



New South Wales

# Government Sector Employment Act 2013 No 40

## Contents

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	Page
<b>Part 1</b>	<b>Preliminary</b>
1	Name of Act 2
2	Commencement 2
3	Definitions 2
4	Objects of Act 4
5	Persons to whom Act does not apply 4
<b>Part 2</b>	<b>Ethical framework for the government sector</b>
6	Objective of Part 5
7	Government sector core values 5
8	General provisions 6

---

---

	Page
<b>Part 3</b>	<b>Public Service Commissioner and Advisory Board</b>
<b>Division 1</b>	<b>Public Service Commissioner</b>
9	Appointment of Commissioner etc 7
10	Principal objectives of Commissioner 8
11	General functions of Commissioner 8
12	Government sector employment rules 9
13	Directions by Commissioner to a government sector agency 10
14	Commissioner to report to Premier 10
15	Annual reports of the Commissioner 11
16	Provision of reports and information by agencies 11
17	Miscellaneous provisions relating to Commissioner 12
<b>Division 2</b>	<b>Public Service Commission Advisory Board</b>
18	Establishment and members of Advisory Board 12
19	Functions of Advisory Board 13
<b>Part 4</b>	<b>The Public Service</b>
<b>Division 1</b>	<b>General</b>
20	The Public Service 14
21	Employment in the Public Service 14
22	Departments and other Public Service agencies 14
<b>Division 2</b>	<b>Secretaries of Departments</b>
23	Secretaries of Departments 15
24	Acting appointments as Secretary of a Department 15
25	General responsibility of Secretaries of Departments 15
26	Employer functions of Secretaries of Departments 16
27	Delegation by Secretaries of Departments 17
<b>Division 3</b>	<b>Heads of other Public Service agencies</b>
28	Heads of agencies other than Departments 17
29	Acting appointments as head of agency (other than Department) 18
30	General responsibility of heads of agencies (other than Departments) 19
31	Employer functions of heads of agencies (other than Departments) 19
32	Delegation by heads of Public Service agencies (other than Departments) 19

---

	Page
<b>Division 4      Public Service senior executives</b>	
33    Application of Division	20
34    Kinds of senior executive employment	20
35    Minister may determine bands in which senior executives to be employed	21
36    Government sector employment rules relating to senior executives	21
37    Employment of senior executives in bands	21
38    Assignment of senior executives to roles in bands across Public Service (other than heads of agencies)	21
39    Contract of employment of senior executives	22
40    Remuneration, benefits and allowances for senior executives	23
41    Termination of employment of senior executives	24
<b>Division 5      Public Service employees (other than senior executives)</b>	
42    Application of Division	24
43    Kinds of employment	25
44    Conditions of engagement	25
45    Employment in classifications of work	25
46    Assignment of roles in work classifications	26
47    Termination of employment	26
48    Matters that government sector employment rules may deal with	27
<b>Division 6      Industrial relations employer functions</b>	
49    Interpretation and application: Division 6	28
50    Role of Industrial Relations Secretary in industrial proceedings	28
51    Industrial Relations Secretary may enter into agreements	28
52    Industrial Relations Secretary may determine employment conditions not otherwise lawfully determined	28
53    Industrial relations provisions	29
<b>Division 7      Additional Public Service employment provisions</b>	
54    Entitlement to extended and other leave	30
55    Resignation	30
56    Retirement on medical grounds	30
57    Crown's dispensation with services	30
58    Industrial or legal proceedings excluded	30
59    How references to employees etc of statutory body to be construed in other Acts, instruments and contracts	32
60    Employer costs for Public Service staff of statutory bodies	32

---

	Page
61 Civil liability with respect to staff of statutory bodies	32
62 Operation of privacy legislation	33
<b>Part 5 Government sector employees</b>	
63 Workforce diversity	34
64 Employee transfers and secondments	34
65 Cross-agency employment	35
66 Temporary assignments of staff between government sector agencies and other relevant bodies	35
67 Performance management systems	36
68 Unsatisfactory performance of government sector employees	36
69 Misconduct—Public Service and other prescribed government sector employees	37
70 Suspension of employees from duty pending decision in relation to misconduct, criminal charge or corrupt conduct	38
71 Employees contesting State elections	39
72 Re-employment of employees resigning to contest Commonwealth elections	39
73 Appointment to position in government sector not affected by additional appointment	40
74 Excess employees—jurisdiction of Industrial Relations Commission	40
<b>Part 6 Removal of statutory officers</b>	
75 Statutory officers to whom Part applies	42
76 Statutory officers to whom Part does not apply	42
77 Removal from office of statutory officers to whom Part applies	42
78 Compensation for office holder following removal	43
79 Operation of this Part	44
<b>Part 7 Miscellaneous</b>	
80 Act to bind Crown	45
81 Delegation by Minister	45
82 Special Ministerial inquiries	45
83 Inquiries by Public Service Commissioner or DPC Secretary into government sector agencies	46
84 Minister's powers to control staff and work of Department not affected	47
85 Operation of industrial relations and superannuation legislation	47
86 Appointment to other statutory offices	47

