



New South Wales

# Public Sector Employment and Management Regulation 2009

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 ROBERTSON, MLC  
Minister for Public Sector Reform

## Explanatory note

The object of this Regulation is to remake, with some amendments, the provisions of the *Public Sector Employment and Management (General) Regulation 1996*, which is repealed on 1 September 2009 by section 10 (2) of the *Subordinate Legislation Act 1989*.

The amendments include the removal of redundant provisions that relate to matters that are now dealt with under industrial instruments.

This Regulation makes provision with respect to the following:

- (a) the appointment of officers in the Public Service,
- (b) the conditions of service of, and allowances payable to, officers and temporary employees (*members of staff*) of a Department of the Public Service,
- (c) the requirement that a Department Head make the *Public Sector Employment and Management Act 2002*, this Regulation and other relevant information available to members of staff,
- (d) determinations and approvals of the Director of Public Employment,
- (e) deductions for rent when a member of staff is allowed to use Government premises for residential purposes,
- (f) the bodies that are prescribed as public sector services for certain purposes,
- (g) reporting if a member of staff is charged with, or convicted of, a serious offence,
- (h) the kinds of service that are declared to be war service,

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#### Explanatory note

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- (i) the leave entitlement of members of staff who are chief executive officers, senior executive officers or special temporary employees and members of staff who are not covered by a State industrial instrument,
- (j) savings and formal matters.

This Regulation is made under the *Public Sector Employment and Management Act 2002*, including sections 3 (1) (definition of **public sector service**), 4G, 19 (4) (b), 62 and 164 (the general regulation-making power) and clause 4 (2) (b) of Schedule 3A.

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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## Public Sector Employment and Management Regulation 2009

under the

Public Sector Employment and Management Act 2002

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Public Sector Employment and Management Regulation 2009*.

#### 2 Commencement

This Regulation commences on 1 September 2009 and is required to be published on the NSW legislation website.

**Note.** This Regulation replaces the *Public Sector Employment and Management (General) Regulation 1996* which is repealed on 1 September 2009 by section 10 (2) of the *Subordinate Legislation Act 1989*.

#### 3 Definitions

(1) In this Regulation:

**executive officer** means a chief executive officer or a senior executive officer in the Public Service.

**member of staff** means an officer or a temporary employee.

**Note.** Casual employees are not members of staff for the purposes of this Regulation.

**officer** means an officer of the Public Service, as referred to in section 7 (1) (a) of the Act.

**public service determination** means a determination referred to in section 130 of the Act.

**State industrial instrument** means an industrial instrument within the meaning of the *Industrial Relations Act 1996*.

**temporary employee** means a Departmental temporary employee, as referred to in section 7 (2) (a) of the Act, or a special temporary employee, as referred to in section 7 (2) (b) of the Act.

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

(2) Notes included in this Regulation do not form part of this Regulation.

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Part 2             Appointments

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### **Part 2   Appointments**

#### **4   Pre-placement health assessments**

- (1) A person may not be appointed to an officer's position before the person's fitness to carry out the duties of the position has been confirmed by a health assessment.
- (2) Fitness to carry out duties includes the ability to carry out those duties without endangering the health and safety of the public, of other persons employed in the Department and of the person concerned.
- (3) The health assessment is to be in the form considered necessary by the appropriate Department Head.
- (4) The form of the health assessment may include (but is not limited to) any one or more of the following:
  - (a) a declaration (which may be a statutory declaration if required) provided by the person concerning any illness, disability or condition of which the person is aware that might make the person unfit to carry out the duties of the position,
  - (b) a medical examination by a medical practitioner approved by the appropriate Department Head,
  - (c) an examination by a medical practitioner, an optometrist or other appropriately qualified health care professional, approved by the appropriate Department Head, of a particular aspect of the person's health likely to detrimentally affect the person's capacity to carry out the duties of the position.
- (5) The appropriate Department Head is to give the health care professional providing a health assessment referred to in subclause (4) (c) any requested information about the duties of the position concerned that is reasonably required for the purpose of providing the assessment.
- (6) This clause does not limit any requirements made by the appropriate Department Head with respect to health assessments of persons employed as temporary employees.

