



New South Wales

Public Sector Management Amendment (Mobility) Act 1996 No 127

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Public Sector Management Amendment (Mobility) Act 1996 No 127

Act No 127, 1996

An Act to amend the *Public Sector Management Act 1988* to facilitate the transfer of officers in the public sector; and for other purposes. [Assented to 3 December 1996]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Public Sector Management Amendment (Mobility) Act 1996*.

2 Commencement

This Act commences on the date of assent.

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 15 Merit appointments

Insert “and all notional executive positions referred to in section 42Q (3) (c) in the Public Service or the Education Teaching Service” after “Service” where secondly occurring in section 15 (2).

[2] Section 42Q Removal of executive officers from office

Insert at the end of section 42Q (3) (b):

, and

- (c) is, for the purposes of sections 15 (2), 26, 53A and 100A, to be regarded as holding an equivalent (though notional) executive position in the Department or organisation from which he or she was removed.

[3] Section 42Q (3A)

Insert after section 42Q (3):

- (3A) If the person referred to in subsection (3) was removed from a chief executive position, then for the purposes of sections 15 (2), 26, 53A and 100A:
 - (a) the person is to be regarded as a senior executive officer, and
 - (b) the person’s notional executive position referred to in subsection (3) (c) is to be regarded as a senior executive position.

[4] Section 42Q (4)

Omit “another”. Insert instead “an”.

[5] Section 42Q (5)

Omit “another” where secondly occurring.
Insert instead “a”.

[6] Section 42S Compensation etc where executive officer has no right to return to public sector

Insert “However, this section does not apply to an executive officer who consents to a transfer at a lower level of remuneration.” at the end of section 42S (1).

[7] Section 53 Officer refusing transfer

Omit “a transfer from one position to another under section 50, 51 or 52” from section 53 (1).
Insert instead “a transfer under section 50, 51, 52 or 100A”.

[8] Section 53A Provisions applying to senior executive officers in the Public Service

Omit “(being a position with the same remuneration package)” wherever occurring.
Insert instead “at the officer’s existing level of remuneration”.

[9] Section 53A (5)

Insert after section 53A (4):

- (5) However, a senior executive officer may be transferred under this section to a position (whether or not an executive position within the meaning of Part 2A) at a level of remuneration that is lower than the officer’s existing level of remuneration, with the consent of the officer.

[10] Sections 100A–100D

Omit section 100A. Insert instead:

100A Employer-sponsored transfers involving public authorities

- (1) The Head of a Department may transfer an officer of the Department to a position in the service of a public authority at the officer's existing level of remuneration, following consultation with the officer, and with the approval of the Head of the public authority and of the Public Employment Office.
- (2) The Head of a public authority may transfer an officer of the public authority to a position in a Department at the officer's existing level of remuneration, following consultation with the officer, and with the approval of the appropriate Department Head and of the Public Employment Office.
- (3) The Head of a public authority may transfer an officer of the public authority to a position in the service of another public authority at the officer's existing level of remuneration, following consultation with the officer, and with the approval of the Head of the other public authority and of the Public Employment Office.
- (4) However, a senior executive officer may be transferred under this section to a position (whether or not an executive position within the meaning of Part 2A) at a level of remuneration that is lower than the officer's existing level of remuneration, with the consent of the officer.
- (5) A transfer under this section may be made only if the officer possesses the qualifications required for the position to which the officer is being transferred.
- (6) An officer of a public authority who refuses a transfer under this section may be dismissed from the service of the public authority in accordance with any dismissal procedures applicable to the public authority, but only if the Head of the public authority has certified that the officer had no valid reason for so refusing. This subsection does not affect the power of removal under section 42Q.

- (7) This section does not affect any other method (statutory or otherwise) by which officers of Departments or public authorities can transfer or be transferred.
- (8) This section does not affect any provisions of any other Act to the extent that they specifically deal with the transfer of any officers from a Department or a public authority.
- (9) The approval of the Public Employment Office under this section may be given unconditionally or subject to conditions. Without limitation, such a condition may provide for the retention of accrued or accruing rights or benefits where they are not covered by Schedule 5A or where that Schedule is not applicable.
- (10) The approval of the Head of a Department or public authority to the transfer of an officer to a protected position in or with the Department or public authority (that is, a position that is subject to the requirements of some other Act or law with respect to appointments to such a position) is effective only after substantial compliance with:
- (a) such of those requirements as relate to probity or integrity, and
 - (b) such of those requirements as are specified in any conditions subject to which the approval of the Public Employment Office is given, and
 - (c) such of those requirements as are prescribed by the regulations.

For the purposes of this subsection, the relevant provisions of the other Act or law imposing any such requirement apply with any necessary modifications.

- (11) In this section:
- Head** of a public authority means:
- (a) (subject to paragraph (b)) the person who is or exercises the functions of chief executive officer of the authority, or
 - (b) the person prescribed by the regulations.

officer of a Department means an officer, as defined in section 3 (1), of the Department.

officer of a public authority means an officer or employee of the public authority.

public authority means:

- (a) the whole or a part of a public sector service or an employer constituting, or within, or for the purposes of, a public sector service, or
- (b) (without limiting paragraph (a)) a State owned corporation,

but does not include a Department.

public sector service has the same meaning as in Schedule 5A.

100B Provisions relating to mobility of public sector employees

Schedule 5A has effect.

100C Variations in remuneration on transfer

- (1) A reference in this Act to an officer's existing salary or an officer's existing level of remuneration includes a reference to that salary or level of remuneration as varied in accordance with general guidelines issued from time to time by the Public Employment Office in connection with the transfer of officers.
- (2) A person is not entitled to appeal under section 20 of the *Government and Related Employees Appeal Tribunal Act 1980* in respect of a decision relating to a vacant office, where the maximum salary applicable to the vacant office is greater than the salary paid to an employee, because of the application of the guidelines.
- (3) An officer is not entitled to any compensation in respect of any reduction of remuneration because of the application of the guidelines.

- (4) A reference in this Act to the transfer of a senior executive officer at a level of remuneration that is lower than the officer's existing level of remuneration includes a reference to the transfer of the officer to a position without a remuneration package (within the meaning of Part 2A) and with a salary and other benefits that are lower in value than the officer's existing remuneration package (within the meaning of that Part). The relative values are to be determined in accordance with any relevant principles in the guidelines.
- (5) This section extends to officers referred to in section 100A.

100D Departmental or organisational changes affecting notional executive positions

If a Department or organisation referred to in section 42Q (3) (c) ceases to exist or to be identifiable, the Public Employment Office may determine that the executive position concerned is to be regarded for the purposes of that paragraph as being in some other specified Department or organisation.

[11] Schedule 3 Declared authorities

Insert "Sydney Organising Committee for the Olympic Games." in alphabetical order.

[12] Schedule 5A Provisions relating to mobility of public sector employees

Omit "100A" occurring before clause 1. Insert instead "100B".

[13] Schedule 5A, clause 1 (1)

Omit "other" from paragraph (d) of the definition of *public sector service*.

Insert instead "of a".

[14] Schedule 5A, clause 1 (1)

Insert “the service of” before “either” in paragraph (e) of the definition of *public sector service*.

[15] Schedule 5A, clause 1 (2)

Omit “section”. Insert instead “Schedule”.

[16] Schedule 7 Savings, transitional and other provisions

Insert “*Public Sector Management Amendment (Mobility) Act 1996*” at the end of clause 2 (1).

[Minister’s second reading speech made in—
Legislative Assembly on 13 November 1996
Legislative Council on 28 November 1996]