



New South Wales

Public Sector Management Amendment Act 1998 No 65

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Public Sector Management Amendment Act 1998 No 65

Act No 65, 1998

An Act to amend the *Public Sector Management Act 1988* to make further provision for the employment of temporary employees, conditions and benefits of employment and the duties of Department Heads; and for other purposes. [Assented to 30 June 1998]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Public Sector Management Amendment Act 1998*.

2 Commencement

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

3 Amendment of Public Sector Management Act 1988 No 33

The *Public Sector Management Act 1988* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 3 Definitions

Omit the definition of *temporary employee* from section 3 (1).
Insert instead:

temporary employee means a departmental temporary employee employed under Division 5 of Part 2 or a special temporary employee employed under Division 5A of Part 2.

[2] Section 11 General responsibility of Department Heads

Insert after section 11 (2):

(3) A Department Head is responsible for the equitable management of staff of the Department.

[3] Part 2, Division 5, heading

Omit the heading. Insert instead:

Division 5 Departmental temporary employees

[4] Section 38 Appointment of departmental temporary employees

Insert after section 38 (1):

(1A) Persons employed under this section are departmental temporary employees.

[5] Section 38 (2)

Insert “departmental” before “temporary employees”.

[6] Section 38 (5)

Insert “departmental” before “temporary employee”.

[7] Section 38A

Insert after section 38:

38A Appointment of long-term departmental temporary employees to officer positions

- (1) For the purposes of this section, a *long-term departmental temporary employee* is a departmental temporary employee whose employment as such an employee falls within a continuous employment period of at least 2 years.
- (2) A long-term departmental temporary employee may, with the approval of the Public Employment Office, be appointed to an officer's position (other than a senior executive position) in a Department if the appropriate Department Head has made a recommendation in accordance with this section for the appointment of the employee to the position.
- (3) A recommendation for the appointment of a long-term departmental temporary employee to an officer's position may be made only if each of the following requirements is satisfied:
 - (a) the duties of the position concerned must be substantially the same as the duties performed by the employee at the time of the employee's initial employment on merit (that is, the employment referred to in paragraph (e)),
 - (b) the rate of salary or wages proposed to be payable to the holder of the position concerned at the time of appointment must not exceed the maximum rate payable for Grade 12, Administrative and Clerical Division, of the Public Service,
 - (c) the appropriate Department Head must be satisfied that on-going work is available in respect of the employee in the Department,

- (d) the appropriate Department Head must be satisfied that the employee has the relevant skills, qualifications, experience, work performance standards and personal qualities to enable the employee to perform the duties of the position concerned,
 - (e) the employee must (initially or at some later stage) have been employed as a temporary employee in some form of open competition involving the selection of the employee as the person who, in the opinion of the then relevant Department Head, had the greatest merit among candidates for appointment.
- (4) An appointment under this section is not an appointment to which section 26 (Selection for appointment to be on merit) applies.
 - (5) Section 28 (Appointments on probation) does not apply to an appointment under this section unless the Department Head otherwise directs in a particular case.

[8] Part 2, Division 5A

Insert after Division 5 of Part 2:

Division 5A Special temporary employees

38B Meaning of “political office holder”

In this Division:

political office holder means:

- (a) a Minister, or
- (b) a Parliamentary Secretary, or
- (c) the Leader of the Opposition in the Legislative Assembly.

38C Employment of special temporary employees

- (1) The Director-General of the Premier's Department may, if of the opinion that it is necessary to do so, employ temporarily a person who has appropriate qualifications to carry out work for a political office holder.
- (2) Persons employed under this section are special temporary employees.
- (3) The instrument of employment of a special temporary employee must specify the name of the political office holder concerned.
- (4) This section does not prevent the appointment or employment of staff to or in an office of a political office holder in any other manner.

38D Period of employment of special temporary employees

- (1) A person may be employed as a special temporary employee for an indefinite term or for a term specified in the instrument of employment.
- (2) However, the employment of a special temporary employee terminates:
 - (a) if the political office holder concerned dies, or
 - (b) if the political office holder concerned ceases to hold the office by reason of which he or she was a political office holder (even if he or she immediately or subsequently becomes a political office holder after ceasing to hold that office), or
 - (c) on the day appointed for the taking of the poll for the next general election, or
 - (d) if the employee resigns by letter addressed to the Director-General of the Premier's Department, or
 - (e) if the services of the employee are dispensed with.

- (3) The Director-General of the Premier's Department may direct in a particular case that the employment of a special temporary employee that would otherwise terminate because of the operation of subsection (2) (a), (b) or (c) does not terminate.
- (4) The Director-General of the Premier's Department may dispense with the services of a special temporary employee at any time.