Government Sector Employment Act 2013 No 40

Contents

---

	Page
87 Proceedings for offences	47
88 Regulations	48
89 Review of Act	48
<b>Schedule 1 Public Service Agencies</b>	<b>49</b>
<b>Schedule 2 Provisions relating to Public Service Commissioner</b>	<b>50</b>
<b>Schedule 3 Members and procedure of Public Service Commission Advisory Board</b>	<b>52</b>
<b>Schedule 4 Savings, transitional and other provisions</b>	<b>57</b>
<b>Schedule 5 Repeal of existing Act and Regulation</b>	<b>64</b>
<b>Schedule 6 Amendment of other Acts</b>	<b>65</b>



New South Wales

# **Government Sector Employment Act 2013 No 40**

Act No 40, 2013

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An Act relating to employment in the government sector. [Assented to 25 June 2013]

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

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**The Legislature of New South Wales enacts:**

## **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).

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**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.

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## **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.

Section 8 Government Sector Employment Act 2013 No 40

Part 2 Ethical framework for the government sector

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- (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.

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## **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,

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- (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.

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- (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.

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**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.

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**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).

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**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.

**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,

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- (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.

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- (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 of 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,

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- (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).

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- (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.

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- (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

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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.

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**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.

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- (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.

Section 79 Government Sector Employment Act 2013 No 40

Part 6 Removal of statutory officers

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*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.

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## Schedule 1 Public Service Agencies

(Section 22)

**Note.** On the enactment of this Act, the names of the various Departments and other agencies were not included in this Schedule. Part 7 of the *Constitution Act 1902* enables the Governor, by administrative arrangements order, to include their names in this Schedule and to alter them from time to time.

### Part 1 Departments

### Part 2 Executive agencies related to Departments

Agency	Head of agency	Related Department
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### Part 3 Separate agencies

Agency	Head of agency
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## 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

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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).

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## **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.
- (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 review by the head of the relevant Public Service agency in connection with the staged implementation of Public Service senior executive employment in the agency under clause 8.

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- (6) Section 58 of this Act applies to the termination of the position and employment of a person referred to in subclause (5) as a result of the review in the same way it applies to the termination of the employment of an executive employee.
  - (7) This clause does not apply to persons employed under the former Act as special temporary employees.

**6 Continuation in office of Secretaries of Departments**

- (1) A person holding office as the head of 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 that Act is taken to have been appointed as the Secretary of the corresponding Department under this Act for the balance of the person's term of office under the former Act.
- (2) A person who is taken to be so appointed as Secretary is employed in accordance with this Act and a contract of employment entered into under this Act, and any provision or contract applying to the person as the head of the former principal Department ceases to apply. However, this subclause does not affect the continuity of service of the person in the Public Service, any accrued rights to leave under the former Act or any accrual of rights to leave under the Secretary's contract of employment under this Act.
- (3) A Department does not cease to be a corresponding Department merely because of a change in the name of the Department under this Act.
- (4) If there ceases to be a corresponding Department on the repeal of the former Act, the head of the former principal Department is taken to be removed from his or her executive position under section 77 of the former Act and that section and section 78 of the former Act apply to that removal.

**7 Continuation in office of non-statutory heads of other Divisions of the Government Service**

- (1) This clause does not apply to the head of a Division of the Government Service who is the holder of a statutory office and whose office is not created by the former Act.
- (2) A person holding office as the head of 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 that Act is taken to have been appointed as the head of the corresponding Public Service agency under this Act for the balance of the person's term of office under the former Act.
- (3) A person who is taken to be so appointed as head of the agency is employed in accordance with this Act and a contract of employment

entered into under this Act, and any provision or contract applying to the person as the head of the former Division ceases to apply. However, this subclause does not affect the continuity of service of the person in the Public Service, any accrued rights to leave under the former Act or any accrual of rights to leave under the person's contract of employment under this Act.

