



Public Sector Management (General) Amendment Regulation 2002

under the

Public Sector Employment and Management Act 2002

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Public Sector Employment and Management Act 2002*.

JOHN DELLA BOSCA, M.L.C.,

Minister Assisting the Premier on Public Sector Management

Explanatory note

The *Public Sector Employment and Management Act 2002* (*the new Act*) will commence on 9 September 2002 with the exception of certain provisions (including those relating to the basis on which Departmental temporary employees and casual employees may be employed and to the new disciplinary scheme for dealing with misconduct and poor performance in the Public Service). The new Act repeals the *Public Sector Management Act 1988* and provides that the regulations made under the repealed Act (including the *Public Sector Management (General) Regulation 1996*) are taken to be regulations made under the new Act.

The object of this Regulation is to make a number of miscellaneous amendments to the *Public Sector Management (General) Regulation 1996* as a consequence of the enactment of the new Act (including replacing terminology that is inconsistent with the new Act and renaming the 1996 Regulation to reflect the fact that it is taken to be made under the new Act). This Regulation also provides for the continuing operation of the provisions of the repealed Act that relate to the appointment of Departmental temporary employees and to the disciplinary process for officers until such time as the provisions of the new Act referred to in the above paragraph are commenced. This Regulation also makes provision for a number of other matters of a savings and transitional nature.

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Explanatory note

This Regulation is made under the *Public Sector Employment and Management Act 2002*, including section 164 (the general regulation-making power) and clause 1 of Schedule 4.

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1 Name of Regulation

This Regulation is the *Public Sector Management (General) Amendment Regulation 2002*.

2 Commencement

This Regulation commences on 9 September 2002.

3 Amendment of Public Sector Management (General) Regulation 1996

The *Public Sector Management (General) Regulation 1996* is amended as set out in Schedule 1.

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Schedule 1 Amendments

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(Clause 3)

[1] Clause 1 Name of Regulation

Insert “*Employment and*” before “*Management*”.

[2] Clause 3 Definitions

Omit the definition of *public servant* from clause 3 (1). Insert instead:

member of staff does not include a person who is employed as a casual employee under Part 2.6 of the Act.

[3] Clause 3 (1), definition of “temporary work location”

Omit “a public servant” wherever occurring.

Insert instead “member of staff”.

[4] Clauses 4, 5, 12–17, 32–35, 37, 40–52, 56–58, 60–70, 72–76, 79–95 and 97–99

Omit “public servants”, “public servant”, and “public servant’s” wherever occurring.

Insert instead “members of staff”, “member of staff” and “staff member’s”, respectively.

[5] Part 2, heading

Omit “**Appointment of public servants**”.

Insert instead “**Appointments**”.

[6] Clauses 13 and 15

Omit the notes at the end of the clauses.

[7] Clause 18

Omit the clause.

[8] Clause 59 Leave for temporary employees

Omit “section 38 of”.

[9] Clauses 62, 67 and 70

Omit “sections 50 and 52” wherever occurring.

Insert instead “sections 57 and 87”.

[10] Clause 83 Payment for untaken leave where member of staff ceases to be employed or dies

Omit “Schedule 5” from clause 83 (3). Insert instead “Schedule 3”.

[11] Clause 96

Omit the clause.

[12] Clauses 100A and 100AA

Insert before clause 100:

100A Report of charges and convictions for serious offences

- (1) A member of staff who is charged with having committed, or is convicted of, a serious offence must immediately report that fact in writing to the appropriate Department Head.
- (2) If the senior officer has reason to believe that a member of staff:
 - (a) has been charged with having committed, or has been convicted of, a serious offence, and
 - (b) has not reported the matter to the appropriate Department Head in accordance with subclause (1),the senior officer must immediately inform the appropriate Department Head in writing that the senior officer has reason to believe that the member of staff has been charged with having committed, or has been convicted of, a serious offence.
- (3) In this clause:

senior officer, in relation to a member of staff, means the senior officer in the branch or section of the Department in which the member of staff is employed.

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serious offence means an offence referred to in section 48 of the Act.

100AA Bodies prescribed as public sector services

For the purposes of paragraph (h) of the definition of *public sector service* in section 3 (1) of the Act, Catchment Management Trusts constituted under the *Catchment Management Act 1989* are prescribed as a class.

[13] Clause 100 Repeal

Insert at the end of the clause:

- (2) Any act, matter or thing that, immediately before the repeal of the *Public Sector Management (General) Regulation 1988*, had effect under that Regulation continues to have effect under this Regulation (but only to the extent that it relates to this Regulation and it is not inconsistent with this Regulation and the acts, matters or things done under this Regulation).

[14] Clause 101

Omit the clause. Insert instead:

101 Savings and transitional provisions

Schedule 1 has effect.

[15] Schedule 1

Insert after Part 7:

Schedule 1 Savings and transitional provisions

(Clause 101)

1 Definitions

In this Schedule:

the former Act means the *Public Sector Management Act 1988*.

the new Act means the *Public Sector Employment and Management Act 2002*.

2 Confirmation or annulment of appointments on probation

If a person was appointed to a position on probation under the former Act but the appointment had not been confirmed or annulled by the Governor under the former Act as at 9 September 2002, the person's appointment to the position may be confirmed or annulled by the appropriate Department Head in accordance with the new Act.

3 Pending appointments

The appropriate Department Head may formally appoint a person to a position in the Department on or after 9 September 2002 even though the selection process for that position occurred before that date.

4 Dispensing with services of excess staff

The services of a person are taken to have been dispensed with in accordance with section 51 (3) of the former Act if the dispensing of that person's services was, before 9 September 2002, recommended by the appropriate Department Head but not formally approved by the Governor.

5 Continuation of former provisions relating to Departmental temporary employees

- (1) Despite the repeal of the former Act and the commencement of Schedule 7.7 [4] to the new Act, the following provisions continue to have effect in relation to the appointment of Departmental temporary employees as if those provisions formed part of the new Act:
 - (a) sections 38 and 38A of the former Act,
 - (b) clause 7 of this Regulation as in force immediately before 9 September 2002.
- (2) Subclause (1) ceases to have effect on the commencement of Part 2.4 of the new Act.

6 Continuation of former provisions relating to breaches of discipline

- (1) Despite the repeal of the former Act and the commencement of Schedule 7.7 [10] to the new Act, the following provisions continue to have effect in relation to breaches of discipline by

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officers in the Public Service as if those provisions formed part of the new Act:

- (a) sections 65A, 66, 74–78 and 81 of the former Act,
 - (b) Part 4 of this Regulation as in force immediately before 9 September 2002.
- (2) Subclause (1) ceases to have effect on the commencement of Part 2.7 of the new Act.

7 Determination of non-statutory SES positions

Until such time as the Minister makes a determination under section 65 (1) (a) of the new Act, the positions referred to in Part 1 of Schedule 3B to the former Act (as in force immediately before 9 September 2002) are taken to be the senior executive positions determined by the Minister for the purposes of that section.

BY AUTHORITY