



# Government Sector Employment Act 2013 No 40

## Status information

### Currency of version

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### Provisions in force

All the provisions displayed in this version of the legislation have commenced. For commencement and other details see the Historical notes.

### See also:

Government Sector Employment Legislation Amendment Bill 2013



New South Wales

# Government Sector Employment Act 2013 No 40

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New South Wales

# Government Sector Employment Act 2013 No 40

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An Act relating to employment in the government sector.

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Government Sector Employment Act 2013*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

(1) In this Act:

**Department** means a Department of the Public Service listed in Part 1 of Schedule 1.  
**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**government sector** comprises all of the following (other than any service in which persons excluded from this Act by section 5 are employed):

- (a) the Public Service,
- (b) the Teaching Service,
- (c) the NSW Police Force,
- (d) the NSW Health Service,
- (e) the Transport Service of New South Wales,
- (f) any other service of the Crown (including the service of any NSW government agency),
- (g) the service of any other person or body constituted by or under an Act or exercising public functions (such as a State owned corporation), being a person or body that is prescribed by the regulations for the purposes of this definition.

**government sector agency** means:

- (a) in the case of the Public Service—a Public Service agency, or
- (b) in the case of any other service in the government sector—the group of staff comprising the service or (subject to the regulations) any separate group of that staff,

and the **head** of a government sector agency means the head of the Public Service agency (where paragraph (a) applies) or the person who exercises employer functions in relation to the relevant staff (where paragraph (b) applies).

**government sector employment rules** means rules made by the Commissioner under section 12.

**head** of a Public Service agency means:

- (a) in the case of a Department—the Secretary of the Department, or
- (b) in any other case—the head of the agency listed in Part 2 or 3 of Schedule 1.

**Public Service** means the Public Service of New South Wales referred to in Part 4.

**Public Service agency** means:

- (a) a Department, or
- (b) a Public Service executive agency (being an agency related to a Department),  
or
- (c) a separate Public Service agency.

**Public Service Commission Advisory Board** (or **Advisory Board**) means the Public Service Commission Advisory Board established under Division 2 of Part 3.

**Public Service Commissioner** (or **Commissioner**) means the Public Service Commissioner appointed under Division 1 of Part 3.

**Public Service employee** means a person employed in ongoing, term, temporary, casual or other employment, or on secondment, in a Public Service agency (and **employee** of a Public Service agency means a person so employed in a Public Service agency).

**Public Service executive agency** related to a Department means a Public Service agency listed in Part 2 of Schedule 1.

**Public Service senior executive** means the Secretary of a Department and any other Public Service employee to whom Division 4 of Part 4 applies.

**resignation** includes retirement.

**role** of an employee means the duties and responsibilities of the employee.

**senior executive bands determination** means a determination made by the Minister under section 35.

**separate Public Service agency** means a Public Service agency listed in Part 3 of Schedule 1.

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

#### 4 Objects of Act

The objects of this Act are as follows:

- (a) to develop a modern high performing government sector:
  - (i) that is efficient and effective in serving the Government in the delivery of services to the people of New South Wales, and
  - (ii) that has effective and fair employment arrangements, management and leadership,
- (b) to establish the Public Service as the general service within the government sector,
- (c) to provide transparent governance and employment arrangements for the Public Service, including providing for the employer functions and responsibilities of heads of Public Service agencies,
- (d) to establish an ethical framework for the government sector comprising core values and principles that guide their implementation,
- (e) to make provision for the objectives, functions and responsibilities of the Public Service Commissioner.

#### 5 Persons to whom Act does not apply

- (1) This Act does not apply to any of the following:
  - (a) a judicial officer within the meaning of the *Judicial Officers Act 1986*,
  - (b) an officer or employee of either House of Parliament or any officer or employee under the separate control of the President or Speaker, or under their joint control,
  - (c) persons employed under the *Members of Parliament Staff Act 2013*,
  - (d) staff of the Independent Commission Against Corruption, or of the Inspector of the Independent Commission Against Corruption, employed under the *Independent Commission Against Corruption Act 1988*,
  - (e) staff of the Audit Office employed under the *Public Finance and Audit Act 1983*,

- (f) staff of the Judicial Commission of New South Wales employed under the *Judicial Officers Act 1986*.
- (2) However, provisions of this Act apply to the extent that this Act expressly so provides.

## Part 2 Ethical framework for the government sector

### 6 Objective of Part

This Part:

- (a) recognises the role of the government sector in preserving the public interest, defending public value and adding professional quality and value to the commitments of the Government of the day, and
- (b) establishes an ethical framework for a merit-based, apolitical and professional government sector that implements the decisions of the Government of the day.

### 7 Government sector core values

The core values for the government sector and the principles that guide their implementation are as follows:

#### **Integrity**

- (a) Consider people equally without prejudice or favour.
- (b) Act professionally with honesty, consistency and impartiality.
- (c) Take responsibility for situations, showing leadership and courage.
- (d) Place the public interest over personal interest.

#### **Trust**

- (a) Appreciate difference and welcome learning from others.
- (b) Build relationships based on mutual respect.
- (c) Uphold the law, institutions of government and democratic principles.
- (d) Communicate intentions clearly and invite teamwork and collaboration.
- (e) Provide apolitical and non-partisan advice.

#### **Service**

- (a) Provide services fairly with a focus on customer needs.
- (b) Be flexible, innovative and reliable in service delivery.
- (c) Engage with the not-for-profit and business sectors to develop and implement service solutions.
- (d) Focus on quality while maximising service delivery.

#### **Accountability**

- (a) Recruit and promote employees on merit.
- (b) Take responsibility for decisions and actions.
- (c) Provide transparency to enable public scrutiny.
- (d) Observe standards for safety.
- (e) Be fiscally responsible and focus on efficient, effective and prudent use of resources.

### 8 General provisions

- (1) The Public Service Commissioner has the function of promoting and maintaining the government sector core values.
- (2) There is no hierarchy among the core values and each is of equal importance.
- (3) Nothing in this Part gives rise to, or can be taken into account in, any civil cause of action.

## **Part 3 Public Service Commissioner and Advisory Board**

### **Division 1 Public Service Commissioner**

#### **9 Appointment of Commissioner etc**

- (1) The Governor may appoint a Public Service Commissioner.
- (2) A person may only be appointed as Commissioner if the Advisory Board has recommended to the Premier that the person be appointed as the Commissioner.
- (3) The Governor may remove the Commissioner from office for incapacity, incompetence or misbehaviour.
- (4) The Commissioner may only be removed from office:
  - (a) following an independent review of the performance or conduct of the Commissioner, and
  - (b) if the Advisory Board has recommended to the Premier that the Commissioner be removed from office.
- (5) Any such independent review may be initiated:
  - (a) by the Advisory Board at the request of the Premier, or
  - (b) by the Premier.
- (6) An independent review of the performance or conduct of the Commissioner is not required under this section before the Commissioner can be removed from office if the performance or conduct giving rise to the Advisory Board's recommendation for removal has been the subject of:
  - (a) an inquiry and report by the Independent Commission Against Corruption, a Royal Commission, a Special Commission of Inquiry or other body constituted by a judicial officer, or
  - (b) a finding by a court.
- (7) The Premier is, if the Commissioner is removed from office, to cause the reasons for the removal to be tabled in both Houses of Parliament.
- (8) The Commissioner must not be present during any deliberation of the Advisory Board on any matter that relates to the making of a recommendation under this section.
- (9) Schedule 2 contains provisions relating to the Commissioner.

#### **10 Principal objectives of Commissioner**

The principal objectives of the Commissioner are as follows:

- (a) to promote and maintain the highest levels of integrity, impartiality, accountability and leadership across the government sector,
- (b) to improve the capability of the government sector to provide strategic and innovative policy advice, implement the decisions of the Government and meet public expectations,
- (c) to attract and retain a high calibre professional government sector workforce,
- (d) to ensure that government sector recruitment and selection processes comply with the merit principle and adhere to professional standards,
- (e) to foster a public service culture in which customer service, initiative, individual responsibility and the achievement of results are strongly valued,
- (f) to build public confidence in the government sector,

- (g) to support the Government in achieving positive budget outcomes through strengthening the capability of the government sector workforce.

## 11 General functions of Commissioner

- (1) The Commissioner has the following functions:
  - (a) to identify reform opportunities for the government sector workforce and to advise the Government on policy innovations and strategy in those areas of reform,
  - (b) to lead the strategic development and management of the government sector workforce in relation to the following:
    - (i) workforce planning, including identifying risks and strategies to minimise risks,
    - (ii) recruitment, particularly compliance with the requirements relating to appointment and promotion on merit,
    - (iii) performance management and recognition,
    - (iv) equity and diversity, including strategies to ensure the government sector reflects the diversity of the wider community,
    - (v) general conduct and compliance with ethical practices,
    - (vi) learning and development,
    - (vii) succession planning,
    - (viii) redeployment, including excess employees,
    - (ix) staff mobility,
    - (x) executive employment arrangements,
  - (c) to advise the Government on leadership structure for the government sector,
  - (d) to advise the Government on appropriate strategies, policies and practices in relation to the structure of the government sector workforce,
  - (e) to advise the Government on appropriate strategies, policies and practices in relation to such other government sector matters as the Minister may determine from time to time, and to monitor, co-ordinate and assist the implementation of Government strategies, policies and practices in such other areas as the Minister may determine from time to time,
  - (f) to develop and advise the Government on service delivery strategies and models for the government sector through collaboration with the private business sector, the not-for-profit sector and the wider community,
  - (g) to set standards, subject to any legislative requirements, for the selection of persons for appointment as members of boards or committees of public authorities (including Government business enterprises).
- (2) The Commissioner has and may exercise such other functions as are conferred or imposed on the Commissioner by or under this or any other Act.

**Note.** Other functions of the Commissioner include promoting and maintaining the government sector core values (see section 7); making government sector employment rules under section 12; giving directions to government sector agencies under section 13; assigning a senior executive to a role in a Public Service agency under section 38; reporting on workforce diversity under section 63 and conducting inquiries under section 83.
- (3) The Commissioner is to exercise his or her functions in accordance with the general policies and strategic directions determined by the Public Service Commission Advisory Board.

## **12 Government sector employment rules**

- (1) The Commissioner may make government sector employment rules, not inconsistent with this Act and the regulations, on any matter for which any such rules are authorised to be made by or under this Act.
- (2) The Commissioner may amend or repeal a government sector employment rule by a further rule.
- (3) Government sector employment rules (including any amendment or repeal) are to be published on the NSW legislation website and take effect on the date they are so published or on any later specified date.

## **13 Directions by Commissioner to a government sector agency**

- (1) The Commissioner may, for the purposes of exercising his or her functions or ensuring compliance with this Act, the regulations and the government sector employment rules, give a direction in writing to the head of a government sector agency on a specific matter in relation to the employees of that agency.
- (2) Before giving a direction the Commissioner is to consult the head of the government sector agency to whom the direction is to be given and such other persons affected by the direction as the Commissioner considers appropriate.
- (3) The head of the government sector agency to whom a direction under this section is given must comply with the direction.
- (4) However, the head of a separate Public Service agency is not required to comply with the direction if the head considers that the direction is not consistent with the independent exercise of statutory functions by the head and the agency. The head is required to report to any Parliamentary Committee that oversees the exercise of those functions on the reasons for any non-compliance with the substantive employment outcomes sought by the direction.
- (5) A direction under this section:
  - (a) must not be inconsistent with this Act (including the regulations and the government sector employment rules) or with the principal objectives of the Commissioner referred to in this Division, and
  - (b) must be made publicly available by the Commissioner as soon as practicable after it is given.

## **14 Commissioner to report to Premier**

- (1) The Commissioner is to report to the Premier in connection with the exercise of the Commissioner's functions but is not subject to the control and direction of the Premier in the exercise of those functions.
- (2) This section does not limit any other provisions of this Act relating to the exercise of the functions of the Premier or the Commissioner.

## **15 Annual reports of the Commissioner**

- (1) The Commissioner is, as soon as practicable after 30 June in each year, to prepare and forward to the Premier:
  - (a) a report on the Commissioner's work and activities for the 12 months ending on that 30 June, and
  - (b) a report on the state of the government sector in relation to the period of 12 months ending on that 30 June.
- (2) The report on the state of the government sector is to include the following:

- (a) an assessment of the performance of the whole of the government sector, including notable achievements, challenges and priorities,
  - (b) an analysis of government sector workforce data.
- (3) The Premier is to table any report under this section, or cause it to be tabled, in both Houses of Parliament as soon as practicable after it is received by the Premier.

#### **16 Provision of reports and information by agencies**

- (1) The Commissioner may require the head of a government sector agency to provide the Commissioner with a report on such matters relating to the employees of the agency, or to the employment policies and practices of the agency, as the Commissioner requires.
- (2) The Commissioner may also require the head of a government sector agency to provide the Commissioner with information collected or held by the agency in dealing with matters relating to government sector employees.
- (3) The head of the government sector agency concerned must comply with a requirement under this section within such time and in such manner as the Commissioner directs.
- (4) Any law relating to the protection of personal information (within the meaning of the *Privacy and Personal Information Protection Act 1998*) does not operate to prevent the furnishing of information, or affect a duty to furnish information, under this section.
- (5) In this section, **government sector agency** includes any person or body, constituted by or under an Act, that is prescribed by the regulations for the purposes of this section, and the **head** of any such prescribed agency means the person prescribed by the regulations in relation to that agency.

#### **17 Miscellaneous provisions relating to Commissioner**

- (1) Persons may be employed in the Public Service to enable the Commissioner to exercise his or her functions. Those persons may be referred to as the staff of the Commissioner or as employees of the Public Service agency in which they are employed.
- (2) The Commissioner may delegate the exercise of any function of the Commissioner (other than this power of delegation) to:
  - (a) the head of any government sector agency or an employee of any government sector agency, or
  - (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.
- (3) The Commissioner is to arrange for government sector employment information to be made available on a website provided and maintained by the Commissioner (including the government sector employment rules, the senior executive bands determination and any guidelines issued by the Commissioner).
- (4) The government sector employment rules may deal with any requirement under this Act for the approval or concurrence of the Commissioner, or for consultation with the Commissioner, and may provide for the circumstances in which the approval, concurrence or consultation is not required.
- (5) The Commissioner is, to the extent that it is reasonable and practicable to do so, to remove any personal information from any report or other document prepared by the Commissioner under this Part that is, or is to be, publicly available. In this

subsection, *personal information* means information about an individual whose identity is apparent, or can reasonably be ascertained, from the information.

- (6) The regulations may make provision with respect to the exercise of the functions of the Commissioner.

## **Division 2 Public Service Commission Advisory Board**

### **18 Establishment and members of Advisory Board**

- (1) There is to be a Public Service Commission Advisory Board.
- (2) The Advisory Board is to consist of the following members:
  - (a) a person appointed by the Premier as the Chairperson of the Advisory Board,
  - (b) 4 other persons appointed by the Premier,
  - (c) the Commissioner or a senior member of the staff of the Commissioner nominated by the Commissioner,
  - (d) the Secretary of the Department of Premier and Cabinet or a senior employee of that Department nominated by the Secretary.
- (3) The members appointed by the Premier are to be persons who together have expertise in human resources management, probity and accountability, strategic planning, budget and performance management and service delivery in the public, private, tertiary and not-for-profit sectors.
- (4) Schedule 3 contains provisions relating to the members and procedure of the Advisory Board.

### **19 Functions of Advisory Board**

- (1) The Advisory Board has the following functions:
  - (a) to determine general policies and strategic directions in relation to the functions of the Commissioner,
  - (b) to provide the Premier, either at the request of the Premier or on its own initiative, with advice on any matter relating to the management and performance of the government sector.
- (2) The Advisory Board has such other functions as are conferred or imposed on it by or under this or any other Act.

## Part 4 The Public Service

### Division 1 General

#### 20 The Public Service

The Public Service of New South Wales consists of those persons who are employed under this Part by the Government of New South Wales in the service of the Crown.

**Note.** See section 47A of the *Constitution Act 1902*.

#### 21 Employment in the Public Service

- (1) The Government of New South Wales may employ persons in the Public Service in accordance with this and any other Act or law.
- (2) Persons may be so employed for the following purposes:
  - (a) to enable Ministers to exercise their functions,
  - (b) to enable statutory bodies or statutory officers to exercise their functions,
  - (c) for any other purpose.
- (3) This section does not affect any other means (statutory or otherwise) by which a person may be employed in the service of the Crown.

**Note.** Other ways in which persons are employed in the service of the Crown include employment in the Teaching Service, the NSW Health Service or the NSW Police Force—see definition of **government sector** in section 3.

#### 22 Departments and other Public Service agencies

- (1) Public Service employees are employed in:
  - (a) Departments (listed in Part 1 of Schedule 1), or
  - (b) Public Service executive agencies related to Departments (listed in Part 2 of Schedule 1), or
  - (c) separate Public Service agencies (listed in Part 3 of Schedule 1).
- (2) A Department or other Public Service agency may comprise such branches or other groups of employees as the Secretary of the Department or the head of the other agency determines from time to time.
- (3) Part 7 of the *Constitution Act 1902* authorises the amendment of Schedule 1 by an administrative arrangements order under that Part. Any such order may also amend Schedule 1 to specify, change or remove the Department to which a Public Service agency is related.

**Note.** An administrative arrangements order may create, abolish or change the name of Departments and other Public Service agencies and transfer employees between agencies.

### Division 2 Secretaries of Departments

#### 23 Secretaries of Departments

- (1) The head of a Department is the Secretary of the Department.
- (2) The office of Secretary of a Department is established by this section.
- (3) If a Department is abolished or its name is changed, the office of Secretary of the Department is taken to be abolished or its name correspondingly changed by the operation of this section.
- (4) Appointments to the office of Secretary of a Department are to be made by the Minister.

**Note.** The Minister may delegate the function of appointing Secretaries—see section 81.

- (5) The appointment of a person to the office of Secretary of a Department is to be made by a contract of employment (under Division 4) between that person and the person who makes the appointment. The person so appointed is a Public Service employee who is employed in the Department.

#### **24 Acting appointments as Secretary of a Department**

- (1) The Minister may appoint a Public Service employee to act as the Secretary of a Department if the office of the Secretary is vacant or if the Secretary is unavailable.
- (2) A person, while acting as the Secretary of a Department, has all the functions of the Secretary.
- (3) The Minister may, at any time, terminate an acting appointment.
- (4) The regulations may make provision with respect to the conditions of employment of a person acting as the Secretary of a Department.

#### **25 General responsibility of Secretaries of Departments**

- (1) The Secretary of a Department is responsible to the Minister or Ministers to whom the Department is responsible for the general conduct and management of the functions and activities of the Department in accordance with the government sector core values under Part 2.

**Note.** Section 50C of the *Constitution Act 1902* provides for the designation of the Minister or Ministers to whom a Department is responsible.

- (2) Any action taken in the exercise of a responsibility under this section is not to be inconsistent with the functions conferred by this Act of a Minister administering this Act or the Public Service Commissioner.

**Note.** The Secretary of a Department is also responsible for workforce diversity under Part 5.

#### **26 Employer functions of Secretaries of Departments**

- (1) The Secretary of a Department may, subject to this and any other Act or law, exercise on behalf of the Government of New South Wales the employer functions of the Government in relation to the following:
  - (a) the Public Service senior executives assigned to roles in the Department,
  - (b) the other employees of the Department,
  - (c) the head of each Public Service executive agency related to the Department unless:
    - (i) the office of the head is a statutory office established by another Act, or
    - (ii) the head is the Secretary, or
    - (iii) Schedule 1 provides that some other person exercises the employer functions in relation to the head,
  - (d) the Public Service senior executives assigned to roles in each Public Service executive agency related to the Department.
- (2) The Minister may, subject to this and any other Act or law, exercise on behalf of the Government of New South Wales the employer functions of the Government in relation to the Secretary of a Department.
- (3) The employer functions of the Government are all the functions of an employer in respect of employees, including (without limitation) the power to employ persons, to assign them to roles and to terminate their employment.

**Note.** Division 6 confers on the Industrial Relations Secretary employer functions relating to the determination of the conditions of employment of, and other industrial matters relating to, Public Service employees.

## **27 Delegation by Secretaries of Departments**

- (1) The Secretary of a Department may delegate to any employee of the Department or of any other Public Service agency or to any statutory officer:
  - (a) any of the functions of the Secretary under this Act (other than this power of delegation), and
  - (b) any employer functions under any other Act or law that the Secretary exercises on behalf of the Government of New South Wales in relation to Public Service employees.
- (2) If:
  - (a) a function of the Secretary of a Department is delegated to an employee or officer in accordance with subsection (1), and
  - (b) the instrument of delegation authorises the sub-delegation of the function,then, subject to any conditions to which the delegation is subject, the employee or officer may sub-delegate the function to another employee of the Department or of any other Public Service agency or to a statutory officer.
- (3) For the purposes of this section, the functions of the Secretary of a Department include any functions delegated to the Secretary under this Act.
- (4) The government sector employment rules may limit a power of delegation or sub-delegation under this section.

## **Division 3 Heads of other Public Service agencies**

### **28 Heads of agencies other than Departments**

- (1) The head of a Public Service agency (other than a Department) is the holder of the office specified in Part 2 or 3 of Schedule 1 in relation to the agency concerned.
- (2) The Secretary of a Department may be specified as the head of any other Public Service agency and the same person may be specified as the head of more than one agency.
- (3) An administrative arrangements order under Part 7 of the *Constitution Act 1902* may amend Schedule 1 to specify or change the head of a Public Service agency (other than a Department).
- (4) The office of head of a Public Service agency (other than a Department) is established by this section, unless it is a statutory office created by another provision of this Act or by any other Act.

**Note.** The statutory offices established by another provision of this Act or by any other Act are identified in Part 2 or 3 of Schedule 1. Accordingly, the following provisions of this section do not apply to any such head of an agency.
- (5) If the description of an office established by this section is omitted or changed by an amendment of Schedule 1, the office is taken to be abolished or its name correspondingly changed by the operation of this section.
- (6) Appointments to an office of head established by this section are to be made:
  - (a) in the case of a Public Service executive agency related to a Department—by the Secretary of the Department, or
  - (b) in the case of a separate Public Service agency—by the Minister.

However, if Schedule 1 provides that some other person exercises the employer functions of the Government of New South Wales in relation to the head, appointments to the office of the head are to be made by that other person.

- (7) The appointment of a person to an office of head established by this section is to be made by a contract of employment (under Division 4) between that person and the person who makes the appointment. The person so appointed is a Public Service employee who is employed in the Public Service agency concerned.

#### **29 Acting appointments as head of agency (other than Department)**

- (1) The person authorised to appoint the head of a Public Service agency (other than a Department) may appoint a Public Service employee to act as the head of the agency if the office of the head is vacant or if the head is unavailable (and no other person has been duly appointed to act as a statutory officer who is the head of that office).
- (2) A person, while acting as the head of any such Public Service agency, has all the functions of the head.
- (3) An acting appointment may be terminated, at any time, by the person who made the acting appointment.
- (4) The regulations may make provision with respect to the conditions of employment of a person acting as the head of any such Public Service agency.

