



New South Wales

Government Sector Employment Legislation Amendment Act 2016 No 2

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New South Wales

Government Sector Employment Legislation Amendment Act 2016 No 2

Act No 2, 2016

*An Act to amend the *Government Sector Employment Act 2013*, the *Health Services Act 1997*, the *Police Act 1990*, the *Transport Administration Act 1988* and other legislation in relation to senior executive and other employment in the government sector. [Assented to 2 March 2016]*

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Government Sector Employment Legislation Amendment Act 2016*.

2 Commencement

- (1) This Act commences on 1 January 2017, except as provided by subsections (2) and (3).
- (2) The Governor may, by proclamation made before 1 January 2017, appoint a day or days (whether before or after that date) as the date on which specified provisions of this Act commence.
- (3) However, any such proclamation may not appoint a date earlier than 1 January 2017 for the commencement of Schedule 2, 3, 4, 5.4 [1]–[3] or 5.6.

Schedule 1 Amendment of Government Sector Employment Act 2013 No 40

[1] Section 3 Definitions

Omit “employed in a” from the definition of *Public Service employee* in section 3 (1).

Insert instead “employed, or on secondment, in the”.

[2] Section 5 Persons to whom Act does not apply

Omit “, or of the Inspector of the Independent Commission Against Corruption,” from section 5 (1) (d).

[3] Section 12 Government sector employment rules

Insert “or any other” after “under this” in section 12 (1).

[4] Section 13 Directions by Commissioner to heads of government sector agencies

Insert after section 13 (1):

- (1A) If any such direction is given to the Secretary of a Department, the direction may extend to the Public Service senior executives employed in a Public Service executive agency related to the Department.

[5] Section 16 Provision of reports and information by agencies

Insert after section 16 (1):

- (1A) If the Secretary of a Department is required to provide any such report, the requirement may extend to the Public Service senior executives employed in a Public Service executive agency related to the Department.

[6] Section 18 Establishment and members of Advisory Board

Insert after section 18 (2) (d):

- (e) the Secretary of the Treasury or a senior employee of the Treasury nominated by the Secretary.

[7] Section 23 Secretaries of Departments

Insert after section 23 (5):

- (6) 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 (as referred to in section 26 (3)) in relation to the Secretary of a Department.

[8] Section 26 Employer functions of Secretaries of Departments

Omit section 26 (2).

[9] Section 28 Heads of agencies other than Departments

Omit section 28 (6). Insert instead:

- (6) Appointments to an office of head established by this section are, subject to subsection (6A), 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.

- (6A) If Schedule 1 provides that some other person exercises the employer functions of the Government of New South Wales in relation to the head:
- (a) appointments to the office of the head are to be made by that other person, and
 - (b) that other person may delegate to an authorised person any of those employer functions (other than the power to appoint a person to the office of head of the agency concerned or to terminate the office holder's employment).

For the purposes of this subsection, *authorised person* means the holder of a statutory office, a person employed in the government sector or a person authorised by the regulations.

[10] Section 35 Minister may determine bands in which senior executives to be employed

Insert at the end of the section:

Note. The senior executive bands determination also applies under relevant legislation relating to the employment of Transport Service senior executives, Police Force senior executives and Health Service senior executives.

[11] Section 36 Government sector employment rules relating to senior executives

Insert "(including temporary assignment)" after "assignment" in section 36 (d).

[12] Section 36, note

Insert at the end of the section:

Note. The legislation under which Police Force senior executives, Health Service senior executives and Transport Service senior executives are employed also provides for the making of government sector employment rules under section 12 of this Act relating to the employment of those executives.

[13] Section 38 Assignment of senior executives (other than heads of agencies) to roles in bands across government sector

Omit "within the Public Service" from section 38 (4).

[14] Section 38 (4A)

Insert after section 38 (4):

- (4A) A Public Service senior executive employed in a Public Service agency may be assigned under this section to a role in another Public Service agency:
- (a) by an agreement between the current employer of the executive and the person who will, on the assignment, be the employer of the executive, or
 - (b) by the Commissioner.

In that case, the executive becomes an employee of the other agency.

[15] Section 38 (7A)

Insert after section 38 (7):

- (7A) A Public Service senior executive may:
- (a) be transferred by the employer of the executive to the NSW Health Service (with the agreement of the Secretary of the Ministry of Health) and assigned to a role by that Secretary in the band in which the executive is employed, or

Note. A Public Service senior executive may not be assigned to the role of chief executive of a local health district or specialty network governed health

corporation except with the concurrence of the board of the organisation concerned—see section 121D (11) of the *Health Services Act 1997*.

- (b) be transferred by the employer of the executive to the NSW Police Force (with the agreement of the Commissioner of Police) and assigned to a role (other than as a police officer) by the Commissioner of Police in the band in which the executive is employed, or
- (c) be transferred by the employer of the executive to the Transport Service of New South Wales (with the agreement of the Secretary of the Department of Transport) and assigned to a role by that Secretary in the band in which the executive is employed.

[16] Section 38 (8)

Insert “under this section (including when transferred under subsection (7A))” after “a different role”.

[17] Section 39 Contract of employment of senior executives

Insert “entered into after the commencement of those mandatory provisions” after “a contract of employment” in section 39 (3).

[18] Section 39 Contract of employment of senior executives

Omit section 39 (4) (b).

[19] Section 39 (5)

Omit the subsection. Insert instead:

- (5) The contract of employment of a Public Service senior executive does not limit, and is not terminated or otherwise affected by:
 - (a) the transfer of the executive under section 38 (7A) to the NSW Health Service, the NSW Police Force or the Transport Service of New South Wales, or
 - (b) the assignment of the executive to a different role or any other change to the title, place of work or duties of the executive.

[20] Section 39 (6)

Omit “varied at any time by further agreement”.

Insert instead “varied at any time in accordance with the contract or by further agreement”.

[21] Section 39 (7)

Insert after section 39 (6):

- (7) The regulations may make provision with respect to the compensation (if any) to which a Public Service senior executive whose employment is terminated is entitled under his or her contract of employment. Any such regulation cannot reduce the amount of compensation to which a Public Service senior executive is entitled under a contract of employment entered into before the commencement of the regulation.

[22] Section 40 Remuneration, benefits and allowances for senior executives

Omit section 40 (2). Insert instead:

- (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 or (subject to the regulations) by the Commissioner.

[23] Section 41 Termination of employment of senior executives

Insert at the end of section 41 (1):

Note. The employment of a senior executive may also be terminated for unsatisfactory performance under section 68 or for misconduct under section 69.

[24] Section 41 (2)

Omit “so terminated is entitled to the compensation”.

Insert instead “terminated under this section is entitled to such compensation (if any) as may be”.

[25] Section 41 (2)

Insert “other than superannuation entitlements” after “for the termination of employment”.

[26] Section 41 (3)

Omit “the compensation relates,”. Insert “any such compensation relates”.

[27] Sections 41 (5) (definition of “public sector”), 64 (5) (b), 71 (4), 72 (3) and 78 (8) (definition of “public sector”)

Omit “any service excluded by section 5” wherever occurring.

Insert instead “any service in which persons excluded from this Act by section 5 are employed”.

[28] Section 44 Conditions of engagement

Omit the section.

[29] Section 47 Termination of employment

Omit “condition of engagement as an employee imposed under section 44” from section 47 (1) (a).

Insert instead “condition of engagement as an employee under section 54”.

[30] Section 47 (1) (f)

Omit “duties to which the employee has been duly assigned”.

Insert instead “the duties of the role assigned to the employee”.

[31] Section 47 (1) (i)

Omit the paragraph.

[32] Section 48 Matters that government sector employment rules may deal with

Omit section 48 (g) and (h). Insert instead:

(g) the assignment of any such employees to roles (including temporary assignment to another role),

[33] Section 54

Renumber section 54 as section 54A and insert before that renumbered section:

54 Conditions of engagement

(1) The engagement of a Public Service 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 of engagement is subject to the government sector employment rules.
- (4) The contract of employment of a Public Service senior executive may include conditions of engagement.

[34] Section 56

Omit the section. Insert instead:

56 Retirement on medical grounds

The person who exercises employer functions in relation to a Public Service employee may retire the employee if:

- (a) the employee is found to be unfit to perform or incapable of performing the duties of his or her employment, and
- (b) the employee'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 employee, or from causes within the employee's control.

[35] Section 59 Construction of references to employees etc of statutory bodies or officers in other Acts, instruments and contracts

Insert "or statutory officer" after "statutory body" wherever occurring.

[36] Section 59 (1)

Omit "its functions" wherever occurring. Insert instead "functions".

[37] Section 59 (1) (b)

Omit "its capacity as". Insert instead "the capacity of".

[38] Section 64 Employee transfers and secondments between government sector agencies

Omit section 64 (1), but not the note to that subsection. Insert instead:

- (1) The government sector employment rules may deal with the transfer or secondment of employees between government sector agencies (whether or not at the request of the employees).

[39] Section 64 (2) and (4)

Insert "or secondment" after "transfer" wherever occurring.

[40] Section 64 (3)

Insert "or seconded" after "transferred".

[41] Section 64 (4A) and (4B)

Insert after section 64 (4):

- (4A) The government sector employment rules may make provision with respect to the recognition of service for the accrual of leave and to other matters consequent on the transfer or secondment of employees between government sector agencies.
- (4B) This section does not apply to the transfer or secondment of an employee to or from that part of the NSW Police Force comprising police officers.

[42] Section 64 (5) (b)

Insert “or secondments” after “transfers”.

[43] Section 66 Secondments of staff between government sector agencies and other relevant bodies

Omit section 66 (1) (a).

[44] Section 66 (1) (b) and (c) and (3)

Omit “temporarily assigned” wherever occurring. Insert instead “seconded”.

[45] Section 66 (1) and (3) (b)

Omit “assignment” wherever occurring. Insert instead “secondment”.

[46] Section 66 (2), (3) (a) and (5)

Omit “temporary assignment” wherever occurring. Insert instead “secondment”.

[47] Section 66 (2)

Omit “between the heads of the government sector agencies or”.

[48] Section 66 (4)

Omit “temporary assignments”. Insert instead “secondments”.

[49] Section 66 (6)

Omit paragraph (e) of the definition of *non-government sector body*.

[50] Sections 68 (2) and 69 (4)

Omit “head of the agency” wherever occurring.

Insert instead “person who exercises employer functions in relation to the employee”.

[51] Section 68 Unsatisfactory performance of government sector employees

Insert after section 68 (2):

- (3) This section does not apply to that part of the NSW Police Force comprising police officers or to any employees of a government sector agency excluded from this section by the regulations.

[52] Section 69 Misconduct—Public Service and other prescribed government sector employees

Insert after paragraph (a) of the definition of *government sector agency* in section 69 (1):

- (a1) that part of the NSW Police Force comprising administrative employees under the *Police Act 1990*, and

[53] Section 69 (1), definition of “misconduct”

Insert after paragraph (c) of the definition:

(d) a conviction or finding of guilt for a serious offence.

[54] Section 69 (1), definition of “serious offence”

Omit the definition. Insert instead:

serious offence means an offence punishable by imprisonment for life or for 12 months or more (including an offence committed outside New South Wales that would be an offence so punishable if committed in New South Wales).

[55] Section 69 (2)

Omit the subsection. Insert instead:

(2) The person who exercises employer functions in relation to an employee of a government sector agency is responsible for dealing with any misconduct by that employee in accordance with this section.

[56] Section 69 (3) (a)

Omit “or the conviction of any such employees for a serious offence”.

[57] Section 69 (4)

Omit “or any such employee is found to have been convicted of a serious offence”.

[58] Section 69 (6)

Omit the subsection. Insert instead:

(6) This section does not apply to that part of the NSW Police Force comprising police officers or to any employees of a government sector agency excluded from this section by the regulations.

[59] Section 69, note

Insert “also” after “See”.

[60] Section 70 Suspension of employees from duty pending decision in relation to misconduct, criminal charge or corrupt conduct

Insert after paragraph (a) of the definition of *government sector agency* in section 70 (1):

(a1) that part of the NSW Police Force comprising administrative employees under the *Police Act 1990*, and

[61] Section 70 (2) (a)

Omit “head of the agency”.

Insert instead “person who exercises employer functions in relation to the employee (the *employer*)”.

[62] Section 70 (2)

Omit “head of the agency” where secondly and thirdly occurring.

Insert instead “employer”.

[63] Section 70 (3)–(6)

Omit “head of the agency” wherever occurring. Insert instead “employer”.

[64] Section 76 Statutory officers to whom Part does not apply

Omit section 76 (h). Insert instead:

- (h) the Solicitor General, the Crown Advocate, the Director of Public Prosecutions, a Deputy Director of Public Prosecutions, the Solicitor for Public Prosecutions, the Senior Public Defender, a Deputy Senior Public Defender, a Public Defender, the Senior Crown Prosecutor, a Deputy Senior Crown Prosecutor or a Crown Prosecutor, or

[65] Section 78 Compensation for office holder following removal

Insert “(if any) paid under this section” after “the compensation” in section 78 (7).

[66] Section 83 Inquiries by Public Service Commissioner or DPC Secretary into government sector agencies

Omit “, or a person authorised by the Commissioner or DPC Secretary,” from section 83 (2).

[67] Section 83 (2A)

Insert after section 83 (2):

- (2A) The Commissioner or DPC Secretary may appoint a person to act on behalf of the Commissioner or DPC Secretary for the purposes of conducting an inquiry under this section. Any such person is to act under the direction of the Commissioner or DPC Secretary and has the functions conferred on the Commissioner or DPC Secretary under this section.

[68] Section 83 (3)

Omit “or on behalf of” wherever occurring.

[69] Section 83 (4)

Omit “, or a person authorised by the Commissioner or DPC Secretary,”.

[70] Section 83 (4) (e)

Omit “, Secretary or authorised person”. Insert instead “or DPC Secretary”.

[71] Section 83 (6)

Omit “(or authorise the conduct of)”.