- (4) A Public Service agency does not cease to be a corresponding agency merely because of a change in the name of the agency under this Act.
- (5) If there ceases to be a corresponding agency on the repeal of the former Act, the head of the former Division is taken to be removed from his or her executive position under section 77 of the former Act and that section and section 78 of the former Act apply to that removal.

## 8 Staged implementation of new senior executive employment arrangements

- (1) In this clause:

*former senior executive provisions* mean the provisions of Part 3.1 of Chapter 3 of the former Act (and any other provisions of the former Act that relate to the operation of that Part, including provisions designating the employer of chief or senior executive officers or providing for the appointment of those officers) and the provisions of Part 3A of the *Statutory and Other Offices Remuneration Act 1975*.

*new senior executive provisions* mean the provisions of Division 4 of Part 4 of this Act (and any other provisions of this Act that relate to the operation of that Division, including provisions designating the person who exercises employer functions in relation to Public Service senior executives) and the provisions of Part 3B of the *Statutory and Other Offices Remuneration Act 1975*.

*senior executive implementation date* for a Public Service agency or a part of any such agency—see subclause (4).

- (2) The Commissioner is to prepare an implementation schedule for the staged implementation of the provisions of this Act relating to Public Service senior executives (other than the Secretary of a Department or the head of a separate Public Service agency).
- (3) The implementation schedule is to set out the date on which the new senior executive provisions will apply to a Public Service agency. A date may only be set on the recommendation of the head of the agency.
- (4) Different dates may be set for different Public Service agencies or for different parts of a Public Service agency. The date so set is the *senior executive implementation date* for that agency or that part of the agency.

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- (5) The senior executive implementation date for an agency or part of an agency may be changed by the Commissioner on the recommendation of the head of the agency.
  - (6) Until the senior executive implementation date for an agency or part of an agency, the former senior executive provisions continue to apply, and the new senior executive provisions do not apply, to that agency or that part of the agency. This subclause does not affect the application of the new senior executive provisions to the Secretary of a Department or the head of a separate Public Service agency.
  - (7) Despite anything to the contrary in this clause, the senior executive implementation date for the head of a Public Service executive agency related to a Department is to be set by the Commissioner after consultation with the Secretary of the Department.
  - (8) A person who was a chief or senior executive officer under the former senior executive provisions immediately before the senior executive implementation date for the agency or part of the agency concerned and who does not become a Public Service senior executive on that date is taken to be removed from his or her executive position under section 77 of the former Act and the former senior executive provisions apply to that removal. With the approval of the Commissioner in a special case, the officer may be declared under that section to be an unattached officer for a period not exceeding 12 months and that section continues to apply accordingly.

## **9 Conditions of employment**

- (1) 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, unless inconsistent with this Act, 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).
- (2) The repeal of the former Act does not affect any conditions of employment under State industrial instruments, or contracts of employment, in force on the commencement of this Act that apply to Public Service employees, unless they are inconsistent with this Act.

## **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

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- (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*.

**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*.

Government Sector Employment Act 2013 No 40

Schedule 5 Repeal of existing Act and Regulation

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## **Schedule 5 Repeal of existing Act and Regulation**

The following Act and instrument are repealed:

*Public Sector Employment and Management Act 2002 No 43*

*Public Sector Employment and Management Regulation 2009*

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## **Schedule 6      Amendment of other Acts**

### **6.1    Anti-Discrimination Act 1977 No 48**

#### **Part 9A Equal Opportunity in Public Employment**

Omit the Part.

### **6.2    Constitution Act 1902 No 32**

#### **[1]    Part 6, heading**

Omit “**and departments**”. Insert instead “**and staff**”.

#### **[2]    Sections 47 and 47A**

Omit section 47. Insert instead:

#### **47    Appointment of officers**

- (1) The appointment of all public officers under the Government of New South Wales is vested in the Governor with the advice of the Executive Council or in a person authorised by legislation to make the appointment.
- (2) This section does not apply to the appointment of:
  - (a) members of the Executive Council and Ministers of the Crown or the holders of any other political office, or
  - (b) an officer or employee of either House of Parliament or any officer under the separate control of the President or Speaker, or under their joint control (other than the Clerk of the Parliaments or of either House of Parliament or any other officer of the Parliament designated by order of the Governor).