#### **30 General responsibility of heads of agencies (other than Departments)**

- (1) The head of a Public Service agency (other than a Department) is responsible to the Minister or Ministers to whom the agency is responsible for the general conduct and management of the functions and activities of the agency in accordance with government sector core values under Part 2.
- (2) Any action taken in the exercise of a responsibility under this section is not to be inconsistent with the functions conferred by this Act of a Minister administering this Act or the Public Service Commissioner.  
**Note.** The head of any such agency is also responsible for workforce diversity under Part 5.

#### **31 Employer functions of heads of agencies (other than Departments)**

- (1) The head of a Public Service agency (other than a Department) may, subject to this and any other Act or law, exercise on behalf of the Government of New South Wales the employer functions of the Government in relation to the employees of the agency (other than Public Service senior executives of an agency that is related to a Department).
- (2) The employer functions of the Government are all the functions of an employer in respect of employees, including (without limitation) the power to employ persons, to assign their roles and to terminate their employment.  
**Note.** The Secretary of the relevant Department exercises employer functions in relation to Public Service senior executives of an agency that is related to the Department.  
Division 6 confers on the Industrial Relations Secretary employer functions relating to the determination of the conditions of employment of, and other industrial matters relating to, Public Service employees.

#### **32 Delegation by heads of Public Service agencies (other than Departments)**

- (1) The head of a Public Service agency (other than a Department) may delegate to any employee of the agency or of any other Public Service agency or to a statutory officer:
  - (a) any of the functions of the head under this Act (other than this power of delegation), and

- (b) any employer functions under any other Act or law that the head exercises on behalf of the Government of New South Wales in relation to Public Service employees.
- (2) If:
  - (a) a function of the head of an agency is delegated to an employee or officer in accordance with subsection (1), and
  - (b) the instrument of delegation authorises the sub-delegation of the function, then, subject to any conditions to which the delegation is subject, the employee or officer may sub-delegate the function to another employee of the agency or of any other Public Service agency or to a statutory officer.
- (3) For the purposes of this section, the functions of the head of an agency include any functions delegated to the head of the agency under this Act.
- (4) The government sector employment rules may limit a power of delegation or sub-delegation under this section.

## **Division 4 Public Service senior executives**

### **33 Application of Division**

- (1) This Division applies to the following:
  - (a) the Secretary of a Department,
  - (b) the head of any other Public Service agency if the head is an employee of the agency and not a statutory officer,
  - (c) any other employees of a Public Service agency who are employed in a Public Service senior executive band.
- (2) For the purposes of this Act, the employees to whom this Division applies are **Public Service senior executives**.
- (3) The person who is authorised by this Act to exercise the employer functions of the Government of New South Wales in relation to a Public Service senior executive is referred to in this Division as the **employer** of the executive.

### **34 Kinds of senior executive employment**

- (1) Employment as a Public Service senior executive may be any one of the following kinds of employment:
  - (a) ongoing employment,
  - (b) term employment.
- (2) Ongoing employment is employment that continues until the executive resigns or his or her employment is terminated.
- (3) Term employment is employment for a specified period or for the duration of a specified task (unless the executive sooner resigns or his or her employment is sooner terminated).

### **35 Minister may determine bands in which senior executives to be employed**

- (1) The Minister may from time to time determine the bands in which Public Service senior executives are to be employed (the **senior executive bands determination**).
- (2) The senior executive bands determination may deal with matters related to bands.
- (3) The Minister may amend or repeal the senior executive bands determination by a further determination.

- (4) Before making, amending or repealing the senior executive bands determination, the Minister is to obtain the advice of the Commissioner.
- (5) The senior executive bands determination (including any amendment or repeal) is to be published on the NSW legislation website and takes effect on the date it is so published or on any later specified date.  
**Editorial note.** See *Government Sector Employment (Senior Executive Bands) Determination 2014*.

### **36 Government sector employment rules relating to senior executives**

The government sector employment rules may deal with any matter relating to the employment of Public Service senior executives, including (without limitation) the following matters:

- (a) work level standards for roles in the bands in which those executives are employed,
- (b) methods of job evaluation for the roles of those executives,
- (c) capabilities for the roles of those executives,
- (d) the assignment of those executives to roles,
- (e) contracts of employment of those executives and their contents.

### **37 Employment of senior executives in bands**

- (1) A Public Service senior executive is to be employed in a band determined under the senior executive bands determination that the employer of the executive considers appropriate for the role of the executive.
- (2) In determining the number of Public Service senior executives and the appropriate band in which they are employed, the employer is to apply the applicable work level standards and have regard to any guidance provided by the Commissioner.

### **38 Assignment of senior executives to roles in bands across Public Service (other than heads of agencies)**

- (1) In this section:  
*assign* to a role includes assign to a different role.  
*Public Service senior executive* does not include the Secretary of a Department or the head of any other Public Service agency.
- (2) A Public Service senior executive may, from time to time, be assigned to a role in any Public Service agency in the band in which the executive is employed.
- (3) A Public Service senior executive may be assigned to a role by the employer of the executive or by the Commissioner.
- (4) Public Service senior executives may be assigned to roles to enable the flexible deployment of staff resources within the Public Service and to develop the capabilities of staff.
- (5) The Secretary of a Department is not to assign a Public Service senior executive to a role in a Public Service executive agency related to the Department without consulting the head of the agency.
- (6) The Commissioner is not to assign a Public Service senior executive to a role in a Department or a Public Service executive agency related to a Department without consulting the Secretary of the Department and the head of any such agency.
- (7) The Commissioner is not to assign a Public Service senior executive to a role in a separate Public Service agency without the agreement of the head of the agency.

- (8) A Public Service senior executive is not to be assigned to a different role unless the executive has been consulted. The remuneration payable to the executive is not to be reduced because of the assignment to the different role without the consent of the executive.

### **39 Contract of employment of senior executives**

- (1) A Public Service senior executive is to be employed under a written contract of employment signed by the executive and by the employer on behalf of the Government.
- (2) The government sector employment rules may deal with contracts of employment of Public Service senior executives and their contents.
- (3) The government sector employment rules may prescribe model contracts of employment and may specify any model provisions that are mandatory and that prevail in the event of any inconsistency with the provisions of a contract of employment.
- (4) Subject to this Act, the government sector employment rules and any direction issued by the Commissioner under this Act, a contract of employment of a Public Service senior executive is to deal with the following matters:
- (a) the band in which the executive is employed,
  - (b) conditions of engagement (of a kind referred to in section 44),
  - (c) the duration of the contract if the executive is not employed in ongoing employment,
  - (d) the total remuneration package of the executive (comprising monetary remuneration and employment benefits) and any allowances,
  - (e) performance obligations, and reviews of performance, of the executive,
  - (f) progression in the total remuneration package of the executive based on performance,
  - (g) leave and other conditions of employment of the executive,
  - (h) the compensation for any termination of employment of the executive by the employer (including the period to which the compensation relates),
  - (i) any other matter prescribed by the regulations.
- (5) The contract of employment of a Public Service senior executive does not limit (and is not affected by) the assignment of the executive to a different role or any other change to the title, place of work or duties of the executive.
- (6) A contract of employment of a Public Service senior executive may, subject to this section, be varied at any time by further agreement.

### **40 Remuneration, benefits and allowances for senior executives**

- (1) The remuneration package of a Public Service senior executive must be within the range determined under the *Statutory and Other Offices Remuneration Act 1975* for the band in which the executive is employed.
- (2) The kinds and value of employment benefits and the allowances for a Public Service senior executive are to be determined in accordance with the regulations and any guidance provided by the Commissioner.
- (3) A Public Service senior executive is only entitled to the remuneration, employment benefits or allowances provided in the executive's contract of employment.
- (4) For the purposes of this Division, employment benefits for a Public Service senior executive are:

- (a) contributions by the executive's employer to a superannuation scheme or fund of the executive, and
  - (b) other benefits provided to the executive at the cost of the executive's employer that are of a private nature.
- (5) For the purposes of this Division, allowances for a Public Service senior executive are allowances paid in money, other than allowances excluded by the government sector employment rules.

#### **41 Termination of employment of senior executives**

- (1) The employer of a Public Service senior executive may terminate the employment of the executive at any time, for any or no stated reason and without notice.
- (2) A Public Service senior executive whose employment is so terminated is entitled to the compensation provided in the contract of employment of the executive (and to no other compensation or entitlement for the termination of employment).
- (3) A Public Service senior executive whose employment is so terminated is not to be employed in the public sector during the period specified in the contract of employment to which the compensation relates, unless arrangements have been made for a refund of the proportionate amount of the compensation.
- (4) The employment of the head of a Public Service agency that is related to a Department may not be terminated under this section by the Secretary of the Department unless the Secretary has consulted the Commissioner.
- (5) In this section:
  - employment* of a former executive in the public sector includes:
    - (a) engagement of the former executive as a consultant or contractor to the employer, and
    - (b) engagement of the former executive through a labour hire arrangement with the employer, and
    - (c) engagement of a company or partnership that provides the services of the former executive 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 or a statutory office.

### **Division 5 Public Service employees (other than senior executives)**

#### **42 Application of Division**

- (1) This Division applies to Public Service employees other than Secretaries of Departments, heads of other Public Service agencies and other Public Service senior executives.
- (2) The employees to whom this Division applies are referred to in this Division as *Public Service non-executive employees*.

#### **43 Kinds of employment**

- (1) Employment as a Public Service non-executive employee may be any one of the following kinds of employment:
  - (a) ongoing employment,
  - (b) temporary employment,
  - (c) casual employment.

- (2) Ongoing employment is employment that continues until the employee resigns or his or her employment is terminated.
- (3) Temporary employment is employment for a temporary purpose.
- (4) Casual employment is employment to carry out irregular, intermittent, short-term, urgent or other work as and when required.
- (5) An employee who is employed to assist a specified judicial officer (or other specified officer of a kind prescribed by the regulations) may be employed on the basis that the person's employment may be terminated when the officer ceases to hold office.

#### **44 Conditions of engagement**

- (1) The engagement of a Public Service non-executive employee may be made subject to conditions notified to the employee on his or her engagement.
- (2) The conditions may include (without limitation) conditions dealing with any of the following matters:
  - (a) probation,
  - (b) citizenship or residency requirements,
  - (c) formal qualifications,
  - (d) security and other clearances,
  - (e) health clearances.
- (3) The imposition of conditions is subject to the government sector employment rules.

#### **45 Employment in classifications of work**

- (1) Public Service non-executive employees are to be employed in a classification of work determined by the head of the Public Service agency in which the person is employed in accordance with this Act and any other Act or law.  
**Note.** See Division 6 in relation to classifications determined under industrial instruments.
- (2) A classification of work extends to any kind of work and any grade of that work.

#### **46 Assignment to roles in work classifications**

- (1) In this section:  
*assign* to a role includes assign to a different role.
- (2) The head of a Public Service agency may from time to time assign Public Service non-executive employees of the agency to roles in the agency in the classification of work in which the employees are employed.
- (3) Public Service non-executive employees may be assigned to roles to enable the flexible deployment of staff resources within the agency and to develop the capabilities of staff.
- (4) A Public Service non-executive employee is not to be assigned to a different role unless the employee has been consulted. The remuneration payable to the employee is not to be reduced because of the assignment to the different role without the consent of the employee.

#### **47 Termination of employment**

- (1) The head of a Public Service agency may, by instrument in writing, terminate the employment of a Public Service non-executive employee of the agency on any of the following grounds if the employment is ongoing employment:

- (a) the employee has failed to meet a condition of engagement as an employee imposed under section 44,
- (b) the employee lacks, or has lost, an essential qualification for performing the duties of the role assigned to the employee,
- (c) the performance of the employee is determined under section 68 to be unsatisfactory,
- (d) the employee is unable to perform the duties of the role assigned to the employee because of physical or mental incapacity,
- (e) the employee is retired on medical grounds under section 56,
- (f) the employee has refused to perform duties to which the employee has been duly assigned,
- (g) the employee has abandoned his or her employment,
- (h) a finding of misconduct has been made against the employee under section 69,
- (i) a finding has been made under section 69 that the employee has been convicted of a serious offence,
- (j) the employee is determined in accordance with the regulations and the government sector employment rules to be excess to the requirements of the relevant part of the agency in which he or she is employed,
- (k) on any other ground prescribed by the regulations.

The instrument is to set out the ground or grounds on which the employment is terminated.

- (2) The head of a Public Service agency may, by instrument in writing, terminate the employment of a Public Service non-executive employee of the agency at any time if the employment is not ongoing employment.

#### **48 Matters that government sector employment rules may deal with**

The government sector employment rules may deal with any matter relating to the employment of Public Service non-executive employees, including (without limitation) the following matters:

- (a) the recruitment of any such employees (including the recruitment process and the application of the principle of employment on merit),
- (b) the circumstances in which any such employees may be employed in particular kinds of employment,
- (c) the conditions of engagement of any such employees,
- (d) work level standards for roles in classifications of work in which any such employees are employed,
- (e) methods of job evaluation for the roles of any such employees,
- (f) capabilities for the roles of any such employees,
- (g) the assigning of any such employees to roles,
- (h) acting of any such employees in another classification of work or in a Public Service senior executive role,
- (i) the termination of employment of any such employees,
- (j) dealing with any such employees who are excess employees.

## **Division 6 Industrial relations employer functions**

### **49 Interpretation and application: Division 6**

- (1) In this Division:  
*conditions of employment* and *industrial matters* have the same meanings they have in the *Industrial Relations Act 1996*.  
*Industrial Relations Secretary* means the Secretary of the Treasury.  
**Note.** An administrative arrangements order may be made under Part 7 of the *Constitution Act 1902* to change the reference to the Secretary of the Treasury having regard to future administrative changes in the allocation of Ministerial and departmental responsibilities.
- (2) This Division does not apply to the conditions of employment of the Secretary of a Department or a Public Service senior executive. This subsection does not prevent particular conditions of employment under this Division from being adopted by reference in the contract of employment of the Secretary or executive.

### **50 Role of Industrial Relations Secretary in industrial proceedings**

The Industrial Relations Secretary is, for the purposes of any proceedings relating to Public Service employees held before a competent tribunal having jurisdiction to deal with industrial matters, taken to be the employer of Public Service employees.

### **51 Industrial Relations Secretary may enter into agreements**

- (1) The Industrial Relations Secretary may enter into an agreement with any association or organisation representing a group of Public Service employees with respect to industrial matters.
- (2) Any such agreement binds all Public Service employees in the group affected by the agreement, and no such employee (whether a member of the association or organisation with which the agreement was entered into or not) has any right of appeal against the terms of the agreement.
- (3) An agreement under this section is not an enterprise agreement within the meaning of the *Industrial Relations Act 1996*. However, the Industrial Relations Secretary (or any delegate of the Industrial Relations Secretary) may enter into such an enterprise agreement as the employer of the employees concerned.

### **52 Industrial Relations Secretary may determine employment conditions not otherwise lawfully determined**

- (1) The Industrial Relations Secretary may from time to time make determinations fixing conditions of employment of Public Service employees (or any group of them).
- (2) Conditions of employment that are so determined apply to Public Service employees unless inconsistent with this Act, State industrial instruments or any other law.
- (3) This section does not prevent the head of a Public Service agency from determining conditions of employment of employees of the agency for the purposes of the day to day management of the agency in matters not regulated by State industrial instruments and determinations under this section.
- (4) For the purposes of the recovery of any amount owing under a determination under this section, the determination is taken to be a State industrial instrument.

### **53 Industrial relations provisions**

- (1) The Industrial Relations Secretary is not subject to the control and direction of any Minister:
  - (a) in determining conditions of employment under this Division, or

- (b) in dealing with a dispute relating to an industrial matter concerning Public Service employees.
- (2) The Industrial Relations Secretary may delegate any of his or her functions under this Division (other than this power of delegation) to the head of a Public Service agency or any Public Service employee or to a statutory officer.
- (3) The Industrial Relations Secretary has the following functions:
  - (a) advising the Government on appropriate strategies and policies regarding employment conditions and industrial relations in the government sector,
  - (b) monitoring the implementation of Government strategies and policies on employment conditions and industrial relations in the government sector and assisting with the implementation of those strategies and policies.

The Industrial Relations Secretary must consult with the Public Service Commissioner before exercising any function under this subsection.

- (4) The head of a Public Service agency is to notify the Industrial Relations Secretary of such industrial matters affecting the agency as the Industrial Relations Secretary specifies in a notice given to the head of the agency.
- (5) A Public Service employee who is authorised by the Industrial Relations Secretary for the purposes of this subsection may:
  - (a) enter the premises of any Public Service agency, and
  - (b) require the production of and examine any documents in the custody of any Public Service employee, and
  - (c) require any Public Service employee to answer questions,for the purposes of enabling the Industrial Relations Secretary to exercise his or her functions under this Division.

## **Division 7 Additional Public Service employment provisions**

### **54 Entitlement to extended and other leave**

Public Service employees have the entitlements to extended and other leave prescribed by the regulations.

### **55 Resignation**

A Public Service employee may resign his or her employment by written notice to the person who exercises employer functions in relation to the employee.

### **56 Retirement on medical grounds**

The head of a Public Service agency may retire a person who is an employee of the agency if:

- (a) the person is found to be unfit to perform or incapable of performing the duties of the person's employment, and
- (b) the person's unfitness or incapacity:
  - (i) appears likely to be of a permanent nature, and
  - (ii) has not arisen from actual misconduct on the part of the person, or from causes within the person's control.

**57 Crown's dispensation with services**

- (1) The right or power of the Crown to dispense with the services of any Public Service employee, as it existed immediately before the commencement of this section, is not abrogated or restricted by any of the provisions of this Act.
- (2) A Public Service employee is not, except as provided by this or any other Act, entitled to any compensation as a result of the person's services being dispensed with.

**58 Industrial or legal proceedings excluded**

- (1) In this section, *executive employee* means the Secretary of a Department or other Public Service senior executive, and *non-executive employee* means a Public Service employee other than an executive employee.
- (2) In this section, a reference to the employment of an executive employee is a reference to:
  - (a) the engagement of, or failure to engage, a person as an executive employee, or
  - (b) the assignment or re-assignment of the executive employee to a role in a band, or
  - (c) the removal, retirement, termination of employment or other cessation of employment of an executive employee, or
  - (d) any disciplinary proceedings or action taken against an executive employee, or
  - (e) the remuneration or other conditions of employment of an executive employee.
- (3) The employment of an executive employee, or any matter, question or dispute relating to any such employment, is not an industrial matter for the purposes of the *Industrial Relations Act 1996*.
- (4) Parts 6, 7 and 9 of Chapter 2 of the *Industrial Relations Act 1996* do not apply to or in respect of the employment of an executive employee.
- (5) Any State industrial instrument (whether made before or after the commencement of this section) does not have effect in so far as it relates to the employment of executive employees. This subsection does not prevent the regulations or other statutory instruments or any contract of employment from applying the provisions of any such industrial instrument to the employment of an executive employee.
- (6) The engagement of, or the failure to engage, a person as a non-executive employee, or any matter, question or dispute relating to any such engagement (or failure to engage), is not an industrial matter for the purposes of the *Industrial Relations Act 1996*.
- (7) No proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, lie in respect of a matter that is declared by this section not to be an industrial matter for the purposes of the *Industrial Relations Act 1996*.
- (8) Nothing in this section prevents any of the following proceedings from being brought by an employee of a Public Service agency in relation to the employment of another employee of any Public Service agency:
  - (a) proceedings under Part 9 of the *Anti-Discrimination Act 1977* in relation to a complaint under that Part,
  - (b) proceedings under section 213 of the *Industrial Relations Act 1996* to enforce the provisions of section 210 (Freedom from victimisation) of that Act.

**59 How references to employees etc of statutory body to be construed in other Acts, instruments and contracts**

- (1) In any other Act, in any statutory or other instrument, or in any contract or agreement (whether enacted, made or executed before or after the commencement of this section):
- (a) a reference to an officer or employee, or a member of staff, of a statutory body is to be read as including a reference:
    - (i) to a Public Service employee who is employed to enable the statutory body to exercise its functions, and
    - (ii) to any other person whose services the statutory body makes use of (whether by way of secondment or otherwise), and
  - (b) a reference to a statutory body in its capacity as an employer of persons is, to the extent that the persons concerned comprise persons employed in the Public Service to enable the statutory body to exercise its functions, to be read as including a reference to the Government of New South Wales or, as the case requires, to the head of the Public Service agency in which the persons are employed.
- (2) This section is subject to the regulations.

**60 Employer costs for Public Service staff of statutory bodies**

- (1) The Minister or the Treasurer may give directions to a statutory body requiring the payment by the statutory body, on behalf of the Government of New South Wales, of the remuneration and other employment-related costs (such as superannuation, workers compensation and public liability insurance) in respect of those Public Service employees who are employed to enable the statutory body to exercise its functions.
- (2) If a fund is established under any Act in connection with a statutory body and the provisions of that Act authorise the payment of amounts from the fund in connection with the employment of persons, the statutory body is authorised to apply the fund for the purposes of any payment required to be made by the body under subsection (1).

**61 Civil liability with respect to staff of statutory bodies**

If:

- (a) a person is employed in the Public Service to enable a statutory body to exercise its functions, and
- (b) the Government of New South Wales is, as the person's employer, proceeded against for any negligence or other tort of the person (whether the damages are recoverable in an action for tort or breach of contract or in any other action), and
- (c) the statutory body is entitled under a policy of insurance or indemnity to be indemnified in respect of liability that the body may incur in respect of that negligence or other tort,

the Government is subrogated to the rights of the statutory body under that policy in respect of the liability incurred by the Government arising from that negligence or other tort.

**62 Operation of privacy legislation**

A group of Public Service employees employed to enable a statutory body to exercise its functions is, for the purposes of the *Privacy and Personal Information Protection*

*Act 1998* and the *Health Records and Information Privacy Act 2002*, taken to be part of the statutory body.

## Part 5 Government sector employees

### 63 Workforce diversity

- (1) In this section:  
*government sector agency* includes the service of a State owned corporation, and any university or other service or agency prescribed by the regulations.  
*workforce diversity* includes (but is not limited to) diversity of the workforce in respect of gender, cultural and linguistic background, Aboriginal people and people with a disability.
- (2) 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.
- (3) The government sector employment rules may deal with workforce diversity in any government sector agency. The head of the agency is to ensure that any obligations of the agency under those rules are complied with.
- (4) The Commissioner is to include in annual or other reports under Part 3 periodic reports on workforce diversity across government sector agencies.
- (5) The obligations of those rules prevail over any inconsistent obligations under the *Anti-Discrimination Act 1977*.

### 64 Employee transfers and secondments

- (1) The government sector employment rules may deal with the transfer of employees between government sector agencies by way of secondment or permanent transfers of employees (whether or not at the request of the employees).  
**Note.** See also Part 4 with respect to assignment of Public Service senior executives to roles.
- (2) Unless a transfer is initiated by the employee, the person who initiates a transfer is required to consult the employee.
- (3) The remuneration of an employee who is transferred is not to be reduced without the approval of the employee.
- (4) The government sector employment rules are to set out the circumstances in which employees have the right to have a transfer they have not initiated reviewed.
- (5) In this section, *government sector agency* includes:
  - (a) the service of a State owned corporation (or a subsidiary), and
  - (b) any service excluded by section 5 (but only for transfers initiated by the employee).

