 Payment where allowance not adequate or available** (2009 Reg, cl 16)

- (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:
  - (a) are not adequately covered by an allowance to which the employee is entitled under this Regulation, or
  - (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).
- (2) An allowance is not payable under this clause unless the employee produces official receipts for the expenses incurred by the employee.

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- (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.

### **Division 5      Special provisions relating to Public Service senior executives**

#### **21    Contract of employment—additional matters to be dealt with in contract**

The following matters are prescribed for the purposes of section 39 (4) (i) of the Act:

- (a) matters relating to confidentiality and intellectual property,
- (b) capability assessments,
- (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.

#### **22    Election to be paid money value of accrued leave**

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.

**Note.** 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.

#### **23    Allowances for Public Service senior executives (2002 Act, s 75 and 2009 Reg, cl 21)**

A Public Service senior executive is entitled to be paid:

- (a) such travelling and subsistence allowances, and
- (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
- (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.

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Government Sector Employment Regulation 2014

Clause 24

Employment in Public Service and other government sector agencies

Part 3

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## **Part 3 Employment in Public Service and other government sector agencies**

### **Division 1 General provisions**

#### **24 Repayment of severance or redundancy payments for non-executives on re-employment in public sector: section 88 (3)**

- (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.  
**Note.** See section 41 (3) of the Act for Public Service senior executives.
- (3) In this clause:  
*employment* 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.

*public sector* 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.

#### **25 Calculation of proportionate amount to be refunded on re-employment in public sector**

- (1) This clause applies in relation to the payment of refund under any of the following provisions:
  - (a) section 41 (3) of the Act,
  - (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

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Part 3 Employment in Public Service and other government sector agencies

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- (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.

### **26 Employment pending cessation of employment** [2002 Act, s 100A]

- (1) If a person who is employed in a government sector agency (the *incumbent employee*) notifies the person's employer in writing that the person:
  - (a) intends to resign or retire from the employment on a specified date, or
  - (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 *new employee*) in that employment.
- (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.
- (3) In any such case, the incumbent employee and the new employee:
  - (a) are both employed in the same role or position, and
  - (b) may jointly exercise the functions of that role or position.
- (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.

## **Division 2 Compensation for termination of employment of Public Service senior executives**

### **27 Public Service senior executives—compensation for termination of employment**

- (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:
  - (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 engagement—an amount equal to the executive's remuneration package for a period of 4 weeks, or
  - (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



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- (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.
- (2) No compensation is payable if the executive’s employment is terminated under section 69 of the Act for misconduct.

### **28 Amount of compensation for part-time Public Service senior executives**

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.

## **Division 3 Cross-government sector leave arrangements**

### **29 Definition** (2002 Act, s 92)

In this Division:

*cessation* of employment includes cessation of employment by resignation, retirement or otherwise.

### **30 State industrial instruments** (2002 Act, s 93)

This Division applies in addition to any State industrial instrument.

### **31 Recognition of prior service for extended leave** (2002 Act, s 94)

Schedule 2 applies to government sector employees.

### **32 Annual leave** (2002 Act, s 95)

- (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:
  - (a) to be paid the whole or part of the money value of the employee’s accrued annual leave, or
  - (b) to retain the entitlement to that accrued annual leave.

**Note.** 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.
- (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.

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Clause 33 Government Sector Employment Regulation 2014

Part 3 Employment in Public Service and other government sector agencies

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- (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.
- (4) In this clause:
- accrued annual leave** 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.
- notional salary**, 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.
- superannuation guarantee amount** 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 *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth, in respect of the person.

**33 Sick leave** (2002 Act, s 96)

- (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.
- (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.
- (3) In this clause:
- accrued sick leave** 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.

**34 Maternity leave etc** (2002 Act, s 97)

- (1) This clause applies for the purposes of determining whether a government sector employee who ceases to 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.

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Government Sector Employment Regulation 2014

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Employment in Public Service and other government sector agencies

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- (2) For the purposes of determining a government sector employee's entitlement to leave referred to in this clause:
  - (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
  - (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.
- (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.
- (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.