#### **47A   Employment of staff**

- (1) Persons employed by the Government of New South Wales in the service of the Crown are to be employed in the Public Service of New South Wales under the *Government Sector Employment Act 2013* or in any other service of the Crown established by legislation.
- (2) A statutory body that is a NSW Government agency, or a person holding a public office under the Government of New South Wales, cannot employ persons unless legislation specifically authorises the body or person to do so.

- (3) This section does not apply to:
- (a) a State owned corporation, or
  - (b) the engagement of independent contractors or volunteer workers.

**[3] Section 48 Absent officers and staff**

Insert “or employee” after “means an officer” in the definition of *officer* in section 48 (1).

**[4] Part 7**

Omit the Part. Insert instead:

## **Part 7 Administrative arrangements**

### **50A Definitions: Part 7**

In this Part:

*administrative arrangements order* means an order made by the Governor under this Part.

*administrative change* means:

- (a) the fact of there ceasing to be a Minister, a Public Service agency or a Public Service employee of a particular description, or
- (b) the transfer of the administration of an Act, or any portion or aspect of an Act, from a Minister to another Minister, or
- (c) the transfer of a function from a Minister, Public Service agency or Public Service employee to another Minister, Public Service agency or Public Service employee, respectively.

*description* includes title.

*Public Service agency* means a Department or other agency of the Public Service, and includes:

- (a) any part of a Department or other agency of the Public Service, and
- (b) that part of the NSW Police Force comprising administrative officers under the *Police Act 1990*, and
- (c) the Transport Service of New South Wales or any part of that Service.

*Public Service employee* means a person employed in a Public Service agency.

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*reference* to a Minister, Public Service agency or Public Service employee includes a reference that (by or under any Act) is to be construed or treated as a reference to that Minister, agency or employee.

**50B Allocation of administration of Acts and other portfolio responsibilities**

- (1) The Governor may, by an administrative arrangements order, allocate to Ministers the administration of Acts and other portfolio responsibilities.
- (2) A Minister may, subject to any direction of the Premier, assume the administration of an Act, or portfolio responsibility, that has not been allocated to a Minister by the Governor under this section.
- (3) In allocating the administration of an Act:
  - (a) different portions of the Act may be administered by different Ministers, and
  - (b) different Ministers may administer the Act in different respects, and
  - (c) 2 or more Ministers may jointly administer the same Act or the same portion of an Act.

The joint administration of an Act or portion of an Act does not require the joint exercise of a Ministerial function.

**50C Ministers to whom Public Service agencies responsible**

- (1) The Governor may, by an administrative arrangements order, specify the Minister to whom a Public Service agency is responsible.
- (2) A Minister may, subject to any direction of the Premier, assume responsibility for a Public Service agency for which the Governor has not determined Ministerial responsibility under this section.
- (3) The same Public Service agency may be responsible to more than one Minister.

**50D Public Service agencies—creation, abolition and changes**

- (1) The Governor may, by an administrative arrangements order:
  - (a) establish, abolish or change the name of any Public Service agency, or

- (b) transfer a part (or all parts) of a Public Service agency to another Public Service agency,  
and substitute or amend Schedule 1 to the *Government Sector Employment Act 2013* for that purpose or any other purpose authorised by that Act.
- (2) If the Governor transfers a part or parts of a Public Service agency to another Public Service agency under this section:
  - (a) the employees in the part or parts of the agency transferred become employees of the agency to which the transfer is made, and
  - (b) the employees continue as employees in the same employment in the agency to which the transfer is made.

**50E Change to references in Acts etc to Ministers, Public Service agencies and Public Service employees**

- (1) The Governor may, by an administrative arrangements order, require a reference in any Act or statutory or other instrument, or in any contract or agreement, to a Minister, Public Service agency or Public Service employee by a specified description to be construed as a reference to a Minister, Public Service agency or Public Service employee, respectively, by another specified description.
- (2) Such a requirement does not apply to or in respect of any Act or statutory or other instrument, or any contract or agreement, enacted, made or entered into after the requirement took effect.
- (3) An administrative arrangements order under this section need not be consequential on or incidental to administrative change.
- (4) For the purposes of this section, a reference to a Minister by a specified description extends to a reference to a Minister administering a specified Act or portion of an Act.

**50F Provisions consequent on administrative changes and other matters**

- (1) The Governor may, by an administrative arrangements order, make such provisions as are necessary or convenient to be made for the purpose of dealing with matters that are incidental to or consequential on administrative change or the making of an administrative arrangements order.
- (2) The provisions that may be made under this section include:
  - (a) provisions for the transfer of any property, rights and liabilities of a superseded authority (being a Minister,

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Public Service agency or Public Service employee the subject of an administrative arrangements order), and

- (b) provisions of a savings or transitional nature.