### 65 Cross-agency employment

- (1) A person may be employed in 2 or more government sector agencies (whether those agencies are Public Service agencies, other agencies or a combination of Public Service agencies and other agencies).
- (2) If the person is employed in 2 or more government sector agencies, the heads of those agencies may determine that the person is to be regarded as employed in one of those agencies for the purposes of all or any conditions of employment of the person (including for the purposes of provisions of or made under this Act or any other Act relating to the employment of the person).

## **66 Temporary assignments of staff between government sector agencies and other relevant bodies**

- (1) Arrangements may be made under this section under which:
  - (a) a person who is employed in a government sector agency is temporarily assigned to carry out work in or for another government sector agency, or
  - (b) a person who is employed in a government sector agency is temporarily assigned to carry out work in or for a non-government sector body, or
  - (c) a person who is employed in or by a non-government sector body is temporarily assigned to carry out work in or for a government sector agency.

Any such assignment may be on a full-time or part-time basis.

- (2) An arrangement for a temporary assignment under this section is to be made between the heads of the government sector agencies or between the head of the government sector agency and the person responsible for the employment of persons in or by the non-government sector body.
- (3) A person employed in or by a non-government sector body (other than a local council or State owned corporation) is not to be temporarily assigned under this section to carry out work in or for a government sector agency unless:
  - (a) the head of the agency is satisfied that the temporary assignment is justified because of the special skills of the person or the special circumstances of the case, and
  - (b) the period of any one assignment does not exceed 2 years.
- (4) The government sector employment rules may deal with temporary assignments under this section.
- (5) A person's employment in a government sector agency (including the continuity of that employment) is not affected by the temporary assignment of the person under this section.
- (6) In this section:  
***non-government sector body*** means any of the following:
  - (a) a local council,
  - (b) a State owned corporation,
  - (c) a private sector entity (including a not-for-profit sector entity),
  - (d) a public authority or government agency of the Commonwealth or of another State or Territory,
  - (e) a political office holder under the *Members of Parliament Staff Act 2013* (except in relation to an assignment to carry out work in or for a government sector agency),
  - (f) a university.

## **67 Performance management systems**

- (1) The head of a government sector agency is responsible for developing and implementing a performance management system with respect to employees of the agency.
- (2) The government sector employment rules may deal with the core requirements of any such performance management system.

**68 Unsatisfactory performance of government sector employees**

- (1) The government sector employment rules may deal with the procedural requirements for dealing with unsatisfactory performance (consistently with procedural fairness).
- (2) If the performance of an employee of a government sector agency is determined to be unsatisfactory in accordance with those rules, the head of the agency may (without limitation on relevant action) take any of the following actions:
  - (a) terminate the employment of the employee (after giving the employee an opportunity to resign),
  - (b) reduce the remuneration payable to the employee,
  - (c) reduce the classification or grade of the employee,
  - (d) assign the employee to a different role.

**69 Misconduct—Public Service and other prescribed government sector employees**

- (1) In this section:

**government sector agency** means:

  - (a) a Public Service agency, and
  - (b) any other government sector agency prescribed by the regulations for the purposes of this section.

**misconduct** extends to the following:

  - (a) a contravention of this Act or an instrument made under this Act,
  - (b) taking any detrimental action (within the meaning of the *Public Interest Disclosures Act 1994*) against a person that is substantially in reprisal for the person making a public interest disclosure within the meaning of that Act,
  - (c) taking any action against another employee of a government sector agency that is substantially in reprisal for a disclosure made by that employee of the alleged misconduct of the employee taking that action.

The subject matter of any misconduct by an employee may relate to an incident or conduct that happened while the employee was not on duty or before his or her employment.

**serious offence** means an offence punishable by imprisonment for 12 months or more.
- (2) The head of a government sector agency is responsible for dealing with any misconduct by employees of the agency (or any conviction for a serious offence by any such employee) in accordance with this section.
- (3) The government sector employment rules may deal with the following:
  - (a) misconduct by employees of government sector agencies or the conviction of any such employees for a serious offence,
  - (b) the procedural requirements for dealing with allegations of misconduct by employees of government sector agencies (consistently with procedural fairness).
- (4) If, in accordance with those rules, there is a finding of misconduct by an employee of a government sector agency or any such employee is found to have been convicted of a serious offence, the head of the agency may take any of the following actions:
  - (a) terminate the employment of the employee (without giving the employee an opportunity to resign),
  - (b) terminate the employment of the employee (after giving the employee an opportunity to resign),

- (c) impose a fine on the employee (which may be deducted from the remuneration payable to the employee),
  - (d) reduce the remuneration payable to the employee,
  - (e) reduce the classification or grade of the employee,
  - (f) assign the employee to a different role,
  - (g) caution or reprimand the employee.
- (5) Proceedings and actions under this section may be taken or continued despite the employee resigning or otherwise ceasing to be an employee of the agency concerned. Any such action may be expressed to be a termination of employment even if the person has ceased to be an employee.
- (6) This section does not apply to any employees of a government sector agency who are excluded by the regulations.
- Note.** See section 82 (2) for inquiries into conduct of heads of agencies.

**70 Suspension of employees from duty pending decision in relation to misconduct, criminal charge or corrupt conduct**

- (1) In this section:  
**government sector agency** means:
- (a) a Public Service agency, and
  - (b) any other government sector agency prescribed by the regulations for the purposes of this section.
- (2) If:
- (a) an allegation of misconduct by an employee of a government sector agency is being dealt with by the head of the agency, or
  - (b) an employee of a government sector agency is charged with a serious offence referred to in section 69,
- the head of the agency may suspend the employee from duty until the allegation of misconduct or the criminal charge has been dealt with and any subsequent action has been taken by the head of the agency.
- (3) If the Independent Commission Against Corruption:
- (a) has made a corrupt conduct finding against an employee of a government sector agency of a kind referred to in section 114A of the *Independent Commission Against Corruption Act 1988*, or
  - (b) is conducting an investigation into the conduct of any such employee that may lead to such a finding,
- the head of the agency may suspend the employee from duty until the completion of any such investigation and, in the case of any such finding, until any subsequent action has been taken by the head of the agency.
- (4) The head of the agency may direct that any remuneration payable to an employee while the employee is suspended from duty under this section is to be withheld.
- (5) If:
- (a) the head of the agency takes action against the employee for the misconduct or the corrupt conduct finding, or
  - (b) the employee is convicted of the offence concerned,
- any remuneration so withheld is forfeited to the State unless the head of the agency otherwise directs or that remuneration was due to the employee in respect of a period before the suspension was imposed.

- (6) The head of the agency may at any time remove a suspension under this section.

#### **71 Employees contesting State elections**

- (1) If a person who is employed in any government sector agency is nominated for election to the Legislative Assembly or Legislative Council, the person is to be granted leave of absence until the day on which the result of the election is declared.
- (2) If the person is elected, the person is required to resign from the government sector agency concerned.
- (3) Unless the person is entitled to leave with pay (and duly applies for that leave), any leave of absence under this section is to be leave without pay.
- (4) In this section:  
**government sector agency** includes the service of a State owned corporation (or a subsidiary) or any service excluded by section 5.

#### **72 Re-employment of employees resigning to contest Commonwealth elections**

- (1) If a person who is employed in any government sector agency:
- (a) resigns in writing from the government sector agency and the resignation takes effect not earlier than 3 months before polling day at an election of a member or members of either House of Parliament of the Commonwealth and before the day fixed for nominations for the election, and
  - (b) includes in the resignation notice of the person's intention to become a candidate at that election, and
  - (c) becomes a candidate at that election, and
  - (d) fails to be elected at that election, and
  - (e) makes written application for re-employment in the government sector agency concerned within 2 months after the declaration of the result of that election,
- the person is entitled to be re-employed in the government sector agency not lower in remuneration than the current remuneration for the employment of the person at the date of the person's resignation (or a similar employment).
- (2) A person, on being re-employed under this section, is taken:
- (a) to have never resigned from the government sector agency concerned, and
  - (b) to have been on leave without pay during the period between resignation and re-employment.
- (3) In this section:  
**government sector agency** includes the service of a State owned corporation (or a subsidiary) or any service excluded by section 5.

#### **73 Appointment to position in government sector not affected by additional appointment**

- (1) The doctrine of incompatibility of office:
- (a) does not operate to prevent the holder of a position in any government sector agency (the **original position**) from being appointed to another position in that or any other government sector agency (the **additional position**), and
  - (b) does not operate to effect or require the holder of the original position to surrender or vacate that position as a result of the appointment to the additional position.
- (2) This section:

- (a) applies even if the original position or the additional position is held on an acting or temporary basis, and
- (b) extends to an appointment made before the commencement of this section (and applies to such an appointment as if this section had been in force when the appointment was made).

#### **74 Excess employees—jurisdiction of Industrial Relations Commission**

- (1) In this section:

**excess employee** means an employee of a government sector agency who is determined by the head of the agency to be excess to the requirements of the relevant part of the agency in which the employee is employed, and includes an employee of a government sector agency who has been notified by the head of the agency:

- (a) that his or her role, position or work in the agency has been abolished or terminated, and
- (b) that he or she is an excess or displaced employee.

Any such person does not cease to be an excess employee merely because the person is engaged (on a temporary basis) to carry out other work in the same or any other government sector agency.

**termination** of the employment of a person includes dispensing with the services of the person.

- (2) Division 2 of Part 9 of Chapter 2 of the *Industrial Relations Act 1996* does not apply to contracts of employment of employees of any government sector agency that are alleged to be unfair for any reason relating to excess employees, including the following:
- (a) when and how employees become excess employees,
  - (b) the entitlements of excess employees (including with respect to redeployment, employment retention, salary maintenance and voluntary or other redundancy payments),
  - (c) the termination of the employment of excess employees.

## **Part 6 Removal of statutory officers**

### **75 Statutory officers to whom Part applies**

- (1) This Part applies to:
  - (a) a person appointed by the Governor or a Minister to a statutory office where the Act concerned provides that the holder of the office holds it for a term specified in the Act, in the instrument of appointment or in another instrument, and
  - (b) a director or chief executive officer of a statutory State owned corporation.
- (2) This Part applies whether the person holds office on a full-time or part-time basis.
- (3) This Part does not apply to a person merely because an Act provides that the person ceases to hold office on reaching a particular age.

### **76 Statutory officers to whom Part does not apply**

This Part does not apply to a person in the person's capacity as:

- (a) the Governor, the Lieutenant-Governor or other officer administering the Government, or
- (b) a member of the Executive Council, a Minister of the Crown, a member of either House of Parliament or the holder of any other political office, or
- (c) the holder of a judicial office, or
- (d) the Parliamentary Remuneration Tribunal, or
- (e) a member of the NSW Police Force, or
- (f) the Secretary of a Department or other Public Service senior executive, or
- (g) the holder of an office under an Act that provides that the holder may or must be removed from office following an address, declaration, resolution or other involvement of either or both of the Houses of Parliament, or
- (h) the Crown Advocate, or
- (i) an Assistant Commissioner for the Independent Commission Against Corruption or any other officer of the Commission, or
- (j) the Public Service Commissioner.

### **77 Removal from office of statutory officers to whom Part applies**

- (1) The Governor may remove a person to whom this Part applies from office at any time for any or no stated reason and without notice.
- (2) This section does not prevent any such person from being removed from office apart from this Act.

### **78 Compensation for office holder following removal**

- (1) This section applies to a person who is removed from an office under this Part, but does not apply to a person who held the office concerned on a part-time basis.
- (2) A person to whom this section applies is entitled to such compensation (if any) for loss of remuneration as the Statutory and Other Offices Remuneration Tribunal determines.
- (3) The maximum compensation payable is an amount equal to the person's gross remuneration for:
  - (a) the period of 38 weeks, or

- (b) the period starting from the person's removal from office and ending when the person's term of office would have expired, at the rate at which it was payable immediately before the person's removal from office.
- (4) If more than one such period is applicable, the maximum compensation is to be calculated by reference to the shorter or shortest period.
- (5) The person is not entitled to any other compensation for the removal from office or to any other remuneration in respect of the office for any period afterwards.
- (6) If the Statutory and Other Offices Remuneration Tribunal determines that compensation is payable under this section, it must, in its determination, specify the period to which the compensation for loss of remuneration relates.
- (7) The person is not to be employed in the public sector during the period so specified, unless arrangements have been made for a refund of the proportionate amount of the compensation.
- (8) In this section:
  - employment** of a person in the public sector includes:
    - (a) engagement of the person as a consultant or contractor to the employer, and
    - (b) engagement of the person through a labour hire arrangement with the employer, and
    - (c) engagement of a company or partnership that provides the services of the person 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 or a statutory office.

#### **79 Operation of this Part**

- (1) This Part prevails over any inconsistent provision of any other Act or law or of the terms of appointment of or contract with a person.
- (2) Parts 6 and 9 of Chapter 2 of the *Industrial Relations Act 1996* do not apply to or in respect of the removal of a person from office under this Part.
- (3) This Part applies to a person appointed to a statutory office even though the Act concerned excludes the application of this Act, unless it expressly excludes the application of this Part.
- (4) This Part applies to persons holding office at the commencement of this Part, as well as to persons appointed to an office afterwards.

## Part 7 Miscellaneous

### 80 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

### 81 Delegation by Minister

- (1) The Minister may delegate to any authorised person any of the Minister's functions under this Act, other than this power of delegation.
- (2) In this section:  
*authorised person* means the holder of a statutory office, a person employed in the government sector or a person authorised by the regulations.

### 82 Special Ministerial inquiries

- (1) The Minister may, in the case of any matter relating to a government sector agency or a NSW government agency, direct such person as the Minister specifies in the direction to conduct a special inquiry into the matter.
- (2) A special inquiry may (without limitation) be conducted under this section into a matter involving the conduct or performance of the head of a government sector agency or a Public Service senior executive (whether or not the person has ceased to be such an agency head or executive).
- (3) A person conducting a special inquiry may enter the premises of any government sector agency or NSW government agency in connection with the inquiry.
- (4) A person conducting a special inquiry has, for the purposes of the inquiry, the functions, protections and immunities conferred on a commissioner by Division 1 of Part 2 of the *Royal Commissions Act 1923*. If 2 or more persons are conducting a special inquiry, the person appointed to preside at the inquiry has, for the purposes of the inquiry, the functions conferred on the chairperson of a commission by the *Royal Commissions Act 1923*.
- (5) The provisions of the *Royal Commissions Act 1923* (except section 13 and Division 2 of Part 2) apply, with necessary modifications:
  - (a) to a special inquiry, and
  - (b) to any witness or person summoned by or appearing before the inquiry or providing material to the inquiry.
- (6) If the person conducting a special inquiry agrees, an agent (including an Australian legal practitioner) may represent a person, government sector agency or other agency at the inquiry.
- (7) The person conducting a special inquiry is not bound by the rules of evidence and may be informed on any matter in issue at the inquiry in such manner as the person considers appropriate.
- (8) The person conducting a special inquiry may, in respect of a matter not dealt with by or under this Act, give directions as to the procedure to be followed at or in connection with the inquiry.
- (9) The person conducting a special inquiry must:
  - (a) within such period as the Minister requires, prepare a report on the conduct and findings, and any recommendations, of the inquiry, and

- (b) immediately after preparing the report, provide the Minister with a copy of the report.
- (10) The Minister must cause a copy of the report, together with information as to any action taken or proposed to be taken in relation to the subject of the report, to be laid before each House of Parliament within 30 sitting days of that House after the day on which the Minister was provided with a copy of the report.

**83 Inquiries by Public Service Commissioner or DPC Secretary into government sector agencies**

- (1) In this section:  
*DPC Secretary* means the Secretary of the Department of Premier and Cabinet.
- (2) The Commissioner or DPC Secretary, or a person authorised by the Commissioner or DPC Secretary, may conduct an inquiry into any matter relating to the administration or management of a government sector agency.
- (3) An inquiry is not to be conducted by or on behalf of the DPC Secretary into any matter that is the subject of an inquiry by or on behalf of the Commissioner, except with the concurrence of the Commissioner.
- (4) The Commissioner or DPC Secretary, or a person authorised by the Commissioner or DPC Secretary, may, for the purposes of conducting an inquiry under this section:
  - (a) enter and inspect the premises of a government sector agency, and
  - (b) require the production of, and take copies of, any documents in the custody of an employee of the government sector agency, and
  - (c) for the purposes of further examination, take possession of, and remove, any of those documents, and
  - (d) require an employee of the government sector agency to answer questions, and
  - (e) require an employee of the government sector agency to provide such assistance and facilities as is or are necessary to enable the Commissioner, Secretary or authorised person to exercise functions under this section.

A reference in this subsection to an employee of a government sector agency includes a reference to any person who is engaged by the agency (whether directly or indirectly) under a contract for services.

- (5) This section does not affect the operation of section 82.
- (6) The DPC Secretary cannot conduct (or authorise the conduct of) an inquiry under this section into the NSW Police Force.

**84 Minister's powers to control staff and work of Department not affected**

The ordinary and necessary departmental authority of a Minister with respect to the control and direction of staff and work is not limited by anything in this Act.

**85 Operation of industrial relations and superannuation legislation**

- (1) This Act does not affect the operation of the *Industrial Relations Act 1996*. This subsection does not limit section 58 (Industrial or legal proceedings excluded) and section 74 (Excess employees—jurisdiction of Industrial Relations Commission).
- (2) This Act does not affect the operation of provisions of the *Superannuation Act 1916* or any other superannuation legislation relating to retirement and other cessation of employment (and to entitlement to pensions and other benefits) of employees to whom this Act applies.

**86 Appointment to other statutory offices**

Nothing in this Act prevents the head of a Public Service agency or other Public Service employee from also being appointed to a statutory office under any Act.

**87 Proceedings for offences**

Proceedings for an offence against the regulations may be dealt with summarily before the Local Court.

**88 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the following:
  - (a) the employment of persons in the government sector (including employment in special cases, leave, redeployment, mobility and termination),
  - (b) any matter that may be dealt with in the government sector employment rules (in which case the regulations prevail to the extent of any inconsistency with those rules).
- (3) The regulations may preclude an employee of a government sector agency who receives a severance or redundancy payment because of a cessation of employment from being engaged in the public sector (referred to in section 41) during a period after that cessation of employment unless arrangements have been made for a refund of a proportionate amount of the payment.
- (4) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

**89 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## Schedule 1 Public Service agencies

(Section 22)

**Note.** Section 47A of the *Constitution Act 1902* precludes a statutory body or statutory officer from employing staff unless specifically authorised to do so by legislation.

Section 21 of this Act enables staff to be employed under this Act in Departments or other Public Service agencies to enable Ministers, statutory bodies or statutory officers to exercise their functions. For example, the Public Service agencies referred to in this Schedule as staff agencies comprise persons who are employed under this Act to enable the statutory body included in the name of the agency to exercise its functions.

Under section 59 of this Act, the persons employed in a Department or other Public Service agency to enable a statutory body or statutory officer to exercise functions may be referred to as the officers or employees, or members of staff, of the statutory body or statutory officer.

### Part 1 Departments

Department of Education and Communities

Department of Family and Community Services

Ministry of Health

Department of Justice

Department of Planning and Environment

Department of Premier and Cabinet

Department of Trade and Investment, Regional Infrastructure and Services

Department of Transport

The Treasury

### Part 2 Executive agencies related to Departments

The agency heads marked with an asterisk are statutory officers and do not hold offices established by this Act in the Public Service.

<b>Executive agency</b>	<b>Head of agency</b>	<b>Related Department</b>
Art Gallery of New South Wales Trust Staff Agency	Director of the Art Gallery of New South Wales	Department of Trade and Investment, Regional Infrastructure and Services. The Minister administering the <i>Art Gallery of New South Wales Act 1980</i> is to exercise the employer functions of the Government in relation to the Director.
Australian Museum Trust Staff Agency	Director of the Australian Museum	Department of Trade and Investment, Regional Infrastructure and Services. The Minister administering the <i>Australian Museum Trust Act 1975</i> is to exercise the employer functions of the Government in relation to the Director.
Barangaroo Delivery Authority Staff Agency	Chief Executive Officer of the Barangaroo Delivery Authority	Department of Premier and Cabinet

<b>Executive agency</b>	<b>Head of agency</b>	<b>Related Department</b>
Multicultural NSW Staff Agency	Chief Executive Officer of the Agency	Department of Education and Communities. The Minister administering the <i>Multicultural NSW Act 2000</i> is to exercise the employer functions of the Government in relation to the Chief Executive Officer.
Crown Solicitor's Office	Crown Solicitor	Department of Justice
Destination NSW Staff Agency	Chief Executive Officer of Destination NSW	Department of Trade and Investment, Regional Infrastructure and Services. The Minister administering the <i>Destination NSW Act 2011</i> is to exercise the employer functions of the Government in relation to the Chief Executive Officer.
Office of Environment and Heritage	Chief Executive of the Office	Department of Planning and Environment
Office of Finance and Services	Chief Executive of the Office	The Treasury
Fire and Rescue NSW	Commissioner of Fire and Rescue NSW	Department of Justice. The Minister administering the <i>Fire Brigades Act 1989</i> is to exercise the employer functions of the Government in relation to the Commissioner.
Health Professional Councils Authority Office	Secretary of the Ministry of Health	Ministry of Health
Home Care Service Staff Agency	Secretary of the Department of Family and Community Services	Department of Family and Community Services
Independent Liquor and Gaming Authority Staff Agency	Chief Executive of the Independent Liquor and Gaming Authority	Department of Trade and Investment, Regional Infrastructure and Services
Infrastructure NSW Staff Agency	Chief Executive Officer and Co-ordinator General, Infrastructure NSW	Department of Premier and Cabinet. The Minister administering the <i>Infrastructure NSW Act 2011</i> is to exercise the employer functions of the Government in relation to the Chief Executive Officer and Co-ordinator General.
Institute of Sport Staff Agency	Chief Executive of the Office of Sport	Department of Premier and Cabinet

<b>Executive agency</b>	<b>Head of agency</b>	<b>Related Department</b>
Library Council of New South Wales Staff Agency	State Librarian	Department of Trade and Investment, Regional Infrastructure and Services. The Minister administering the <i>Library Act 1939</i> is to exercise the employer functions of the Government in relation to the State Librarian.
Office of Local Government	Chief Executive of the Office	Department of Planning and Environment
Local Land Services Staff Agency	Chair of the Board of Chairs under the <i>Local Land Services Act 2013</i>	Department of Trade and Investment, Regional Infrastructure and Services
Mental Health Commission Staff Agency	Secretary of the Ministry of Health	Ministry of Health
Natural Resources Commission Staff Agency	*Commissioner for the Commission	Department of Premier and Cabinet
NSW Institute of Psychiatry Staff Agency	Secretary of the Ministry of Health	Ministry of Health
Office of the NSW Rural Fire Service	Commissioner of the NSW Rural Fire Service	Department of Justice. The Minister administering the <i>Rural Fires Act 1997</i> is to exercise the employer functions of the Government in relation to the Commissioner.
Office of the NSW State Emergency Service	Commissioner of the NSW State Emergency Service	Department of Justice. The Minister administering the <i>State Emergency Service Act 1989</i> is to exercise the employer functions of the Government in relation to the Commissioner.
Parliamentary Counsel's Office	Parliamentary Counsel	Department of Premier and Cabinet
Ministry for Police and Emergency Services	Chief Executive of the Ministry	Department of Justice. The Minister administering this Act is to exercise the employer functions of the Government in relation to the Chief Executive.
Service NSW	Chief Executive Officer of Service NSW	The Treasury
Office of Sport	Chief Executive of the Office	Department of Premier and Cabinet
Sydney Cricket and Sports Ground Trust Staff Agency	Secretary of the Sydney Cricket and Sports Ground Trust	Department of Premier and Cabinet

<b>Executive agency</b>	<b>Head of agency</b>	<b>Related Department</b>
Sydney Opera House Trust Staff Agency	Chief Executive of the Sydney Opera House Trust	Department of Trade and Investment, Regional Infrastructure and Services. The Minister administering the <i>Sydney Opera House Trust Act 1961</i> is to exercise the employer functions of the Government in relation to the Chief Executive.
Trustees of the Museum of Applied Arts and Sciences Staff Agency	Director of the Museum of Applied Arts and Sciences	Department of Trade and Investment, Regional Infrastructure and Services. The Minister administering the <i>Museum of Applied Arts and Sciences Act 1945</i> is to exercise the employer functions of the Government in relation to the Director.
UrbanGrowth NSW Development Corporation Staff Agency	Chief Executive of the UrbanGrowth NSW Development Corporation	Department of Planning and Environment. The Minister administering the <i>Growth Centres (Development Corporations) Act 1974</i> is to exercise the employer functions of the Government in relation to the Chief Executive.