**35 Access to forfeited sick leave—transitional arrangements** (2002 Act, s 98)

- (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.
- (2) An employee's *forfeited sick leave* is the total amount of sick leave that the employee ceased to be 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.
- (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).
- (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.
- (5) The Commissioner may provide guidance to government sector employers as to the circumstances in which, and the matters to be taken

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## consultation draft

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Clause 36 Government Sector Employment Regulation 2014

Part 3 Employment in Public Service and other government sector agencies

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into account in determining whether, forfeited sick leave should or should not be granted as sick leave under this clause.

**36 Funding of leave entitlements** (2002 Act, s 99)

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.

**Division 4 Workforce diversity**

**Note.** Under section 63 of the Act, the head of a government sector agency is responsible for workforce diversity within the agency and for ensuring that workforce diversity is integrated into workforce planning in the agency. See definition of “agency head” in clause 3 (being the person who exercises employer functions in relation to the employees of the agency).

**37 Prescribed agencies for purposes of workplace diversity**

The following universities or agencies are prescribed for the purposes of the definition of *government sector agency* in section 63 of the Act:

- (a) Charles Sturt University,
- (b) Macquarie University,
- (c) Southern Cross University,
- (d) University of New England,
- (e) University of New South Wales,
- (f) University of Newcastle,
- (g) University of Sydney,
- (h) University of Technology, Sydney,
- (i) University of Western Sydney,
- (j) University of Wollongong,
- (k) Internal Audit Bureau,
- (l) Treasury Corporation.

**Note.** See also clause 41.

**38 Existing EEO plans**

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 *Anti-Discrimination Act 1977* immediately before that commencement.

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# consultation draft

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Government Sector Employment Regulation 2014

Clause 39

Miscellaneous

Part 4

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## Part 4 Miscellaneous

### 39 Decisions under Regulation to be notified 92009 Reg, cl 24)

- (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.
- (2) In this clause:  
*relevant person* means any of the following:
  - (a) the Public Service Commissioner,
  - (b) the Industrial Relations Secretary,
  - (c) the head of a government sector agency.

### 40 Deductions for rent in certain cases (2009 Reg, cl 25)

- (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.
- (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.
- (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.
- (4) This clause is subject, in the case of a Public Service senior executive, to the contract of employment of the executive.
- (5) In this clause:  
*rent* includes payment for board and lodging.

### 41 Statutory bodies included as part of the government sector for certain purposes

- (1) Each of the following is prescribed as a government sector agency for the purposes of section 16 of the Act (Provision of reports and information by agencies):
  - (a) a State owned corporation,
  - (b) the Internal Audit Bureau,
  - (c) the Treasury Corporation,

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## consultation draft

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Clause 41 Government Sector Employment Regulation 2014

Part 4 Miscellaneous

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- (d) a university referred to in clause 37 (but only in relation to the provision of reports and information relating to workforce diversity).
- (2) For the purposes of section 16 of the Act:
  - (a) the head of a body referred to in subclause (1) (a)–(c) is the person holding office as the chief executive (however described) of the body, and
  - (b) the head of any such university is the Vice Chancellor of the university.
- (3) Landcom is prescribed for the purposes of paragraph (g) of the definition of *government sector* 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.

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Government Sector Employment Regulation 2014

Public Service extended leave entitlements

Schedule 1

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## **Schedule 1    Public Service extended leave entitlements**

(Clause 14)

### **1    Meaning of “service”**

For the purposes of this Schedule, *service* includes service occurring before the commencement of this Regulation.

**Note.** See also Schedule 2 as to the recognition of former service with certain government agencies.

### **2    Extended leave entitlements generally**

- (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:
  - (a) 2 months on full pay, or
  - (b) 4 months on half pay, or
  - (c) one month on double pay, for 10 years served.
- (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:
  - (a) 5 months on full pay, or
  - (b) 10 months on half pay, or
  - (c) 2.5 months on double pay, for each 10 years served after the first 10 years.

### **3    Entitlement to extended leave if employment terminated in special circumstances**

- (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:
  - (a) by the employee for reasons of illness, incapacity or domestic or other pressing necessity, or
  - (b) by the employer for reasons other than for misconduct.
- (2) The Public Service employee is entitled to:
  - (a) for 5 years' service—one month's leave on full pay, and
  - (b) for further service in excess of 5 years—additional leave proportionate to the employee's length of service (up to but not

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Government Sector Employment Regulation 2014

Schedule 1 Public Service extended leave entitlements

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including 7 years), calculated at the rate of 3 months' leave for 15 years' service.