**50G Publication, commencement and operation of orders**

- (1) An administrative arrangements order is to be published on the NSW legislation website.
- (2) The order takes effect on the date of its publication on the NSW legislation website, or on such other date as may be specified in the order. The commencement date can be a date that is earlier than the date of publication of the order on the NSW legislation website.
- (3) To the extent to which the order takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the order 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) An administrative arrangements order may combine any 2 or more of the provisions authorised by this Part to be made by such an order.

**[5] Section 8A Assent to Bills**

Insert after section 8A (2):

- (3) Every Bill shall, on becoming an Act, be transmitted to and enrolled in a public repository of State documents.

**6.3 Government Information (Public Access) Act 2009 No 52**

**Schedule 2 Excluded information of particular agencies**

Insert at the end of clause 2:

The office of the Public Service Commissioner—inquiry functions of the Commissioner under section 83 of the *Government Sector Employment Act 2013* (or under section 82 of that Act if the Commissioner is directed to conduct a special inquiry).

## **6.4 Industrial Relations Act 1996 No 17**

### **[1] Section 83 Application of Part**

Omit “an executive officer to whom Part 2A of the *Public Sector Management Act 1988* or Part 5 of the *Police Act 1990* applies” from section 83 (3).

Insert instead “the Secretary of a Department or a Public Service senior executive under the *Government Sector Employment Act 2013* or an executive officer to whom Part 5 of the *Police Act 1990* applies”.

### **[2] Chapter 2, Part 7, Heading**

Omit “**promotion and**”.

### **[3] Section 91 Interpretation**

Omit “promotion appeal or a” from the definition of *appeal*.

### **[4] Section 91, definition of “promotion appeal”**

Omit the definition.

### **[5] Section 91, definition of “public sector employee”**

Omit paragraph (a) (and the note to that paragraph) from the definition.

Insert instead:

(a) employed in the Public Service, or

### **[6] Section 91, definition of “public sector employer”**

Omit “the appropriate Division Head within the meaning of the *Public Sector Employment and Management Act 2002*”.

Insert instead “the head of the relevant Public Service agency”.

### **[7] Section 91 (2)**

Omit the subsection.

### **[8] Section 92 Application of Part**

Omit “promotion appeals and” from section 92 (1).

### **[9] Chapter 2, Part 7, Division 2 Promotion appeals**

Omit the Division.

### **[10] Section 100B Time for lodging appeal**

Omit section 100B (1) and (3).

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- [11] **Section 100C Decisions with respect to appeals**  
Omit section 100C (1).
- [12] **Section 100H Provisions relating to promotion appeals**  
Omit the section.
- [13] **Section 146C (8)**  
Omit “Government Service”. Insert instead “Public Service”.
- [14] **Section 166 Representation of parties**  
Omit “promotion and” from section 166 (2).
- [15] **Section 166 (2A)**  
Omit the subsection.
- [16] **Dictionary, definition of “public sector employee”**  
Omit “Government Service”. Insert instead “Public Service”.
- [17] **Dictionary, definition of “public sector industrial agreement”**  
Omit “section 64 of the *Public Sector Management Act 1988*”.  
Insert instead “section 51 of the *Government Sector Employment Act 2013*”.
- 6.5 Interpretation Act 1987 No 15**
- [1] **Section 21 Meanings of commonly used words and expressions**  
Insert in alphabetical order in section 21 (1):  
*Public Service* or *NSW Public Service* means the Public Service referred to in the *Government Sector Employment Act 2013*.
- [2] **Section 21A Construction of references in relation to the Public Service**  
Omit the section.
- [3] **Section 21B Construction of references in relation to the Government Service**  
Omit the section.
- 6.6 Police Act 1990 No 47**
- [1] **Part 6A, Division 3 Promotion appeals by non-executive administrative officers to Industrial Relations Commission**  
Omit the Division.

**[2] Section 88 Industrial arbitration or legal proceedings excluded in relation to appointments**

Omit “(except Part 7 of Chapter 2 of that Act)” from section 88 (1).

**[3] Section 88 (4)**

Omit the subsection.

**6.7 Public Sector Employment and Management Act 2002 No 43**

**[1] Sections 135, 136, 145 (1) (d) and 151 (1)**

Omit “Chapter” wherever occurring. Insert instead “Part”.