### Part 3 Separate agencies

The agency heads marked with an asterisk are statutory officers and do not hold offices established by this Act in the Public Service.

<b>Agency</b>	<b>Head of agency</b>
Board of Studies, Teaching and Educational Standards Staff Agency	*President of the Board of Studies, Teaching and Educational Standards
Office of the Children's Guardian	*Children's Guardian
Office of the Director of Public Prosecutions	*Director of Public Prosecutions
Environment Protection Authority Staff Agency	*Chairperson of the Environment Protection Authority
Health Care Complaints Commission Staff Agency	*Commissioner of the Health Care Complaints Commission
Independent Pricing and Regulatory Tribunal Staff Agency	*Chairperson of the Independent Pricing and Regulatory Tribunal
Independent Transport Safety Regulator Staff Agency	*Chief Executive of the Independent Transport Safety Regulator
Information and Privacy Commission	*Information Commissioner
Legal Aid Commission Staff Agency	*Chief Executive Officer of the Legal Aid Commission
New South Wales Crime Commission Staff Agency	*Commissioner for the New South Wales Crime Commission

<b>Agency</b>	<b>Head of agency</b>
New South Wales Electoral Commission Staff Agency	*Electoral Commissioner
Ombudsman's Office	*Ombudsman
Police Integrity Commission Staff Agency	*Commissioner for the Police Integrity Commission
Public Service Commission	* Public Service Commissioner
TAFE Commission (Senior Executives) Staff Agency	*Managing Director of the TAFE Commission

## **Schedule 2 Provisions relating to Public Service Commissioner**

(Section 9)

### **1 Basis of office of Commissioner**

- (1) The office of Commissioner is a full-time office and the holder of the office is required to hold it on that basis, except to the extent permitted by the Governor.
- (2) The office of Commissioner is a statutory office under this Act and the holder of the office is not employed in the Public Service.

### **2 Term of office**

- (1) Subject to this Schedule, the Commissioner holds office for such term not exceeding 7 years as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A person may not hold the office of Commissioner for terms totalling more than 7 years.

### **3 Remuneration**

The Commissioner is entitled to be paid:

- (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and
- (b) such travelling and subsistence allowances as the Premier may from time to time determine.

### **4 Vacancy in office**

The office of Commissioner becomes vacant if the holder:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Governor, or
- (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (e) becomes a mentally incapacitated person, or
- (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (g) is removed from office by the Governor under section 9.

### **5 Filling of vacancy**

If the office of Commissioner becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

### **6 Appointment of acting Commissioner**

- (1) The Premier may, from time to time, appoint a person to act in the office of the Commissioner during the illness or absence of the Commissioner or during a vacancy in the office of the Commissioner. The person, while so acting, has all the functions

of the Commissioner and is taken to be the Commissioner (including as a member of the Public Service Commission Advisory Board).

- (2) The Premier may, at any time, remove a person from office as acting Commissioner.
- (3) An acting Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Premier may from time to time determine.

#### **7 Personal liability of Commissioner**

A matter or thing done (or omitted to be done) by:

- (a) the Commissioner, or
- (b) a person acting under the direction of the Commissioner,

does not, if the matter or thing was done (or omitted to be done) in good faith for the purposes of executing this Act (or any other Act that confers functions on the Commissioner), subject the Commissioner or a person so acting personally to any action, liability, claim or demand.

## **Schedule 3 Members and procedure of Public Service Commission Advisory Board**

(Section 18)

### **Part 1 Preliminary**

#### **1 Definitions**

In this Schedule:

*appointed member* means the Chairperson of the Advisory Board or other member of the Advisory Board who is appointed by the Premier.

*member* means an appointed or ex-officio member of the Advisory Board.

### **Part 2 Members**

#### **2 Terms of office of appointed members**

- (1) Subject to this Schedule and the regulations, an appointed member holds office for the period (not exceeding 3 years) specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A person may not be an appointed member for consecutive terms totalling more than 6 years unless the Premier determines otherwise.

#### **3 Remuneration of appointed members**

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Premier may from time to time determine in respect of the member.

#### **4 Vacancy in office of appointed member**

- (1) The office of an appointed member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Premier, or
  - (d) is removed from office by the Premier under this clause, or
  - (e) is absent from 3 consecutive meetings of the Advisory Board of which reasonable notice has been given to the member personally or by post, except on leave granted by the Premier or unless the member is excused by the Premier for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Premier may remove an appointed member from office at any time.

## **5 Filling of vacancy in office of appointed member**

If the office of any appointed member becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy.

## **6 Appointed members not prevented from holding other offices**

If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as an appointed member.

## **7 Appointed member holds statutory office**

An appointed member holds a statutory office and is not employed in the Public Service.

## **8 Disclosure of pecuniary or other interests**

- (1) If:
  - (a) a member has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered at a meeting of the Advisory Board, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Advisory Board.
- (2) A disclosure by a member at a meeting of the Advisory Board that the member:
  - (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Advisory Board and the record must be available at all reasonable hours to inspection by any person.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Premier or the Advisory Board otherwise determines:
  - (a) be present during any deliberation of the Advisory Board with respect to the matter, or
  - (b) take part in any decision of the Advisory Board with respect to the matter.
- (5) For the purposes of the making of a determination by the Advisory Board under subclause (4), a member who has a direct or indirect pecuniary or other interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the Advisory Board for the purpose of making the determination, or

- (b) take part in the making by the Advisory Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Advisory Board.

#### **9 Personal liability of members**

A matter or thing done (or omitted to be done) by:

- (a) the Advisory Board, or
- (b) a person acting under the direction of the Advisory Board,

does not, if the matter or thing was done (or omitted to be done) in good faith for the purposes of executing this Act (or any other Act that confers functions on the Advisory Board), subject a member of the Advisory Board or a person so acting personally to any action, liability, claim or demand.

### **Part 3 Procedure**

#### **10 General procedure**

The procedure for the calling of meetings of the Advisory Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Advisory Board.

#### **11 Quorum**

The quorum for a meeting of the Advisory Board is a majority of the members for the time being.

#### **12 Presiding member**

- (1) The Chairperson of the Advisory Board (or, in the absence of the Chairperson, a person elected by the members of the Advisory Board who are present at a meeting of the Advisory Board) is to preside at a meeting of the Advisory Board.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

#### **13 Voting**

A decision supported by a majority of the votes cast at a meeting of the Advisory Board at which a quorum is present is the decision of the Advisory Board.

#### **14 Transaction of business outside meetings or by telephone**

- (1) The Advisory Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Advisory Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Advisory Board.
- (2) The Advisory Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Advisory Board.

- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Advisory Board.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

**15 Frequency of meetings**

The Advisory Board is to meet at least on a quarterly basis each year (but no more than 6 times each year).

## **Schedule 4 Savings, transitional and other provisions**

### **Part 1 General**

#### **1 Definition**

In this Schedule:

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

#### **2 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) Any such provision has effect despite anything to the contrary in this Schedule.
- (5) The regulations may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.

### **Part 2 Provisions consequent on enactment of this Act**

#### **3 Continuation in office of Public Service Commissioner**

- (1) The person holding office as the Public Service Commissioner under the former Act immediately before the repeal of that Act is taken to have been appointed as the Public Service Commissioner under this Act for the balance of the Commissioner's term of office under the former Act.
- (2) For the purpose of determining the maximum total terms that a person may hold office as Public Service Commissioner under this Act, a term of office under the former Act is taken to be a term of office under this Act.

#### **4 Continuation in office of members of Public Service Commission Advisory Board**

- (1) A person holding office as a member of the Public Service Commission Advisory Board under the former Act immediately before the repeal of that Act is taken to have been appointed as a member of the Public Service Commission Advisory Board under this Act for the balance of the member's term of office under the former Act.
- (2) For the purpose of determining the maximum total terms that a person may hold office as a member of the Public Service Commission Advisory Board under this Act, a term of office under the former Act is taken to be a term of office under this Act.

## 5 Existing employees of the Government Service become employees of Public Service

- (1) A person who was employed in the Government Service of New South Wales immediately before the repeal of the former Act is, on that repeal, taken to be employed in the Public Service of New South Wales in the same kind of employment. For that purpose, employment (other than for a term) in an officer's position or in a permanent position is the same kind of employment as ongoing employment.
- (1A) Subclause (1) does not apply to any persons employed in the Government Service of New South Wales who are, on the commencement of this Act, transferred to the Transport Service of New South Wales by an administrative arrangements order under the *Constitution Act 1902*. Division 4 of Part 7 of the *Transport Administration Act 1988* applies to any such transferred staff as if they had been transferred by an order under that Division.
- (2) The application of the provisions of this Act, the regulations and the government sector employment rules to any such person is subject to the provisions of this Schedule.
- (3) The repeal of the former Act does not affect the continuity of service of a person taken to be employed in the Public Service under this clause, any accrued rights to leave under the former Act or any accrual of rights to leave under this Act.
- (4) A person who is taken to be employed in the Public Service under this clause is taken to be employed in a role or classification of work that corresponds to the kind and grade of work of the person's position or work on the repeal of the former Act.
- (5) The continued employment of a person taken to be employed in the Public Service under this clause who held a Chief or Senior Executive position or a senior officer position (or equivalent position) under the former Act is subject to clauses 6–8.
- (6) (Repealed)
- (7) This clause does not apply to persons employed under the former Act as special temporary employees.

## 6 Secretaries of Departments—transitional arrangements

- (1) In this clause, **former principal Department** means a principal Department of the Public Service listed in Division 1 of Part 1 of Schedule 1 to the former Act immediately before the repeal of the former Act.
- (2) A person holding office as the head of a former principal Department immediately before the repeal of the former Act continues in office as the Secretary of the corresponding Department under this Act:
  - (a) for the balance of the person's term of office under the former Act, or
  - (b) for the period of 12 months after the commencement of this Act,whichever is the longer period. However, the person ceases to hold office as Secretary under this subclause if the person's employment is terminated under section 41 of this Act (or otherwise ceases) or if the person is subsequently appointed as Secretary of the Department under this Act.
- (3) A Department under this Act that is declared, by an administrative arrangements order under the *Constitution Act 1902*, to be the successor and a continuation of a former principal Department is the corresponding Department of that former principal Department for the purposes of this clause. A Department does not cease to be a corresponding Department merely because of a subsequent change in the name of the Department under this Act.
- (4) A person who continues in office as Secretary under subclause (2):

- (a) is employed under Division 2 of Part 4 of this Act in term employment in Band 4 under the senior executive bands determination, and
- (b) is not required to enter into a contract of employment under this Act for the purposes of that temporary period of continued employment, and
- (c) has a remuneration package that is equivalent to the remuneration package of the person immediately before the repeal of the former Act (unless the remuneration package is increased as a result of a determination of the Statutory and Other Offices Remuneration Tribunal made under Part 3A of the *Statutory and Other Offices Remuneration Act 1975*), and
- (d) if the person's employment is terminated under section 41 of this Act on or after the commencement of this Act, is entitled to the compensation provided under section 78 of the former Act as if the termination had been a removal of the person from office under the former Act.

#### **7 Heads of other Public Service agencies—transitional arrangements**

- (1) In this clause, *former other Division* means a Division of the Government Service listed in Division 2 of Part 1, or Part 2, of Schedule 1 to the former Act immediately before the repeal of the former Act, but does not include any such Division whose staff are, on the commencement of this Act, transferred to the Transport Service of New South Wales by an administrative arrangements order under the *Constitution Act 1902*.
- (2) A person holding office as the head of a former other Division immediately before the repeal of the former Act (other than the holder of a statutory office) continues in office as the head of the corresponding Public Service agency under this Act:
  - (a) for the balance of the person's term of office under the former Act, or
  - (b) for the period of 12 months after the commencement of this Act,whichever is the longer period. However, the person ceases to hold office as the head of the agency under this subclause if the person's employment is terminated under section 41 of this Act (or otherwise ceases) or if the person is subsequently appointed as head of the agency under this Act.
- (3) A Public Service agency under this Act (other than a Department) that is declared, by an administrative arrangements order under the *Constitution Act 1902*, to be the successor and a continuation of a former other Division is the corresponding Public Service agency of that former other Division for the purposes of this clause. A Public Service agency does not cease to be a corresponding Public Service agency merely because of a subsequent change in the name of the agency under this Act.
- (4) If, on the commencement of this Act, there is no corresponding Public Service agency of a former other Division, the head of the former other Division immediately before that commencement (other than the holder of a statutory office) is a continuing former senior executive under clause 8 in the Public Service agency to which the staff of the former other Division are transferred by an administrative arrangements order under the *Constitution Act 1902*.
- (5) If, on the commencement of this Act, a Public Service agency (other than a Department) is not a corresponding Public Service agency of a former other Division and the head of the agency is not a statutory officer, the person who, immediately before that commencement, was the relevant chief manager of the group of staff transferred to the Public Service agency on that commencement by an administrative arrangements order under the *Constitution Act 1902* holds office as the head of the Public Service agency under this Act:
  - (a) for the balance of the person's term of office as the relevant chief manager under the former Act, or

- (b) for the period of 12 months after the commencement of this Act, whichever is the longer period. However, the person ceases to hold office as the head of the agency under this subclause if the person's employment is terminated under section 41 of this Act (or otherwise ceases) or if the person is subsequently appointed as head of the agency under this Act.
- (6) For the purposes of subclause (5), the relevant chief manager of a transferred group of staff is the person who held, immediately before the repeal of the former Act, the executive position under Part 3.1 of Chapter 3 of the former Act having the duties of the head of that group of staff.
- (7) A person who continues in office as head of a Public Service agency under subclause (2) or who holds office as head of a Public Service agency under subclause (5):
- (a) is employed under Division 3 of Part 4 of this Act in term employment in the band under the senior executive bands determination that includes the remuneration package to which the head of the agency continues to be entitled under this subclause, and
- (b) is not required to enter into a contract of employment under this Act for the purposes of that temporary period of continued employment, and
- (c) has a remuneration package that is equivalent to the remuneration package of the person immediately before the repeal of the former Act (unless the remuneration package is increased as a result of a determination of the Statutory and Other Offices Remuneration Tribunal made under Part 3A of the *Statutory and Other Offices Remuneration Act 1975*), and
- (d) if the person's employment is terminated under section 41 of this Act on or after the commencement of this Act, is entitled to the compensation provided under section 78 of the former Act as if the termination had been a removal of the person from office under the former Act.
- (8) The following applies to the initial recruitment action under this Act to fill the role of the head of a Public Service agency (other than a Department):
- (a) the work level and other employment arrangements relating to the role are to be determined under this Act and are not determined by the level and other arrangements that apply to the continued employment of the existing head of the agency under this clause,
- (b) the existing head may be recruited before or at the end of the temporary period of continued employment of the existing head,
- (c) the existing head may be recruited without compliance with the government sector employment rules on merit-based employment (but only in term employment not exceeding 2 years if the recruitment did not comply with those rules).

**7A Review of senior executive structure for implementation of new executive employment arrangements under this Act**

- (1) The Secretary of each Department is to review the senior executive structure of the Department and its related Public Service agencies in order to transition senior executive employment in the Department and related agencies to the new arrangements under this Act.
- (2) The head of a separate Public Service agency is to review the senior executive structure of the agency in order to transition senior executive employment in the agency to the new arrangements under this Act.
- (3) The Commissioner is to determine the date (before 24 February 2017) on which senior executive employment in a Public Service agency or in a part of a Public

Service agency will transition to those new arrangements, and on which relevant persons employed in the agency or part of the agency will cease to be transitional former senior executives referred to in clause 8.

- (4) The Commissioner may determine a different date under this clause for a particular transitional former senior executive than the date otherwise determined for the agency or the part of the agency in which the executive is employed. The date determined for an agency, a part of an agency or for a particular transitional former senior executive may be changed by a further determination of the Commissioner (but only to a date before 24 February 2017).
- (5) Without limiting the date that may be determined as the implementation date for a transitional former senior executive, the implementation date for an executive may be extended to a date before 24 February 2017 that is beyond the implementation date for other such executives in the Public Service agency concerned for the purposes of knowledge transfer and continuity of service by the agency in the transition to the new executive employment arrangements under this Act or to enable the executive to take accrued leave before the termination of employment.
- (6) The date on which a relevant person ceases to be a transitional former senior executive is the **implementation date** for the executive for the purposes of this Schedule.
- (7) Determinations of implementation dates by the Commissioner under this clause are to be made in consultation with the relevant Secretaries of Departments and relevant heads of separate Public Service agencies.

#### **8 Senior executives (other than Secretaries and other heads of agencies)—transitional arrangements**

- (1) In this clause:
  - implementation date** for a transitional former senior executive—see clause 7A.
  - transitional former senior executive** means a person who was, immediately before the repeal of the former Act:
    - (a) an executive officer within the meaning of Part 3.1 of Chapter 3 of the former Act (a **former SES executive**), or
    - (b) employed in the Government Service in the classification or grade of senior officer (or in any equivalent classification or grade determined by the Commissioner for the purposes of this clause) and whose salary was more than the maximum salary for a clerk (Grade 12) in the Public Service (a **former SO executive**),but does not include a statutory officer or a person holding office as Secretary of a Department under clause 6 or holding office as the head of a Public Service agency (other than a Department) under clause 7.
- (2) Until the implementation date for a transitional former senior executive of a Public Service agency who is a former SES executive, this Act applies to the executive subject to the following:
  - (a) the executive is employed under Division 4 of Part 4 of this Act in term employment in the band under the senior executive bands determination that includes the remuneration package to which the executive continues to be entitled under this subclause,
  - (b) the term for which the executive is taken to be so employed is (subject to this clause):
    - (i) the balance of the person's term of office as a former SES executive, and

- (ii) any additional period before the implementation date that the agency head may approve,
  - (c) the executive is not required to enter into a contract of employment under this Act for the purposes of that temporary period of continued employment,
  - (d) the executive has a remuneration package that is equivalent to the remuneration package of the person immediately before the repeal of the former Act (unless the remuneration package is increased as a result of a determination of the Statutory and Other Offices Remuneration Tribunal made under Part 3A of the *Statutory and Other Offices Remuneration Act 1975*),
  - (e) if the executive's employment is terminated under section 41 of this Act on or after the commencement of this Act, the executive is entitled to the compensation provided under section 78 of the former Act as if the termination had been a removal of the executive from office under the former Act.
- (3) Until the implementation date for a transitional former senior executive of a Public Service agency who is a former SO executive, this Act applies to the executive subject to the following:
- (a) the executive is employed under Division 5 of Part 4 of this Act in ongoing employment or, if the executive was employed for a term under the former Act, in term employment,
  - (b) the executive is not employed in a band under the senior executive bands determination and is not subject to re-assignment to a role in another Public Service agency without the agreement of the executive,
  - (c) the conditions of employment of the executive that are preserved by clause 9 are subject to this clause.
- (4) On the implementation date for a transitional former senior executive of a Public Service agency:
- (a) the person ceases to be a transitional former senior executive, and
  - (b) the employment of the person in the agency is terminated unless the person is employed in the agency on and from the implementation date in accordance with this Act (whether as a Public Service senior executive or as a Public Service non-executive employee), and
  - (c) any such termination of the employment of a person who was a former SES executive is taken to be a termination under section 41 of this Act to which subclause (2) (e) applies, and
  - (d) any such termination of the employment of a person who was a former SO executive is taken to be a termination under section 47 of this Act to which this Act (including the conditions of employment preserved by clause 9) applies, and
  - (e) section 58 of this Act applies to any such termination of employment of a person (whether a former SES executive or a former SO executive) on the basis that the person is an executive employee for the purposes of that section.
- (5) The following applies to the creation of a role within the new senior executive structure of a Public Service agency (other than agency head) and to the initial recruitment action under this Act to fill that role:
- (a) the work level and other employment arrangements relating to a new role within that new structure are to be determined under this Act and are not determined by the work level and other arrangements that applied to roles in the former executive structure of the agency,

- (b) transitional former senior executives may be recruited to any such new role before or at the end of the period of their continued employment as transitional former senior executives,
- (c) a person is to be recruited to any such new role in accordance with government sector employment rules on merit-based employment,
- (d) the initial recruitment action to fill any such role is to be limited to the following candidates (having regard to the type and level of the role and any other relevant matter):
  - (i) any transitional former senior executives who occupy a similar role in the relevant parts of the agency,
  - (ii) any Public Service senior executives employed in the relevant parts of the agency in a similar role after the commencement of this Act,
  - (iii) any other Public Service employees (or groups of Public Service employees) in the relevant parts of the agency whom the agency head considers appropriate.

#### **8A Statutory senior executives**

- (1) This clause applies to the following statutory officers whose employment was, immediately before the repeal of the former Act, subject to Part 3.1 of Chapter 3 of the former Act:
  - (a) President of the Board of Studies, Teaching and Educational Standards,
  - (b) Children's Guardian,
  - (c) Commissioner for the Commission for Children and Young People,
  - (d) Registrar of Community Housing appointed under section 10 of the *Community Housing Providers (Adoption of National Law) Act 2012*,
  - (e) Chief Executive Officer of Destination NSW,
  - (f) chief executive of a development corporation appointed under section 6B of the *Growth Centres (Development Corporations) Act 1974*,
  - (g) Chairperson of the Environment Protection Authority,
  - (h) Commissioner of the Health Care Complaints Commission,
  - (i) Chief Executive of the Independent Transport Safety Regulator,
  - (j) Chief Executive of the Internal Audit Bureau,
  - (k) Chief Executive Officer of the Legal Aid Commission,
  - (l) Legal Services Commissioner,
  - (m) chief executive of a major event authority constituted under the *Major Events Act 2009*,
  - (n) Managing Director of the New South Wales Government Telecommunications Authority,
  - (o) Chief Executive Officer of the NSW Trustee and Guardian,
  - (p) Deputy or Assistant Ombudsman,
  - (q) Chief Executive of the Rural Assistance Authority,
  - (r) Commissioner of the Soil Conservation Service,
  - (s) Chief Executive of the Sydney Catchment Authority,
  - (t) Managing Director of the TAFE Commission,
  - (u) Chief Investigator of the Office of Transport Safety Investigations,
  - (v) Director of the Zoological Parks Board.