#### **4 Payment of accrued leave on termination of employment**

- (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.
- (2) Any pension to which any such Public Service employee is entitled under the *Superannuation Act 1916* commences from and including the date on which the employee's extended leave, if taken, would have commenced.

#### **5 Leave to be paid out to dependants in cases of death**

- (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:
  - (a) the employee's spouse, or
  - (b) if there is no such spouse, the employee's children, or
  - (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 not taken or not completed.
- (2) If a Public Service employee with at least 5 years' service but less than 7 years' service dies:
  - (a) the employee's spouse, or
  - (b) if there is no such spouse, the employee's children, or
  - (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).
- (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.
- (4) If:
  - (a) no person is entitled to receive a payment under subclause (1) or (2), or



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Government Sector Employment Regulation 2014

Public Service extended leave entitlements

Schedule 1

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- (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.
- (5) Any payment under this clause is in addition to any payment due under any Act under which superannuation benefits are paid.
- (6) In this clause, *spouse* of a Public Service employee includes a de facto partner of the employee at the time of his or her death.  
**Note.** "De facto partner" is defined in section 21C of the *Interpretation Act 1987*.

## 6 Calculation of money value of extended leave

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 persons's notional salary within the meaning of clause 30 of this Regulation.

## 7 Certain periods to be disregarded

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.

## 8 Leave entitlement reduced by leave already taken or paid out

- (1) The following amounts of extended leave are to be deducted from a Public Service employee's extended leave entitlement:
  - (a) for each period of extended leave taken on full pay—the number of days (or parts of a day) so taken,
  - (b) for each period of extended leave taken on half pay—half the number of days (or parts of a day) so taken,
  - (c) for each period of extended leave taken on double pay—twice the number of days (or parts of a day) so taken,
  - (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.
- (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).
- (3) In subclause (2), *public holiday* means any special or public holiday for which the Public Service employee is entitled to payment.

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Government Sector Employment Regulation 2014

Schedule 1 Public Service extended leave entitlements

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**9 Extended leave may be postponed for employees not employed in ongoing employment**

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.

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Government Sector Employment Regulation 2014

Government sector employees extended leave entitlements—recognition of prior government service Schedule 2

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## **Schedule 2 Government sector employees extended leave entitlements—recognition of prior government service**

(Clause 31)

### **Part 1 Preliminary**

#### **1 Definitions**

In this Schedule:

*Australian Defence Force* includes the armed forces of the Commonwealth, however described.

*Commonwealth or interstate agency* 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
- (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
- (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.

*continuous*—see clause 3.

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

*immediately follows*—see clause 4.

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Government Sector Employment Regulation 2014

Schedule 2 Government sector employees extended leave entitlements—recognition of prior government service

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**recognised service**, in relation to a government sector employee, means service that is recognised service in relation to the employee pursuant to Part 2.

**related government service** means any service excluded by section 5 of the Act.

## 2 Declarations concerning Commonwealth or interstate agencies

- (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.
- (2) An order under this clause:
  - (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
  - (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.
- (3) There are to be made publicly available on a website provided and maintained by the Public Service Commissioner:
  - (a) a list of the names of each body that is declared under this clause to be a Commonwealth or interstate agency, and
  - (b) a list of the names of each body that is declared under this clause not to be a Commonwealth or interstate agency.

## 3 Meaning of “continuous”

- (1) For the purposes of this Schedule, a person’s employment by an employer is **continuous** in relation to a period if the person remains employed by that employer for the whole of the period.
- (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.

## 4 Meaning of “immediately follows”

- (1) For the purposes of this Schedule, a person’s period of employment **immediately follows** another period of employment if:
  - (a) the later period commences:
    - (i) except as provided by subparagraph (ii), within 2 months after the end of the earlier period, or

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Government Sector Employment Regulation 2014

Government sector employees extended leave entitlements—recognition of prior government service Schedule 2