[72] Section 83A

Insert after section 83:

83A Reinstatement of senior executives whose employment has been terminated for making public interest disclosure

- (1) This section applies in relation to a person whose employment as a senior executive has been terminated by the person’s employer (the *former employer*).
- (2) If the Commissioner is satisfied that:
 - (a) the person’s employment was terminated substantially in reprisal for the person making a public interest disclosure, and
 - (b) the person wishes to be reinstated or otherwise re-employed as a senior executive,

the person may be reinstated by the former employer to the role assigned to the person immediately before the termination of employment (the **former role**).

- (3) If reinstatement to the person's former role is considered to be impracticable, the person may be re-employed (whether in the same government sector agency in which the former role was located or in another government sector agency) in some other similar or appropriate role:
- (a) that is within the same band (or, in the case of a senior executive who is not employed in a band, within the same level of work) as the former role, and
 - (b) that has a level of remuneration no less than the remuneration payable to the person in the former role.
- (4) The Commissioner may give a direction under section 13 to the head of a government sector agency that a person be reinstated or re-employed under this section. In the case where the person's employer is the Minister, the Commissioner may make a recommendation to the Minister that the person be reinstated or re-employed under this section.
- Note.** Section 13 (2) requires the Commissioner to consult the agency head before giving any such direction.
- (5) If a person is reinstated or re-employed under this section, the person is entitled to such salary and other employment benefits as if the person had continued to be employed during the period following the termination of employment. However any such entitlement is subject to the repayment of any compensation or other amount paid to the person on the termination of employment.
- (6) The reinstatement or re-employment of a person under this section is not subject to the provisions of the government sector employment rules relating to the recruitment of employees.
- (7) The re-employment of a person under this section in a role other than the person's former role is not for any purpose to be regarded as a continuation of the reprisal action that resulted in the person's employment being terminated.
- (8) If a person to whom this section applies:
- (a) was, immediately before his or her termination of employment, a transitional former senior executive within the meaning of clause 8 of Schedule 4, and
 - (b) is subsequently reinstated under this section to the person's former role, the person is to be reinstated as a transitional former senior executive if the implementation date (as referred to in that clause) for the agency (or part of the agency) in which the person is reinstated has not occurred at the time of the reinstatement.
- (9) In this section:
- amending Act** means the *Government Sector Employment Legislation Amendment Act 2016*.
- public interest disclosure** has the same meaning as in the *Public Interest Disclosures Act 1994*.
- role** includes office or position and **assigned**, in the case where the person concerned has been appointed to an office or a position, includes held by the person.
- senior executive** means any of the following:
- (a) a Public Service senior executive,

- (b) a health executive within the meaning of Part 3 of Chapter 9 of the *Health Services Act 1997* or a NSW Health Service senior executive to whom that Part (as substituted by the amending Act) applies,
- (c) an executive officer within the meaning of Part 5 of the *Police Act 1990* or a NSW Police Force senior executive to whom that Part (as substituted by the amending Act) applies,
- (d) an executive officer within the meaning of section 68G of the *Transport Administration Act 1988* (as in force before its repeal by the amending Act) or a Transport Service senior executive or senior manager to whom Part 7A of the *Transport Administration Act 1988* (as substituted by the amending Act) applies.

[73] Section 88 Regulations

Insert “, allowances” after “leave” in section 88 (2) (a).

[74] Section 88 (3A)

Insert after section 88 (3):

- (3A) The regulations may make provision relating to the calculation of the proportionate amount of a payment to be refunded under subsection (3) or under section 41 (3) or 78 (7).

[75] Schedule 1 Public Service agencies

Omit the matter relating to the Sydney Cricket and Sports Ground Trust Staff Agency from Part 2.

[76] Schedule 4 Savings, transitional and other provisions

Omit clause 13C.

[77] Schedule 4, Part 4

Insert after Part 3:

**Part 4 Provisions consequent on enactment of
Government Sector Employment Legislation
Amendment Act 2016**

16 Definition

In this Part:

amending Act means the *Government Sector Employment Legislation Amendment Act 2016*.

17 Pending inquiries under section 83

A person who, before the commencement of the amendments made to section 83 of this Act by the amending Act, was authorised to conduct an inquiry under that section is, if the inquiry has not been completed before that commencement, taken to have been appointed under that section (as so amended) to act on behalf of the Commissioner or DPC Secretary (as the case requires) for the purposes of conducting the inquiry.

18 Reinstatement of senior executives whose employment has been terminated for making public interest disclosure

Section 83A of this Act (as inserted by the amending Act) extends to the termination of a person's employment before the commencement of that section.

19 Appointment or employment of parliamentary officers and staff

- (1) The amendments to the *Constitution Act 1902* made by Schedule 5.2 [1]–[3] to the amending Act extend to persons appointed or employed as parliamentary officers and staff after the commencement of this Act and before the commencement of those amendments as if those amendments had been in force at that time.
- (2) For the purposes of this clause, *parliamentary officers and staff* are officers or employees of either House of Parliament or officers under the separate control of the President or Speaker or under their joint control.

Schedule 2 Amendment of Health Services Act 1997 No 154

[1] Section 23

Omit the section. Insert instead:

23 Appointment of chief executive

- (1) A chief executive is to be appointed for each local health district by the local health district board with the concurrence of the Health Secretary.
- (2) Any such chief executive is employed in the NSW Health Service and is a NSW Health Service senior executive.

[2] Section 28 Functions of local health district boards

Omit section 28 (e). Insert instead:

- (e) to appoint, and exercise employer functions in relation to, the chief executive of the local health district,
- (e1) to ensure that the number of NSW Health Service senior executives employed to enable the local health district to exercise its functions, and the remuneration paid to those executives, is consistent with any direction by the Health Secretary or condition referred to in section 122 (2),

[3] Section 51 Appointment of chief executive of board governed health corporation

Omit section 51 (1)–(3). Insert instead:

- (1) A chief executive is to be appointed by the Health Secretary for each board governed health corporation.
- (2) Any such chief executive is employed in the NSW Health Service.

[4] Section 52 Removal of members and appointment of administrator

Omit section 52 (6). Insert instead:

- (6) If the chief executive of a board governed health corporation is a NSW Health Service senior executive, the removal of the chief executive from office under this section is taken to be a termination of employment under section 121H.

[5] Section 52A

Omit the section. Insert instead:

52A Appointment of chief executive of chief executive governed health corporation

- (1) A chief executive is to be appointed by the Health Secretary for each chief executive governed health corporation.
- (2) Any such chief executive is employed in the NSW Health Service.
- (3) If any such chief executive is not a NSW Health Service senior executive, the provisions of Part 3 of Chapter 9 relating to the termination of employment of senior executives extend to the chief executive.

[6] Section 52G Appointment of chief executive of specialty network governed health corporations

Omit section 52G (1). Insert instead:

- (1) A chief executive is to be appointed for each specialty network governed health corporation by the board for the specialty network with the concurrence of the Health Secretary.
- (1A) Any such chief executive is employed in the NSW Health Service and is a NSW Health Service senior executive.

[7] Section 52G (2)

Omit “The provisions of Division 1 of Part 2 of Chapter 3 (except section 23 (1))”.

Insert instead “Sections 24 and 25”.

[8] Section 52G (2) (a)–(c)

Omit “provisions (however expressed)” wherever occurring. Insert instead “sections”.

[9] Section 67A Ambulance Service of NSW

Omit section 67A (2) and (3). Insert instead:

- (2) A chief executive of the Ambulance Service of NSW may be appointed by the Health Secretary.
- (3) Any such chief executive is employed in the NSW Health Service and is a NSW Health Service senior executive.

[10] Section 115 The NSW Health Service

Insert after section 115 (1):

- (1A) Those persons are not employed in the Public Service of New South Wales.

[11] Section 115, note

Omit the note. Insert instead:

Note. Other ways in which persons are employed in the service of the Crown include employment in the Public Service, the Teaching Service or the Transport Service.

[12] Section 116 Employment of staff generally

Omit section 116 (3) (but not the note to that subsection). Insert instead:

- (3) The Health Secretary 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 staff employed in the NSW Health Service (except as otherwise provided by subsections (3A)–(3D)).
- (3A) A local health district board 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 chief executive of the local health district.
- (3B) The chief executive of a local health district 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 other NSW Health Service senior executives employed to enable the local health district to exercise its functions.

- (3C) The board of a specialty network governed health corporation 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 chief executive of the health corporation.
- (3D) The chief executive of a specialty network governed health corporation 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 other NSW Health Service senior executives employed to enable the health corporation to exercise its functions.

[13] Section 116A Salary, conditions etc of staff employed in the NSW Health Service (other than senior executives)

Omit section 116A (5). Insert instead:

- (5) This section does not apply to the conditions of employment of NSW Health Service senior executives under Part 3 of this Chapter. This subsection does not prevent particular conditions of employment under this section from being adopted by reference in the contract of employment of the executives.

[14] Section 116C Transfer of staff within the NSW Health Service on ground of redundancy

Insert after section 116C (5):

- (6) This section does not apply to NSW Health Service senior executives.

[15] Section 116D Health Secretary may arrange for use of services or facilities outside of NSW Health Service

Omit “any Division of the Government Service”.

Insert instead “any government sector agency (within the meaning of the *Government Sector Employment Act 2013*)”.

[16] Section 116G Miscellaneous provisions relating to civil liability

Insert after section 116G (6):

- (6A) Subsections (5) and (6) do not apply in relation to NSW Health Service senior executives.

[17] Section 118 Disciplinary action in certain cases of serious sex or violence offences

Insert after section 118 (3):

- (3A) The Health Secretary is, in the case of a member of staff who is a NSW Health Service senior executive, authorised to take any such action regardless of whether the Health Secretary exercises employer functions in relation to the executive.
- (3B) If, under this section, a member of staff who is a NSW Health Service senior executive is assigned to or from a division of the NSW Health Service for which the Health Secretary does not exercise employer functions in relation to the Health Service senior executives employed in that division, the Health Secretary is to consult the person or body that exercises or will exercise employer functions in relation to the executive.
- (3C) A person may not, under this section:
 - (a) be transferred and assigned to the role of chief executive of a local health district or specialty network governed health corporation without the concurrence of the board of the local health district or specialty

network governed health corporation to which the person is transferred,
or

- (b) in the case of a person who is the chief executive of a local health district or specialty network governed health corporation—be assigned to another role unless the Health Secretary has consulted the board of the local health district or the specialty network governed health corporation (as the case requires).

[18] Section 118 (6)

Omit paragraph (c) of the definition of *disciplinary action*. Insert instead:

- (c) transferring a member of staff who is not a NSW Health Service senior executive to another position in the NSW Health Service or assigning a member of staff who is a NSW Health Service senior executive to another role in the NSW Health Service.

[19] Section 120A (1), note

Omit the note.

[20] Chapter 9 The NSW Health Service

Omit Part 3. Insert instead:

Part 3 NSW Health Service senior executives

121A NSW Health Service senior executives

- (1) Persons who are employed in the NSW Health Service in a Public Service senior executive band are *NSW Health Service senior executives*. For that purpose, the Public Service senior executive bands under the *Government Sector Employment Act 2013* apply to employment in the NSW Health Service.
- (2) The following chief executives are to be employed as NSW Health Service senior executives:
 - (a) chief executives of local health districts,
 - (b) chief executives of specialty network governed health corporations,
 - (c) the chief executive of the Ambulance Service of NSW.

Note. See section 23 (2) in the case of the chief executive of a local health district, section 52G (1A) in the case of the chief executive of a specialty network governed health corporation and section 67A (3) in the case of the chief executive of the Ambulance Service.
- (3) The chief executive of a statutory health corporation (other than a specialty network governed health corporation) may, but need not, be employed as a NSW Health Service senior executive.
- (4) Persons who are employed under Part 4 of the *Government Sector Employment Act 2013* and assigned to roles to enable a Council established under section 41B of the *Health Practitioner Regulation National Law (NSW)* to exercise its functions may be designated by the Health Secretary as NSW Health Service senior executives. Any such person, if so designated, ceases to be employed under the *Government Sector Employment Act 2013* and becomes employed in the NSW Health Service as a NSW Health Service senior executive.

121B Employer of senior executives

For the purposes of this Part, the person who is authorised to exercise the employer functions of the Government of New South Wales in relation to a NSW Health Service senior executive is referred to in this Part as the *employer* of the executive.

Note. The Health Secretary is the employer of Health Service senior executives, except that:

- (a) the employer of the chief executive of a local health district or of a specialty network governed health corporation is the board of the district or corporation, and
- (b) the employer of the other senior executives of any such district or corporation is the chief executive of the district or corporation.

121C Kinds of employment

- (1) Employment as a NSW Health 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 terminated).