- (2) On the repeal of the former Act, the employment of a statutory officer to whom this clause applies is subject to Division 4 of Part 4 of this Act and this clause.
- (3) Any such statutory officer:
  - (a) is employed in the band under the senior executive bands determination that includes the remuneration package to which the officer continues to be entitled under this subclause, and
  - (b) is not required to enter into a contract of employment under this Act, and
  - (c) has a remuneration package that is equivalent to the remuneration package of the officer immediately before the repeal of the former Act (unless the remuneration package is increased as a result of a determination of the Statutory and Other Offices Remuneration Tribunal made under Part 3A of the *Statutory and Other Offices Remuneration Act 1975*), and
  - (d) if the officer's employment is terminated under section 41 of this Act on or after the commencement of this Act, is entitled to the compensation provided under section 78 of the former Act as if the termination had been a removal of the statutory officer from office under the former Act, and
  - (e) cannot be removed from office (or otherwise have the officer's employment terminated) on a ground other than a ground on which the officer could have been removed from office immediately before the repeal of the former Act.

#### **8B Transitional provisions relating to remuneration of senior executives**

- (1) For the purposes of clauses 6, 7, 8 and 8A, the remuneration package of a person under the former Act includes any of the following determined by the Statutory and Other Offices Remuneration Tribunal and payable to the person under the former Act:
  - (a) a remuneration package that is payable to the person as the holder of the relevant position under the former Act that exceeds the remuneration package otherwise determined for the senior executive level of the person,
  - (b) an additional amount payable as a recruitment allowance.
- (2) If a person referred to in subclause (1) to whom a recruitment allowance is payable is subsequently employed in accordance with the provisions of this Act as a Public Service senior executive, the person continues to be entitled to so much of that former recruitment allowance as will ensure that the remuneration payable after that subsequent employment is not less than the remuneration payable before that subsequent employment. Any general increase in remuneration packages to account for an annual determination of the Statutory and Other Offices Remuneration Tribunal is to be excluded and does not operate to reduce the amount of recruitment allowance payable.
- (3) This subclause applies to a former SES executive referred to in clause 8 who is subsequently employed in accordance with the provisions of this Act as a Public Service senior executive and who is assigned to a role (or subsequently assigned to different role) that is of equivalent work value as the person's position under the former Act. The remuneration package of the person in any such role is to be not less than the remuneration package of the person immediately before the repeal of the former Act.
- (4) This subclause applies to a former SO executive referred to in clause 8 who is subsequently employed in accordance with the provisions of this Act as a Public Service senior executive and who is assigned to a role (when first so employed) that is of equivalent work value as the person's position under the former Act. The person may be paid an allowance, determined by the agency head in accordance with guidance provided by the Commissioner, to avoid any financial disadvantage as a

Public Service senior executive in that role (or any other assigned role of equivalent work value) compared to the remuneration payable immediately before the repeal of the former Act.

- (5) A retention allowance payable under the former Act to a person to whom clause 6, 7, 8 or 8A applies is payable for completed years of service (or pro rata for completed parts of years of service) on the date the person ceases to be a person to whom that clause applies (otherwise than by resignation).

### **8C Existing temporary employees**

- (1) This clause applies to a person who, immediately before 24 February 2014, was employed on a temporary basis under the former Act (an *existing temporary employee*). This clause does not apply to persons employed under the former Act as special temporary employees.

**Note.** Clause 5 provides that persons employed under the former Act are taken to be employed under this Act in the same kind of employment.

- (2) **Extension of existing term of temporary employment**

If the term of employment of an existing temporary employee is due to expire before 24 February 2015, the person's temporary employment may be extended before it expires in accordance with the provisions of the former Act as if that Act had not been repealed. However, if the temporary employment is to be extended beyond 24 February 2015, the extension of the existing temporary employee's employment must satisfy the requirements of the government sector employment rules relating to temporary employment.

- (3) On and from 24 February 2015, any extension of an existing temporary employee's employment must be made in accordance with the provisions of the government sector employment rules relating to temporary employment.

- (4) **Conversion to ongoing employment**

Despite its repeal, section 31 of the former Act continues to apply, until 24 February 2015, in relation to an existing temporary employee who is a long-term employee within the meaning of that section. Any appointment of the employee under that section as so continued by this clause is taken to be employment in ongoing employment under this Act in a relevant role.

- (5) On and from 24 February 2015, any conversion of an existing temporary employee's employment to ongoing employment must be made in accordance with the provisions of the government sector employment rules.

### **9 Existing conditions of employment under former Act**

- (1) In this clause:

*former non-Public Service group of staff* means a group of staff:

- (a) who, immediately before the commencement of this Act, were employed in the Government Service of New South Wales (but not in the Public Service of New South Wales) or in the NSW Health Service and who become Public Service employees on that commencement, and
- (b) who comprise a Public Service agency or a discrete branch or other part of a Public Service agency,

and includes any persons who become members of that group of staff after the commencement of this Act.

- (2) Conditions of employment applying to any group of Public Service employees immediately before the commencement of this Act (whether under State industrial instruments, determinations under section 4E of the former Act or contracts of

employment) continue to apply, subject to this clause, to that group of Public Service employees. This subclause extends to members of a former non-Public Service group of staff.

- (3) The conditions of employment of Public Service employees who are members of a former non-Public Service group of staff do not include any conditions of employment relating to leave or other matters that are conferred by the regulations under this Act on Public Service employees generally unless they apply because of conditions of employment applying to that group of staff immediately before the repeal of the former Act. In this subclause, a reference to conditions of employment conferred by the regulations includes conditions relating to extended leave and to conditions under the *Crown Employees (Public Service Conditions of Employment) Award 2009* for groups of staff to which that award did not apply immediately before the repeal of the former Act.
- (4) A determination under section 130 of the former Act, or an industrial agreement under section 131 of the former Act, that is in force immediately before the repeal of the former Act is, subject to this clause, taken to be a determination under section 52 of this Act or an industrial agreement under section 51 of this Act (as the case requires).
- (5) A condition of employment that applies because of this clause applies until such time as provision is otherwise made under this Act or any other law.

#### **10 Existing delegations under former Act**

- (1) Any delegation of a function by the Division Head of a Division of the Government Service under section 4F of the former Act and in force immediately before the repeal of the former Act is taken to be a delegation of a comparable function under this Act by the head of the corresponding Public Service agency under section 27 of this Act (in the case of a Department) or under section 32 of this Act (in the case of any other Public Service agency).
- (2) Any delegation of a function by the Director-General under section 123 of the former Act and in force immediately before the repeal of the former Act is taken to be a delegation of a comparable function under this Act by the Industrial Relations Secretary under section 53 of this Act.

#### **11 Unsatisfactory performance, misconduct and suspension**

- (1) Sections 68, 69 and 70 of this Act extend to conduct occurring before the commencement of this Act.
- (2) Any proceedings for unsatisfactory performance or misconduct pending under Part 2.7 of Chapter 2 of the former Act immediately before the repeal of the former Act are to continue to be dealt with under the provisions of that Part as if it had not been repealed, subject to the regulations and the government sector employment rules.

#### **12 Superseded references**

In any other Act, in any statutory or other instrument, or in any contract or agreement:

- (a) a reference to the Government Service of New South Wales (or to any Division of the Government Service) is to be construed as a reference to the Public Service of New South Wales (or to any Public Service agency), and
- (b) a reference to a Department or a Department head (within the meaning of the former Act) is to be construed as a reference to a Public Service agency or the head of such an agency, respectively, and
- (c) a reference to the Public Service Board, the Public Employment Industrial Relations Authority, the Public Employment Office or the Director of Public

Employment (unless the reference relates to the functions exercised by the Industrial Relations Secretary under Division 6 of Part 4 of this Act) is to be construed as a reference to the Public Service Commissioner, and

- (d) a reference to the Public Service Board, the Public Employment Industrial Relations Authority, the Public Employment Office, the Director of Public Employment or the Director-General of the Department of Premier and Cabinet (if the reference relates to the functions exercised by the Industrial Relations Secretary under Division 6 of Part 4 of this Act) is to be construed as a reference to the Industrial Relations Secretary, and
- (e) a reference to an officer or to a temporary or casual employee of the Public Service (or a Department) or to a member of staff or employee of the Government Service (or a Division of the Government Service) is to be construed as a reference to a Public Service employee, and
- (f) a reference to an order under Chapter 4 of the former Act is to be construed as a reference to an administrative arrangements order under Part 7 of the *Constitution Act 1902*, and
- (g) a reference to the former Act, the *Public Sector Management Act 1988* or the *Public Service Act 1979* or to a provision of any such Act is to be construed as extending to a reference to this Act or to the corresponding provision of this Act, except as provided by this clause or except in so far as a contrary intention appears in the Act concerned, and
- (h) a reference to Part 2.5 of the former Act or to a provision of that Part is to be construed as a reference to Part 2 of the *Members of Parliament Staff Act 2013*, and
- (i) a reference to Schedule 3 or 3A to the former Act (or that is required to be construed as such a reference) is to be construed as a reference to Schedule 1 or 2, respectively, to the *Government Sector Employment Regulation 2014*.

### **13 Saving of administrative changes orders under former Act**

An order made (or taken to have been made) under Chapter 4 of the former Act that has not been revoked is taken to be an administrative arrangements order under Part 7 of the *Constitution Act 1902*.

### **13A Staff of Internal Audit Bureau, Treasury Corporation and SAS Trustee Corporation**

Despite the repeal of the former Act, that Act continues to apply to the employment of staff under Chapter 1A of that Act:

- (a) in the Internal Audit Bureau Division to enable the Internal Audit Bureau to exercise its functions, but only until 1 July 2015 or until such time as the Internal Audit Bureau is authorised by legislation to employ staff (whichever is the sooner), and
- (b) in the Treasury Corporation Division to enable the Treasury Corporation to exercise its functions, but only until 1 July 2015 or until such time as the Treasury Corporation is authorised by legislation to employ staff (whichever is the sooner), and
- (c) in the SAS Trustee Corporation Division to enable the SAS Trustee Corporation to exercise its functions, but only until 1 July 2015 or until such time as the SAS Trustee Corporation is authorised by legislation to employ staff (whichever is the sooner).

### **13B Staff previously employed under section 47 of the Constitution Act 1902**

- (1) The enactment of sections 47 and 47A of the *Constitution Act 1902*, as inserted by the amendments made to that Act by Schedule 6.2 to this Act, does not affect the

continued employment of persons who were appointed to public offices under the Government under section 47 of the *Constitution Act 1902*, as in force before its substitution by Schedule 6.2 to this Act (and does not prevent appointments under section 47 as so in force to fill vacancies in those public offices during the period of 12 months after the commencement of this Act).

- (2) During the period of 12 months after the commencement of this Act, any of those persons who are no longer authorised to be employed under section 47A of the *Constitution Act 1902* are to be transferred to employment that is authorised by that section if their continued employment is required.

### **Part 3 Provisions consequent on enactment of Schedule 3 to Statute Law (Miscellaneous Provisions) Act 2014**

#### **14 Continuation in office of statutory and other officers**

The appointment and term of office of a person holding office as a statutory or other officer under an Act amended by Schedule 3 to the *Statute Law (Miscellaneous Provisions) Act 2014* on the commencement of the amendments made to that Act by Schedule 3 are not affected by that Schedule.

#### **15 Savings and transitional regulations**

A regulation that may be made under clause 2 of this Schedule consequent on an amendment to an Act made by Schedule 3 to the *Statute Law (Miscellaneous Provisions) Act 2014* may be made instead under the Act as so amended.

### **Schedules 5, 6 (Repealed)**

## Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
ClI	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

See also the *Members of Parliament Staff Act 2013*.

## Table of amending instruments

Government Sector Employment Act 2013 No 40. Assented to 25.6.2013. Date of commencement, Sch 6.10 excepted, 24.2.2014, sec 2 and 2013 (631) LW 8.11.2013; date of commencement of Sch 6.10, 16.9.2013, sec 2 and 2013 (529) LW 13.9.2013. This Act has been amended as follows:

- 2014** (11) Administrative Arrangements Order 2014. LW 29.1.2014.  
Date of commencement, 24.2.2014, cl 2. Amended by Administrative Arrangements Amendment Order 2014 (58). LW 20.2.2014. Date of commencement, 24.2.2014, cl 2.
- (60) Government Sector Employment Regulation 2014. LW 20.2.2014.  
Date of commencement, 24.2.2014, cl 2.
- (233) Administrative Arrangements (Administrative Changes—Ministers and Public Service Agencies) Order 2014. LW 23.4.2014.  
Date of commencement, 23.4.2014, cl 2.
- No 33 Statute Law (Miscellaneous Provisions) Act 2014. Assented to 24.6.2014.  
Date of commencement of Sch 3.9, 4.7.2014, sec 2 (1).
- (413) Administrative Arrangements (Administrative Changes—Miscellaneous Agencies) Order 2014. LW 30.6.2014.  
Date of commencement of cl 4, 1.7.2014, cl 2 (1).
- No 64 Multicultural NSW Legislation Amendment Act 2014. Assented to 28.10.2014.  
Date of commencement, 24.11.2014, sec 2 and 2014 (714) LW 14.11.2014.
- (801) Administrative Arrangements (Administrative Changes—TAFE Senior Executives and Other Matters) Order 2014. LW 12.12.2014.  
Date of commencement of cl 7, on publication on LW, cl 2 (1).

This Act has been amended by sec 30C of the Interpretation Act 1987 No 15.

## Table of amendments

- Sch 1 Subst 2014 (11), cl 4 (am 2014 (58), cl 3 (1) (2)). Am 2014 (233), cl 4 (1)–(6); 2014 (413), cl 4 (1)–(7); 2014 No 64, Sch 2.5; 2014 (801), cl 7.
- Sch 4 Am 2014 (60), Sch 3 [1]–[7]; 2014 No 33, Sch 3.9.

Sch 5 Rep 1987 No 15, sec 30C.

Sch 6 Am 1987 No 15, sec 30C. Rep 1987 No 15, sec 30C.

### Table of concordance

For the purposes of comparison, this table shows for provisions of this Act (as at the date of assent) corresponding provisions of the repealed Public Sector Employment and Management Act 2002 and other legislation.

<b>Column 1</b>	<b>Column 2</b>
<b>Provisions of this Act</b>	<b>Corresponding provisions of repealed Public Sector Employment and Management Act 2002</b>
Secs 1–4	—
Sec 5	Sec 158A
Sec 6	Sec 3A
Sec 7	Sec 3B
Sec 8	Sec 3C
Sec 9	Sec 3D
Sec 10	Sec 3E
Sec 11	Sec 3F
Sec 12	—
Sec 13	Sec 3J
Sec 14	Sec 3G
Sec 15	Sec 3H
Sec 16	Sec 3I
Sec 17	Secs 3L–3P, 164 (1A)
Sec 18	Sec 3Q
Sec 19	Sec 3R
Sec 20	Secs 4A, 6
Sec 21	Sec 4B
Sec 22	Sec 4C
Sec 23	Secs 4D (1), 10, 12
Sec 24	Sec 13
Sec 25	Sec 14
Sec 26	Sec 4D (2), (3)
Sec 27	Sec 4F
Sec 28	Secs 4D (1), 10
Sec 29	Sec 13
Sec 30	Sec 14
Sec 31	Sec 4D (2), (3)

**Column 1**

**Provisions of this Act**

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**Column 2**

**Corresponding provisions of  
repealed Public Sector Employment  
and Management Act 2002**

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—  
Sec 69  
Sec 74  
Sec 77  
Sec 16  
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—  
Secs 25, 26, 30, 39, 56  
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Sec 131  
Secs 4E (1), 130  
Secs 122–125  
—  
Sec 25  
Secs 60, 61  
Secs 22, 72  
Sec 4K  
Sec 4E (2), (3)  
Sec 4I (4)  
Sec 4J  
—  
Secs 86–91  
Sec 100  
Secs 88, 88A  
Sec 101A  
Sec 47  
Secs 40–53  
Sec 49  
Sec 102  
Sec 103  
Sec 102A  
Sec 103A  
Secs 114, 116 (3)

**Column 1**

**Column 2**

**Provisions of this Act**

**Corresponding provisions of  
repealed Public Sector Employment  
and Management Act 2002**

Sec 76	Secs 115, 116 (4), 120(6)
Sec 77	Sec 116
Sec 78	Sec 118
Sec 79	Sec 120
Sec 80	Sec 158
Sec 81	Sec 162
Sec 82	Sec 159
Sec 83	Secs 3K, 159A
Sec 84	Sec 161
Sec 85	Secs 93, 160
Sec 86	—
Sec 87	Sec 163
Sec 88	Secs 4G, 62, 164
Sec 89	—
Sch 1	Sch 1
Sch 2	Sch 2A
Sch 3	Sch 2B

See Part 7 of the Constitution Act 1902 in relation to sections 104, 106 and 108–113 of the repealed Public Sector Employment and Management Act 2002.

See section 279A of the Workers Compensation Act 1987 in relation to section 4I of the repealed Public Sector Employment and Management Act 2002.





New South Wales

# Government Sector Employment Rules 2014

under the

Government Sector Employment Act 2013

## Status information

### Currency of version

Current version for 21 November 2014 to date (generated 27 November 2014 at 10:21).

Legislation on the NSW legislation website is usually updated within 3 working days.

### Provisions in force

All the provisions displayed in this version of the legislation have commenced. For commencement and other details see the Historical notes.



New South Wales

# Government Sector Employment Rules 2014

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## Government Sector Employment Rules 2014 [NSW]

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:

**above-level** means:

- (a) in the case of a non-executive employee—at a higher classification of work than the employee's current classification, or
- (b) in the case of an executive employee—in a band higher than the band in which the executive is employed.

**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.** The employer functions of the head of a Public Service agency may be delegated under section 27 or 32 of the Act. Accordingly, references to the agency head (in the case of a Public Service agency) will include a reference to any such delegate.

**at-level** means:

- (a) in the case of a non-executive employee—at the same classification of work as the employee's current classification, or
- (b) in the case of an executive employee—within the same band as the band in which the executive is employed.

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

**comparative assessment**—see rule 17.

**employment decision**—see rule 16.

**external advertising** means the process of advertising on the NSW Jobs website. It may also include any other form of advertising that is accessible to the general public.

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

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

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

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

**special office temporary employee** means a person who is employed in temporary employment in the Public Service:

- (a) as an executive assistant to the Governor, or
- (b) as the tipstaff or associate of a judicial officer, or
- (c) to provide direct assistance of a personal or administrative nature to a former Governor or former Premier.

**suitability assessment**—see rule 18.

**talent pool**—see rule 19.

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

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

#### **4 Delegation by Secretaries of Departments of functions relating to Public Service senior executives**

- (1) The following functions cannot be delegated by the Secretary of a Department under section 27 of the Act:
  - (a) the initial engagement of a Public Service senior executive and the consequent assignment of the senior executive to a role,
  - (b) the assignment of a Public Service senior executive to a different role (not being a temporary assignment for a period of less than 6 months),
  - (c) the termination of the employment of a Public Service senior executive under section 41, 68 or 69 of the Act.
- (2) However, the Secretary of a Department may delegate to the head of a Public Service executive agency related to the Department a function referred to in subrule (1) (a) in relation to executives in that related agency. If any such function is delegated to the head of the related agency the function cannot be subdelegated.
- (3) A reference in this rule to an assignment to a different role does not include an assignment consequent on the engagement of an existing executive to a role following recruitment action to fill a vacancy in that role.

## **Part 2 General Public Service employment provisions**

### **5 Probation periods**

- (1) The head of a Public Service agency may determine that the engagement of a person in ongoing employment in the Public Service for the first time is subject to the condition that the person 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.

### **6 Citizenship or residency requirements**

- (1) A person is not to be employed 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.
- (2) A person is not to be offered employment in the Public Service if that employment would exceed any limitation imposed by or in accordance with law as to the person's entitlement to work in Australia.

### **7 Formal qualifications**

- (1) This rule 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 employed on the condition that the person provides that evidence in the time and manner determined by the employer.

## 8 Security and other clearances

- (1) This rule 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.

## 9 Health assessment

- (1) This rule 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 rule, *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 a medical practitioner approved by the agency head or the Commissioner,
  - (c) an examination, by a medical practitioner, optometrist or other appropriately qualified health care professional, approved by the agency head or the Commissioner, of a particular aspect of the person's health likely to detrimentally affect the person's capacity to carry out the role.
- (4) The person's employer is to give the health care professional providing a health assessment referred to in subrule (3) (b) or (c) any requested information about the role concerned that is reasonably required for the purpose of providing the assessment.
- (5) (Repealed)

## 10 Maximum period of temporary employment

- (1) The maximum total period for which a Public Service non-executive employee may be employed in temporary employment in the same Public Service agency is 4 years within any continuous period of 5 years.
- (1A) Despite subrule (1), a Public Service non-executive employee may be employed in temporary employment in the same Public Service agency for a further period or periods of up to 4 years (the *maximum temporary period*) if the decision to employ the person for any such further period is based on a comparative assessment after external advertising. The recruitment process should be commenced not later than 3 months before the start of the proposed further period of temporary employment.
- (1B) If a person is employed under subrule (1A) after a comparative assessment (the *initial assessment*) for less than the maximum temporary period and the person is subsequently employed for a further period within the maximum temporary period, a further comparative assessment is not required in connection with the decision to employ the person for that further period if:
  - (a) the person is to be assigned to the same role as the role to which the person was assigned after the initial assessment, or

- (b) the agency head is satisfied that it is appropriate to rely on the initial assessment for the role to which the person is to be assigned.
- (2) The period of 4 years referred to in subrule (1) or (1A) may, with the approval of the Commissioner in any particular case, be extended for an additional period of up to 12 months.
- (3) The Commissioner may determine classes of exceptions to this rule. Any such determination is to be made publicly available on a website provided and maintained by the Commissioner.
- (4) This rule does not apply to special office temporary employees.

#### **11 Temporary assignments**

- (1) A person employed in a Public Service agency may be temporarily assigned to another role in the agency (including, in the case of a Public Service senior executive, to another role in another Public Service agency) if:
  - (a) the person who is usually assigned to that other role is unavailable for any reason, or
  - (b) there is no person assigned to that other role.

**Note.** The regulations under the Act provide for an allowance in the case where the temporary assignment involves a higher role.
- (2) A temporary assignment under this rule may be made by:
  - (a) if the Public Service employee assigned is a Public Service senior executive—the employer of the executive, or
  - (b) if a non-executive employee is assigned to the role of a Public Service senior executive—the employer of the executive, or
  - (c) in any other case—the agency head.
- (3) A Public Service senior executive may not be assigned under this rule to a role in another agency without the agreement of the head of that other agency.
- (4) A temporary assignment under this rule may be terminated at any time by the relevant employer or agency head.
- (5) On completion of a person's temporary assignment under this rule, the person, unless assigned to a different role under section 38 or 46 of the Act, continues to have the role assigned to the person under section 38 or 46 of the Act immediately before the start of the temporary assignment.
- (6) Sections 38 and 46 of the Act do not apply to a temporary assignment under this rule.

