



New South Wales

# Government Sector Employment Amendment Act 2022 No 76

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New South Wales

# Government Sector Employment Amendment Act 2022 No 76

Act No 76, 2022

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An Act to amend the *Government Sector Employment Act 2013* to make further provision relating to employment in the government sector. [Assented to 28 November 2022]

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

**1 Name of Act**

This Act is the *Government Sector Employment Amendment Act 2022*.

**2 Commencement**

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

## Schedule 1 Amendment of Government Sector Employment Act 2013 No 40 consequent on the Head Report

### [1] Part 2A

Insert after Part 2—

### Part 2A Code of ethics and conduct

#### 8A Code of ethics and conduct

- (1) The Commissioner may, by order published in the Gazette, adopt a code of ethics and conduct.
- (2) Before adopting a code of ethics and conduct, the Commissioner must consult the industrial organisations that represent government sector employees and the peak body of those industrial organisations about the proposed code or ensure those industrial organisations and the peak body are consulted.
- (3) Government sector employees must comply with a code adopted under this section.

**Note—** A contravention of a code adopted under this section, being an instrument under this Act, may be ***misconduct*** for the purposes of section 69.

- (4) In this section—

***Government sector employee*** means a person employed in ongoing, term, temporary, casual or other employment, or on secondment, in a government sector agency.

***industrial organisation*** means—

- (a) an industrial organisation of employees within the meaning of the *Industrial Relations Act 1996*, or
- (b) an association of employees registered as an organisation under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth.

### [2] Section 25, heading

Omit “**General responsibility**”. Insert instead “**Role and responsibilities**”.

### [3] Section 25(3) and (4)

Insert after section 25(2), before the note—

- (3) The role of a Secretary of a Department includes, but is not limited to, the following—
  - (a) policy adviser—acting as principal official policy adviser to the Minister or Ministers to whom the Secretary is responsible,
  - (b) manager—ensuring the delivery of the Government’s policies and programs and collaborating with other agencies across the government sector to achieve the Government’s stated outcomes,
  - (c) leader—providing stewardship within the Department and, in partnership with other Secretaries and the Public Service Commissioner, across the government sector,
  - (d) employer—exercising the employer functions of Government under this Act,

**Note—** See section 26.

- (e) other roles conferred or imposed on the Secretary by or under this or another Act or another law.
- (4) Without limiting subsection (1), the responsibilities of a Secretary of a Department also include the following—
  - (a) to manage the affairs of the Department efficiently, effectively and ethically,
  - (b) to provide frank and fearless advice to the Minister or Ministers to whom the Secretary is responsible about matters relating to the Department and its related agencies,
  - (c) to implement measures to ensure the Department complies with the law,
  - (d) to provide leadership, strategic direction and a focus on results for the Department,
  - (e) to maintain clear lines of communication with the heads of the Department's related agencies,
  - (f) to engage with stakeholders, particularly in relation to the core activities of the Department,
  - (g) to ensure that the Department has a strong strategic policy capability that can consider complex, whole-of-government issues,
  - (h) to assist Ministers in fulfilling Ministerial accountability obligations to Parliament in providing factual information in relation to the operation and administration of the Department,
  - (i) to accept and take other responsibilities conferred or imposed on the Secretary by or under this or another Act or another law.

**[4] Section 26 Employer functions of Secretaries of Departments**

Insert after section 26(3)—

- (4) In the exercise of the employer functions referred to in subsection (1), a Secretary of a Department is not subject to the direction or control of a Minister.

**[5] Section 31 Employer functions of heads of agencies (other than Departments)**

Insert after section 31(2)—

- (3) In the exercise of the employer functions referred to in subsection (1), a head of a Public Service agency is not subject to the direction or control of a Minister.

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

Insert after section 83(4)—

- (4A) The Commissioner or DPC Secretary may—
  - (a) prepare a report on the conduct and findings, and any recommendations, of the inquiry, and
  - (b) publish the report, if the Commissioner or DPC Secretary considers it is in the public interest to do so.
- (4B) No civil or criminal action or proceedings may be brought in relation to the publication of the report or a copy of the report.

**[7] Section 83B**

Insert after section 83A—

**83B Employment after leaving certain senior executive employment**

- (1) This section applies to the following senior executives (a *GSSE*)—
  - (a) Secretaries of Departments,
  - (b) other heads of Public Service agencies who are Public Service employees,
  - (c) other Public Service employees employed in the 2 most senior bands determined under the senior executive bands determination,
  - (d) other government sector senior executives in the following services employed in the 2 most senior bands determined under the senior executive bands determination for the service—
    - (i) the NSW Health Service,
    - (ii) the NSW Police Force,
    - (iii) the Transport Service of New South Wales.
- (2) A GSSE who intends to accept an offer of employment in the private sector must, if the employment directly relates to any of the GSSE's current role or responsibilities, or a role or responsibilities held during the previous 2 years, first seek the guidance of the Commissioner.
- (3) The guidance may include, but is not limited to, advice regarding—
  - (a) the management of actual and potential conflicts of interest,
  - (b) the use of information or knowledge gained by the GSSE in the course of the GSSE's employment.