121D Employment in bands and assignment to roles

- (1) A NSW Health Service senior executive is to be employed in the Public Service senior executive band that the employer of the executive considers appropriate for the role of the executive.
- (2) In determining the number of NSW Health 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 Public Service Commissioner.
- (3) In the case of a local health district or specialty network governed health corporation, the number of NSW Health Service senior executives, the bands in which they are employed and the roles they perform are required to be approved by the Health Secretary.
- (4) A NSW Health Service senior executive may, from time to time, be assigned to a role in any division of the NSW Health Service in the band in which the executive is employed.
- (5) A NSW Health Service senior executive may be assigned to a role (in the band in which the executive is employed) by the employer of the executive within the relevant division of the NSW Health Service for which the employer exercises employer functions.
- (6) A NSW Health Service senior executive employed in a division of the NSW Health Service may, subject to this section, be assigned to a role (in the band in which the executive is employed) by the Health Secretary in another division of the NSW Health Service.
- (7) If a NSW Health Service senior executive is assigned to a role in or from a division of the NSW Health Service for which the Health Secretary does not exercise employer functions in relation to the Health Service senior executives

- employed in that division, the Health Secretary is to consult the person or body that exercises or will exercise employer functions in relation to the executive.
- (8) A NSW Health Service senior executive may not be assigned to the role of chief executive of a local health district or specialty network governed health corporation without the concurrence of the board of the local health district or specialty network governed health corporation to which the executive is to be assigned.
- (9) A NSW Health Service senior executive may:
- (a) be transferred by the Health Secretary to the Public Service of New South Wales and assigned to a role in any Public Service agency in the band in which the executive is employed (with the agreement of the head of that agency), or
 - (b) be transferred by the Health Secretary to the NSW Police Force and assigned to a role (other than as a police officer) in the band in which the executive is employed (with the agreement of the Commissioner of Police), or
 - (c) be transferred by the Health Secretary to the Transport Service of New South Wales and assigned to a role in the band in which the executive is employed (with the agreement of the Secretary of the Department of Transport).
- (10) If, under subsection (9) or under a corresponding provision of the *Government Sector Employment Act 2013* or other Act, an executive is transferred to or from a division of the NSW Health Service for which the Health Secretary does not exercise employer functions in relation to the Health Service senior executives employed in that division, the Health Secretary is to consult the person or body that exercises or will exercise employer functions in relation to the executive.
- (11) A person may not, under subsection (9) or under a corresponding provision of the *Government Sector Employment Act 2013* or other Act:
- (a) be transferred and assigned to the role of chief executive of a local health district or specialty network governed health corporation without the concurrence of the board of the local health district or specialty network governed health corporation to which the person is transferred, or
 - (b) in the case of a person who is the chief executive of a local health district or specialty network governed health corporation—be transferred and assigned to another role unless the Health Secretary has consulted the board of the local health district or the specialty network governed health corporation (as the case requires).
- (12) NSW Health Service senior executives may be assigned to roles under this section to enable the flexible deployment of staff resources and to develop the capabilities of staff.
- (13) A NSW Health Service senior executive is not to be assigned to a different role under this section 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. This subsection extends to a transfer under subsection (9).
- (14) In this section:
assign to a role includes assign to a different role.

121E Government sector employment rules and employment directions and conditions

- (1) The Public Service Commissioner may make government sector employment rules under section 12 of the *Government Sector Employment Act 2013* on any matter relating to the employment of NSW Health Service senior executives (including, without limitation, matters of the kind referred to in section 36 of that Act).
- (2) The Public Service Commissioner must consult the Health Secretary before making any such rules.
- (3) This section does not limit any direction, or any condition referred to in section 122 (2), that the Health Secretary is otherwise authorised to give or impose in relation to the employment of NSW Health Service senior executives. However, if any such direction or condition is inconsistent with the applicable government sector employment rules:
 - (a) the direction or condition does not have any effect unless the Public Service Commissioner has agreed to the inconsistency (unless it is a direction or condition referred to in paragraph (b)), or
 - (b) if the direction or condition relates to the health or safety of any person or persons or the provision of essential health services—the Health Secretary is to consult the Public Service Commissioner about the inconsistency (whether before or after the direction or condition is given or attached).

121F Contract of employment

- (1) A NSW Health Service senior executive is to be employed under a written contract of employment signed by the executive and by the employer of the executive on behalf of the Government.
- (2) Without limiting section 121E (1), the government sector employment rules made under section 12 of the *Government Sector Employment Act 2013* may prescribe model contracts of employment for NSW Health Service senior executives 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 entered into after the commencement of those mandatory provisions.
- (3) Subject to this Part, the government sector employment rules and any direction issued by the Public Service Commissioner under the *Government Sector Employment Act 2013*, a contract of employment of a NSW Health Service senior executive is to deal with the following matters:
 - (a) the band in which the executive is employed,
 - (b) the duration of the contract if the executive is not employed in ongoing employment,
 - (c) the total remuneration package of the executive (comprising monetary remuneration and employment benefits) and any allowances,
 - (d) performance obligations, and reviews of performance, of the executive,
 - (e) progression in the total remuneration package of the executive based on performance,
 - (f) leave and other conditions of employment of the executive,
 - (g) the compensation for any termination of employment of the executive by the Health Secretary or other employer of the executive (including the period to which the compensation relates),

- (h) any other matter prescribed by the regulations under section 39 (4) of the *Government Sector Employment Act 2013*.
- (4) The contract of employment of a NSW Health Service senior executive may, subject to this Act, include conditions of engagement.
- (5) The contract of employment of a NSW Health Service senior executive does not limit, and is not terminated or otherwise affected by:
 - (a) the transfer of the executive under section 121D (9) to the Public Service of New South Wales, the NSW Police Force or the Transport Service of New South Wales, or
 - (b) 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 NSW Health Service senior executive may, subject to this section, be varied at any time in accordance with the contract or by further agreement.
- (7) The regulations under the *Government Sector Employment Act 2013* may make provision with respect to the compensation to which a NSW Health Service senior executive whose employment is terminated is entitled under his or her contract of employment. Any such regulation cannot reduce the amount of compensation to which a NSW Health Service senior executive is entitled under a contract of employment entered into before the commencement of the regulation.

121G Remuneration, benefits and allowances

- (1) The remuneration package of a NSW Health 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, except as provided by subsection (2).

Note. See also section 24R (3) of the *Statutory and Other Offices Remuneration Act 1975*.
- (2) The Health Secretary may, in accordance with parameters agreed on by the Health Secretary and the Public Service Commissioner, determine a remuneration package for a NSW Health Service senior executive or class of NSW Health Service senior executives that is within a range higher than the range determined under the *Statutory and Other Offices Remuneration Act 1975* for the band in which the executive or class of executives is employed.
- (3) The kinds and value of employment benefits and the allowances for a NSW Health Service senior executive are to be determined by the Health Secretary. In making any such determination, the Health Secretary is to have regard to any similar determinations that apply to Public Service senior executives.
- (4) A NSW Health Service senior executive is only entitled to the remuneration, employment benefits or allowances provided in the executive's contract of employment.
- (5) For the purposes of this section, employment benefits for a NSW Health 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.

121H Termination of employment

- (1) The employer of a NSW Health Service senior executive, or the Health Secretary if the Health Secretary is not the employer, may terminate the employment of the executive at any time, for any or no stated reason and without notice.

Note. The termination of employment of a senior executive may also be effected by other means (for example under Part 2 of this Chapter or under section 68 of the *Government Sector Employment Act 2013*).

- (2) A NSW Health Service senior executive whose employment is terminated under this section is entitled to such compensation (if any) as may be provided in the contract of employment of the executive (and to no other compensation or entitlement for the termination of employment other than superannuation entitlements).
- (3) A NSW Health 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 any such compensation relates unless arrangements have been made for a refund of the proportionate amount of the compensation.
- (4) The regulations under the *Government Sector Employment Act 2013* may make provision relating to the calculation of the proportionate amount of a payment to be refunded under subsection (3).
- (5) The employment of the chief executive of a local health district or of a specialty network governed health corporation may not be terminated under this section without the concurrence of the Health Secretary.
- (6) For the purposes of this section, *employment* of a former executive in the public sector and *public sector* have the same meanings as in section 41 of the *Government Sector Employment Act 2013*.

121I Acting in executive roles

- (1) A NSW Health Service senior executive or other employee of the NSW Health Service may be assigned to act in the role of a NSW Health Service senior executive if:
 - (a) the person who is usually assigned to that other role is unavailable for any reason, or
 - (b) there is no person performing duties in that other role for the time being.
- (2) An assignment to act in the role of a NSW Health Service senior executive under this section may be made:
 - (a) in any case—by the Health Secretary, or
 - (b) in the case of a NSW Health Service senior executive being assigned to act in the role of another such executive—by the employer of the executive assigned to act (but only if the employer is also the employer of the other executive).

If the Health Secretary assigns an executive to act in the role of an executive for whom the Health Secretary is not the employer, the Health Secretary is to consult the employer of that executive.

- (3) While assigned to act in the role of a NSW Health Service senior executive the person has all the functions of the executive, but does not thereby become a NSW Health Service senior executive if not already such an executive.

- (4) An assignment to act in the role of a NSW Health Service senior executive under this section may be terminated at any time by a person authorised to make the assignment.
- (5) This Part does not prevent the payment of an applicable allowance to a person when assigned to act in the role of a NSW Health Service senior executive under this section.

121J Industrial or legal proceedings excluded

- (1) The employment of a NSW Health Service senior executive, 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*.
- (2) 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 a NSW Health Service senior executive.
- (3) 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 NSW Health Service senior executives. This subsection does not prevent the provisions of any such industrial instrument being adopted by reference in the conditions of employment of any such executive.
- (4) 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*.
- (5) In this section, a reference to the **employment** of a NSW Health Service senior executive is a reference to:
 - (a) the engagement of, or failure to engage, a person as such an executive, or
 - (b) the assignment or re-assignment of the executive to a role in a band, or
 - (c) the removal, retirement, termination of employment or other cessation of employment of the executive, or
 - (d) any disciplinary proceedings or action taken against the executive, or
 - (e) the remuneration or other conditions of employment of the executive.

121K Delegation of employer functions

- (1) If the employer of a NSW Health Service senior executive is a board, the employer functions of the board under this Chapter in relation to the executive (other than the function of employing or terminating the employment of the executive) may be delegated by the board to the chairperson or any other member of the board.
- (2) If the employer of a NSW Health Service senior executive is a chief executive, the employer functions of the chief executive under this Chapter in relation to the senior executive may be delegated by the chief executive to any member of the NSW Health Service (other than the senior executive) or to any person employed in the Public Service.

[21] Section 122 Functions of the Health Secretary

Insert “, including (subject to section 121E (3)) directions relating to the employment of NSW Health Service senior executives” after “directions to statutory health organisations” in section 122 (f1).

[22] Section 122 (2)

Insert at the end of section 122:

- (2) Without limiting subsection (1) (f1), the Health Secretary may, in exercising any power delegated by the Minister to attach conditions under section 127 (4) to the payment of a subsidy under that section to a statutory health organisation, attach conditions relating to the employment of NSW Health Service senior executives who are employed to enable the statutory health organisation to exercise its functions. Any such condition is subject to section 121E (3).

[23] Schedule 7 Savings, transitional and other provisions

Insert at the end of the Schedule with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of
Government Sector Employment Legislation
Amendment Act 2016**

Definitions

In this Part:

amending Act means the *Government Sector Employment Legislation Amendment Act 2016*.

existing Health Service senior executive means a member of the NSW Health Service who was, immediately before the substitution of Part 3 of Chapter 9 of this Act by the amending Act, employed in an executive position under the former senior executive provisions, and includes any such member of the NSW Health Service holding office as a chief executive under section 23, 51, 52A, 52G or 67A of this Act.

former senior executive provisions means the provisions of Part 3 of Chapter 9 of this Act (and any other provisions of this Act that relate to the operation of that Part), as in force immediately before the substitution of that Part by the amending Act.

new senior executive provisions means the provisions of Part 3 of Chapter 9 of this Act (and any other provisions of this Act that relate to the operation of that Part), as amended by the amending Act, and the provisions of Part 3B of the *Statutory and Other Offices Remuneration Act 1975*.

Application of new senior executive provisions to existing Health Service senior executives

- (1) On the commencement of the new senior executive provisions, the following provisions apply in relation to an existing Health Service senior executive:
 - (a) the executive is taken to be employed in ongoing employment as a Health Service senior executive under the new senior executive provisions,
 - (b) for that purpose, a contract of employment under the new senior executive provisions is taken to have been entered into in relation to employment of the executive,
 - (c) the terms and conditions of that contract are taken to be those contained in the model contract of employment for NSW Health Service senior executives that is prescribed by the government sector employment rules as at the date of commencement of the new senior executive provisions,

- (d) the executive is taken to be employed in the band under the Public Service senior executive band determination that:
 - (i) the employer of the executive considers appropriate for the role of the executive, and
 - (ii) is approved by the Health Secretary (in the case where the Health Secretary is not the employer),
 - (e) the executive is to be assigned to the same (or a similar) role to the role in which the executive was employed immediately before the commencement of the new senior executive provisions,
 - (f) the executive has a remuneration package that is equivalent to the executive's remuneration package under the former senior executive provisions (unless the remuneration package is increased as a result of arrangements in force under those provisions) even if it exceeds the band in which the person is employed,
 - (g) the executive continues to be entitled to any recruitment or other allowance payable to the executive under the former senior executive provisions immediately before the commencement of the new senior executive provisions.
- (2) Subclause (1) (f) and (g) apply in relation to a NSW Health Service senior executive until such time as the executive:
- (a) is assigned to a role in the NSW Health Service that has a remuneration package exceeding the remuneration package paid to the executive immediately before the assignment to the new role, or
 - (b) ceases to be employed in the NSW Health Service.

Savings and transitional regulations

- (1) The provisions of any regulation made under Part 1 of this Schedule consequent on the enactment of the amending Act have effect despite anything to the contrary in this Part.
- (2) The regulations made under Part 1 of this Schedule consequent on the enactment of the amending Act may make separate savings and transitional provisions or amend this Part to consolidate the savings and transitional provisions.

[24] Dictionary

Omit the definition of *Health Executive Service* from Part 1.

[25] Dictionary, Part 1

Insert in appropriate order:

NSW Health Service senior executive means a person employed in the NSW Health Service as a NSW Health Service senior executive.

role of a NSW Health Service senior executive means the duties and responsibilities of the executive.

Schedule 3 Amendment of Police Act 1990 No 47

- [1] **Section 3 (1), definitions of “administrative officer” and “non-executive administrative officer”**
Omit the definitions.
- [2] **Section 3 (1), definitions of “Assistant Commissioner” and “Deputy Commissioner”**
Omit “Division 2 of Part 5” wherever occurring. Insert instead “Part 5”.
- [3] **Section 3 (1), definition of “NSW Police Force Senior Executive Service”**
Omit the definition.
- [4] **Section 3 (1)**
Insert in alphabetical order:
administrative employee means a member of the NSW Police Force other than a police officer.
non-executive administrative employee means a member of the NSW Police Force, other than a police officer or a NSW Police Force senior executive.
NSW Police Force senior executive—see section 32.
position, in relation to NSW Police Force senior executives or non-executive administrative employees, includes role.
role of a NSW Police Force senior executive or a non-executive administrative employee means the duties and responsibilities of any such executive or employee.
- [5] **Section 3 (1), definition of “temporary employee”**
Omit the definition.
- [6] **Section 5 Composition of NSW Police Force**
Omit section 5 (b)–(d). Insert instead:
(b) NSW Police Force senior executives,
(c) all other police officers or non-executive administrative employees who are employed under this Act.
- [7] **Section 10 Positions in the NSW Police Force**
Omit section 10 (5).
- [8] **Section 10 (6)**
Omit “(other than the NSW Police Force Senior Executive Service)”.
- [9] **Section 11 Designation of police officers**
Omit “administrative officer” from section 11 (3).
Insert instead “administrative employee”.
- [10] **Section 11 (5)**
Omit the subsection.