#### **12 Converting temporary or term employment to ongoing employment at-level**

- (1) An agency head may convert the temporary or term employment of a person to ongoing employment in the agency if the person has been employed in temporary or term employment for a period of at least 12 months and the ongoing employment is at-level.
- (2) The conversion to ongoing employment under this rule:
  - (a) must be based on the results of a comparative assessment after external advertising (whether a previous comparative assessment for the role concerned or a new comparative assessment) and on the employee's most recent performance under the agency's performance management system, and
  - (b) is subject to the satisfactory conduct of the employee.
- (3) The Commissioner may, on application by the head of a Public Service agency, determine that the conversion to ongoing employment at-level of an existing

temporary employee (or class of existing temporary employees) specified in the determination is not required to comply with subrule (2). An *existing temporary employee* is a person referred to in subrule (1) who:

- (a) is currently employed in the agency as a Public Service non-executive employee, and
  - (b) is an existing temporary employee as referred to in clause 8C of Schedule 4 to the Act.
- (4) If such a determination is made in relation to an existing temporary employee, the agency head may, without complying with subrule (2), convert the person's employment to ongoing employment if the agency head is satisfied that the person has the qualifications, experience, standard of work performance and capabilities to enable the person to perform the duties of the role to which the person is to be assigned in the ongoing employment.
- (5) A conversion to ongoing employment in accordance with subrule (4) is to be completed by no later than 23 February 2017 or such earlier date as may be specified in the determination.
- (6) An application for a determination by the Commissioner under this rule must specify the following:
- (a) the existing temporary employees or class of existing temporary employees to which the application relates,
  - (b) the reasons why the exemption from subrule (2) is required,
  - (c) a timeframe for the conversion (if it is to occur) of existing temporary employees to ongoing employment in accordance with the exemption,
  - (d) a timetable setting out the key milestones that will enable the agency to achieve that timeframe.
- (7) A determination by the Commissioner under this rule is to be in writing and may be varied or revoked by a further determination.
- (8) The conversion to ongoing employment of an existing temporary employee in accordance with clause 8C (4) of Schedule 4 to the Act does not require the approval of the Commissioner.

### **13 Excess non-executive employees**

- (1) The head of a Public Service agency may determine a person who is employed in ongoing employment in the agency other than as a Public Service senior executive to be excess to the requirements of the relevant part of the agency in which the person is employed.
- (2) In making any such determination and in dealing with any such excess employee, the agency head is to have regard to any relevant government policies that were in force immediately before 24 February 2014 and are notified by the Commissioner for the purposes of this rule. Any such policies are to be made publicly available on a website provided and maintained by the Commissioner.

### **14 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 rule 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.

## Part 3 Merit-based employment

### 15 Application of Part

Except as provided by these Rules, this Part applies to employment in the Public Service.

### 16 Merit principles to be applied in employment decisions

- (1) This rule applies to any of the following decisions (an *employment decision*):
  - (a) the employment of persons in any kind of employment and the assignment under section 38 or 46 of the Act of persons to roles,
  - (b) the transfer or secondment of an employee to a Public Service agency from another agency,
  - (c) the conversion to ongoing employment of an employee's temporary or term employment.
- (2) 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 relevant Public Service agency.
- (3) Without limiting subrule (2), the following principles apply in relation to employment decisions:
  - (a) any recruitment action (whether for ongoing employment, temporary or term employment or casual employment) is to take into account:
    - (i) long and short term capability needs to meet the objectives of the relevant agency, and
    - (ii) existing workforce capabilities,
  - (b) pre-established standards for a role are to be expressed as levels against each capability or other requirements for the role,
  - (c) any assessment for a role is to include appropriate methods to assess different requirements,
  - (d) except in the case where a development opportunity is being provided, a person may be employed in a role only if the person meets the pre-established standards for the role or type of role,
  - (e) any employment decision is to be made on balance taking into account all the results provided by the assessment process.
- (4) This rule does not apply to the employment of a person as a special office temporary employee.

**Note.** The Commissioner may issue guidance in relation to the application of the merit principles to the assignment of persons to roles.

### 17 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) any other claimants for the role.
- (2) The process is to include the following:
  - (a) screening for essential requirements such as a qualification or licence,
  - (b) reviewing an application and resume,

- (c) at least 3 capability-based assessments, one of which is an interview,
  - (d) referee checks against the pre-established standards for the role.
- (3) More than one assessor must be involved in a comparative assessment.

#### **18 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) reviewing a resume,
  - (c) at least 2 capability-based assessments, one of which is an interview,
  - (d) referee checks against the pre-established standards for the role.

#### **19 Talent pools**

- (1) A **talent pool** is a list of those persons (whether or not existing Public Service employees) who have satisfied the pre-established standards for a role or type of role through a comparative assessment.
- (2) A talent pool may be used for recruitment to ongoing employment or for temporary or term employment.
- (3) A talent pool may, without limitation, be established jointly by more than one Public Service agency and may be used for recruitment purposes by any Public Service agency.
- (4) 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.

#### **20 Ongoing employment**

- (1) The following decisions must be based on a comparative assessment after external advertising:
- (a) the decision to employ a person in ongoing employment in a particular classification of work or band and the initial assignment of the person to a role in that classification or band,
  - (b) any subsequent decision to employ the person in a different classification of work or in a different band and the initial assignment of the person to a role in that classification or band.
- (2) The Commissioner may, on application by the head of a Public Service agency, determine that the decision to employ an existing non-executive employee in ongoing employment at a higher classification of work than the employee's current classification in the agency is not required to comply with subrule (1). An **existing non-executive employee** is a Public Service non-executive employee (or class of existing non-executive employees) specified in the determination who:
- (a) is currently employed in ongoing employment in the agency, and
  - (b) has been performing duties in the agency at that higher classification or at a classification similar to that higher classification for a period of at least 12 months.
- (3) If such a determination is made in relation to an existing non-executive employee, the agency head may, without complying with subrule (1), employ the person in ongoing employment at that higher classification of work if the agency head is

satisfied that the person has the qualifications, experience, standard of work performance and capabilities to enable the person to perform the duties associated with that higher classification.

**Note.** Employment in a classification of work only applies to persons who are non-executive employees.

- (4) The process for employing a person in accordance with subrule (3) is to be completed by no later than 23 February 2017 or such earlier date as may be specified in the determination.
- (5) An application under subrule (2) must specify the following:
  - (a) the existing non-executive employees or class of existing non-executive employees to which the application relates,
  - (b) the reasons why the exemption from subrule (1) is required,
  - (c) a timeframe for the employment (if it is to occur) of those employees in ongoing employment in accordance with the exemption,
  - (d) a timetable setting out the key milestones that will enable the agency to achieve that timeframe.
- (6) A determination by the Commissioner under this rule is to be in writing and may be varied or revoked by a further determination.

#### **21 Temporary or term employment (up to 6 months)**

- (1) The decision to employ a person in temporary or term employment for a period of up to 6 months must be based on either a suitability assessment or a comparative assessment.
- (2) If the person is employed in temporary or term employment on the basis of a suitability assessment, the person cannot continue in that employment after 6 months unless the person does so on the basis of a comparative assessment after advertising across the Public Service. In such a case, action to undertake the additional requirements of a comparative assessment should commence not later than 3 months after the commencement of the person's temporary or term employment.
- (3) Subrule (2) does not prevent any additional form of advertising from also being used for the purposes of the comparative assessment.
- (4) This rule does not apply to special office temporary employees.

#### **22 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 after advertising across the Public Service. This rule does not prevent any additional form of advertising from also being used for the purposes of the comparative assessment.
- (2) This rule does not apply to special office temporary employees.

#### **22A Employment of special office temporary employees**

- (1) The decision to employ a person as a special office temporary employee must be based on the person's appropriateness for the role concerned having regard to the nature of the role and the person's qualifications, skills and experience.
- (2) The person who is to be assisted by a special office temporary employee may be involved in the process of determining a person's appropriateness for the role in which the person is to be employed.

**22B Use of initial suitability and comparative assessments when extending period of temporary or term employment**

If a person is employed in accordance with rule 21 or 22 after a suitability or comparative assessment (the *initial assessment*) and the person's temporary or term employment is subsequently extended for a further period, a further suitability or comparative assessment is not required in connection with the decision to employ the person for that further period if:

- (a) the person is to be assigned to the same role as the role to which the person was assigned after the initial assessment, or
- (b) the person's employer is satisfied that it is appropriate to rely on the initial assessment for the role to which the person is to be assigned.

**Note.** The extension of a person's temporary employment in the same agency is limited by the maximum period of temporary employment under rule 10 (unless an exception under rule 10 (3) applies).

**22C Exemption from rules 21 and 22 for temporary employees employed under former recruitment provisions**

- (1) This rule applies to a temporary employee who:
  - (a) is employed under the former recruitment provisions as referred to in clause 3 of Schedule 4 to the *Government Sector Employment Regulation 2014*, and
  - (b) is an employee to whom an exception under rule 10 (3) applies.
- (2) The decision to extend the period of employment of any such temporary employee is not required to comply with rule 21 or 22.

**22D Exemption from rules 21 and 22 for temporary employees who are subject to Commissioner's determination**

- (1) In this rule:

*temporary employee* means a person who:

  - (a) is an existing temporary employee as referred to in clause 8C of Schedule 4 to the Act, or
  - (b) is employed in temporary employment under the former recruitment provisions as referred to in clause 3 of Schedule 4 to the *Government Sector Employment Regulation 2014*.
- (2) The Commissioner may, on application by the head of a Public Service agency, determine that the decision to extend the period of employment of a temporary employee (or class of temporary employees) specified in the determination is not required to comply with rule 21 or 22.
- (3) If such a determination is made in relation to a temporary employee, the agency head may, without complying with rule 21 or 22, extend the period of employment of the temporary employee to a date that is no later than the date specified in the Commissioner's determination if the agency head is satisfied that the person has the qualifications, experience, standard of work performance and capabilities to enable the person to perform the duties of the role in which the person is employed.
- (4) The date to which the period of employment of a temporary employee may be extended under subrule (3) cannot be later than 23 February 2017.
- (5) An application under this rule must specify the following:
  - (a) the temporary employees or class of temporary employees to which the application relates,
  - (b) the reasons why the exemption from rules 21 and 22 is required,

- (c) the latest date or dates to which the employment of the temporary employees to which the application relates is proposed to be extended,
  - (d) a timetable setting out the key milestones that will enable the agency to achieve compliance with the requirements of rules 21 and 22 when the proposed exemption ceases to apply.
- (6) A determination by the Commissioner under this rule is to be in writing and may be varied or revoked by a further determination.
- (7) Without affecting the operation of subrule (4), rule 10 does not apply in relation to the extension of the period of employment of a temporary employee under subrule (3).

**23 Limited advertising of vacancies arising from agency restructure**

- (1) If, during the course of a major restructure affecting one or more Public Service agencies (an *affected agency*), the head of an affected agency considers that a significant number of employees in that or any other affected agency are likely to be determined to be excess employees, the agency head may, in taking recruitment action to fill a vacancy in a non-executive role that arises as part of the restructure, limit the recruitment to the following candidates:
- (a) persons employed in ongoing employment in affected agencies,
  - (b) persons who have been employed in temporary employment in affected agencies for a period of at least 12 months.
- (2) This rule has effect despite any requirement under these Rules for external advertising in relation to the role concerned.

## Part 4 Review of promotion decisions

### 24 Request for review of promotion decision

- (1) A Public Service non-executive employee (the *relevant employee*) may request a review of the 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 both the relevant employee and the other employee immediately before the decision was made). Any such decision is referred to in this Part as a *promotion decision*.
- (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:
  - (a) must be 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) may only be made within the period of 10 business days after the relevant employee is advised of the promotion 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.

### 25 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 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) After conducting a review of a promotion decision, the reviewer may:
  - (a) if satisfied that the selection process was not in any way improper or irregular, confirm the promotion decision, or
  - (b) 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.
- (4) The relevant employee is to be notified in writing of the reviewer's decision.
- (5) The decision of the reviewer in respect of the review is final.

## Part 5 Workforce diversity

### 26 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 rule is suitable for the role and have the greatest merit of the eligible persons seeking to be employed in the role.
- (3) For that purpose, Part 3 applies but with such modifications as are necessary to facilitate the employment of eligible persons. Without limiting the operation of this subrule, the capabilities of eligible persons must be assessed against the pre-established standards for the role using such capability-based assessments as the agency head considers relevant.
- (4) In this rule:  
*eligible person* means any of the following:
  - (a) an Aboriginal person or Torres Strait Islander,
  - (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.
- (5) The designation by the Commissioner of any such group of persons is to be made publicly available on a website provided and maintained by the Commissioner.

### 27 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.

## **Part 6 Transfers and secondments**

### **28 Application of Part**

- (1) This Part applies to transfers or secondments between government sector agencies but not to transfers or secondments within the same government sector agency.
- (2) This Part does not apply in relation to a government sector agency comprising the service of a State owned corporation or any service excluded by section 5 of the Act.

### **29 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) Except where the employee initiates the transfer or consents to a transfer at a lower level, 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) Unless it is initiated by the employee, the person 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) This rule does not apply in relation to the assignment under section 38 of the Act of Public Service senior executives to roles in Public Service agencies.

### **30 Merit assessment in relation to transfers**

- (1) Any at-level transfer of an employee to a Public Service agency from a non-Public Service government sector agency, or between Public Service agencies, must be based on either a suitability assessment or a comparative assessment.
- (2) If:
  - (a) a Public Service employee is transferred to a non-Public Service government sector agency, or
  - (b) a government sector employee is transferred between non-Public Service government sector agencies,

the head of the government sector agency to which the employee is transferred is to ensure that the employee is suitable for the role, position or work to be assigned to the employee in that agency.

### **31 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 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 secondment,
  - (d) the circumstances in which the secondment may be terminated and the form of notice to be given to terminate the secondment before the end of the agreed period.
- (3) A copy of the agreement must be provided to the employee concerned.
  - (4) An employee who requests a secondment must do so in writing to the head of the government sector agency in which the person is employed.
  - (5) Unless it is initiated by the employee, the person who initiates a secondment is required:
    - (a) to provide reasonable notice of the secondment to the employee, and
    - (b) to 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 that agency.
- (7) In the case of a secondment of a Public Service employee to a non-Public Service government sector agency, any merit assessment in relation to the secondment is to be to the satisfaction of the head of that government sector agency.
- (8) A government sector employee who is seconded to another agency is, on completion of the secondment, entitled to return to the government sector agency from which the employee was seconded at the same work level at which the person was employed immediately before being seconded.
- (9) This rule does not apply in relation to the assignment under section 38 of the Act of Public Service senior executives to roles in Public Service agencies.

### **32 At-level secondments to Public Service agencies**

An at-level secondment to a Public Service agency must, unless it is provided as a development opportunity, be based on either a suitability assessment or a comparative assessment.

### **33 Above-level secondments to Public Service agencies**

- (1) An above-level secondment of up to 6 months to a Public Service agency must be based on either a suitability assessment or a comparative assessment.
- (2) If the person is seconded above-level on the basis of a suitability assessment, the person cannot continue in that employment after 6 months unless the person does so on the basis of a comparative assessment after advertising across the Public Service. In such a case, action to undertake the additional requirements of the comparative assessment should commence not later than 3 months after the commencement of the above-level secondment.
- (3) The head of a Public Service agency may, in the case of a Public Service employee who has been seconded above-level to the agency for a period of at least 12 months and with the consent of the employee, employ the person in ongoing employment in the agency at that level.

**Note.** Persons seconded at-level to an agency may be transferred to the agency under rule 29.
- (4) The decision to employ a person in ongoing employment under subrule (3):

- (a) must be based on the results of the comparative assessment under subrule (2) or a new comparative assessment after external advertising and on the employee's most recent performance under the agency's performance management system, and
- (b) is subject to the satisfactory conduct of the employee.

#### **34 Review of employer-initiated transfers or secondments**

- (1) This rule applies in relation to the transfer or secondment of a government sector employee that has not been initiated by the employee (referred to in this rule 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 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:
  - (a) in writing to the 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 secondment would cause undue hardship to the employee.
- (8) In conducting a review, the reviewer is:
  - (a) to assess whether or not the employer-initiated transfer or secondment is 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.
- (10) The agency head is to make a decision in relation to the matter subject to the review and notify the employee concerned in writing of the decision.
- (11) Any decision by the agency head in relation to the matter is final.

## **Part 7 Performance management**

### **35 Core requirements of performance management systems**

- (1) The core requirements of a performance management system are as follows:
  - (a) to set and clarify expectations for employees,
  - (b) to monitor employee performance,
  - (c) to plan and review employee performance,
  - (d) to develop employee capability,
  - (e) to recognise employee achievements,
  - (f) to resolve unsatisfactory employee performance.
- (2) The Commissioner may determine the essential elements of those core requirements.

### **36 Dealing with unsatisfactory performance**

- (1) 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.
- (2) This rule does not apply in relation to police officers or to the staff of the following:
  - (a) Rail Corporation New South Wales,
  - (b) Sydney Trains,
  - (c) NSW Trains,
  - (d) Transport Cleaning Services.

## Part 8 Misconduct—procedural requirements

### 37 Definition

In this Part:

*government sector agency* has the same meaning as in section 69 of the Act.

**Note.** The term covers Public Service agencies and any other government sector agency prescribed by the regulations. The part of the NSW Police Force comprising administrative officers is prescribed by the regulations for that purpose.

### 38 Initial stage for dealing with allegations of misconduct

- (1) An allegation of misconduct by an employee of a government sector agency may be made by any person to the agency head. The employee in respect of whom the allegation is made is referred to in this Part as the *relevant employee*.
- (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 relevant 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 relevant 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 relevant 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 relevant 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 rule not to proceed with the matter.

### 39 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 relevant 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.

### 40 Findings by agency head

- (1) An agency head may, in dealing with an allegation of misconduct:
  - (a) make a finding of misconduct by the relevant employee (in which case the employee is to be notified of the finding in writing), or

- (b) make a finding that misconduct by the relevant employee has not occurred (in which case the agency head is to dismiss the allegation and advise the relevant 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) if any such submissions are made, the agency head has taken those 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 or similar 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.

#### **41 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 personnel 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.

## **Part 9 Additional provisions relating to Public Service senior executives**

### **42 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 rule, the *employer* of a Public Service senior executive does not include a Minister.

### **43 Model contracts of employment for Public Service senior executives (including Secretaries of Departments and other agency heads)**

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

### **44 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.

### **45 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.

### **46 Ongoing 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.

**47 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.

**48 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).

**49 Performance management**

- (1) 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.
- (2) A Public Service senior executive may be employed under a contract of employment even though the agency's performance management system has not been implemented or the executive has not entered into a performance agreement. In that case, the executive's contract of employment is to be construed accordingly.

**50 Capability-based assessments**

A Public Service senior executive (other than the Secretary of a Department) must participate in:

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

**51 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.

**52 Application of Part 3 to certain appointments**

Part 3 does not apply:

- (a) to the appointment of a person as the Secretary of a Department or head of a Public Service executive agency if the person held office, no longer than 3 months before the appointment takes effect, as Secretary of a Department, or
- (b) to the appointment of a person as the head of a Public Service executive agency if the person held office, no longer than 3 months before the appointment takes effect, as head of a Public Service executive agency or as Secretary of a Department.

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

(Rule 43)

### **Contract of employment under Government Sector Employment Act 2013**

#### **This contract of employment is made**

on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

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#### **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 meanings 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 to which the Senior Executive is assigned at any time.

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 ending on [*specify date*]. The period of employment may be extended by the Employer.

### **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-based assessments**

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

10.2 The Senior Executive agrees to the use of these assessments for workforce planning purposes.

### **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.

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 meets the performance requirements under the agency's performance management system, 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 days or parts of days.

### **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 or as agreed to by 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.

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 (as referred to in section 41 of the GSE Act) within the period to which the compensation relates the Senior Executive will repay the proportionate amount, as calculated in accordance with the GSE Regulations, before the commencement of that re-employment. This obligation continues even though the contract of employment is terminated.

### **Confidentiality**

*[The following provisions are mandatory to the extent that the contract must contain obligations relating to confidentiality. However, the following provisions may be substituted by a different set of obligations (that are not inconsistent with the following provisions) to suit the particular requirements of the Public Service agency concerned.]*

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.

### **Intellectual property**

*[A provision relating to intellectual property may be included if relevant to the particular requirements of the Public Service agency concerned. If included, the following clauses should be renumbered accordingly.]*

### **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 *[insert components of remuneration package]*:

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

### **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

\_\_\_\_\_  
**The Senior Executive**

Signed

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name in full *[printed]*

\_\_\_\_\_  
Witnessed by

Witness name in full [*printed*]

---

Witness address

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## **Schedule 2 Model contract of employment for Secretaries of Departments and heads of other Public Service agencies**

(Rule 43)

### **Contract of employment under Government Sector Employment Act 2013**

#### **This contract of employment is made**

on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

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#### **Between**

THE GOVERNMENT OF NEW SOUTH WALES

#### **and**

[*Insert full name*] (the “Secretary/Agency Head”) [*both here and elsewhere in this contract, delete whichever is not applicable*]

#### **Parties**

1.1 This contract of employment is between the Secretary/Agency Head and the Government of New South Wales.

#### **Commencement**

2.1 The employment of the Secretary/Agency Head under this contract commences on [*insert date*].

#### **Definitions**

3.1 In this contract:

“Employer” of the Secretary/Agency Head means the person who exercises the employer functions of the Government of New South Wales in relation to the Secretary/Agency Head (being the [*insert name of the office who makes the appointment*] 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 meanings as they have in the GSE Act.

#### **Band**

4.1 The Secretary/Agency Head is employed in Band [*specify band*].

#### **Office**

5.1 The Secretary/Agency Head is appointed to the office described in Appendix A.

5.2 The Secretary/Agency Head must perform the duties and responsibilities of the office to which the Secretary/Agency Head is appointed.

#### **Core values**

6.1 The Secretary/Agency Head agrees to perform the duties and responsibilities of the office in accordance with the government sector core values under section 7 of the GSE Act.

#### **Duration of employment**

7.1 The employment of the Secretary/Agency Head under this contract is ongoing employment (that is, employment that continues until the Secretary/Agency Head resigns or the Secretary/Agency Head’s employment is terminated).

[OR]

The employment of the Secretary/Agency Head under this contract is, unless the Secretary/Agency Head sooner resigns or the Secretary/Agency Head’s employment is sooner terminated, for the period ending on [*specify date*]. The period of employment may be extended by the Employer.

### **Annual performance agreement**

8.1 The Secretary/Agency Head is required to enter into an annual performance agreement with the Employer setting out the performance obligations of the Secretary/Agency Head, and reviews of performance, for the year. The performance agreement continues until a new agreement is signed.

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

### **Capability-based assessments**

*[The following provisions only apply in relation to Agency Heads. In the case of Secretaries they should not be included in the contract and the following clauses should be renumbered accordingly.]*

9.1 The Agency Head agrees to participate in periodic capability-based assessments.

9.2 The Agency Head agrees to the use of these assessments for workforce planning purposes.

### **Total remuneration package and allowances**

10.1 The total remuneration package (comprising monetary remuneration and employment benefits) of the Secretary/Agency Head is specified in Appendix C.