#### **5   Selection procedures for officers**

- (1) Unless the appropriate Department Head otherwise determines, a selection committee is to be established to assess the merit of applicants for appointment to a vacant officer's position.
- (2) A selection committee should, as far as practicable:
  - (a) consist of at least 2 persons, and

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- (b) include at least one person who does not hold a position in the branch of the Department in which the vacant position exists, and
  - (c) be constituted so as to ensure the fairest consideration of all applicants.
- (3) A selection committee must, as far as practicable, deal with each applicant in a similar fashion, but the committee is not required to grant an interview to all applicants.
  - (4) A selection committee may use a range of processes as the basis of determining the merit of the applicants, including interviews and objective work-related tests. The committee is not obliged to use any particular process.
  - (5) Nothing in this clause requires a Department Head to adopt any recommendation made by a selection committee in relation to the filling of a vacancy.

## 6 Selection in special cases

- (1) A person (whether or not an officer) may be appointed to an officer's position (other than a senior executive position) in accordance with the special procedures prescribed by this clause.
- (2) The appropriate Department Head may, with the approval of the Director of Public Employment, recommend the appointment of a person belonging to a disadvantaged group of persons to a position in the Department that the Department Head considers suitable for the person.
- (3) A **disadvantaged group** of persons is a group of persons in the community that the Director of Public Employment has designated as a disadvantaged group for the purposes of this clause. The Director of Public Employment may so designate any group of persons who suffer a disadvantage in employment, including but not limited to:
  - (a) Aboriginals or Torres Strait Islanders, or
  - (b) persons who have a disability within the meaning of the *Anti-Discrimination Act 1977*.
- (4) A person may be recommended for appointment under this clause only if the person belongs to a relevant disadvantaged group and, in the opinion of the appropriate Department Head, has the greatest merit of the eligible persons seeking appointment in accordance with this clause.
- (5) The Director of Public Employment is to determine the general or selective advertising or search procedures to be used for the purposes of seeking eligible persons for appointment under this clause and the selection procedures to be used for selecting a person from among the eligible persons seeking appointment.

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### **7    Exception—appointment of chief executive officers**

This Part does not apply to or in respect of appointments to chief executive positions.



## Part 3 Conditions of service

### 8 Application of Part

The provisions of this Part:

- (a) are subject to any State industrial instrument, and
- (b) unless the contrary intention appears, apply to all members of staff, and
- (c) in the case of executive officers—are subject to the contract of employment under Part 3.1 of the Act between the executive officer and the executive officer's employer.

### 9 Hours of attendance on duty

- (1) The hours of attendance on duty of members of staff and the manner of recording their attendance are to be as determined from time to time by the appropriate Department Head. Any such determination is to be made in accordance with any direction of the Director of Public Employment.
- (2) The appropriate Department Head or a person authorised by the appropriate Department Head may require a member of staff to perform duty beyond the hours determined under subclause (1), but only if it is not unreasonable for the member of staff to be required to do so.

### 10 Public and local holidays

- (1) In this clause:  
*local holiday* means a public holiday that is not a public holiday throughout the State.  
*public holiday* means a bank or public holiday under the *Banks and Bank Holidays Act 1912*, but does not include:
  - (a) a Saturday that is such a holiday by virtue of section 15A of that Act, and
  - (b) 1 August or such other day that is a bank holiday instead of 1 August.
- (2) A member of staff is entitled to be absent from duty on the following days unless the member of staff is required to attend for duty by the appropriate Department Head or by a person authorised by the appropriate Department Head:
  - (a) a day that is a public holiday throughout the State,

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Part 3 Conditions of service

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- (b) a day that is a local holiday in that part of the State at or from which the member of staff performs duty,
  - (c) a day between Boxing Day and New Year's Day determined by the appropriate Department Head.
- (3) A member of staff who is required under this clause to attend for duty on a local holiday is not entitled to overtime or time in lieu on that account.
  - (4) If a local holiday falls during a staff member's absence on leave, the member of staff is not to be credited with the holiday.

### 11 Absence from duty

- (1) A member of staff must not be absent from duty unless reasonable cause is shown.
- (2) If a member of staff is absent from duty because of illness or other emergency, the member of staff must, as soon as practicable, provide an explanation for the absence.
- (3) If the member of staff fails to provide that explanation to the satisfaction of the appropriate Department Head, the Department Head is to cause to be deducted from the pay of the member of staff the amount paid to the member of staff for the period of absence.
- (4) Nothing in this clause affects the taking of any action under Part 2.7 of the Act in relation to a member of staff who is absent from duty without authorised leave.