[11] Section 12 Ranks and grades of police officers

Omit section 12 (1) (b) and (c). Insert instead:

- (b) NSW Police Force senior executive.
- (c) Superintendent.

[12] Section 12 (2)

Omit “within the NSW Police Force Senior Executive Service”.

Insert instead “who are NSW Police Force senior executives”.

[13] Section 27 Employment and remuneration of Commissioner

Omit section 27 (2). Insert instead:

- (2) The provisions of sections 36 (1), 38, 39 and 42 apply to the Commissioner in the same way as they apply to a NSW Police Force senior executive (subject to a reference in those provisions to the Commissioner being construed as a reference to the Minister).

[14] Section 28 Removal of Commissioner

Omit “no reason” from section 28 (1). Insert instead “no stated reason”.

[15] Section 28 (1A)–(1C)

Insert after section 28 (1):

- (1A) A Commissioner who is removed from office is entitled to such compensation (if any) as may be provided in the contract of employment of the Commissioner (and to no other compensation or entitlement for the removal from office). This subsection does not affect the operation of the *Police Regulation (Superannuation) Act 1906* or the *State Authorities Superannuation Act 1987* or prevent the payment of any other benefit provided under a superannuation scheme.
- (1B) A Commissioner who is removed from office is not to be employed in the public sector during the period specified in the contract of employment to which any such compensation relates unless arrangements have been made for a refund of the proportionate amount of the compensation.
- (1C) For the purposes of this section, *employment* of a former Commissioner in the public sector and *public sector* have the same meanings as in section 41 of the *Government Sector Employment Act 2013*.

[16] Section 28 (2) and (4)–(7)

Omit the subsections.

[17] Section 28A

Insert after section 28:

28A Declaration as “unattached” officer

- (1) This section applies in relation to a person who is removed from office as Commissioner under section 28.
- (2) The Governor, on the recommendation of the Minister:
 - (a) may declare the person so removed to be an unattached officer in the service of the Crown, and

- (b) may revoke any such declaration.
- (3) While such a declaration remains in force, the person concerned is entitled to monetary remuneration and employment benefits (including any benefits that may be provided under a superannuation scheme) as if the person had not been removed from office.
- (4) If:
 - (a) the Commissioner is removed from office and such a declaration is not made, or
 - (b) a declaration that is made is revoked,the person concerned ceases to be employed in the service of the Crown, unless appointed to another position in the service of the Crown.
- (5) A declaration under this section, unless sooner revoked, is revoked on the date on which the term of office of the person as Commissioner would have expired.

[18] Part 5

Omit the Part. Insert instead:

Part 5 NSW Police Force senior executives

32 NSW Police Force senior executives

- (1) Persons who are employed in the NSW Police Force in a Public Service senior executive band, whether as police officers or as administrative employees, are *NSW Police Force senior executives*. For that purpose, the Public Service senior executive bands under the *Government Sector Employment Act 2013* apply to employment in the NSW Police Force.
- (2) The Commissioner is not a NSW Police Force senior executive.
- (3) Deputy Commissioners and Assistant Commissioners are to be employed as NSW Police Force senior executives.
- (4) A police officer is not to be employed as a NSW Police Force senior executive unless the police officer is above the rank of superintendent.
- (5) The Commissioner may, subject to this and any other Act or law, exercise employer functions in relation to persons employed as NSW Police Force senior executives.

33 Appointment of senior executives

- (1) Deputy Commissioners and Assistant Commissioners are to be appointed by the Governor. The persons appointed are to be persons recommended to the Minister by the Commissioner and approved by the Minister.
- (2) Other NSW Police Force senior executives are to be appointed by the Commissioner.
- (3) The appointment of a person under this section to a position in the NSW Police Force is to be based on an assessment of the capabilities, experience and knowledge of the person against the pre-established standards for the position to determine the person best suited to the requirements of the position and the needs of the NSW Police Force.
- (4) It does not matter whether a person appointed under this section is or is not already a member of the NSW Police Force, and it does not matter that a

person appointed to a position designated as a position to be held by a police officer is not a police officer at the time of appointment.

- (5) The Commissioner may appoint a member of the NSW Police Force to act as a Deputy Commissioner, Assistant Commissioner or other NSW Police Force senior executive if the executive is suspended, sick or absent or has vacated office, and may terminate the appointment at any time.
- (6) A person, while so acting as a NSW Police Force senior executive, has all the functions of the executive, but does not thereby become a NSW Police Force senior executive if not already such an executive.

34 Integrity matters

- (1) It is the duty of the Commissioner, before recommending the appointment of, or appointing, a person as a NSW Police Force senior executive:
 - (a) to make inquiries (from the Police Integrity Commission, and the Commander, Professional Standards Command, and from any other person or body the Commissioner considers appropriate) as to the person's integrity, and
 - (b) to have regard to any information that comes to the Commissioner's attention (whether as a result of inquiries under paragraph (a) or otherwise) as to the person's integrity.
- (2) The Police Integrity Commission, subject to the *Police Integrity Commission Act 1996*, and the Commander, Professional Standards Command, are required to furnish a report to the Commissioner (on the basis of the information available to the Commission or the Commander and without the need for any special investigation or inquiry) on the person the subject of an inquiry by the Commissioner.
- (3) As soon as practicable after a person is appointed as a NSW Police Force senior executive, the Commissioner is required to notify the Police Integrity Commission of the identity of the person so appointed.
- (4) The Commissioner must, before recommending the appointment of, or appointing, a person as a NSW Police Force senior executive:
 - (a) require the person to provide a statutory declaration, in such form (if any) as may be prescribed by the regulations, that the person has not knowingly engaged in specified misconduct or any other misconduct, and
 - (b) have regard to the statutory declaration so provided.
- (5) Subsection (4) does not apply to a person who is not, and has never been, a police officer (whether a member of the NSW Police Force, or the Police Force, by whatever name described, of another State or Territory, or of another country).
- (6) A person who does not provide a statutory declaration in accordance with a requirement under subsection (4) is ineligible for appointment.
- (7) The fact that a person does not provide a statutory declaration in accordance with such a requirement is not to be taken into consideration for a purpose other than the assessment of the person's eligibility to be appointed as a NSW Police Force senior executive.
- (8) In the case of the appointment of a person as the Commander, Professional Standards Command, the functions of that Commander under this section are to be exercised by a Deputy Commissioner nominated by the Commissioner.

35 Kinds of employment

- (1) Employment as a NSW Police Force 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 terminated).

36 Employment in bands and assignment to roles

- (1) A NSW Police Force senior executive is to be employed in the Public Service senior executive band that the Commissioner considers appropriate for the role of the executive.
- (2) In determining the number of NSW Police Force senior executives and the appropriate band in which they are employed, the Commissioner is to apply the applicable work level standards and have regard to any guidance provided by the Public Service Commissioner.
- (3) A NSW Police Force senior executive may, from time to time, be assigned to a role in any part of the NSW Police Force in the band in which the executive is employed.
- (4) A NSW Police Force senior executive may be assigned to a role by the Commissioner.
- (5) A NSW Police Force senior executive (other than a police officer) may:
 - (a) be transferred by the Commissioner to the Public Service of New South Wales and assigned to a role in any Public Service agency in the band in which the executive is employed (with the agreement of the head of that agency), or
 - (b) be transferred by the Commissioner to the NSW Health Service and assigned to a role in the band in which the executive is employed (with the agreement of the Secretary of the Ministry of Health), or
Note. A Police Force senior executive may not be assigned to the role of chief executive of a local health district or specialty network governed health corporation except with the concurrence of the board of the organisation concerned—see section 121D (11) of the *Health Services Act 1997*.
 - (c) be transferred by the Commissioner to the Transport Service of New South Wales and assigned to a role in the band in which the executive is employed (with the agreement of the Secretary of the Department of Transport).
Note. See also section 95A which enables a police officer to be seconded to other government agencies. While seconded, the police officer retains his or her rank, seniority and remuneration and may continue to act as a police officer of that rank.
- (6) NSW Police Force senior executives may be assigned to roles under this section to enable the flexible deployment of staff resources and to develop the capabilities of staff.
- (7) A NSW Police Force senior executive is not to be assigned to a different role under this section 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. This subsection extends to a transfer under subsection (5).

- (8) In this section:
assign to a role includes assign to a different role.

37 Government sector employment rules and employment directions

- (1) The Public Service Commissioner may make government sector employment rules under section 12 of the *Government Sector Employment Act 2013* on any matter relating to the employment of NSW Police Force senior executives (including, without limitation, matters of the kind referred to in section 36 of that Act and the application of the principle of employment on merit).
- (2) The Public Service Commissioner must consult the Commissioner of Police before making any such rules.
- (3) This section does not limit any direction that the Commissioner is otherwise authorised to give in relation to the management or control of the NSW Police Force (including employment arrangements). The Commissioner is to consult with the Public Service Commissioner on any inconsistency between any such directions given and applicable government sector employment rules.

38 Contract of employment

- (1) A NSW Police Force senior executive is to be employed under a written contract of employment signed by the executive and by the Commissioner on behalf of the Government.
- (2) Without limiting section 37 (1), the government sector employment rules made under section 12 of the *Government Sector Employment Act 2013* may prescribe model contracts of employment for NSW Police Force senior executives 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 entered into after the commencement of those mandatory provisions.
- (3) Subject to this Part, the government sector employment rules and any direction issued by the Public Service Commissioner under the *Government Sector Employment Act 2013*, a contract of employment of a NSW Police Force senior executive is to deal with the following matters:
 - (a) the band in which the executive is employed,
 - (b) the duration of the contract if the executive is not employed in ongoing employment,
 - (c) the total remuneration package of the executive (comprising monetary remuneration and employment benefits) and any allowances,
 - (d) performance obligations, and reviews of performance, of the executive,
 - (e) progression in the total remuneration package of the executive based on performance,
 - (f) leave and other conditions of employment of the executive,
 - (g) the compensation for any termination of employment of the executive by the Commissioner (including the period to which the compensation relates),
 - (h) any other matter prescribed by the regulations under section 39 (4) of the *Government Sector Employment Act 2013*.

- (4) The contract of employment of a NSW Police Force senior executive may, subject to this Act, include conditions of engagement.
- (5) The contract of employment of a NSW Police Force senior executive does not limit, and is not terminated or otherwise affected by:
 - (a) the transfer of the executive under section 36 (5) to the Public Service of New South Wales, the NSW Health Service or the Transport Service of New South Wales, or
 - (b) 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 NSW Police Force senior executive may, subject to this section, be varied at any time in accordance with the contract or by further agreement.
- (7) The regulations under the *Government Sector Employment Act 2013* may make provision with respect to the compensation to which a NSW Police Force senior executive whose employment is terminated is entitled under his or her contract of employment. Any such regulation cannot reduce the amount of compensation to which a NSW Police Force senior executive is entitled under a contract of employment entered into before the commencement of the regulation.

39 Remuneration, benefits and allowances

- (1) The remuneration package of a NSW Police Force 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, except as provided by subsection (2).

Note. See also section 24R (3) of the *Statutory and Other Offices Remuneration Act 1975*.
- (2) The Commissioner may, in accordance with parameters agreed on by the Commissioner and the Public Service Commissioner, determine a remuneration package for a NSW Police Force senior executive or class of NSW Police Force senior executives that is within a range higher than the range determined under the *Statutory and Other Offices Remuneration Act 1975* for the band in which the executive or class of executives is employed.
- (3) The kinds and value of employment benefits and the allowances for a NSW Police Force senior executive are to be determined by the Commissioner. In making any such determination, the Commissioner is to have regard to any similar determinations that apply to Public Service senior executives.
- (4) A NSW Police Force senior executive is only entitled to the remuneration, employment benefits or allowances provided in the executive's contract of employment.
- (5) For the purposes of this section, employment benefits for a NSW Police Force 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.

40 Termination of employment

- (1) The Governor may terminate the appointment of a person as Deputy Commissioner or Assistant Commissioner at any time, for any or no stated

reason and without notice. The Governor is not to do so unless the termination is recommended to the Minister by the Commissioner and the Minister approves the recommendation.

- (2) The Commissioner may terminate the employment of any other NSW Police Force senior executive at any time, for any or no stated reason and without notice.
- (3) The Commissioner:
 - (a) may declare a person whose appointment is terminated under subsection (1) to be an unattached officer in the NSW Police Force (an ***unattached declaration***), and
 - (b) may revoke an unattached declaration.
- (4) While an unattached declaration is in force, the person to whom the declaration relates:
 - (a) is to be regarded as a NSW Police Force senior executive (although not as the holder of any position), and
 - (b) is entitled to remuneration and employment benefits (including any benefits that may be provided under a superannuation scheme) as if the person's appointment had not been terminated.
- (5) If, in the case of a person whose appointment has been terminated under subsection (1), an unattached declaration is not made or is revoked by the Commissioner, the employment of the person as a NSW Police Force senior executive is to be terminated by the Commissioner unless the person is appointed to another position in the NSW Police Force (including a position as a non-executive police officer) after consultation with the person.
- (6) Without limiting subsection (5), a person whose appointment as Deputy Commissioner or Assistant Commissioner is terminated under this section and who is the subject of an unattached declaration may be appointed by the Commissioner to a position in the NSW Police Force as a non-executive police officer after consultation with the person.
- (7) Nothing in this section prevents:
 - (a) a NSW Police Force senior executive who is a police officer being removed from the NSW Police Force apart from under this section, or
 - (b) a NSW Police Force senior executive who is an administrative employee from having his or her employment terminated under section 68 or 69 of the *Government Sector Employment Act 2013*.