**[2] Section 135, definition of “government agency”**

Omit paragraph (a). Insert instead:

- (a) a government sector agency (within the meaning of the *Government Sector Employment Act 2013*),

**[3] Section 138 Membership of Board**

Omit “Director-General” wherever occurring in section 138 (1) (a) and (2).

Insert instead “Secretary”.

**[4] Section 138 (1) (b)**

Omit the paragraph. Insert instead:

- (b) the heads of at least 6 other Public Service Departments, being the Departments determined by the Minister from time to time.

**[5] Section 138 (3)**

Omit “Schedule 2C”. Insert instead “The Fifth Schedule”.

**[6] Section 142 Delegation of Board’s functions**

Omit section 142 (3) (b). Insert instead:

- (b) a Public Service employee,

**[7] Section 151 Regulations**

Omit “The regulations may make provision” from section 151 (1).

Insert instead “The Governor may make regulations”.

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**[8] Chapter 7 (as amended by this Subschedule)**

Omit the Chapter.

Transfer the Chapter to the *Public Works Act 1912* as Part 11, renumber Parts 7.1–7.4 of the transferred Chapter as Divisions 1–4, renumber sections 135–151 of the transferred Chapter as sections 162–178 and amend any cross references in the transferred Chapter accordingly.

**[9] Schedule 2C Members and procedure of NSW Procurement Board**

Omit the Schedule.

Transfer the Schedule to the *Public Works Act 1912* as the Fifth Schedule.

**6.8 Public Works Act 1912 No 45**

**[1] Long title**

Insert “; and to make provision in relation to the procurement of goods and services for New South Wales government agencies” after “Public Works”.

**[2] Section 1 Name of Act**

Insert “*and Procurement*” after “*Works*”.

**6.9 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)**

**[1] Section 6 Statutory and Other Offices Remuneration Tribunal**

Insert “or an executive (within the meaning of Part 3B)” after “or an executive office holder (within the meaning of Part 3A)” in section 6 (4) (a).

**[2] Section 6AA Tribunal to give effect to declared government policy on remuneration for public sector staff**

Insert after section 6AA (1):

- (1A) This section also applies to the determination of any alteration in the remuneration packages applicable to executive bands within the meaning of Part 3B.

**[3] Part 3, heading**

Omit the heading. Insert instead:

**Part 3 Remuneration of office holders (except Part 3A or 3B office holders)**

**[4] Section 11A Employment benefits for non-judicial office holders**

Omit “entitled to be provided with employment benefits (within the meaning of Division 4 of Part 3.1 of the *Public Sector Employment and Management Act 2002*)” from section 11A (3).

Insert instead “entitled to be provided with employment benefits that Secretaries of Departments may be provided with under the *Government Sector Employment Act 2013*”.

**[5] Section 11A (3) (c)**

Omit “the cost determined under that Division of similar employment benefits provided to an executive officer under that Division”.

Insert instead “the cost determined under that Act of similar employment benefits provided to Secretaries of Departments”.

**[6] Section 11B Salary sacrifice for motor vehicles and superannuation for office holders not subject to section 11A**

Omit “the cost determined under Division 4 of Part 3.1 of the *Public Sector Employment and Management Act 2002* of a similar employment benefit under that Division” from section 11B (3) (c).

Insert instead “the cost determined under the *Government Sector Employment Act 2013* of a similar employment benefit provided to the Secretary of a Department”.

**[7] Section 13 Annual determinations**

Omit “1 October”. Insert instead “1 July”.

**[8] Section 16 General provisions as to determinations**

Omit section 16 (7).

**[9] Section 17 Inquiries**

Omit “1 April” from section 17 (2). Insert instead “1 January”.

**[10] Section 20 Operation of determinations**

Omit “1 October” from section 20 (1) (b). Insert instead “1 July”.

**[11] Section 22 Remuneration payable during period before publication of report**

Omit “1 October” from section 22 (1). Insert instead “1 July”.

**[12] Section 22 (1)**

Omit “30 September”. Insert instead “30 June”.

**[13] Part 3A, heading**

Insert “(except Part 3B office holders)” at the end of the heading.

**[14] Section 24AA**

Insert after section 24A:

**24AA Application of Part**

- (1) This Part does not apply to the Secretary of a Department of the Public Service or to any other Public Service senior executive to whom Division 4 of Part 4 of the *Government Sector Employment Act 2013* applies.
- (2) A reference in this Part to the *Public Sector Employment and Management Act 2002* is a reference to that Act as in force immediately before its repeal, as continued in operation in relation to executive office holders by the *Government Sector Employment Act 2013*.

