



New South Wales

Government Sector Employment Amendment (Transfers to Non-Government Sector) Regulation 2016

under the

Government Sector Employment Act 2013

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

MIKE BAIRD, MP
Premier

Explanatory note

The object of this Regulation is to provide that a government sector employee whose employment in a government sector agency ceases as a result of the transfer to a non-government sector body of the services provided by the agency is not entitled to any severance or redundancy payment for the cessation of employment if the person is offered comparable employment by the non-government sector body.

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

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1 Name of Regulation

This Regulation is the *Government Sector Employment Amendment (Transfers to Non-Government Sector) Regulation 2016*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Government Sector Employment Regulation 2014

Clause 25A

Insert after clause 25:

25A Transfer of services to non-government sector—no severance or redundancy payments if comparable employment offered or not applied for

- (1) A person whose employment in a government sector agency ceases as a result of the transfer to a non-government sector body of any of the services provided by the agency is not entitled to any severance or redundancy payment for that cessation of employment if:
 - (a) the person is offered employment by the non-government sector body that is comparable with the person's employment as a government sector employee, or
 - (b) the person fails to apply for any such comparable employment that has been notified to the person as being available.
- (2) For the purposes of subclause (1), employment by a non-government sector body (the *new employment*) is comparable with the person's employment as a government sector employee (the *former employment*) if:
 - (a) the person's prior service in the government sector is recognised for the purposes of the new employment, and
 - (b) the work to be performed by the person under the new employment is similar to the work performed by the person under the former employment, and
 - (c) the terms of any industrial instrument or agreement (however described) applying to the new employment are substantially similar to, and (when considered on an overall basis) no less favourable than, the terms of any government sector industrial instrument that applied to the former employment, and
 - (d) the new employment does not involve an unreasonable increase in the person's journey to work.
- (3) To avoid doubt, subclause (1) does not create an entitlement to any severance or redundancy payment.
- (4) Subclause (1) is subject to any State industrial instrument and to clause 39.
- (5) In this clause:

government sector industrial instrument means any of the following:

 - (a) a State industrial instrument,
Note. *State industrial instrument* is defined in the *Interpretation Act 1987*.
 - (b) a federal industrial instrument within the meaning of section 9A of the *Industrial Relations Act 1996*,
 - (c) a determination made under any Act fixing conditions of employment of government sector employees.

non-government sector body means any of the following:

 - (a) a private sector entity (including a not-for-profit sector entity),
 - (b) a local council,
 - (c) a State owned corporation,

- (d) a public authority or government agency of the Commonwealth or of another State or Territory.
services provided by an agency include functions exercised by the agency.