41 Compensation for termination of employment

- (1) A NSW Police Force senior executive whose employment is terminated under section 40 is entitled to such compensation (if any) as may be provided in the contract of employment of the executive (and to no other compensation or entitlement for the termination of employment). This subsection does not affect the operation of the *Police Regulation (Superannuation) Act 1906* or the *State Authorities Superannuation Act 1987* or prevent the payment of any other benefit provided under a superannuation scheme.
- (2) A NSW Police Force 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 any such compensation relates unless arrangements have been made for a refund of the proportionate amount of the compensation.

- (3) The regulations under the *Government Sector Employment Act 2013* may make provision relating to the calculation of the proportionate amount of a payment to be refunded under subsection (2).
- (4) For the purposes of this section, **employment** of a former executive in the public sector and **public sector** have the same meanings as in section 41 of the *Government Sector Employment Act 2013*.

42 Industrial or legal proceedings excluded

- (1) The employment of a NSW Police Force senior executive, 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*.
- (2) 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 a NSW Police Force senior executive.
- (3) 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 NSW Police Force senior executives. This subsection does not prevent the provisions of any such industrial instrument being adopted by reference in the conditions of employment of any such executive.
- (4) 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) the engagement of, or failure to engage, a person as such a NSW Police Force senior executive, or
 - (b) the assignment or re-assignment of a NSW Police Force senior executive to a role in a band.
- (5) In this section, a reference to the **employment** of a NSW Police Force senior executive is a reference to:
 - (a) the engagement of, or failure to engage, a person as such an executive, or
 - (b) the assignment or re-assignment of the executive to a role in a band, or
 - (c) the removal, retirement, termination of employment or other cessation of employment of the executive, or
 - (d) any disciplinary proceedings or action taken against the executive, or
 - (e) the remuneration or other conditions of employment of the executive.

[19] Section 62 Officers to whom Part applies

Omit “members of the NSW Police Force Senior Executive Service”.

Insert instead “NSW Police Force senior executives”.

[20] Section 65 Filling non-executive positions by either police officers or non-executive administrative employees

Omit section 65 (1). Insert instead:

- (1) If the Commissioner is satisfied that a position is suitable for either a police officer or a non-executive administrative employee, the position may, for the purpose of the selection process, be designated as a position available to both police officers and non-executive administrative employees.

- [21] **Section 65 (2)**
Omit “an administrative officer”.
Insert instead “a non-executive administrative employee”.
- [22] **Section 67 Temporary appointments**
Omit “Without limiting section 90, the” from section 67 (2). Insert instead “The”.
- [23] **Section 67 (4)**
Omit “administrative officer”. Insert instead “administrative employee”.
- [24] **Section 69 Transfer of non-executive police officers**
Omit “non-executive administrative officer” in section 69 (1) and (5) wherever occurring.
Insert instead “non-executive administrative employee”.
- [25] **Section 72 Vacation of non-executive police officer positions**
Omit section 72 (2).
- [26] **Section 72A Incapable non-executive police officer may be retired**
Omit the section.
- [27] **Section 73 Approval to engage in other paid employment**
Omit the section.
- [28] **Part 6A**
Omit the Part. Insert instead:

Part 6A Non-executive administrative employees

81 Application of Part

This Part applies to non-executive administrative employees.

81A Kinds of employment

- (1) Employment in the NSW Police Force as a non-executive administrative 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.

81B Integrity matters

- (1) It is the duty of the Commissioner before employing a non-executive administrative employee, to make inquiries (from any person or body the Commissioner thinks appropriate), as to the person’s integrity.

- (2) It is the duty of the Commissioner to have regard to any information that comes to the Commissioner's attention (whether as a result of inquiries under subsection (1) or otherwise) as to the integrity of a person referred to in that subsection.
- (3) The Police Integrity Commission is authorised (but not required) to furnish a report to the Commissioner on any person the subject of an inquiry under this section.
- (4) The Commissioner is required to notify the Police Integrity Commission of the identity of each person employed as a non-executive administrative employee as soon as practicable after the person is so employed.

81C Employment in classifications of work

- (1) Non-executive administrative employees are to be employed in a classification of work determined by the Commissioner in which the person is employed in accordance with this and any other Act or law.
- (2) A classification of work extends to any kind of work and any grade of that work.

81D Assignment of roles in work classifications

- (1) In this section:
assign to a role includes assign to a different role.
- (2) The Commissioner may from time to time assign non-executive administrative employees to roles in the NSW Police Force in the classification of work in which the employees are employed.
- (3) Non-executive administrative employees may be assigned to roles to enable the flexible deployment of staff resources within the NSW Police Force and to develop the capabilities of staff.
- (4) A non-executive administrative 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.
- (5) The Commissioner may also transfer a non-executive administrative employee to a non-executive police officer position.

81E Termination of employment

- (1) The Commissioner may, by instrument in writing, terminate the employment of a non-executive administrative employee 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 Part 8,
 - (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 of the *Government Sector Employment Act 2013* 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 94B,
 - (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,
- (h) a finding of misconduct has been made against the employee under section 69 of the *Government Sector Employment Act 2013*,
- (i) the employee is determined in accordance with the government sector employment rules under the *Government Sector Employment Act 2013* or the regulations under that Act to be excess to the requirements of the NSW Police Force,
- (j) on any other ground prescribed by the regulations under this Act or by the regulations under section 47 (1) (k) of the *Government Sector Employment Act 2013*.

The instrument is to set out the ground or grounds on which the employment is terminated.

- (2) The Commissioner may, by instrument in writing, terminate the employment of a non-executive administrative employee at any time if the employment is not ongoing employment.

81F Government sector employment rules relating to employment of non-executive administrative employees

- (1) The Public Service Commissioner may make government sector employment rules under section 12 of the *Government Sector Employment Act 2013* on any matter relating to the employment of NSW Police Force non-executive administrative employees (including, without limitation, matters of the kind referred to in section 48 of that Act).
- (2) The Public Service Commissioner must consult the Commissioner of Police before making any such rules.
- (3) This section does not limit any direction that the Commissioner is otherwise authorised to give in relation to the management or control of the NSW Police Force (including employment arrangements). The Commissioner is to consult with the Public Service Commissioner on any inconsistency between directions given and applicable government sector employment rules.

81G Employment of special constables

- (1) The Commissioner may employ a person under this Part as a non-executive administrative employee (special constable). A person so employed is a *special constable*.
- (2) Employment as a special constable may be made subject to such conditions as the Commissioner determines, including (but not limited to) conditions as to the kinds of functions conferred or imposed and the purposes for and circumstances in which such functions may be exercised.
- (3) Without limiting the generality of subsection (2), the Commissioner may confer or impose on a special constable any of the functions of a police officer of the rank of constable, including any of the functions of a police officer that are specified in the *Law Enforcement (Powers and Responsibilities) Act 2002*.
Note. Accordingly, section 13 of this Act, for example, would apply to any such special constable.
- (4) Sections 207A and 211A–211AB apply to a special constable who is authorised to exercise functions of a police officer in the same way as those sections apply to a police officer.
- (5) Part 15 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (Safeguards relating to powers) applies to a special constable who is

authorised to exercise functions of a police officer in the same way as that Part applies to a police officer.

- (6) Part 4 of the *Law Reform (Vicarious Liability) Act 1983* applies to a special constable who is authorised to exercise functions of a police officer in the same way as that Part applies to a police officer.

[29] Section 84 Application of Part

Omit “, members of the NSW Police Force Senior Executive Service and temporary employees” from section 84 (1).

Insert instead “or NSW Police Force senior executives”.

[30] Section 88

Omit the section. Insert instead:

88 Industrial or legal proceedings excluded

- (1) The engagement of, or the failure to engage, a person as a non-executive officer, 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*.
- (2) 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*.
- (3) The failure of a non-executive commissioned police officer to be appointed for a further term of office as provided by section 75 is, for the purposes of this section, taken to be a failure to engage the person as a non-executive officer.
- (4) Nothing in this section prevents any of the following proceedings from being brought by a member of the NSW Police Force in relation to the employment of another member of the NSW Police Force:
 - (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.

[31] Part 7 Temporary employees of NSW Police Force

Omit the Part.

[32] Section 93A

Insert before section 94:

93A Conditions of engagement of administrative employees

- (1) The engagement of an administrative 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 of engagement is subject to the government sector employment rules under the *Government Sector Employment Act 2013* and the regulations under this Act.
- (4) The contract of employment of a NSW Police Force senior executive may include conditions of engagement.

[33] Section 94 Requirements as to citizenship

Omit section 94 (4).

[34] Sections 94B–94D

Insert before section 95:

94B Retirement on medical grounds

The Commissioner may retire a member of the NSW Police Force if:

- (a) the person is found on medical grounds to be unfit to perform or incapable of discharging the duties of the person’s position, 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.

94C Resignation or retirement

- (1) A member of the NSW Police Force may resign from the NSW Police Force by written notice to the Commissioner.
- (2) The resignation of a member of the NSW Police Force does not take effect until:
 - (a) the Commissioner accepts the resignation, or
 - (b) the member has given the Commissioner at least 4 weeks’ notice in writing of the day on which the member intends to resign and the member is not under suspension from duty on that day.
- (3) In this section, *resignation* includes retirement and *member of the NSW Police Force* does not include the Commissioner.

94D Approval to engage in other paid employment

A member of the NSW Police Force (other than the Commissioner) must not engage in any paid employment outside his or her duties as such a member without the approval of the Commissioner.

[35] Section 184 Conduct and performance of administrative officers

Omit the section.

[36] Section 185 Disciplinary appeals to Industrial Relations Commission by non-executive administrative employees

Omit “administrative officers (not being members of the NSW Police Force Senior Executive Service) as if those officers”.

Insert instead “non-executive administrative employees as if those employees”.

[37] Section 203 Wearing or possession of police uniforms by others

Omit “appointed under section 82L” from section 203 (1).

Insert instead “employed under section 81G”.

[38] Section 218 Industrial Relations Act 1996 not affected

Omit “section 44” from section 218 (2). Insert instead “section 42”.

[39] Schedule 4 Savings, transitional and other provisions

Insert after Part 31:

Part 32 Provisions consequent on enactment of Government Sector Employment Legislation Amendment Act 2016

88 Definitions

In this Part:

amending Act means the *Government Sector Employment Legislation Amendment Act 2016*.

former senior executive provisions means:

- (a) the provisions of Part 5 of this Act (and any other provisions of this Act that relate to the operation of that Part) as in force immediately before the substitution of that Part by the amending Act, and
- (b) the provisions of Part 3A of the *Statutory and Other Offices Remuneration Act 1975* as in force immediately before the commencement of the amendments made by the amending Act to that Part.

implementation date for a transitional police senior executive or transitional administrative senior executive—see clause 90.

new senior executive provisions means the provisions of Part 5 of this Act (and any other provisions of this Act that relate to the operation of that Part), as substituted by the amending Act, and the provisions of Part 3B of the *Statutory and Other Offices Remuneration Act 1975*.

senior executive bands determination has the same meaning as in the *Government Sector Employment Act 2013*.

transitional administrative senior executive means a person (other than a police officer):

- (a) who, immediately before the substitution of Part 5 of this Act by the amending Act, was employed as an executive officer under the former senior executive provisions (such a person is referred to in this Part as a ***transitional administrative SES executive***), or
- (b) who, immediately before the substitution of Part 6A of this Act by the amending Act, was employed under that Part in the NSW Police Force as an administrative officer in the classification or grade of senior officer (or in any equivalent classification or grade determined by the Commissioner for the purposes of this definition) and whose salary was more than the maximum salary for a clerk (Grade 12) in the Public Service (such a person is referred to in this Part as a ***transitional administrative SO executive***).

transitional police senior executive means a police officer who, immediately before the substitution of Part 5 of this Act by the amending Act, was

employed as an executive officer under the former senior executive provisions.

89 Existing Police Commissioner

- (1) The person holding office as Commissioner on the commencement of the amendment made to section 27 of this Act by the amending Act continues in office as Commissioner for the balance of the person's existing term of office. However, the person ceases to hold office as Commissioner under this clause if the person vacates that office in accordance with Part 4 of this Act or if the person is subsequently appointed as Commissioner under Part 4 of this Act (as amended by the amending Act).
- (2) A person who continues in office as Commissioner under this clause:
 - (a) is taken to be employed in accordance with this Act (as amended by the amending Act) in the Public Service senior executive band determined in respect of that office, and
 - (b) is not required to enter into a contract of employment under the new senior executive provisions for the purposes of the period of continued employment, and
 - (c) has a remuneration package that is equivalent to the remuneration package of the person immediately before the commencement of this clause (unless the remuneration package is increased in accordance with the former senior executive provisions or as a result of progression within the applicable remuneration range), and
 - (d) is, if the person is removed from office under this Act (as amended by the amending Act) on or after the commencement of this clause, entitled to the compensation (if any) provided under and in accordance with section 28 (7) of this Act (as in force immediately before the repeal of that subsection by the amending Act).

90 Review of senior executive structure for implementation of new senior executive provisions

- (1) The Commissioner is to review the senior executive structure of the NSW Police Force in order to transition senior executive employment in the NSW Police Force to the arrangements under the new senior executive provisions.
- (2) The Commissioner is, in consultation with the Public Service Commissioner, to prepare an implementation schedule for the staged implementation of the new senior executive provisions to the extent they relate to transitional police senior executives and transitional administrative senior executives.
- (3) The implementation schedule is to set out the date on which the new senior executive provisions will apply to transitional police senior executives and transitional administrative senior executives. Different dates may be set for different transitional senior executives.
- (4) The date so set is the *implementation date* for the transitional senior executive concerned.
- (5) The implementation date for a transitional police senior executive or transitional administrative senior executive may be changed by the Commissioner in consultation with the Public Service Commissioner.
- (6) The implementation date for a transitional police senior executive cannot be earlier than the end of the person's term of office under the former senior executive provisions.