**[8] Section 86A**

Insert after section 86—

**86A Oversight of Commissioner's functions by Joint Committee**

- (1) The Joint Committee has the following functions under this Act—
  - (a) to monitor and review the exercise by the Commissioner of the Commissioner's functions under this Act (the *GSE functions*),
  - (b) to report to both Houses of Parliament, with comments as it thinks fit, on matters concerning the Commissioner or connected with the exercise of the Commissioner's GSE functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed,
  - (c) to examine each annual and other report of the Commissioner and report to both Houses of Parliament on any matter appearing in, or arising out of, one of those reports,
  - (d) to recommend to both Houses of Parliament changes to the GSE functions of the Commissioner that the Joint Committee thinks desirable,
  - (e) to inquire into any question in connection with the GSE functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.
- (2) Nothing in this section authorises the Joint Committee—
  - (a) to investigate a matter relating to any particular conduct, or

- (b) to reconsider any decision to investigate, not to investigate or to discontinue investigation of any particular matter, or
  - (c) to reconsider the determinations, findings, recommendations or other decisions of the Commissioner in relation to any particular matter.
- (3) The provisions of the *Ombudsman Act 1974*, Part 4A apply in relation to the Joint Committee's functions under this Act in the same way as the provisions apply in relation to the Joint Committee's functions under that Act.
- (4) In this section—  
*investigate* includes inquire into.  
*Joint Committee* means the Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission constituted under the *Ombudsman Act 1974*.

**[9] Schedule 4 Savings, transitional and other provisions**

Insert after Part 4—

**Part 5 Provisions consequent on enactment of  
Government Sector Employment Amendment Act  
2022**

**21 Code of ethics and conduct—the Act, s 8A**

- (1) The code set out in section 2.2 of the document entitled *Behaving Ethically: A Guide for NSW government sector employees* as published on the Public Service Commission's website on 26 August 2022 is taken to have been adopted by the Commissioner for the purposes of this Act, section 8A on the commencement of this clause.
- (2) To avoid doubt, the code referred to in subclause (1) may be revoked and replaced by an order published in the Gazette adopting a replacement code.

**22 Industrial Relations Secretary determinations—the Act, s 52**

To avoid doubt, a determination of the Industrial Relations Secretary under section 52 in force on the commencement of the amendment to the section by the *Government Sector Employment Amendment Act 2022*, Schedule 2[8] may be amended or rescinded by the Industrial Relations Secretary under section 52.

## **Schedule 2      Amendment of Government Sector Employment Act 2013 No 40 consequent on the Independent Review**

**[1]      Section 25 General responsibility of Secretaries of Departments**

Omit “of a Minister” from section 25(2).

Insert instead “on a Minister”.

**[2]      Section 30 General responsibility of heads of agencies (other than Departments)**

Omit “of a Minister” from section 30(2).

Insert instead “on a Minister”.

**[3]      Section 38, heading**

Insert “**and classifications**” after “**bands**”.

**[4]      Section 38(2) and (2A)**

Omit section 38(2). Insert instead—

(2) A Public Service senior executive may, from time to time, be assigned as follows—

- (a) to a role in any Public Service agency in the band in which the executive is employed,
- (b) with the prior written consent of the executive—to a role in any Public Service agency in a lower band to the band in which the executive is employed,
- (c) with the prior written consent of the executive—to a role in the Public Service agency in which the executive is employed in a classification of work in which Public Service non-executive employees are employed.

(2A) To avoid doubt, if a person is assigned to a role—

- (a) under subsection (2)(b)—the person, on and from the assignment, is employed in the lower band, or
- (b) under subsection (2)(c)—the person, on and from the assignment, ceases to be a Public Service senior executive and becomes a Public Service non-executive employee.

**[5]      Section 38(8)–(10)**

Omit section 38(8). Insert instead—

- (8) A Public Service senior executive is not to be assigned to a different role under subsection (2)(a) or transferred under subsection (7A) unless the executive has been consulted.
- (9) The remuneration payable to a Public Service senior executive referred to in subsection (8) is not to be reduced because of the assignment to the different role without the prior written consent of the executive.
- (10) The remuneration payable to the Public Service senior executive assigned under subsection (2)(b) or (c) is to be adjusted, on the commencement of the assignment, to a level appropriate for the lower band or classification of work.

**[6]      Section 41 Termination of employment of senior executives**

Insert at the end of section 41(5), definition of *employment*, paragraph (c)—



, and

(d) the appointment of the former executive to a statutory office.

**[7] Section 41(6)**

Insert after section 41(5)—

(6) To avoid doubt, subsection (3) has effect despite another Act or law unless the other Act or law explicitly provides that the subsection does not apply.

**[8] Section 52 Industrial Relations Secretary may determine employment conditions not otherwise lawfully determined**

Insert after section 52(4)—

(5) The Industrial Relations Secretary may amend or rescind a determination made under this section, but only if no Public Service employee will be adversely affected by the amendment or rescission.

**[9] Section 53 Industrial relations provisions**

Insert after section 53(2)—

(2A) A delegate under subsection (2) may, subject to the conditions of the delegation, sub-delegate a function to a Public Service employee or to a statutory officer if the delegate is authorised in writing to do so.

**[10] Section 78 Compensation for office holder following removal**

Insert at the end of section 78(8), definition of *employment*, paragraph (c)—

, and

(d) the appointment of the person to a statutory office.

**[11] Section 78(9)**

Insert after section 78(8)—

(9) To avoid doubt, subsection (7) has effect despite another Act or law unless the other Act or law explicitly provides that the subsection does not apply.

[Second reading speech made in—

Legislative Assembly on 19 October 2022

Legislative Council on 17 November 2022]