



New South Wales

Public Sector Employment and Management Amendment Act 2008 No 16

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Public Sector Employment and Management Amendment Act 2008 No 16

Act No 16, 2008

An Act to amend the *Public Sector Employment and Management Act 2002* to make further provision with respect to the appointment of long-term temporary employees and persons on long-term secondments, the advertising of public service positions and the use of eligibility lists; and for other purposes. [Assented to 16 May 2008]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Public Sector Employment and Management Amendment Act 2008*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Amendment of Public Sector Employment and Management Act 2002 No 43

The *Public Sector Employment and Management Act 2002* is amended as set out in Schedule 1.

4 Amendment of other legislation

The Act and Regulation specified in Schedule 2 are amended as set out in that Schedule.

5 Repeal of this Act

- (1) This Act is repealed on the day following the day on which this Act commences.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Public Sector Employment and Management Act 2002

(Section 3)

[1] Section 3 Definitions

Omit the definition of *Public Sector Notices* from section 3 (1).

[2] Section 18 Advertising vacancies

Omit “in the Public Sector Notices and in such other” from section 18 (1).

Insert instead “on the NSW Government’s recruitment website and in such”.

[3] Section 20 Eligibility lists

Omit section 20 (3). Insert instead:

- (3) An eligibility list for a position remains current for 12 months after the list was created.

[4] Section 20 (5) and (5A)

Omit section 20 (5). Insert instead:

- (5) An eligibility list is applicable not only to the position in relation to which it was created (*the relevant position*) but also:
 - (a) to any other position in the Department that the appropriate Department Head determines the list should be applicable to on the basis that the other position is substantially the same as the relevant position, and
 - (b) to any other position in another Department that the Department Head for that Department determines the list should be applicable to on the basis that the other position is substantially the same as the relevant position.

- (5A) Any such determination by the Department Head may be made at any time during the currency of the eligibility list.

[5] Section 20 (7)

Omit the subsection.

[6] Section 21 Appointments subject to promotion appeal

Insert at the end of section 21 (2):

Note. See section 19 of the *Government and Related Employees Appeal Tribunal Act 1980* which requires the appropriate Department Head to cause notice of the proposed appointment to be published and distributed to employees.

[7] Section 21 (3)

Omit the subsection.

[8] Section 23 Appointments on probation

Omit “this Part” from section 23 (1). Insert instead “this Act”.

[9] Section 31 Appointment of long-term employees to officer positions

Omit section 31 (3) (a). Insert instead:

- (a) the employee must, at some stage of the temporary employment, have been selected to perform duties at a grade that is the same as (or similar to) the grade of the position concerned (whether or not the duties of the position are substantially the same as the duties performed during the temporary employment),
- (a1) the employee was performing duties at that grade following some form of open competition that involved the selection of the employee as the person who, in the opinion of the Department Head, had the greatest merit among the candidates concerned,

[10] Section 31 (3) (e)

Omit the paragraph.

[11] Section 86 Temporary staff transfers (secondments)

Insert after section 86 (6):

- (6A) The head of the host agency may appoint the person who becomes an employee of the agency under subsection (6) (*the relevant person*) to a position in the agency (*the new position*) that is:
 - (a) at the same grade as (or at a grade similar to) the relevant person’s original position in the home agency, or
 - (b) at any grade higher than the relevant person’s original position in the home agency.

- (6B) The new position may, but need not, be advertised. Accordingly, if the new position is a position in the Public Service and it is not advertised, an appointment under subsection (6A) is not an appointment to which section 19 applies.
- (6C) If the relevant person is appointed to the new position, the head of the host agency may decide to make the appointment without requiring the person to serve any period of probation.
- (6D) The relevant person may be appointed to the new position only if each of the following requirements is satisfied:
- (a) the rate of salary or wages payable to the person at the time of appointment to the new position must not exceed the maximum rate payable for Grade 12, Administrative and Clerical Division, of the Public Service,
 - (b) the head of the host agency must be satisfied that ongoing work is available in respect of the person in the agency,
 - (c) the head of the host agency must be satisfied that the person has the relevant skills, qualifications, experience, work performance standards and personal qualities to enable the person to perform the duties of the new position.
- (6E) Without limiting subsection (6D), if:
- (a) the grade of the new position is higher than the grade of the relevant person's original position in the home agency, and
 - (b) the new position has not been advertised,
- the relevant person may be appointed to the new position only if the person has been performing duties in the host agency at a grade that is the same as (or similar to) the grade of the new position and was performing those duties following some form of open competition that involved the selection of the person as the person who, in the opinion of the head of the host agency, had the greatest merit among the candidates concerned.

[12] Schedule 4, Savings, transitional and other provisions

Insert at the end of clause 1 (1);

*Public Sector Employment and Management Amendment Act
2008*

[13] **Schedule 4, Part 5**

Insert after Part 4:

**Part 5 Provisions consequent on enactment of
Public Sector Employment and
Management Amendment Act 2008**

27 Operation of amendments

(1) In this clause, *amending Act* means the *Public Sector Employment and Management Amendment Act 2008*.

(2) **Existing eligibility lists**

Section 20, as amended by the amending Act, extends to eligibility lists having effect immediately before the commencement of those amendments.

(3) **Existing temporary employees**

Section 31, as amended by the amending Act, extends to persons employed as Departmental temporary employees as at the commencement of those amendments.

(4) **Existing secondments**

The amendment to section 86 made by the amending Act extends to a person who, as at the commencement of that amendment, is the subject of an employee-initiated temporary transfer under that section but who has not yet become an employee of the host agency concerned.

Schedule 2 Amendment of other legislation

(Section 4)

2.1 Government and Related Employees Appeal Tribunal Act 1980 No 39

Section 19 Publication of notices

Insert after section 19 (1A):

- (1B) A notice under subsection (1):
 - (a) may, without limiting the manner in which it may otherwise be published, appear on the NSW Government's recruitment website, and
 - (b) is taken to have been distributed in accordance with subsection (1) if that website contains the notice and is made available to the employees of the employer.

2.2 Government and Related Employees Appeal Tribunal Regulation 2005

[1] Clause 4 Publication of notices

Omit "section 19 (1)". Insert instead "section 19 (4)".

[2] Schedule 1 Forms

Omit "circulated in the Public Service Notices and/or advertised outside the Service" from Form 1.

Insert instead "advertised".

[Second reading speech made in Legislative Council on 2 April 2008

Agreement in principle speech made in Legislative Assembly on 7 May 2008]

BY AUTHORITY