91 Police senior executives—transitional arrangements

- (1) Until the implementation date for a transitional police senior executive, the new senior executive provisions apply to the executive subject to the following:
 - (a) the executive is employed under the new senior executive provisions in term employment in the band under the senior executive bands determination that includes the remuneration package to which the executive continues to be entitled under this subclause,
 - (b) the term for which the executive is taken to be so employed is (subject to this subclause):
 - (i) the balance of the person's term of office as a transitional police senior executive, and
 - (ii) any additional period before the implementation date that the Commissioner may approve,
 - (c) the executive is not required to enter into a contract of employment under the new senior executive provisions for the purposes of that period of continued employment,
 - (d) the executive has a remuneration package that is equivalent to the remuneration package of the person under the former senior executive provisions (unless the remuneration package is increased in accordance with those provisions or as a result of progression within the applicable remuneration range),
 - (e) if the executive's employment is terminated under section 40 of this Act (as inserted by the amending Act), the executive is entitled to the compensation provided under the former senior executive provisions (and is subject to any requirements under those provisions relating to the refund of that compensation) as if the termination had been a removal of the executive from office under those former provisions.
- (2) On the implementation date for a transitional police senior executive, the person:
 - (a) ceases to be a transitional police senior executive, and
 - (b) is employed as a NSW Police Force senior executive under the new senior executive provisions.

92 Administrative senior executives—transitional arrangements

- (1) Until the implementation date for a transitional administrative SES executive, the new senior executive provisions apply to the executive subject to the following:
 - (a) the executive is taken to be employed in the band under the Public Service senior executive bands determination that the Commissioner considers appropriate for the role of the executive,
 - (b) the term for which the executive is taken to be so employed is (subject to this clause):
 - (i) the balance of the person's term of office as a transitional administrative SES executive, and
 - (ii) any additional period before the implementation date that the Commissioner may approve,
 - (c) the executive is not required to enter into a contract of employment under the new senior executive provisions for the purposes of that period of continued employment,

- (d) the executive has a remuneration package that is equivalent to the remuneration package of the person under the former senior executive provisions even if it exceeds the band in which the executive is employed,
 - (e) if the executive's employment is terminated under section 40 of this Act (as inserted by the amending Act), the executive is entitled to the compensation provided under the former senior executive provisions (and is subject to any requirements under those provisions relating to the refund of that compensation) as if the termination had been a removal of the executive from office under the former senior executive provisions.
- (2) The following provisions apply in relation to a person who is a transitional administrative SO executive until the person's implementation date:
- (a) the person is employed under Part 6A of this Act (as substituted by the amending Act) in ongoing employment,
 - (b) the person is not employed in a band under the senior executive bands determination,
 - (c) the conditions of employment applying to the person immediately before the commencement of this clause continue to apply to the person, subject to this clause,
 - (d) if the person's employment is terminated under section 81E of this Act (as inserted by the amending Act), the person is entitled to the compensation that the person would have received had the person's employment been terminated immediately before the commencement of this clause.
- (3) If a transitional administrative senior executive is assigned to a different role in the NSW Police Force:
- (a) the person does not cease to be a transitional administrative senior executive, and
 - (b) the remuneration package of the transitional administrative senior executive is, despite subclause (1) (d) and subject to section 36 (7) of this Act, the remuneration package for the role to which the executive has been so assigned.
- Note.** See also subclause (7) for consequences of temporary assignments outside the NSW Police Force.
- (4) On the implementation date for a transitional administrative senior executive:
- (a) the person ceases to be a transitional administrative senior executive, and
 - (b) the employment of the person in the NSW Police Force is terminated unless the person is employed in the NSW Police Force on and from the implementation date in accordance with this Act (whether as a NSW Police Force senior executive or as a non-executive administrative employee, and whether following recruitment action or, in the case of a transitional administrative SO executive, following redeployment as an excess employee), and
 - (c) any such termination of the employment of a person who was a transitional administrative SES executive is taken to be a termination under section 40 of this Act to which subclause (1) (e) applies, and
 - (d) any such termination of the employment of a person who was a transitional administrative SO executive is taken to be a termination

- under section 81E of this Act to which this Act (including the conditions of employment preserved by this clause) applies, and
- (e) section 42 of this Act applies to any such termination of employment of a person (whether an existing administrative SES executive or an existing administrative SO executive) on the basis that the person is an executive employee for the purposes of that section.
- (5) The following applies to the creation of a role within the new senior executive structure of the NSW Police Force (to the extent that it relates to administrative employees) and to the initial recruitment action under this Act to fill that role:
- (a) the work level and other employment arrangements relating to a new role within that new structure are to be determined under this Act and are not determined by the work level and other arrangements that applied to roles in the former executive structure of the NSW Police Force,
 - (b) transitional administrative senior executives may be recruited to any such new role before or at the end of the period of their continued employment as transitional administrative senior executives,
 - (c) the initial recruitment action to fill any such role is to be limited to the following candidates (having regard to the type and level of the role and any other relevant matter):
 - (i) any transitional administrative senior executives who occupy a similar role in the NSW Police Force,
 - (ii) any NSW Police Force senior executives employed in a similar role after the substitution of Part 5 of this Act by the amending Act,
 - (iii) any other persons employed in the NSW Police Force whom the Commissioner considers appropriate.
- (6) Initial recruitment action to fill a role within the new senior executive structure of the NSW Police Force Public Service agency (to the extent that it relates to administrative employees) is not required to be limited as referred to in subclause (5) (c) if:
- (a) there are no candidates of the kind referred to in subclause (5) (c) (i) or (ii) for the recruitment action concerned, or
 - (b) the role is not similar to any role in the former executive structure of the NSW Police Force.
- (7) If a transitional administrative senior executive is temporarily assigned to work outside the NSW Police Force:
- (a) the person does not cease to be a transitional administrative senior executive, and the implementation date for the executive does not change, because of that temporary assignment, and
 - (b) the person retains his or her eligibility under subclause (5) as a candidate for initial recruitment action in the NSW Police Force, and
 - (c) the person is also eligible under subclause (5) as a candidate for initial recruitment action in relation to a similar role in the other government sector agency to which the person is temporarily assigned.

93 Transitional provisions relating to remuneration of senior executives

- (1) For the purposes of clauses 91 and 92, the remuneration package of a person under the former senior executive provisions includes any of the following

determined by the Statutory and Other Offices Remuneration Tribunal and payable to the person under those provisions:

- (a) a remuneration package that is payable to the person as the holder of the relevant position under the former senior executive provisions that exceeds the remuneration package otherwise determined for the senior executive level of the person,
 - (b) an additional amount payable as a recruitment allowance.
- (2) If a person referred to in subclause (1) to whom a recruitment allowance is payable is subsequently employed in accordance with the new senior executive provisions as a NSW Police Force senior executive, the person continues to be entitled to so much of that former recruitment allowance as will ensure that the remuneration payable after that subsequent employment is not less than the remuneration payable before that subsequent employment. Any general increase in remuneration packages to account for an annual determination of the Statutory and Other Offices Remuneration Tribunal is to be excluded and does not operate to reduce the amount of recruitment allowance payable.
 - (3) This subclause applies to a transitional administrative SES executive who is subsequently employed in accordance with the new senior executive provisions as a NSW Police Force senior executive and who is assigned to a new role (or subsequently assigned to a different role) that is of equivalent work value as the person's former position, office or role. The remuneration package of the person in any such new or different role is to be not less than the remuneration package of the person immediately before the person was so subsequently employed.
 - (4) This subclause applies to a transitional administrative SO executive who is subsequently employed in accordance with the new senior executive provisions as a NSW Police Force senior executive and who is assigned to a role (when first so employed) that is of equivalent work value as the person's position immediately before the commencement of this clause. The person may be paid an allowance, determined by the Commissioner in accordance with guidance provided by the Public Service Commissioner, to avoid any financial disadvantage as a NSW Police Force senior executive in that role (or any other assigned role of equivalent work value) compared to the remuneration payable immediately before the person was so subsequently employed.
 - (5) A retention allowance payable under the former senior executive provisions to a person to whom clause 91 or 92 applies is payable for completed years of service (or pro rata for completed parts of years of service) on the date the person ceases to be a person to whom that clause applies (otherwise than by resignation).

94 Existing non-executive administrative officers

- (1) A person (other than a transitional administrative SO executive) who was employed in the NSW Police Force as a non-executive administrative officer immediately before the substitution of Part 6A of this Act by the amending Act is, on that substitution, taken to be employed in ongoing employment as a non-executive administrative employee under that Part.
- (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 substitution of Part 6A of this Act does not affect the continuity of service of a person taken to be employed under this clause, any accrued rights to leave under the former Part 6A or any accrual of rights to leave under this Act.
- (4) A person who is taken to be employed 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 substitution of Part 6A.

95 Existing temporary employees

- (1) A person who was employed in the NSW Police Force as a temporary employee immediately before the repeal of Part 7 of this Act by the amending Act (an *existing temporary employee*) is, on that repeal, taken to be employed in temporary employment as a non-executive administrative employee under Part 6A of this Act (as substituted by the amending Act).
- (2) The application of the provisions of this Act, the regulations and the government sector employment rules to an existing temporary employee is subject to the provisions of this Schedule.
- (3) The repeal of Part 7 of this Act (the *repealed Part*) does not affect the continuity of service of an existing temporary employee, any accrued rights to leave under the repealed Part or any accrual of rights to leave under this Act (as amended by the amending Act).
- (4) A person who is taken to be employed under this clause is taken to be employed in a role or classification of work that corresponds to the kind and grade of the person's work on the repeal of Part 7.
- (5) The Commissioner is to determine a date for the purposes of this clause in respect of each existing temporary employee (the *determined date*).
- (6) If the term of employment of an existing temporary employee is due to expire before the determined date, the person's temporary employment may be extended before it expires in accordance with the repealed Part as if that Part had not been repealed. However, if the temporary employment is to be extended beyond the determined date, the extension of the existing temporary employee's employment must satisfy the requirements of the government sector employment rules relating to temporary employment.
- (7) On and from the determined date, any extension of the temporary employee's employment must be made in accordance with the provisions of the government sector employment rules relating to temporary employment.
- (8) Despite its repeal, section 91A of this Act continues to apply, until the determined date, in relation to an existing temporary employee who is a long-term temporary employee within the meaning of that section. Any appointment of the employee under that section as so continued by this clause is taken to be employment in ongoing employment under this Act in a relevant role.
- (9) On and from the determined date, any conversion of an existing temporary employee's employment to ongoing employment must be made in accordance with the provisions of the government sector employment rules.

96 Continuation of eligibility lists for senior executive positions

An eligibility list that was current under section 39A (as in force immediately before its repeal by the amending Act) may continue to be used in relation to a position in respect of which the list was applicable under that section, but only until such time as the list would otherwise cease to have effect under that section.

97 Preservation of status as police officer for purposes of applying for benefits under Police Regulation (Superannuation) Act 1906

A person who is removed from office as Commissioner under section 28 or whose appointment as Deputy Commissioner or Assistant Commissioner is terminated under section 40 is, on that removal or termination, taken to be a police officer for the purposes only of enabling the person to make an application for benefits under the *Police Regulation (Superannuation) Act 1906* as a police officer and enabling matters in connection with that application to be dealt with.

98 Continuation of merit appointment and eligibility lists for senior executive positions

The provisions of section 39 (1)–(2A) and (6) and section 39A (as in force immediately before their repeal by the amending Act) continue to apply in relation to the appointment of a person to a position as a NSW Police Force senior executive until such time as government sector employment rules are made under section 12 of the *Government Sector Employment Act 2013* that relate to the employment of NSW Police Force senior executives.

99 References to special constables

In any other Act, in any statutory or other instrument, or in any contract or agreement, a reference to a special constable within the meaning of section 82L of this Act is to be construed as a reference to a special constable within the meaning of section 81G of this Act.

100 Savings and transitional regulations

- (1) The provisions of any regulation made under Part 1 of this Schedule consequent on the enactment of the amending Act have effect despite anything to the contrary in this Part.
- (2) The regulations made under Part 1 of this Schedule consequent on the enactment of the amending Act may make separate savings and transitional provisions or amend this Part to consolidate the savings and transitional provisions.

101 Review of certain amendments made by amending Act

- (1) The Minister is to review the following provisions of this Act to determine whether the policy objectives of the provision remain valid and whether the terms of the provision remain appropriate for securing those objectives:
 - (a) section 28 (as amended by the amending Act),
 - (b) sections 28A, 33 (3), 40 and 41 (as inserted by the amending Act).
- (2) The review is to be undertaken as soon as possible after the end of the period of 2 years following the commencement of this clause.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament as soon as practicable after the review is completed.

Schedule 4 Amendment of Transport Administration Act 1988 No 109

[1] Part 7A

Omit the Part. Insert instead:

Part 7A The Transport Service

68B The Transport Service

- (1) The Transport 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.
- (2) Those persons are not employed in the Public Service of New South Wales.

68C Employment in the Transport Service

- (1) The Government of New South Wales may employ persons in the Transport Service to enable the following bodies (and their public subsidiary corporations) to exercise their functions:
 - (a) TfNSW,
 - (b) State Transit Authority,
 - (c) RMS.

Note. Section 68Q (10) provides that the persons so employed may be referred to as officers or employees, or members of staff, of the body or corporation concerned. Section 47A of the *Constitution Act 1902* precludes TfNSW, the State Transit Authority and RMS (and any of their public subsidiary corporations) from employing staff.
- (2) The Government of New South Wales may also employ persons in the Transport Service to enable RailCorp (or a public subsidiary corporation of RailCorp) to exercise its functions.

Note. RailCorp also has the power to employ staff separately (see section 58A). Staff employed by RailCorp are not employed in the Transport Service.
- (3) The Transport Secretary 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 persons employed in the Transport Service.
- (4) 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.