**[15] Section 24C Annual determinations**

Omit “1 October”. Insert instead “1 July”.

**[16] Section 24G Inquiries**

Omit “1 April” from section 24G (2). Insert instead “1 January”.

**[17] Section 24J Operation of determinations**

Omit “1 October” from section 24J (1) (b). Insert instead “1 July”.

**[18] Section 24K Remuneration package during period before making of report**

Omit “1 October” from section 24K (1). Insert instead “1 July”.

**[19] Section 24K (1)**

Omit “30 September”. Insert instead “30 June”.

[20] **Part 3B**

Insert after Part 3A:

**Part 3B Remuneration packages for Public Service senior executives**

**24M Definitions**

In this Part:

**determination** means a determination made by the Tribunal under section 24N, 24O or 24P.

**remuneration package** means the annual amount payable to a senior executive under the *Government Sector Employment Act 2013*:

- (a) as monetary remuneration for the executive, or
- (b) partly as that remuneration and partly as the cost to the employer of the executive's employment benefits.

**senior executive** means the Secretary of a Department of the Public Service and any other Public Service senior executive to whom Division 4 of Part 4 of the *Government Sector Employment Act 2013* applies.

**24N Initial determinations**

- (1) The Tribunal is required to make, as soon as practicable after the commencement of this Part, a determination of the remuneration package for each band in which senior executives may be employed under the *Government Sector Employment Act 2013*.
- (2) The Tribunal may make a determination under this section in respect of a prospective band in which senior executives may be employed that is notified to the Tribunal by the Minister.

**24O Annual determinations**

The Tribunal is required to make, in each year, a determination of remuneration packages for senior executives as on and from 1 July in that year.

**24P Special determinations**

If the Minister so directs, the Tribunal is required to make (not later than the day specified in the direction as the day on or before which the determination is to be made) a determination as to whether, and (if so) how, any determination already made should

be altered in relation to remuneration packages as are referred to in the direction.

**24Q Matters to be taken into consideration by Tribunal**

- (1) The Minister or the Commissioner may notify the Tribunal of matters which the Tribunal should take into consideration when making determinations of the remuneration packages for senior executives.
- (2) In making a determination, the Tribunal must take into consideration any such matters and such other matters as the Tribunal thinks fit.

**24R General provisions relating to determinations**

- (1) In making a determination, the Tribunal:
  - (a) is to fix, as the remuneration package, any amount that is within a specified range of amounts, and
  - (b) is to fix a single remuneration package for all senior executives employed in a specified band, and
  - (c) may provide that a different remuneration package applies in the case of particular senior executives named in the determination (but only if the Minister has requested the Tribunal to do so), and
  - (d) may increase, reduce or not change any remuneration package.
- (2) A remuneration package determined by the Tribunal may not be less than the remuneration package which the Tribunal considers appropriate for a clerk (grade 12) in the Public Service with general administrative duties.

**24S Inquiries**

- (1) Before making a determination, the Tribunal may make such inquiry as the Tribunal thinks necessary.
- (2) An inquiry for the purpose of a determination to be made under section 24O (Annual determinations) may not be commenced before 1 January in the year in which the determination is to be made.
- (3) In the exercise or performance of the Tribunal's powers, authorities, duties and functions under this Part:
  - (a) the Tribunal may inform himself or herself in such manner as he or she thinks fit, and

- (b) the Tribunal may receive written or oral submissions, and
  - (c) the Tribunal must take into consideration submissions received by him or her relating to the remuneration packages for senior executives, whether or not those submissions were received in response to an invitation under subsection (4), and
  - (d) the Tribunal is not required to conduct any proceedings in a formal manner, and
  - (e) the Tribunal is not bound by the rules of evidence.
- (4) Without affecting the generality of subsection (3), the Tribunal may invite submissions from senior executives, Ministers of the Crown, the Public Service Commissioner and any other persons.

**24T Tribunal's reports**

- (1) The Tribunal must, as soon as practicable after making a determination under section 24N (Initial determinations), make a report to the Minister of the Tribunal's determination.
- (2) The Tribunal must, in each year, make a report to the Minister of the Tribunal's determination under section 24O (Annual determinations).
- (3) The Tribunal must, not later than the day specified in a direction referred to in section 24P (Special determinations) as the day on or before which the determination is to be made, make a report to the Minister of the Tribunal's determination made in consequence of that direction.