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- (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
  - (b) the earlier period ends otherwise than by reason of the person's dismissal for disciplinary reasons.
- (2) For the purposes of subclause (1) (a) (ii), *war service* means:
  - (a) service occurring during, or partly during, a period of war in which the Australian Defence Force is engaged, or
  - (b) service of a kind referred to in subclause (3).
- (3) The following kinds of service are declared to be war service:
  - (a) war service within the meaning of Division 8 of Part III of the *Repatriation Act 1920* of the Commonwealth,
  - (b) service outside Australia as a member of the Interim Forces within the meaning of the *Interim Forces Benefits Act 1947* of the Commonwealth,
  - (c) Malayan service within the meaning of the *Repatriation (Far East Strategic Reserve) Act 1956* of the Commonwealth,
  - (d) special service within the meaning of the *Repatriation (Special Overseas Service) Act 1962* of the Commonwealth,as those Acts were in force immediately before their repeal on 22 May 1986.

## Part 2 Recognition of former government service for government sector employees generally

### 5 Object of Part

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:

- (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).

### 6 Recognition of former government service

- (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.

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Government Sector Employment Regulation 2014

Schedule 2 Government sector employees extended leave entitlements—recognition of prior government service

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- (2) The person's employment in a government sector agency or a Commonwealth or interstate agency or in a related government service (*the former agency*) is *recognised service* in relation to the person's subsequent employment in a government sector agency (*the current agency*) if:
- (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
    - (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.
- (3) A period of recognised service may not be counted more than once for the purpose of calculating the person's extended leave entitlement.

### **7 Exclusion of leave already taken, paid or deemed to have been taken**

- (1) The following amounts of leave are to be deducted from a government sector employee's extended leave entitlement:
- (a) the amount of any extended leave taken by the government sector employee in relation to recognised service,
  - (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,
  - (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.
- (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.
- (3) A period of extended leave is not to be deducted more than once under this clause.

### **8 Government sector employee may elect to be paid money value of accrued leave if commencing work in another agency**

- (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:

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Government Sector Employment Regulation 2014

Government sector employees extended leave entitlements—recognition of prior government service Schedule 2

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- (a) to be paid the whole or part of the money value of the government sector employee's accrued extended leave, or
  - (b) to retain the entitlement to that accrued extended leave.
- (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.

**Note.** 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.

**9 Employee who has recognised Commonwealth or interstate service and was entitled to take leave in former agency deemed to have taken leave**

- (1) For the purposes of clause 7 (1) (c), a government sector employee:
- (a) whose employment in a government sector agency (*the current agency*) immediately follows employment in a Commonwealth or interstate agency (*the former agency*), or
  - (b) who is entitled, by law or administrative practice, to 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.
- (2) The amount of extended leave that the government sector employee is deemed to have taken is calculated as if:
- (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
  - (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
  - (c) the amount of leave taken before the calculation of the entitlement was nil, and
  - (d) the money value of leave paid before the calculation of the entitlement was nil.

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Government Sector Employment Regulation 2014

Schedule 2 Government sector employees extended leave entitlements—recognition of prior government service

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## **Part 3 Additional provisions for former members of Australian Defence Force and for holders of certain statutory offices**

### **10 Recognition of service with Australian Defence Force**

For the purposes of this Schedule:

- (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
- (b) the Australian Defence Force is taken to have been the government sector employee's employer during that period.

### **11 Recognition of service in certain statutory offices**

- (1) For the purposes of this Schedule:
  - (a) a person who:
    - (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
    - (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
  - (b) the body concerned is taken to be the person's employer during that period.
- (2) For the purposes of this Schedule:
  - (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
  - (b) the body concerned is taken to have been the government sector employee's employer during that period.
- (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.



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Government Sector Employment Regulation 2014

Government sector employees extended leave entitlements—recognition of prior government service Schedule 2

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**Note for consultation purposes:**

The following Table to be reviewed in light of pending establishment of the Civil and Administrative Tribunal.

**Table**

**Administrative Decisions Tribunal of New South Wales**

Deputy President (not being a judicial officer)

Non-presidential judicial member (not being a judicial officer)

Non-judicial member

Assessor

**Consumer, Trader and Tenancy Tribunal of New South Wales**

Deputy Chairperson

Member

**Industrial Relations Commission of New South Wales**

Member

**Police Integrity Commission**

Commissioner

Inspector

**Transport Appeal Boards**

Chairperson

**Workers Compensation Commission of New South Wales**

Deputy President (not being a judicial officer)

Registrar

Arbitrator