68D Transport Service senior executives, senior managers and non-executive employees

- (1) Persons who are employed in the Transport Service in a Public Service senior executive band are ***Transport Service senior executives***. For that purpose, the Public Service senior executive bands under the *Government Sector Employment Act 2013* apply to employment in the Transport Service.
- (2) Persons who are employed in the Transport Service and designated by the Transport Secretary as senior managers are ***Transport Service senior managers***.
- (3) All other persons employed in the Transport Service who are not Transport Service senior executives or Transport Service senior managers are ***Transport Service non-executive employees***.

68E Kinds of employment in the Transport Service

- (1) Employment in the Transport Service may be any one of the following kinds of employment:
 - (a) ongoing employment,
 - (b) term employment (in the case of Transport Service senior executives or senior managers),
 - (c) temporary employment (in the case of Transport Service non-executive employees),
 - (d) casual employment (in the case of Transport Service non-executive employees).
- (2) Ongoing employment is employment that continues until the employee 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 employee sooner resigns or his or her employment is terminated).
- (4) Temporary employment is employment for a temporary purpose.
- (5) Casual employment is employment to carry out irregular, intermittent, short-term, urgent or other work as and when required.

68F Senior executives—employment in bands and assignment to roles

- (1) A Transport Service senior executive is to be employed in the Public Service senior executive band that the Transport Secretary considers appropriate for the role of the executive.
- (2) In determining the number of Transport Service senior executives and the appropriate band in which they are employed, the Transport Secretary is to apply the applicable work level standards and have regard to any guidance provided by the Public Service Commissioner.
- (3) A Transport Service senior executive may, from time to time, be assigned by the Transport Secretary to a role in any part of the Transport Service in the band in which the executive is employed.
- (4) A Transport Service senior executive may:
 - (a) be transferred by the Transport Secretary to the Public Service of New South Wales and assigned to a role in any Public Service agency in the band in which the executive is employed (with the agreement of the head of that agency), or
 - (b) be transferred by the Transport Secretary to the NSW Police Force and assigned to a role (other than as a police officer) in the band in which the executive is employed (with the agreement of the Commissioner of Police), or
 - (c) be transferred by the Transport Secretary to the NSW Health Service and assigned to a role in the band in which the executive is employed (with the agreement of the Secretary of the Ministry of Health).

Note. A Transport Service senior executive may not be assigned to the role of chief executive of a local health district or specialty network governed health corporation except with the concurrence of the board of the organisation concerned—see section 121D (11) of the *Health Services Act 1997*.
- (5) Transport Service senior executives may be assigned to roles under this section to enable the flexible deployment of staff resources and to develop the capabilities of staff.

- (6) A Transport Service senior executive is not to be assigned to a different role under this section 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. This subsection extends to a transfer under subsection (4).
- (7) In this section:
assign to a role includes assign to a different role.
role of a Transport Service senior executive means the duties and responsibilities of the executive.

68G Senior executives—government sector employment rules

- (1) The Public Service Commissioner may make government sector employment rules under section 12 of the *Government Sector Employment Act 2013* on any matter relating to the employment of Transport Service senior executives (including, without limitation, matters of the kind referred to in section 36 of that Act).
- (2) The Public Service Commissioner must consult the Transport Secretary before making any such rules.

68H Senior executives—contract of employment

- (1) A Transport Service senior executive is to be employed under a written contract of employment signed by the executive and by the Transport Secretary on behalf of the Government.
- (2) Without limiting section 68G (1), the government sector employment rules made under section 12 of the *Government Sector Employment Act 2013* may prescribe model contracts of employment for Transport Service senior executives 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 entered into after the commencement of those mandatory provisions.
- (3) Subject to this Part, the government sector employment rules and any direction issued by the Public Service Commissioner under the *Government Sector Employment Act 2013*, a contract of employment of a Transport Service senior executive is to deal with the following matters:
 - (a) the band in which the executive is employed,
 - (b) the duration of the contract if the executive is not employed in ongoing employment,
 - (c) the total remuneration package of the executive (comprising monetary remuneration and employment benefits) and any allowances,
 - (d) performance obligations, and reviews of performance, of the executive,
 - (e) progression in the total remuneration package of the executive based on performance,
 - (f) leave and other conditions of employment of the executive,
 - (g) the compensation for any termination of employment of the executive by the Transport Secretary (including the period to which the compensation relates),
 - (h) any other matter prescribed by the regulations under section 39 (4) of the *Government Sector Employment Act 2013*.

- (4) The contract of employment of a Transport Service senior executive may, subject to this Act, include conditions of engagement.
- (5) The contract of employment of a Transport Service senior executive does not limit, and is not terminated or otherwise affected by:
 - (a) the transfer of the executive under section 68F (4) to the Public Service of New South Wales, the NSW Police Force or the NSW Health Service, or
 - (b) 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 Transport Service senior executive may, subject to this section, be varied at any time in accordance with the contract or by further agreement.
- (7) The regulations under the *Government Sector Employment Act 2013* may make provision with respect to the compensation to which a Transport Service senior executive whose employment is terminated is entitled under his or her contract of employment. Any such regulation cannot reduce the amount of compensation to which a Transport Service senior executive is entitled under a contract of employment entered into before the commencement of the regulation.

68I Senior executives—remuneration, benefits and allowances

- (1) The remuneration package of a Transport 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 (except as provided by subsection (2)).

Note. See also section 24R (3) of the *Statutory and Other Offices Remuneration Act 1975*.
- (2) The Transport Secretary may, in accordance with parameters agreed on by the Transport Secretary and the Public Service Commissioner, determine a remuneration package for a Transport Service senior executive or class of Transport Service senior executives that is within a range higher than the range determined under the *Statutory and Other Offices Remuneration Act 1975* for the band in which the executive or class of executives is employed.
- (3) The kinds and value of employment benefits and the allowances for a Transport Service senior executive are to be determined by the Transport Secretary. In making any such determination, the Transport Secretary is to have regard to any similar determinations that apply to Public Service senior executives.
- (4) A Transport Service senior executive is only entitled to the remuneration, employment benefits or allowances provided in the executive's contract of employment.
- (5) For the purposes of this section, employment benefits for a Transport 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.

68J Senior managers—remuneration level and conditions of employment

- (1) The remuneration level for Transport Service senior managers is to be less than that for any Transport Service senior executive and more than that for a clerk (grade 12) in the Public Service with general administrative duties.
- (2) However, the Transport Secretary may, in such cases as the Transport Secretary considers appropriate, determine a remuneration level for any particular Transport Service senior manager or class of senior managers that is above the range referred to in subsection (1).

Note. See also the relevant savings and transitional provisions of Schedule 7 which provide that existing senior managers (ie members of the Transport Service who were designated as senior managers before the commencement of the substitution of this Part by the *Government Sector Employment Legislation Amendment Act 2016*) have on that commencement the same remuneration as paid to them under the former executive provisions.

- (3) The conditions of employment of Transport Service senior managers are the conditions set out in a written contract of employment between the Transport Secretary and the senior manager.
- (4) The contract of employment may adopt by reference conditions of employment applicable to Transport Service senior executives.
- (5) In this section:
conditions of employment has the same meaning as in the *Industrial Relations Act 1996*.

68K Non-executive employees—conditions of employment

- (1) The Transport Secretary may fix the conditions of employment of Transport Service non-executive employees in so far as they are not fixed by or under any other law. Conditions of employment fixed under this subsection may adopt by reference conditions of employment applicable to Transport Service senior executives or senior managers.
- (2) The Transport Secretary may enter into an agreement with any association or organisation representing Transport Service non-executive employees with respect to the conditions of employment of those employees in so far as they are not fixed by or under any other law.
- (3) The Transport Secretary is, for the purposes of any proceedings relating to Transport Service non-executive employees held before a competent tribunal having jurisdiction to deal with industrial matters, taken to be the employer of those employees.
- (4) In this section:
conditions of employment has the same meaning as in the *Industrial Relations Act 1996*.

68L Senior managers and non-executive employees—assignment to different roles within Transport Service

- (1) The Transport Secretary may, subject to this section, assign a person who is a Transport Service senior manager or non-executive employee to another role within the Transport Service following consultation with the person.
- (2) The following provisions apply to the assignment of a person under this section:
 - (a) the assignment is to be made at the person's existing level of remuneration, unless the person consents to the assignment at a lower level of remuneration,

- (b) the Transport Secretary must be satisfied that the person possesses the essential qualifications specified for the other role and the work assigned to the other role is appropriate to the skills and qualifications of the person,
- (c) the person is entitled, on the assignment date, to any conditions of employment applicable to that person under section 67 immediately before the assignment, until such time as further provision is made under this Act or any other law.

68M Acting in senior executive or senior manager roles

- (1) The Transport Secretary may assign a Transport Service senior manager to act in the role of a Transport Service senior executive if:
 - (a) the person who is usually assigned to that other role is unavailable for any reason, or
 - (b) there is no person performing duties in that other role for the time being.
- (2) The Transport Secretary may assign a Transport Service non-executive employee to act in the role of a Transport Service senior executive or senior manager if:
 - (a) the person who is usually assigned to that other role is unavailable for any reason, or
 - (b) there is no person performing duties in that other role for the time being.
- (3) While assigned to act in the role of a Transport Service senior executive or senior manager the person has, subject to any determination by the Transport Secretary, all the functions of the executive or senior manager but does not thereby become a Transport Service senior executive or senior manager if not already such an executive or manager.
- (4) An assignment to act in the role of a Transport Service senior executive or senior manager under this section may be terminated at any time by the Transport Secretary.
- (5) This Part does not prevent the payment of an applicable allowance to a person when assigned to act in the role of a Transport Service senior executive or senior manager under this section.

68N Senior executives and managers—termination of employment

- (1) The Transport Secretary may terminate the employment of a Transport Service senior executive or senior manager at any time, for any or no stated reason and without notice.

Note. The regulations also provide for the termination of the employment of members of the Transport Service senior executive on disciplinary grounds.
- (2) A Transport Service senior executive or senior manager whose employment is terminated under this section is entitled to such compensation (if any) as may be provided in the contract of employment of the executive or manager (and to no other compensation or entitlement for the termination of employment other than superannuation entitlements).
- (3) A Transport Service senior executive or senior manager 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 any such compensation relates unless arrangements have been made for a refund of the proportionate amount of the compensation.

- (4) The regulations under the *Government Sector Employment Act 2013* may make provision relating to the calculation of the proportionate amount of a payment to be refunded under subsection (3).
- (5) A Transport Service senior executive or senior manager whose employment is terminated under the provisions of the regulations under this Part (or other statutory provisions) relating to the termination of the employment of persons employed in the Transport Service in connection with disciplinary action is not entitled to compensation under this section. Those provisions do not apply to a termination of employment under this section.
- (6) For the purposes of this section, **employment** of a former executive or manager in the public sector and **public sector** have the same meanings as in section 41 of the *Government Sector Employment Act 2013*.

68O Senior executives and managers—industrial or legal proceedings excluded

- (1) The employment of a Transport Service senior executive or senior manager, 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*.
- (2) 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 a Transport Service senior executive or senior manager.
- (3) 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 Transport Service senior executives or senior managers. This subsection does not prevent the provisions of any such industrial instrument being adopted by reference in the conditions of employment of any such executive or manager.
- (4) 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*.
- (5) In this section, a reference to the **employment** of a Transport Service senior executive or senior manager is a reference to:
 - (a) the engagement of, or failure to engage, a person as such an executive or manager, or
 - (b) the assignment or re-assignment of the executive or manager to a role in a band or a classification, or
 - (c) the removal, retirement, termination of employment or other cessation of employment of the executive or manager, or
 - (d) any disciplinary proceedings or action taken against the executive or manager, or
 - (e) the remuneration or other conditions of employment of the executive or manager.

68P Regulations relating to employees in the Transport Service

- (1) The regulations may make provision for or with respect to the employment of persons in the Transport Service, including conditions of employment and disciplinary matters.

- (2) Any such regulations have effect:
 - (a) despite any determination of the Transport Secretary under this Part, and
 - (b) except in the case of Transport Service senior executives or senior managers—subject to any relevant award made by a competent industrial tribunal and to any industrial agreement to which the Transport Secretary is a party.

68Q Miscellaneous provisions relating to the Transport Service

(1) **Groups of staff**

The Transport Secretary may create groups (however described) of staff and designate persons employed in the Transport Service to any such group.

(2) **Extended leave entitlements**

Persons employed in the Transport Service have the same entitlements to extended leave as Public Service employees under the *Government Sector Employment Act 2013*.

(3) **Retirement on medical grounds**

The Transport Secretary may retire a person employed in the Transport Service if:

- (a) the employee is found to be unfit to perform or incapable of performing the duties of the person's employment, and
- (b) the employee'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 employee, or from causes within the employee's control.

(4) **Resignation of employment**

A person employed in the Transport Service may resign his or her employment by written notice to the Transport Secretary.

(5) **Civil liability with respect to employees**

If:

- (a) a person is employed in the Transport Service, and
- (b) the Government of New South Wales is, as the person's employer, proceeded against for any negligence or other tort of the person (whether the damages are recoverable in an action for tort or breach of contract or in any other action), and
- (c) TfNSW, the State Transit Authority, RMS or RailCorp, or a public subsidiary corporation of any such transport authority, is entitled under a policy of insurance or indemnity to be indemnified in respect of liability that it may incur in respect of that negligence or other tort,

the Government is subrogated to the rights of TfNSW, the State Transit Authority, RMS, RailCorp or the public subsidiary corporation under that policy in respect of the liability incurred by the Government arising from that negligence or other tort.

(6) **Operation of privacy legislation**

The persons employed in the Transport Service to enable TfNSW, the State Transit Authority, RMS or RailCorp, or a public subsidiary corporation of any such transport authority, to exercise its functions are, 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 TfNSW, the State Transit Authority, RMS, RailCorp or the public subsidiary corporation, as the case requires.

(7) **Delegation of Transport Secretary's functions under this Part**

The Transport Secretary may delegate any of the Transport Secretary's functions under this Part (other than this power of delegation) to a person employed in the Transport Service or to a person employed in the Department of Transport.