**24U Publication of determinations**

The report of a determination may be published by the Minister in the Gazette and in such other manner as the Minister thinks fit.

**24V Operation of determinations**

- (1) Subject to this Part, a determination which was made under:
  - (a) section 24N (Initial determinations)—comes into force when it is made, and
  - (b) section 24O (Annual determinations)—comes into force, or is to be taken to have come into force, on 1 July in the year in which it is made, and
  - (c) section 24P (Special determinations)—comes into force, or is to be taken to have come into force, on the day specified in the determination as the day on which the determination is, or is to be taken, to come into force.

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- (2) Subject to this Part, a determination continues in force until and including 30 June next following the day on which it comes into force.
  - (3) Subject to this Part, a determination has effect subject to any determination that was made under section 24P (Special determinations) and that is in force.
  - (4) A determination may not be challenged, reviewed, quashed or called into question before any court in any legal proceedings, or restrained, removed or otherwise affected by proceedings in the nature of prohibition, mandamus, certiorari or otherwise.

**24W Remuneration package during period before making of report**

- (1) If the report of a determination under section 24O (Annual determinations) is made to the Minister after 1 July in any year, the remuneration package for the senior executives is (for the period commencing on and including that day and ending on and including the day preceding the date the report is made) the remuneration package that would have been applicable had the determination in force on the preceding 30 June continued in force (subject to any adjustment necessary because of the making of the report).
- (2) Despite anything in this Part, if a determination takes effect on a date (the *effective date*) that is earlier than the date that the report of the determination is made to the Minister, a person who:
  - (a) was a senior executive at or at any time before the effective date, and
  - (b) was not a senior executive at the date that the report is made,is not, in relation to any period before the date the report is made, affected by the determination, unless:
  - (c) the determination would, if the person had continued as a senior executive, operate to increase the remuneration package for the person in relation to that period, and
  - (d) the person ceased to be a senior executive otherwise than because of his or her resignation (except by way of retirement) or because of his or her removal as a senior executive.

**24X Remuneration packages for senior executives not dealt with**

- (1) If, but for this section, no remuneration package would be applicable to a senior executive in respect of any period during which he or she is a senior executive, the Minister may, from time

to time, fix the remuneration package for the senior executive in respect of that period.

- (2) The remuneration package for a senior executive under this section applies until a determination applicable to the person comes into force.

## **6.10 Transport Administration Act 1988 No 109**

### **[1] Schedule 2 Provisions relating to Chief Executives**

Omit clause 1A. Insert instead:

#### **1A Employment of Chief Executives**

- (1) A Chief Executive is to be employed in the Transport Service under Part 7A of this Act.
- (2) A Chief Executive holding office immediately before the substitution of this clause by the *Government Sector Employment Act 2013* is, on that substitution, taken to be employed in the Transport Service on the same terms and conditions as applied to the Chief Executive immediately before that substitution.

### **[2] Schedule 7 Savings, transitional and other provisions**

Omit clause 175 (7).

## **6.11 Transport Legislation Amendment Act 2011 No 41**

### **Schedule 5 Consequential and other amendments**

Omit Schedule 5.38 [6].

## **6.12 Workers Compensation Act 1987 No 70**

### **Section 279A**

Insert after section 279:

#### **279A Workers compensation liability with respect to staff of statutory bodies**

- (1) Part 5 applies to work injury damages recoverable from the Government of New South Wales, and to work injury damages recoverable from a statutory body, by or in respect of a person employed in the Public Service to enable the statutory body to exercise its functions. Part 5 so applies as if:
- (a) the statutory body were an employer of the person in addition to the Government, and

- (b) the statutory body were an employer liable to pay compensation under this Act.
- (2) A policy of insurance may be issued to the Government of New South Wales under this Act that is limited to workers employed in a particular part of the Public Service.
- (3) A licence under Division 5 of Part 7 that is limited to workers employed in a particular part of the Public Service may be granted to the Government of New South Wales.
- (4) In this section:  
*work injury damages* means work injury damages recoverable from a statutory body or the Government of New South Wales in respect of injury to or the death of a person employed in the Public Service to enable the statutory body to exercise its functions caused by the negligence or other tort of the statutory body or the Government and arising out of the employment of the person by the Government.

[Second reading speech made in—  
Legislative Assembly on 23 May 2013  
Legislative Council on 18 June 2013]