10.2 The Secretary/Agency Head 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.

10.3 The Secretary/Agency Head is entitled to the allowances specified in Appendix C and any allowances conferred under the GSE Act and GSE Regulations.

10.4 The Employer may, subject to the GSE Act, vary the total remuneration package and allowances of the Secretary/Agency Head from time to time.

### **Progression**

11.1 If the Secretary/Agency Head meets the requirements of the annual performance agreement, the Secretary/Agency Head's total remuneration package may be increased within the range of remuneration applicable to the office of the Secretary/Agency Head.

11.2 This clause does not limit the Employer's power to vary the Secretary/Agency Head's total remuneration package in accordance with the GSE Act.

### **Hours of duty**

12.1 The Secretary/Agency Head must work the hours necessary to perform the duties and responsibilities of the office.

12.2 The Secretary/Agency Head's total remuneration package compensates the Secretary/Agency Head for any hours worked.

### **Leave**

13.1 The Secretary/Agency Head is entitled to leave in accordance with the GSE Act, the GSE Regulations and the GSE Rules.

### **Notice of resignation**

14.1 The Secretary/Agency Head may resign his or her employment by providing 4 weeks written notice to the Employer or as agreed to by the Employer.

### **Compensation for termination**

15.1 The Secretary/Agency Head is entitled to the payment of compensation, on the termination of employment by the Employer, as determined by and under the GSE Act.

15.2 If the Secretary/Agency Head's employment is terminated with compensation, the Secretary/Agency Head agrees that if the Secretary/Agency Head is re-employed in the public sector (as referred to in section 41 of the GSE Act) within the period to which the compensation relates the Secretary/Agency Head will repay the proportionate amount, as calculated in accordance with the GSE Regulations, before the commencement of that re-employment. This obligation continues even though the contract of employment is terminated.

### **Confidentiality**

*[The following provisions are mandatory to the extent that the contract must contain obligations relating to confidentiality. However, the following provisions may be substituted by a different set of obligations (that are not inconsistent with the following provisions) to suit the particular requirements of the Public Service agency concerned.]*

16.1 During his or her employment, the Secretary/Agency Head will not disclose, without lawful authority, any confidential or secret information acquired as a consequence of the employment.

16.2 On termination of employment the Secretary/Agency Head will not, without lawful authority, disclose or make *[commercial]* use of any confidential or secret information acquired by the Secretary/Agency Head as a consequence of his or her employment.

### **Intellectual property**

*[A provision relating to intellectual property may be included if relevant to the particular requirements of the Public Service agency concerned. If included, the following clauses should be renumbered accordingly.]*

### **Employment policies**

17.1 The Secretary/Agency Head agrees to act in accordance with any applicable employment policies of the Employer.

17.2 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 Secretary/Agency Head and the Employer.

### **Variation**

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

## **APPENDICES**

The Appendices to this contract (other than Appendix A) may be substituted by the Employer.

### **Appendix A—Office**

*[insert office to which appointed]*

### **Appendix B—Performance agreement**

*[attach copy of current performance agreement]*

### **Appendix C—Remuneration package and allowances**

The total remuneration package of the Secretary/Agency Head is *[insert \$ value of package]*, comprising *[insert components of remuneration package]*:

The Secretary/Agency Head is entitled to allowances under the GSE Regulations and the following additional allowances *[insert any additional allowances]*:

### **Signatures**

#### **The Employer**

Signed

\_\_\_\_\_

Date

\_\_\_\_\_

Name

\_\_\_\_\_  
[Insert office]

\_\_\_\_\_  
pursuant to the GSE Act on behalf of the Government of NSW.  
Witnessed by

\_\_\_\_\_  
Witness name in full [printed]

\_\_\_\_\_  
Witness address

\_\_\_\_\_  
**The Secretary/Agency Head**  
Signed

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name in full [printed]

\_\_\_\_\_  
Witnessed by

\_\_\_\_\_  
Witness name in full [printed]

\_\_\_\_\_  
Witness address



## Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
Cll	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

## Table of amending instruments

Government Sector Employment Rules 2014 (65). LW 20.2.2014. Date of commencement, 24.2.2014, rule 2. These Rules have been amended as follows:

- 2014 (624)** Government Sector Employment Rules 2014 (Amendment No 1). LW 23.9.2014.  
Date of commencement, on publication on LW, cl 2.
- (742) Government Sector Employment Rules 2014 (Amendment No 2). LW 21.11.2014.  
Date of commencement, on publication on LW, cl 2.

## Table of amendments

Rule 3	Am 2014 (624), Sch 1 [1].
Rule 9	Am 2014 (742), Sch 1 [1]–[4].
Rule 10	Am 2014 (624), Sch 1 [2]; 2014 (742), Sch 1 [5] [6].
Rule 12	Am 2014 (742), Sch 1 [7].
Rule 15	Am 2014 (624), Sch 1 [3].
Rule 16	Am 2014 (624), Sch 1 [4].
Rule 20	Am 2014 (742), Sch 1 [8].
Rule 21	Am 2014 (624), Sch 1 [5].
Rule 22	Am 2014 (624), Sch 1 [6].
Rule 22A	Ins 2014 (624), Sch 1 [7].
Rules 22B–22D	Ins 2014 (742), Sch 1 [9].
Rule 52	Ins 2014 (624), Sch 1 [8].





New South Wales

# Government Sector Employment Regulation 2014

under the

Government Sector Employment Act 2013

## Status information

### Currency of version

Current version for 1 January 2015 to date (generated 8 January 2015 at 11:56).

Legislation on the NSW legislation website is usually updated within 3 working days.

### Provisions in force

All the provisions displayed in this version of the legislation have commenced. For commencement and other details see the Historical notes.



New South Wales

# Government Sector Employment Regulation 2014

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## Government Sector Employment Regulation 2014 [NSW]

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.

**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.

**Public Service senior executive** means the Secretary of a Department and any other Public Service employee to whom Division 4 of Part 4 of the Act applies.

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

**the Act** (or the **new Act**) means the *Government Sector Employment Act 2013*.

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

#### **4 Decisions under Regulation to be notified**

- (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.

#### **5 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) a university referred to in clause 34 (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) 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) The following State owned corporations are 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):
  - (a) Landcom,
  - (b) Water NSW.

This subclause does not limit the operation of subclause (1) to the extent that it applies to those State owned corporations.

#### **6 Application of certain provisions to administrative officers of NSW Police Force**

The part of the NSW Police Force comprising administrative officers under the *Police Act 1990* is prescribed as a government sector agency for the purposes of the following provisions of the Act:

- (a) section 69 (Misconduct—Public Service and other prescribed government sector employees),
- (b) section 70 (Suspension of employees from duty pending decision in relation to misconduct, criminal charge or corrupt conduct).

## Part 2 Public Service employment

### Division 1 General provisions

#### 7 Employees not to undertake other paid work without permission

- (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.

#### 8 Deductions for rent in certain cases

- (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.

#### 9 Reporting charges and convictions for serious offences

- (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
  - (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.

#### **10 Employee to report bankruptcy etc**

- (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.

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

#### **11 Application of Division**

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

#### **12 Public holidays**

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.

#### **13 Absence from duty**

- (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) This clause does not prevent any other action being taken under section 69 of the Act in relation to a Public Service employee who is absent from duty without authorised leave.

#### **14 Increments**

- (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 (including any decision by the agency head to accelerate the progression of an employee through the increment scale applying to the 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 agency's performance management system is to set out the criteria for the payment of an increment in relation to performance.
- (4) Until such time as the agency head is satisfied that such criteria are set out in the agency's performance management system or until 1 July 2015 (whichever is the sooner), the payment of an increment to an employee is subject to the satisfactory performance of duties by, and the satisfactory conduct of, the employee as determined by the agency head.
- (5) The payment of an increment may be deferred from time to time, but may not be deferred for more than 12 months at any one time.
- (6) A Public Service employee must be promptly notified in writing by the agency head of any decision to defer payment of an increment. The notice must include the reasons for the decision.
- (7) This clause does not apply to Public Service senior executives.

#### **15 Fitness for duty**

- (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 Service 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.
- (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

#### 16 Extended leave entitlements

Schedule 1 applies to Public Service employees other than persons employed in casual employment. This clause is subject to Schedule 4 to the Act.

**Note.** Under transitional provisions in clause 9 of Schedule 4 to the GSE Act, Schedule 1 to this Regulation does not apply to certain groups of staff to whom the general Public Service extended leave entitlements did not apply under the former Act. Schedule 1 also applies to members of the Transport Service (see section 68F of the *Transport Administration Act 1988* and clause 12 of Schedule 4 to the GSE Act).

#### 17 Other leave entitlements for senior executives and certain other employees

- (1) This clause applies to:
  - (a) Public Service senior executives, and
  - (b) Public Service non-executive employees whose entitlement to leave is not subject to 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.
- (3) This clause is subject to Schedule 4 to the Act.

#### 18 Accrued leave of non-executive employees who become Public Service senior executives

- (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.

## **Division 4 Allowances**

### **19 Application of Division**

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*.

### **20 Allowance for temporary assignments to higher non-executive roles**

- (1) A Public Service non-executive employee who is temporarily assigned by the agency head under the government sector employment rules to another non-executive role in the agency is entitled to be paid an allowance under this clause if the other role is at a higher classification of work than the employee's current classification of work.
- (2) Subject to this clause, the amount of the allowance to be paid to the employee who is temporarily assigned to another role is the difference between the salary of the employee's usual role and the point in the salary range of the other role that the agency head determines is appropriate having regard to the employee's capabilities, knowledge and experience.
- (3) The amount of the allowance to be paid is proportionate to the duties to be performed by the employee in the other role and is to be determined by the agency head before the employee starts the temporary assignment.
- (4) An allowance under this clause is not to be paid:
  - (a) for a temporary assignment to another role that is for a single period of less than 5 ordinary working days (except where the agency head otherwise determines), or
  - (b) in the case where the temporary assignment is for a period of less than 3 months—for any unbroken period of leave of more than 5 ordinary working days taken by the employee during the temporary assignment.
- (5) Subclause (4) (a) does not prevent an allowance being paid under this clause to an employee who works part-time.

## 21 Allowance for temporary assignments to executive roles

### (1) **Non-executives assigned to executive roles**

A Public Service non-executive employee who is temporarily assigned by the agency head under the government sector employment rules to an executive role in the agency is entitled to be paid an allowance.

(2) Subject to this clause, the amount of the allowance to be paid under subclause (1) is the difference between the salary of the person's usual role and the notional salary of the executive role to which the person is temporarily assigned.

### (3) **Executives assigned to higher executive roles**

A Public Service senior executive who is temporarily assigned by the agency head under the government sector employment rules to an executive role that is:

- (a) in a band higher than the band in which the executive is employed, or
- (b) in the same band in which the executive is employed but at a higher remuneration point within that band,

is entitled to be paid an allowance.

(4) Subject to this clause, the amount of the allowance to be paid under subclause (3) is the difference between the total amount of the executive's remuneration package and the total amount of the remuneration package for the executive role to which the executive is temporarily assigned that corresponds to a point, as determined by the agency head for the purposes of the temporary assignment, within the remuneration range for that executive role.

### (5) **General provisions**

The amount of an allowance to be paid under this clause is proportionate to the duties to be performed by the person in the other role and is to be determined by the agency head before the person starts the temporary assignment.

(6) An allowance under this clause is not to be paid:

- (a) for a temporary assignment to another role for a single period of less than 5 ordinary working days (except where the agency head otherwise determines), or
- (b) in the case where the temporary assignment is for a period of less than 3 months—for any unbroken period of leave of more than 5 ordinary working days taken by the person during the temporary assignment.

(7) Subclause (6) (a) does not prevent an allowance being paid under this clause to a person who works part-time.

(8) In this clause:

**agency head** in relation to a Public Service senior executive means the employer of the executive if the employer is not otherwise the agency head.

**executive role** means the role of Public Service senior executive.

**notional salary** in relation to an executive role to which a non-executive employee is temporarily assigned means the total amount of the remuneration package that corresponds to a point, as determined by the agency head for the purposes of the temporary assignment, within the remuneration range for the executive role, less the superannuation guarantee amount payable in respect of a person employed in the executive role at that remuneration point.

**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.

**22 Allowance for secondments**

A Public Service employee who is seconded under section 64 of the Act to another Public Service agency is entitled to be paid an allowance at the same rate as the employee would be entitled under clause 20 or 21 had the secondment been a temporary assignment for which an allowance is payable under those clauses.

**23 Payment where allowance not adequate or available**

- (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.
- (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.

## 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) The proportionate amount of a payment to be refunded is to be calculated on the basis of the number of weeks (if any) that remain as part of the period to which the payment relates.
- (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.
- (4) This clause does not apply to Public Service senior executives.  
**Note.** See section 41 (3) of the Act and clause 39 of this Regulation.

#### 25 Employment pending cessation of employment

- (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 Cross-government sector leave arrangements

#### 26 Definition

In this Division:

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

## 27 State industrial instruments

This Division applies in addition to any State industrial instrument.

## 28 Recognition of prior service for extended leave

Schedule 2 applies to government sector employees.

## 29 Annual leave

- (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.
- (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.

## 30 Sick leave

- (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.

### **31 Maternity leave etc**

- (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.
- (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 24 February 2014.

### **32 Access to forfeited sick leave—transitional arrangements**

- (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 30 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 30.
- (5) The Commissioner may provide guidance to government sector employers as to the circumstances in which, and the matters to be taken into account in determining whether, forfeited sick leave should or should not be granted as sick leave under this clause.

### 33 Funding of leave entitlements

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 3 Workforce diversity

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

### 34 Prescribed agencies for purposes of workforce diversity

The following universities 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.

## Division 4 Secondments to political office holders

**Note.** Part 6 of the *Government Sector Employment Rules 2014* provides for transfers and secondments of employees between government sector agencies as defined in section 3 of the Act.

### 35 Secondments to staff of political office holders

- (1) In this clause:  
**political office holder** has the same meaning as in the *Members of Parliament Staff Act 2013*.  
**staff of a political office holder** means the group of staff who are employed by the political office holder under Part 2 of the *Members of Parliament Staff Act 2013*.
- (2) A government sector employee may, at the request of the employee, be seconded to the staff of a political office holder by agreement between the head of the agency in which the person is employed and the political office holder.
- (3) Any such agreement is to set out the following:
  - (a) the period of the secondment,
  - (b) the financial responsibilities relating to the employee's entitlements,
  - (c) the procedure to be followed on completion of the secondment,
  - (d) the circumstances in which the secondment may be terminated and the form of notice to be given to terminate the secondment before the end of the agreed period of secondment.
- (4) A copy of the agreement must be provided to the seconded employee.

- (5) The political office holder to whose staff an employee is seconded under this clause is responsible for ensuring that the employee is assigned a suitable role while seconded to that office.
- (6) The seconded employee is, while seconded to the staff of a political office holder under this clause, subject to the conditions of employment applying to the members of that staff under Part 2 of the *Members of Parliament Staff Act 2013*.
- (7) Any annual leave accrued by the seconded employee in the service of a government sector agency may be taken while on secondment to the staff of a political office holder.
- (8) On completion of the secondment, the seconded employee:
  - (a) retains any rights to leave accrued by the person while on secondment, and
  - (b) is entitled to return to the government sector agency from which the employee was seconded at the same work level at which the person was employed immediately before being seconded.
- (9) The period of a person's secondment under this clause is, for the purposes of calculating the person's extended leave entitlements as a government sector employee, taken to be a period of employment in the government sector agency from which the person was seconded.
- (10) Despite any other provision of this clause, the secondment of a government sector employee to the staff of a political office holder may be terminated at any time by the political office holder.
- (11) A political office holder may delegate to a member of the political office holder's staff any of the office holder's functions under this clause.

## **Part 4 Additional provisions relating to Public Service senior executives**

### **36 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-based 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.

### **37 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 17) to take 10 days of annual leave each year.

### **38 Allowances for Public Service senior executives**

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.

### **39 Compensation for termination of employment and calculation of proportionate amount to be refunded on re-employment in public sector**

- (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,
  - (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 for the period remaining on the term of the contract (whichever is the lesser),
  - (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.
- (3) The proportionate amount of a payment to be refunded under section 41 (3) of the Act is to be calculated on the basis of the number of weeks (if any) that remain as part of the period to which the payment relates.

- (4) The amount of compensation payable in accordance with this clause 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.

## Schedule 1 Public Service extended leave entitlements

(Clause 16)

**Note.** See clause 16 of the Regulation for provisions relating to the application of this Schedule.

### 1 Definition of “service”

- (1) For the purposes of this Schedule, *service* includes:
- (a) in the case of a Public Service employee who has completed at least 10 years’ service—any period of leave without pay, not exceeding 6 months, taken after 13 December 1963, and
  - (b) service occurring before 24 February 2014, including service of the kind referred to in paragraph (a).

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

- (2) Subject to clauses 2 (3) and 3 (3), for the purpose of determining whether or not a Public Service employee has completed at least 10 years’ service, as referred to in subclause (1) (a), the employee’s period of service is taken:
- (a) to include any period of leave without pay taken before 13 December 1963, and
  - (b) to exclude any period of leave without pay taken after 13 December 1963.

### 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) For the purposes of this clause, *service* includes any period of leave without pay taken before 13 December 1963.

### 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 including 7 years), calculated at the rate of 3 months' leave for 15 years' service.
- (3) For the purposes of this clause, *service* does not include any period of leave without pay, whether taken before, on or after 13 December 1963.

#### **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
  - (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 29 (Annual leave) 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.

## **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.

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

(Clause 28)

### 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 the 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.

*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.
- (4) Any declaration by the Commissioner under clause 2 of Schedule 3A to the former Act and having effect immediately before 24 February 2014 is taken to be a declaration by the Commissioner under this clause.

### 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 ceases to be employed by the employer on the grounds of retrenchment or reduction of work but is re-employed by the employer within the next 12 months.

### 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
    - (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.
- (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:

- (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 4 of Schedule 1.

**Note.** Whichever election the government sector employee makes, his or her service with the current employer will, pursuant to clause 6 of this Schedule, 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.

**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 clause 11 of Schedule 3A to the former Act as in force immediately before its repeal, 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 clause 11 of Schedule 3A to the former Act as in force immediately before its repeal, 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 clause 11 of Schedule 3A to the former Act as in force immediately before its repeal, 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.

## **Schedule 3 Amendment of Schedule 4 to the Government Sector Employment Act 2013 No 40**

### **[1] Clause 5 Existing employees of the Government Service become employees of Public Service**

Insert after clause 5 (1):

- (1A) Subclause (1) does not apply to any persons employed in the Government Service of New South Wales who are, on the commencement of this Act, transferred to the Transport Service of New South Wales by an administrative arrangements order under the *Constitution Act 1902*. Division 4 of Part 7 of the *Transport Administration Act 1988* applies to any such transferred staff as if they had been transferred by an order under that Division.

### **[2] Clause 5 (5) and (6)**

Omit the subclauses. Insert instead:

- (5) The continued employment of a person taken to be employed in the Public Service under this clause who held a Chief or Senior Executive position or a senior officer position (or equivalent position) under the former Act is subject to clauses 6–8.

### **[3] Clauses 6–8**

Omit the clauses. Insert instead:

#### **6 Secretaries of Departments—transitional arrangements**

- (1) In this clause, *former principal Department* means a principal Department of the Public Service listed in Division 1 of Part 1 of Schedule 1 to the former Act immediately before the repeal of the former Act.
- (2) A person holding office as the head of a former principal Department immediately before the repeal of the former Act continues in office as the Secretary of the corresponding Department under this Act:
- (a) for the balance of the person's term of office under the former Act, or
- (b) for the period of 12 months after the commencement of this Act, whichever is the longer period. However, the person ceases to hold office as Secretary under this subclause if the person's employment is terminated under section 41 of this Act (or otherwise ceases) or if the person is subsequently appointed as Secretary of the Department under this Act.
- (3) A Department under this Act that is declared, by an administrative arrangements order under the *Constitution Act 1902*, to be the successor and a continuation of a former principal Department is the corresponding Department of that former principal Department for the purposes of this clause. A Department does not cease to be a corresponding Department merely because of a subsequent change in the name of the Department under this Act.
- (4) A person who continues in office as Secretary under subclause (2):
- (a) is employed under Division 2 of Part 4 of this Act in term employment in Band 4 under the senior executive bands determination, and
- (b) is not required to enter into a contract of employment under this Act for the purposes of that temporary period of continued employment, and
- (c) has a remuneration package that is equivalent to the remuneration package of the person immediately before the repeal of the former Act

(unless the remuneration package is increased as a result of a determination of the Statutory and Other Offices Remuneration Tribunal made under Part 3A of the *Statutory and Other Offices Remuneration Act 1975*), and

- (d) if the person's employment is terminated under section 41 of this Act on or after the commencement of this Act, is entitled to the compensation provided under section 78 of the former Act as if the termination had been a removal of the person from office under the former Act.

## 7 Heads of other Public Service agencies—transitional arrangements

- (1) In this clause, **former other Division** means a Division of the Government Service listed in Division 2 of Part 1, or Part 2, of Schedule 1 to the former Act immediately before the repeal of the former Act, but does not include any such Division whose staff are, on the commencement of this Act, transferred to the Transport Service of New South Wales by an administrative arrangements order under the *Constitution Act 1902*.
- (2) A person holding office as the head of a former other Division immediately before the repeal of the former Act (other than the holder of a statutory office) continues in office as the head of the corresponding Public Service agency under this Act:
- (a) for the balance of the person's term of office under the former Act, or
- (b) for the period of 12 months after the commencement of this Act,
- whichever is the longer period. However, the person ceases to hold office as the head of the agency under this subclause if the person's employment is terminated under section 41 of this Act (or otherwise ceases) or if the person is subsequently appointed as head of the agency under this Act.
- (3) A Public Service agency under this Act (other than a Department) that is declared, by an administrative arrangements order under the *Constitution Act 1902*, to be the successor and a continuation of a former other Division is the corresponding Public Service agency of that former other Division for the purposes of this clause. A Public Service agency does not cease to be a corresponding Public Service agency merely because of a subsequent change in the name of the agency under this Act.
- (4) If, on the commencement of this Act, there is no corresponding Public Service agency of a former other Division, the head of the former other Division immediately before that commencement (other than the holder of a statutory office) is a continuing former senior executive under clause 8 in the Public Service agency to which the staff of the former other Division are transferred by an administrative arrangements order under the *Constitution Act 1902*.
- (5) If, on the commencement of this Act, a Public Service agency (other than a Department) is not a corresponding Public Service agency of a former other Division and the head of the agency is not a statutory officer, the person who, immediately before that commencement, was the relevant chief manager of the group of staff transferred to the Public Service agency on that commencement by an administrative arrangements order under the *Constitution Act 1902* holds office as the head of the Public Service agency under this Act:
- (a) for the balance of the person's term of office as the relevant chief manager under the former Act, or
- (b) for the period of 12 months after the commencement of this Act,

whichever is the longer period. However, the person ceases to hold office as the head of the agency under this subclause if the person's employment is terminated under section 41 of this Act (or otherwise ceases) or if the person is subsequently appointed as head of the agency under this Act.