(8) **Delegation of Transport Secretary's functions under GSE Act**

The power of the Transport Secretary under section 27 of the *Government Sector Employment Act 2013* to delegate a function referred to in that section extends to a delegation of the function to a person employed in the Transport Service.

(9) **Acting Transport Secretary**

A person employed in the Transport Service may also be appointed to act as the Transport Secretary under section 24 of the *Government Sector Employment Act 2013*.

(10) **Construction of references relating to transport employees**

In this or any other Act, or in any instrument made under this or any other Act or in any other instrument of any kind, a reference to an officer or employee, or a member of staff, of:

- (a) TfNSW or a public subsidiary corporation of TfNSW is to be read as a reference to a person employed in the Transport Service to enable TfNSW or the public subsidiary corporation to exercise its functions, or
- (b) the State Transit Authority or a public subsidiary corporation of the Authority is to be read as a reference to a person employed in the Transport Service to enable the Authority or the public subsidiary corporation to exercise its functions, or
- (c) RMS or a public subsidiary corporation of RMS is to be read as a reference to a person employed in the Transport Service to enable RMS or the public subsidiary corporation to exercise its functions, or
- (d) RailCorp or a public subsidiary corporation of RailCorp is to be read as including a reference to a person employed in the Transport Service to enable RailCorp or the public subsidiary corporation to exercise its functions.

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

Insert at the end of the Schedule with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of
Government Sector Employment Legislation
Amendment Act 2016**

Definitions

In this Part:

amending Act means the *Government Sector Employment Legislation Amendment Act 2016*.

existing senior executive means a person (other than an existing senior manager) who, immediately before the substitution of Part 7A of this Act by the amending Act, was employed as an executive officer under the former senior executive provisions.

existing senior manager means a person who, immediately before the substitution of Part 7A of this Act by the amending Act, was:

- (a) employed as an executive officer under the former senior executive provisions, and
- (b) designated as a senior manager by the Transport Secretary.

former senior executive provisions means the provisions of section 68G of this Act (and any other provisions of this Act that relate to the operation of that section), as in force immediately before the repeal of that section by the amending Act.

new senior executive provisions means the provisions of Part 7A of this Act (and any other provisions of this Act that relate to the operation of that Part), as substituted by the amending Act, and the provisions of Part 3B of the *Statutory and Other Offices Remuneration Act 1975*.

Continuation of public transport chief executives

The appointment and term of office of a person holding office as a Chief Executive to whom Schedule 2 applies, the Chief Executive of the ITSR or the Chief Investigator of the Office of Transport Safety Investigations on the commencement of the amendments made to this Act by the amending Act is not affected by the amending Act.

Existing senior executives—transitional arrangements

- (1) The Transport Secretary is, in consultation with the Public Service Commissioner, to prepare an implementation schedule for the staged implementation of the new senior executive provisions in relation to existing senior executives.
- (2) The implementation schedule is to set out the date on which the new senior executive provisions will apply to existing senior executives. Different dates may be set for different existing senior executives.
- (3) The date so set is the **implementation date** for the existing senior executive concerned.
- (4) The implementation date for an existing senior executive may be changed by the Transport Secretary in consultation with the Public Service Commissioner.
- (5) Until the implementation date for an existing senior executive, the former senior executive provisions continue to apply, and the new senior executive provisions do not apply, to the person despite the repeal of the former senior executive provisions by the amending Act.
- (6) On the implementation date for an existing senior executive, the person:
 - (a) ceases to be employed under the former senior executive provisions, and
 - (b) is employed as a Transport Service senior executive under the new senior executive provisions in the same kind of employment in which the person was employed as an existing senior executive.

- (7) The employment of any such person as a Transport Service senior executive under the new senior executive provisions is subject to the following:
- (a) the person has a remuneration package that is equivalent to the person's remuneration package under the former senior executive provisions even if it exceeds the band in which the person is employed,
Note. The band in which the person is employed is determined by the Transport Secretary in accordance with section 68F (1) and (2).
 - (b) the person's remuneration package may be increased in accordance with the former senior executive provisions whether or not the person remains within the band in which the person was employed on the implementation date,
 - (c) the person is not required to enter into a contract of employment under the new senior executive provisions and section 68H (2) of this Act does not apply in relation to the person,
 - (d) the person's contract of employment under the former senior executive provisions continues to apply to the person,
 - (e) any such existing contract of employment may be extended or renewed, or varied, in accordance with the former senior executive provisions.

Existing senior managers—transitional arrangements

- (1) On the commencement of the new senior executive provisions, an existing senior manager is taken to be employed under those provisions as a Transport Service senior manager in the same kind of employment in which the person was employed as an existing senior manager.
- (2) The employment of any such senior manager under the new senior executive provisions is subject to the following:
 - (a) the person has a remuneration package that is equivalent to the person's remuneration package under the former senior executive provisions,
 - (b) any such remuneration package may be subsequently increased in accordance with the arrangements in force under the former senior executive provisions,
 - (c) if the person was employed under the former senior executive provisions at a remuneration level equivalent to any person employed as a Transport Service senior executive under the new senior executive provisions, the person may, despite section 68J (1), continue to be paid remuneration at the senior executive level,
 - (d) the person is not required to enter into a contract of employment under the new senior executive provisions and the person's contract of employment under the former senior executive provisions continues to apply,
 - (e) any such existing contract of employment may be extended or renewed, or varied, in accordance with the former senior executive provisions.
- (3) Subclause (2) ceases to apply in relation to a Transport Service senior manager if the manager is subsequently employed in a role that has a remuneration level exceeding the remuneration paid to the manager immediately before being employed in the new role.

Existing non-executive employees

- (1) A person (other than an existing senior executive or existing senior manager) who was employed in the Transport Service immediately before the substitution of Part 7A of this Act by the amending Act is, on that substitution,

taken to be employed as a Transport Service non-executive employee in the same kind of employment.

- (2) The substitution of Part 7A of this Act by the amending Act does not affect the continuity of service of a person taken to be employed under this clause, any accrued rights to leave under the former Part 7A or any accrual of rights to leave under this Act.

Savings and transitional regulations

- (1) The provisions of any regulation made under Part 1 of this Schedule consequent on the enactment of the amending Act have effect despite anything to the contrary in this Part.
- (2) The regulations made under Part 1 of this Schedule consequent on the enactment of the amending Act may make separate savings and transitional provisions or amend this Part to consolidate the savings and transitional provisions.

Schedule 5 Amendment of other legislation

5.1 Annual Reports (Departments) Act 1985 No 156

Section 6 Inclusion of other reports in annual reports

Insert after section 6 (2):

- (3) The annual report of a Public Service agency that is related to a Department under the *Government Sector Employment Act 2013* may be included in the annual report of that Department.

5.2 Constitution Act 1902 No 32

[1] Section 47 Appointment of officers

Omit section 47 (2) (b). Insert instead:

- (b) persons referred to in section 47B (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).

[2] Section 47A Employment of staff

Insert after section 47A (3) (a):

- (a1) the employment of persons referred to in section 47B, or

[3] Section 47B

Insert after section 47A:

47B Parliamentary officers and staff

Persons may be appointed and employed as officers or employees of either House of Parliament or as officers under the separate control of the President or Speaker or under their joint control.

[4] Section 50D Public Service agencies—creation, abolition and changes

Insert after section 50D (2):

- (3) If the Governor abolishes a Public Service agency under this section, the Public Service agency to which the Governor transfers all parts of the abolished agency (or all parts other than specified parts) is taken for all purposes to be the successor of the abolished agency.

5.3 Government Sector Employment Regulation 2014

[1] Clause 38 Allowances for Public Service senior executives

Omit “A Public”.

Insert instead “Subject to section 40 (3) of the Act and this clause, a Public”.

[2] Clause 38 (2)

Insert at the end of clause 38:

- (2) The payment of an allowance determined by the employer in respect of a Public Service senior executive is subject to any determination by the Public Service Commissioner as to the circumstances in which an allowance of that kind may be paid and the amount of the allowance.

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

[1] Section 24A, definition of “chief executive office holder”

Omit “or the Commissioner of Police”.

[2] Section 24A, definition of “remuneration package”

Omit “or section 46 of the *Police Act 1990*”.

[3] Section 24A, definition of “senior executive office holder”

Omit “or the holder of a position determined as an executive position under Division 2 of Part 5 of the *Police Act 1990*”.

[4] Part 3B, heading

Insert “**and other**” after “**Public Service**”.

[5] Section 24M Definitions

Insert in alphabetical order:

amending Act means the *Government Sector Employment Legislation Amendment Act 2016*.

government sector senior executive employment legislation means any of the following:

- (a) Division 4 of Part 4 of the *Government Sector Employment Act 2013*,
- (b) Part 5 of the *Police Act 1990* (as inserted by the amending Act),
- (c) Part 3 of Chapter 9 of the *Health Services Act 1997* (as inserted by the amending Act),
- (d) Part 7A of the *Transport Administration Act 1988* (as inserted by the amending Act).

[6] Section 24M, definition of “remuneration package”

Omit “under the *Government Sector Employment Act 2013*”.

Insert instead “under the government sector senior executive employment legislation”.

[7] Section 24M, definition of “senior executive”

Omit the definition. Insert instead:

senior executive means:

- (a) the Secretary of a Department of the Public Service or any other Public Service senior executive to whom Division 4 of Part 4 of the *Government Sector Employment Act 2013* applies, or
- (b) any NSW Police Force senior executive to whom Part 5 of the *Police Act 1990* (as inserted by the amending Act) applies, or
- (c) any NSW Health Service senior executive to whom Part 3 of Chapter 9 of the *Health Services Act 1997* (as inserted by the amending Act) applies, or
- (d) any Transport Service senior executive to whom Part 7A of the *Transport Administration Act 1988* (as inserted by the amending Act) applies,

and includes the Commissioner of Police (but only on and from the date of commencement of Schedule 3 to the amending Act).

[8] Section 24N Initial determinations

Omit “under the *Government Sector Employment Act 2013*” from section 24N (1).

Insert instead “under the government sector senior executive employment legislation”.

[9] Section 24R General provisions relating to determinations

Insert after section 24R (2):

- (3) Despite subsection (1), the Tribunal may, in making a determination, fix a remuneration package:
 - (a) for a particular senior executive named in the determination, or
 - (b) for a particular role, office or position specified in the determination, or
 - (c) for a particular class of senior executives specified in the determination, that is higher than the remuneration range otherwise determined by the Tribunal for the band in which a senior executive to whom the determination relates is or is to be employed (but only if the Minister has directed the Tribunal to do so).
- (4) For the purposes of the government sector senior executive employment legislation, any such higher remuneration package is taken to be within the remuneration range for the band in which the senior executive concerned is employed.
- (5) The Tribunal may make a determination that applies in relation to a particular role, office or position even though no person is assigned to the role, or holds the office or position, for the time being.

5.5 Sydney Cricket and Sports Ground Act 1978 No 72

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

chief executive officer means the chief executive officer of the Trust.

[2] Section 4 (1), definition of “Secretary”

Omit the definition.

[3] Section 5 Constitution of Trust

Omit section 5 (3) (including the note).

[4] Section 7A

Insert after section 7:

7A Role of chief executive officer

The chief executive officer is responsible for the day to day management of the affairs of the Trust in accordance with the general policies and specific directions of the Trust.

[5] Sections 19A and 19B

Insert after section 19:

19A Employment of staff (including chief executive officer)

- (1) The Trust may employ staff (including a person as chief executive officer of the Trust). The provisions of the *Government Sector Employment Act 2013*

relating to the employment of Public Service employees do not apply to the staff employed by the Trust.

- (2) Schedule 1A contains provisions relating to the chief executive officer.

19B Delegation

- (1) The Trust may delegate to an authorised person any of its functions, other than this power of delegation.

- (2) In this section:

authorised person means any of the following:

- (a) a member of the Trust,
- (b) the chief executive officer,
- (c) any other member of staff of the Trust,
- (d) a person or body authorised by the regulations for the purposes of this section.

[6] Schedule 1 Provisions relating to constitution and procedure of the Trust

Omit “*Public Service Act 1979*” from clause 4.

Insert instead “*Government Sector Employment Act 2013*”.

[7] Schedule 1, clause 12

Omit “Secretary” wherever occurring.

Insert instead “chief executive officer or other member of staff”.

[8] Schedule 1, clause 13 (9)

Omit “Secretary”. Insert instead “chief executive officer”.

[9] Schedule 1A

Insert after Schedule 1:

Schedule 1A Provisions relating to chief executive officer

(Section 19A (2))

1 Term of office

Subject to this Schedule, the chief executive officer holds office for such period (not exceeding 5 years) as may be specified in the chief executive officer’s instrument of appointment, but is eligible for re-appointment.

2 Conditions of employment and remuneration

- (1) The Trust is to fix the conditions of employment of the chief executive officer.
- (2) The chief executive officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Trust may determine.
- (3) The Trust may require the chief executive officer to enter into a performance agreement with the Trust.

3 Vacancy in office of chief executive officer

- (1) The office of chief executive officer becomes vacant if the holder of that office:
 - (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 Chairperson of the Trust, or
 - (d) is removed from office under clause 4, or
 - (e) 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
 - (f) becomes a mentally incapacitated person, or
 - (g) 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) If the office of chief executive officer becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

4 Removal from office

The Trust may remove the chief executive officer from office at any time for any or no stated reason and without notice.

5 Acting chief executive officer

- (1) The Trust may appoint a person to act in the office of chief executive officer during the illness or absence of the chief executive officer or during a vacancy in the office of chief executive officer. The person, while so acting, has all the functions of the chief executive officer and is taken to be the chief executive officer.
- (2) The Trust may remove a person from any office to which the person was appointed under this clause at any time for any or no stated reason and without notice.
- (3) A person while acting in the office of chief executive officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Trust may determine in respect of the person.

5.6 Transport Administration (Staff) Regulation 2012

Clause 32A Groups of staff within Transport Service

Omit the clause.

[Second reading speech made in—

Legislative Assembly on 17 February 2016

Legislative Council on 24 February 2016]