38E Industrial arbitration or legal proceedings excluded

- (1) In this section, a reference to the employment of a special temporary employee is a reference to:
 - (a) the employment of, or failure to employ, a person as a special temporary employee, or
 - (b) dispensing with the services of, or other termination of the employment of, a special temporary employee, or
 - (c) any disciplinary proceedings or disciplinary action taken against a special temporary employee, or
 - (d) the remuneration or conditions of employment of a special temporary employee.
- (2) The employment of a special temporary 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*. This subsection applies whether or not any person has been appointed to a vacant position of special temporary employee.
- (3) Part 6 (Unfair dismissals) of Chapter 2 of the *Industrial Relations Act 1996* does not apply to the employment of a special temporary employee.
- (4) 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 special temporary employees.

- (5) Subsection (4) does not prevent the regulations or other statutory instruments under this Act from applying the provisions of a State industrial instrument to the employment of a special temporary employee.
- (6) This section does not affect the operation of any determination under section 63 or agreement under section 64, in its application to special temporary employees.
- (7) An appeal does not lie to the Tribunal in relation to the employment of a special temporary employee.
- (8) 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 the employment of or failure to employ a person as a special temporary employee, the entitlement or non-entitlement of a person to be so employed or the validity or invalidity of any such employment.

38F Delegation by Director-General

- (1) The Director-General of the Premier's Department may delegate any function of the Director-General under this Division (other than this power of delegation) to any other Department Head.
- (2) The power of delegation conferred by this section is in addition to and does not limit the power conferred by section 12 (Delegation by Department Head).

38G Status of special temporary employees

- (1) All special temporary employees are taken to constitute a branch of the Premier's Department, except any who are employed by a Department Head as delegate of the Director-General of the Premier's Department.

- (2) Special temporary employees employed by a Department Head as delegate of the Director-General of the Premier's Department are taken to constitute a branch of the Department concerned.
- (3) Accordingly, the Director-General of the Premier's Department has the functions of Department Head in relation to those special temporary employees who constitute a branch of the Premier's Department, and the relevant Department Head has the functions of Department Head in relation to those special temporary employees who constitute a branch of the Department concerned.

38H Regulations

The employment of a person under this Division is subject to the regulations (if any) concerning the employment of special temporary employees.

[9] Section 63 Public Employment Office may determine employment conditions

Omit section 63 (1) and (2). Insert instead:

- (1) The Public Employment Office may from time to time make determinations fixing the conditions and benefits of employment of officers and temporary employees (or any group or class of officers or temporary employees) and their salary, wages and other remuneration. Such a determination can provide for redundancy and severance payments and for remuneration packaging.
- (2) The conditions, benefits, salary, wages and other remuneration of an officer or temporary employee is, except in so far as provision is otherwise made by law, such as may be fixed by a determination made under this section.
- (2A) This section does not prevent the relevant Department Head from determining conditions of employment of officers and temporary employees under section 11 or under any other law. However, a determination by the Public Employment Office under this section prevails to

the extent of any inconsistency with a determination of a Department Head, unless the Public Employment Office approves of the Department Head's determination.

[10] Schedule 7 Savings, transitional and other provisions

Insert after Part 5:

Part 6 Provisions consequent on enactment of Public Sector Management Amendment Act 1998

38 Meaning of "1998 amending Act"

In this Part:

1998 amending Act means the *Public Sector Management Amendment Act 1998*.

39 Saving of existing appointment of temporary employees

- (1) An amendment made by the 1998 amending Act does not affect the employment of a person as a temporary employee that commenced before the commencement of the amendment, except as provided by this clause.
- (2) The employee becomes a departmental temporary employee unless a determination is made under subclause (3) in relation to the employee.
- (3) The Director-General of the Premier's Department can make a determination that the employee was, immediately before the commencement of section 38B, employed to do work for a political office holder as defined in that section, and such a determination has the following effect:
 - (a) the employee becomes a special temporary employee.

- (b) the employee is to be issued with an instrument of employment specifying the name of the political office holder concerned and specifying an indefinite term as the term of that employment.

40 Appointment of long-term departmental temporary employees

Section 38A extends to periods of employment that occurred before the commencement of that section.

41 Determinations of PEO

A determination in force under section 63 immediately before the commencement of the amendment of that section by the 1998 amending Act is taken to have been made under that section as so amended.

[Minister's second reading speech made in—
Legislative Assembly on 3 June 1998
Legislative Council on 24 June 1998]