- (6) For the purposes of subclause (5), the relevant chief manager of a transferred group of staff is the person who held, immediately before the repeal of the former Act, the executive position under Part 3.1 of Chapter 3 of the former Act having the duties of the head of that group of staff.
- (7) A person who continues in office as head of a Public Service agency under subclause (2) or who holds office as head of a Public Service agency under subclause (5):
  - (a) is employed under Division 3 of Part 4 of this Act in term employment in the band under the senior executive bands determination that includes the remuneration package to which the head of the agency continues to be entitled under this subclause, and
  - (b) is not required to enter into a contract of employment under this Act for the purposes of that temporary period of continued employment, and
  - (c) has a remuneration package that is equivalent to the remuneration package of the person immediately before the repeal of the former Act (unless the remuneration package is increased as a result of a determination of the Statutory and Other Offices Remuneration Tribunal made under Part 3A of the *Statutory and Other Offices Remuneration Act 1975*), and
  - (d) if the person's employment is terminated under section 41 of this Act on or after the commencement of this Act, is entitled to the compensation provided under section 78 of the former Act as if the termination had been a removal of the person from office under the former Act.
- (8) The following applies to the initial recruitment action under this Act to fill the role of the head of a Public Service agency (other than a Department):
  - (a) the work level and other employment arrangements relating to the role are to be determined under this Act and are not determined by the level and other arrangements that apply to the continued employment of the existing head of the agency under this clause,
  - (b) the existing head may be recruited before or at the end of the temporary period of continued employment of the existing head,
  - (c) the existing head may be recruited without compliance with the government sector employment rules on merit-based employment (but only in term employment not exceeding 2 years if the recruitment did not comply with those rules).

**7A Review of senior executive structure for implementation of new executive employment arrangements under this Act**

- (1) The Secretary of each Department is to review the senior executive structure of the Department and its related Public Service agencies in order to transition senior executive employment in the Department and related agencies to the new arrangements under this Act.
- (2) The head of a separate Public Service agency is to review the senior executive structure of the agency in order to transition senior executive employment in the agency to the new arrangements under this Act.
- (3) The Commissioner is to determine the date (before 24 February 2017) on which senior executive employment in a Public Service agency or in a part of

a Public Service agency will transition to those new arrangements, and on which relevant persons employed in the agency or part of the agency will cease to be transitional former senior executives referred to in clause 8.

- (4) The Commissioner may determine a different date under this clause for a particular transitional former senior executive than the date otherwise determined for the agency or the part of the agency in which the executive is employed. The date determined for an agency, a part of an agency or for a particular transitional former senior executive may be changed by a further determination of the Commissioner (but only to a date before 24 February 2017).
- (5) Without limiting the date that may be determined as the implementation date for a transitional former senior executive, the implementation date for an executive may be extended to a date before 24 February 2017 that is beyond the implementation date for other such executives in the Public Service agency concerned for the purposes of knowledge transfer and continuity of service by the agency in the transition to the new executive employment arrangements under this Act or to enable the executive to take accrued leave before the termination of employment.
- (6) The date on which a relevant person ceases to be a transitional former senior executive is the *implementation date* for the executive for the purposes of this Schedule.
- (7) Determinations of implementation dates by the Commissioner under this clause are to be made in consultation with the relevant Secretaries of Departments and relevant heads of separate Public Service agencies.

**8 Senior executives (other than Secretaries and other heads of agencies)—transitional arrangements**

- (1) In this clause:  
*implementation date* for a transitional former senior executive—see clause 7A.  
*transitional former senior executive* means a person who was, immediately before the repeal of the former Act:
  - (a) an executive officer within the meaning of Part 3.1 of Chapter 3 of the former Act (a *former SES executive*), or
  - (b) employed in the Government Service in the classification or grade of senior officer (or in any equivalent classification or grade determined by the Commissioner for the purposes of this clause) and whose salary was more than the maximum salary for a clerk (Grade 12) in the Public Service (a *former SO executive*),but does not include a statutory officer or a person holding office as Secretary of a Department under clause 6 or holding office as the head of a Public Service agency (other than a Department) under clause 7.
- (2) Until the implementation date for a transitional former senior executive of a Public Service agency who is a former SES executive, this Act applies to the executive subject to the following:
  - (a) the executive is employed under Division 4 of Part 4 of this Act in term employment in the band under the senior executive bands determination that includes the remuneration package to which the executive continues to be entitled under this subclause,
  - (b) the term for which the executive is taken to be so employed is (subject to this clause):

- (i) the balance of the person's term of office as a former SES executive, and
    - (ii) any additional period before the implementation date that the agency head may approve,
  - (c) the executive is not required to enter into a contract of employment under this Act for the purposes of that temporary period of continued employment,
  - (d) the executive has a remuneration package that is equivalent to the remuneration package of the person immediately before the repeal of the former Act (unless the remuneration package is increased as a result of a determination of the Statutory and Other Offices Remuneration Tribunal made under Part 3A of the *Statutory and Other Offices Remuneration Act 1975*),
  - (e) if the executive's employment is terminated under section 41 of this Act on or after the commencement of this Act, the executive is entitled to the compensation provided under section 78 of the former Act as if the termination had been a removal of the executive from office under the former Act.
- (3) Until the implementation date for a transitional former senior executive of a Public Service agency who is a former SO executive, this Act applies to the executive subject to the following:
- (a) the executive is employed under Division 5 of Part 4 of this Act in ongoing employment or, if the executive was employed for a term under the former Act, in term employment,
  - (b) the executive is not employed in a band under the senior executive bands determination and is not subject to re-assignment to a role in another Public Service agency without the agreement of the executive,
  - (c) the conditions of employment of the executive that are preserved by clause 9 are subject to this clause.
- (4) On the implementation date for a transitional former senior executive of a Public Service agency:
- (a) the person ceases to be a transitional former senior executive, and
  - (b) the employment of the person in the agency is terminated unless the person is employed in the agency on and from the implementation date in accordance with this Act (whether as a Public Service senior executive or as a Public Service non-executive employee), and
  - (c) any such termination of the employment of a person who was a former SES executive is taken to be a termination under section 41 of this Act to which subclause (2) (e) applies, and
  - (d) any such termination of the employment of a person who was a former SO executive is taken to be a termination under section 47 of this Act to which this Act (including the conditions of employment preserved by clause 9) applies, and
  - (e) section 58 of this Act applies to any such termination of employment of a person (whether a former SES executive or a former SO executive) on the basis that the person is an executive employee for the purposes of that section.
- (5) The following applies to the creation of a role within the new senior executive structure of a Public Service agency (other than agency head) and to the initial recruitment action under this Act to fill that role:

- (a) the work level and other employment arrangements relating to a new role within that new structure are to be determined under this Act and are not determined by the work level and other arrangements that applied to roles in the former executive structure of the agency,
- (b) transitional former senior executives may be recruited to any such new role before or at the end of the period of their continued employment as transitional former senior executives,
- (c) a person is to be recruited to any such new role in accordance with government sector employment rules on merit-based employment,
- (d) the initial recruitment action to fill any such role is to be limited to the following candidates (having regard to the type and level of the role and any other relevant matter):
  - (i) any transitional former senior executives who occupy a similar role in the relevant parts of the agency,
  - (ii) any Public Service senior executives employed in the relevant parts of the agency in a similar role after the commencement of this Act,
  - (iii) any other Public Service employees (or groups of Public Service employees) in the relevant parts of the agency whom the agency head considers appropriate.

**[4] Clauses 8A–8C**

Insert after clause 8:

**8A Statutory senior executives**

- (1) This clause applies to the following statutory officers whose employment was, immediately before the repeal of the former Act, subject to Part 3.1 of Chapter 3 of the former Act:
  - (a) President of the Board of Studies, Teaching and Educational Standards,
  - (b) Children’s Guardian,
  - (c) Commissioner for the Commission for Children and Young People,
  - (d) Registrar of Community Housing appointed under section 10 of the *Community Housing Providers (Adoption of National Law) Act 2012*,
  - (e) Chief Executive Officer of Destination NSW,
  - (f) chief executive of a development corporation appointed under section 6B of the *Growth Centres (Development Corporations) Act 1974*,
  - (g) Chairperson of the Environment Protection Authority,
  - (h) Commissioner of the Health Care Complaints Commission,
  - (i) Chief Executive of the Independent Transport Safety Regulator,
  - (j) Chief Executive of the Internal Audit Bureau,
  - (k) Chief Executive Officer of the Legal Aid Commission,
  - (l) Legal Services Commissioner,
  - (m) chief executive of a major event authority constituted under the *Major Events Act 2009*,
  - (n) Managing Director of the New South Wales Government Telecommunications Authority,
  - (o) Chief Executive Officer of the NSW Trustee and Guardian,
  - (p) Deputy or Assistant Ombudsman,

- (q) Chief Executive of the Rural Assistance Authority,
  - (r) Commissioner of the Soil Conservation Service,
  - (s) Chief Executive of the Sydney Catchment Authority,
  - (t) Managing Director of the TAFE Commission,
  - (u) Chief Investigator of the Office of Transport Safety Investigations,
  - (v) Director of the Zoological Parks Board.
- (2) On the repeal of the former Act, the employment of a statutory officer to whom this clause applies is subject to Division 4 of Part 4 of this Act and this clause.
- (3) Any such statutory officer:
- (a) is employed in the band under the senior executive bands determination that includes the remuneration package to which the officer continues to be entitled under this subclause, and
  - (b) is not required to enter into a contract of employment under this Act, and
  - (c) has a remuneration package that is equivalent to the remuneration package of the officer immediately before the repeal of the former Act (unless the remuneration package is increased as a result of a determination of the Statutory and Other Offices Remuneration Tribunal made under Part 3A of the *Statutory and Other Offices Remuneration Act 1975*), and
  - (d) if the officer's employment is terminated under section 41 of this Act on or after the commencement of this Act, is entitled to the compensation provided under section 78 of the former Act as if the termination had been a removal of the statutory officer from office under the former Act, and
  - (e) cannot be removed from office (or otherwise have the officer's employment terminated) on a ground other than a ground on which the officer could have been removed from office immediately before the repeal of the former Act.

#### **8B Transitional provisions relating to remuneration of senior executives**

- (1) For the purposes of clauses 6, 7, 8 and 8A, the remuneration package of a person under the former Act includes any of the following determined by the Statutory and Other Offices Remuneration Tribunal and payable to the person under the former Act:
- (a) a remuneration package that is payable to the person as the holder of the relevant position under the former Act that exceeds the remuneration package otherwise determined for the senior executive level of the person,
  - (b) an additional amount payable as a recruitment allowance.
- (2) If a person referred to in subclause (1) to whom a recruitment allowance is payable is subsequently employed in accordance with the provisions of this Act as a Public Service senior executive, the person continues to be entitled to so much of that former recruitment allowance as will ensure that the remuneration payable after that subsequent employment is not less than the remuneration payable before that subsequent employment. Any general increase in remuneration packages to account for an annual determination of the Statutory and Other Offices Remuneration Tribunal is to be excluded and does not operate to reduce the amount of recruitment allowance payable.

- (3) This subclause applies to a former SES executive referred to in clause 8 who is subsequently employed in accordance with the provisions of this Act as a Public Service senior executive and who is assigned to a role (or subsequently assigned to different role) that is of equivalent work value as the person's position under the former Act. The remuneration package of the person in any such role is to be not less than the remuneration package of the person immediately before the repeal of the former Act.
- (4) This subclause applies to a former SO executive referred to in clause 8 who is subsequently employed in accordance with the provisions of this Act as a Public Service senior executive and who is assigned to a role (when first so employed) that is of equivalent work value as the person's position under the former Act. The person may be paid an allowance, determined by the agency head in accordance with guidance provided by the Commissioner, to avoid any financial disadvantage as a Public Service senior executive in that role (or any other assigned role of equivalent work value) compared to the remuneration payable immediately before the repeal of the former Act.
- (5) A retention allowance payable under the former Act to a person to whom clause 6, 7, 8 or 8A applies is payable for completed years of service (or pro rata for completed parts of years of service) on the date the person ceases to be a person to whom that clause applies (otherwise than by resignation).

#### **8C Existing temporary employees**

- (1) This clause applies to a person who, immediately before 24 February 2014, was employed on a temporary basis under the former Act (an *existing temporary employee*). This clause does not apply to persons employed under the former Act as special temporary employees.  
**Note.** Clause 5 provides that persons employed under the former Act are taken to be employed under this Act in the same kind of employment.
- (2) **Extension of existing term of temporary employment**  
If the term of employment of an existing temporary employee is due to expire before 24 February 2015, the person's temporary employment may be extended before it expires in accordance with the provisions of the former Act as if that Act had not been repealed. However, if the temporary employment is to be extended beyond 24 February 2015, the extension of the existing temporary employee's employment must satisfy the requirements of the government sector employment rules relating to temporary employment.
- (3) On and from 24 February 2015, any extension of an existing temporary employee's employment must be made in accordance with the provisions of the government sector employment rules relating to temporary employment.
- (4) **Conversion to ongoing employment**  
Despite its repeal, section 31 of the former Act continues to apply, until 24 February 2015, in relation to an existing temporary employee who is a long-term employee within the meaning of that section. Any appointment of the employee under that section as so continued by this clause is taken to be employment in ongoing employment under this Act in a relevant role.
- (5) On and from 24 February 2015, any conversion of an existing temporary employee's employment to ongoing employment must be made in accordance with the provisions of the government sector employment rules.

#### **[5] Clause 9**

Omit the clause. Insert instead:

## 9 Existing conditions of employment under former Act

- (1) In this clause:  
**former non-Public Service group of staff** means a group of staff:
- (a) who, immediately before the commencement of this Act, were employed in the Government Service of New South Wales (but not in the Public Service of New South Wales) or in the NSW Health Service and who become Public Service employees on that commencement, and
  - (b) who comprise a Public Service agency or a discrete branch or other part of a Public Service agency,
- and includes any persons who become members of that group of staff after the commencement of this Act.
- (2) Conditions of employment applying to any group of Public Service employees immediately before the commencement of this Act (whether under State industrial instruments, determinations under section 4E of the former Act or contracts of employment) continue to apply, subject to this clause, to that group of Public Service employees. This subclause extends to members of a former non-Public Service group of staff.
- (3) The conditions of employment of Public Service employees who are members of a former non-Public Service group of staff do not include any conditions of employment relating to leave or other matters that are conferred by the regulations under this Act on Public Service employees generally unless they apply because of conditions of employment applying to that group of staff immediately before the repeal of the former Act. In this subclause, a reference to conditions of employment conferred by the regulations includes conditions relating to extended leave and to conditions under the *Crown Employees (Public Service Conditions of Employment) Award 2009* for groups of staff to which that award did not apply immediately before the repeal of the former Act.
- (4) A determination under section 130 of the former Act, or an industrial agreement under section 131 of the former Act, that is in force immediately before the repeal of the former Act is, subject to this clause, taken to be a determination under section 52 of this Act or an industrial agreement under section 51 of this Act (as the case requires).
- (5) A condition of employment that applies because of this clause applies until such time as provision is otherwise made under this Act or any other law.

### [6] Clause 12 Superseded references

Insert at the end of the clause:

, and

- (g) a reference to the former Act, the *Public Sector Management Act 1988* or the *Public Service Act 1979* or to a provision of any such Act is to be construed as extending to a reference to this Act or to the corresponding provision of this Act, except as provided by this clause or except in so far as a contrary intention appears in the Act concerned, and
- (h) a reference to Part 2.5 of the former Act or to a provision of that Part is to be construed as a reference to Part 2 of the *Members of Parliament Staff Act 2013*, and
- (i) a reference to Schedule 3 or 3A to the former Act (or that is required to be construed as such a reference) is to be construed as a reference to

Schedule 1 or 2, respectively, to the *Government Sector Employment Regulation 2014*.

**[7] Clauses 13A and 13B**

Insert after clause 13:

**13A Staff of Internal Audit Bureau, Treasury Corporation and SAS Trustee Corporation**

Despite the repeal of the former Act, that Act continues to apply to the employment of staff under Chapter 1A of that Act:

- (a) in the Internal Audit Bureau Division to enable the Internal Audit Bureau to exercise its functions, but only until 1 July 2015 or until such time as the Internal Audit Bureau is authorised by legislation to employ staff (whichever is the sooner), and
- (b) in the Treasury Corporation Division to enable the Treasury Corporation to exercise its functions, but only until 1 July 2015 or until such time as the Treasury Corporation is authorised by legislation to employ staff (whichever is the sooner), and
- (c) in the SAS Trustee Corporation Division to enable the SAS Trustee Corporation to exercise its functions, but only until 1 July 2015 or until such time as the SAS Trustee Corporation is authorised by legislation to employ staff (whichever is the sooner).

**13B Staff previously employed under section 47 of the Constitution Act 1902**

- (1) The enactment of sections 47 and 47A of the *Constitution Act 1902*, as inserted by the amendments made to that Act by Schedule 6.2 to this Act, does not affect the continued employment of persons who were appointed to public offices under the Government under section 47 of the *Constitution Act 1902*, as in force before its substitution by Schedule 6.2 to this Act (and does not prevent appointments under section 47 as so in force to fill vacancies in those public offices during the period of 12 months after the commencement of this Act).
- (2) During the period of 12 months after the commencement of this Act, any of those persons who are no longer authorised to be employed under section 47A of the *Constitution Act 1902* are to be transferred to employment that is authorised by that section if their continued employment is required.

## **Schedule 4 Additional savings, transitional and other provisions**

### **1 Existing inquiries under former Act**

- (1) Any inquiry under section 3K of the former Act that was commenced but not completed before 24 February 2014 may continue to be conducted by the Commissioner under section 83 of the new Act. For that purpose, any authorisation under section 3K or 3L of the former Act that had effect immediately before 24 February 2014 continues to have effect under section 83 of the new Act.
- (2) Any special inquiry under section 159 of the former Act that was commenced but not completed before 24 February 2014 may continue to be conducted under section 82 of the new Act.
- (3) Any inquiry under section 159A of the former Act that was commenced but not completed before 24 February 2014 may continue to be conducted by the Secretary of the Department of Premier and Cabinet under section 83 of the new Act. For that purpose, any authorisation under section 159A of the former Act that had effect immediately before 24 February 2014 continues to have effect under section 83 of the new Act.

### **2 Existing directions by Commissioner**

Any direction given by the Commissioner under section 3J of the former Act is, to the extent that it had effect immediately before 24 February 2014 and is consistent with the new Act, taken to be a direction given under section 13 of the new Act.

### **3 Recruitment action**

- (1) Any recruitment action commenced within the period of 12 months immediately before 24 February 2014 but not completed before that date may be completed as if the former Act had not been repealed.
- (2) Without limiting the operation of subclause (1), the head of a Public Service agency may, in relation to any recruitment action that was pending under the former Act immediately before 24 February 2014 or that is commenced under the new Act before 24 February 2015, choose to proceed:
  - (a) under the provisions of the former Act and the regulations made under that Act relating to the recruitment of employees (the *former recruitment provisions*), in which case those provisions continue, despite their repeal, to have effect in relation to the recruitment action, or
  - (b) under the provisions of the new Act, the regulations made under the new Act and the government sector employment rules relating to the recruitment of employees (the *new recruitment procedures*).
- (3) However, if a person is employed in the Public Service under the former recruitment provisions, the person is to be assigned to a role in the Public Service and not be appointed to a position.
- (4) A person may not be employed in temporary employment under the former recruitment provisions for a period that extends beyond 24 February 2015.
- (5) Any recruitment action taken by the head of a Public Service agency on and from 24 February 2015 must comply with the new recruitment procedures.

### **4 Eligibility lists**

- (1) An eligibility list that was current under section 20 of the former Act immediately before 24 February 2014 may continue to be used in relation to a role that is

comparable to the position for which the list was created, but only until such time as the list would otherwise cease to have effect under section 20 (3) of the former Act.

- (2) If, in accordance with clause 3 (2) (a) of this Schedule, recruitment action is taken under the provisions of the former Act and the regulations made under that Act, an eligibility list for the purposes of that recruitment may be created under section 20 of the former Act as if the former Act had not been repealed.
- (3) Any such eligibility list ceases to have effect on 24 February 2015.

#### **5 Pending promotion appeals before IRC**

The amendments made to the *Industrial Relations Act 1996* by Schedule 6.4 to the new Act do not apply in relation to a promotion appeal that was lodged under Part 7 of Chapter 2 of the *Industrial Relations Act 1996* before 24 February 2014 and any such appeal may continue to be heard and dealt with as if those amendments had not been made.

#### **6 Existing appointments on probation**

Any appointment on probation made under section 23 of the former Act that had effect immediately before 24 February 2014 continues to have effect under the government sector employment rules as a condition of the person's engagement as a Public Service employee.

#### **7 Existing acting appointments**

Any appointment to act in a position under section 24 of the former Act that had effect immediately before 24 February 2014 is taken to be a temporary assignment under the new Act to a role that is comparable to the position concerned.

#### **8 Retirement on medical grounds**

If any action to retire a person under section 25 of the former Act was commenced but not completed before 24 February 2014 that action may be completed under section 56 of the new Act.

#### **9 Dealing with excess employees under former Act**

If any action was being taken in respect of a person under section 56 of the former Act immediately before 24 February 2014, the person may continue to be dealt with under that section as if it had not been repealed. For that purpose, section 103A of the former Act continues to apply despite its repeal.

#### **10 Existing EEO plans**

- (1) The head of a government sector agency is taken to have complied with the requirements of section 63 of the new 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 24 February 2014.
- (2) This clause ceases to have effect on 24 February 2015.

#### **11 Existing transfers and secondments**

- (1) Any transfer (whether by way of secondment or otherwise) under section 86 or 87 (1) of the former Act that had effect immediately before 24 February 2014 is taken to have effect under section 64 of the new Act.
- (2) In the case of any such existing transfer that is by way of a temporary secondment, the person is entitled to return to the government sector agency from which the

person was seconded under the former Act at the same work level at which the person was employed immediately before being assigned.

**12 Existing temporary assignments**

- (1) Any assignment under section 88 or 88A of the former Act that had effect immediately before 24 February 2014 is taken to have effect under section 66 of the new Act.
- (2) In the case of any such existing assignment involving a person who is a Public Service employee, the person is entitled to return to the Public Service agency from which the person was assigned under the former Act at the same work level at which the person was employed immediately before being assigned.

**13 Existing performance management systems**

Any performance management system in operation under section 101A of the former Act immediately before 24 February 2014 is taken to be a performance management system under section 67 of the new Act.

## Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
Cll	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

## Table of amending instruments

Government Sector Employment Regulation 2014 (60). LW 20.2.2014. Date of commencement, 24.2.2014, cl 2. This Regulation has been amended as follows:

<b>2014</b> (123)	Government Sector Employment Amendment (Additional Appointment) Regulation 2014. LW 19.3.2014. Date of commencement, on publication on LW, cl 2.
No 33	Statute Law (Miscellaneous Provisions) Act 2014. Assented to 24.6.2014. Date of commencement of Sch 2.17, 4.7.2014, sec 2 (1).
No 74	Water NSW Act 2014. Assented to 11.11.2014. Date of commencement, 1.1.2015, sec 2 and 2014 (839) LW 19.12.2014.

## Table of amendments

Cl 5	Am 2014 (123), cl 3; 2014 No 74, Sch 3.11.
Part 3, Div 4, note	Revised by Parliamentary Counsel to reflect the content of the Government Sector Employment Rules 2014.
Sch 2	Am 2014 No 33, Sch 2.17.