### 12 Increments

- (1) This clause does not apply to executive officers.
- (2) The payment to any member of staff of an increment in accordance with any State industrial instrument or public service determination is, unless otherwise provided by the instrument or determination, to be made only with the prior approval of the appropriate Department Head.
- (3) The payment of an increment to a member of staff is subject to the satisfactory conduct of, and the satisfactory performance of duties by, the member of staff as determined by the appropriate Department Head.
- (4) A member of staff must be promptly notified in writing by the appropriate Department Head of any decision to defer payment of an increment.
- (5) The payment of an increment may be deferred from time to time, but may not be deferred for more than 12 months at any one time.

**13 Health and safety**

- (1) For the purposes of this clause, a member of staff is not fit for work if the health of the member of staff:
  - (a) may render the member of staff a danger to other members of staff or to the public, or
  - (b) is likely to be seriously affected by the staff member remaining on duty or, if the member of staff is absent from duty, by the staff member resuming duty.
- (2) If the appropriate Department Head has reason to believe that a member of staff is not fit for work, he or she may direct the member of staff to submit to such medical examination or other health assessment as the Department Head may, on the advice of a nominated medical assessor, consider necessary.
- (3) If the appropriate Department Head has issued a direction under subclause (2) to a member of staff, the member of staff:
  - (a) must, if on duty, cease duty immediately, and
  - (b) must not resume duty until the completion of the medical examination or other health assessment concerned unless the concurrence of a nominated medical assessor is first obtained or a certificate is furnished by a medical practitioner that the member of staff is fit for work.
- (4) If the appropriate Department Head receives a health assessment from a nominated medical assessor that a member of staff:
  - (a) is fit for work, the Department Head is to direct in writing that the member of staff, if absent from duty, must resume duty, or
  - (b) is not fit for work, the Department Head is to direct in writing that the member of staff must cease duty immediately or, if absent from duty, must not resume duty.
- (5) If a direction has been given to a member of staff under subclause (4), the nature of the leave, if any, to be granted to the member of staff during the absence from duty is to be determined by the appropriate Department Head after consideration of any relevant advice of the nominated medical assessor.
- (6) A member of staff to whom a direction has been given under subclause (4) (b) must not resume duty unless the appropriate Department Head, on the advice of a nominated medical assessor, approves in writing.

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Part 3 Conditions of service

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- (7) The appropriate Department Head is to give the health care professional providing a health assessment of a member of staff under this clause any requested information about the duties of the staff member's position that is reasonably required for the purpose of providing the assessment.
- (8) In this clause:  
*nominated medical assessor* means a person or body, or a person who is a member of a class of persons, nominated by the Director of Public Employment for the purposes of this clause.

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## Part 4 Allowances

### Division 1 Preliminary

#### 14 Application of Part

The provisions of this Part are subject to any State industrial instrument.

**Note.** Other allowances are set out in the *Crown Employees (Public Service Conditions of Employment) Award 2009*.

#### 15 Rates and conditions of payment of allowances

- (1) The rates and conditions of payment of allowances under this Part are, subject to this Part, to be as determined by the Director of Public Employment from time to time.
- (2) If an allowance under this Part is payable at a daily rate, the amount to be paid for a portion of a day is to be the appropriate proportion of the daily rate and, for the purpose of calculating that amount, any fraction of an hour is to be corrected to the nearest half-hour.

#### 16 Payment where allowance not adequate or available

- (1) If the appropriate Department Head is satisfied that, but for this clause, the actual expenses properly and reasonably incurred by a member of staff in the performance of official duties:
  - (a) are not adequately covered by an allowance to which the member of staff is entitled under this Part, or
  - (b) are not covered by any allowance payable under this Part or under any State industrial instrument,the member of staff is to be paid an allowance equivalent to the amount of those additional expenses or the amount of those expenses, as the case may be.
- (2) An allowance is not payable under this clause unless the member of staff produces official receipts for the expenses incurred by the member of staff.
- (3) An allowance under this clause may be reduced if it exceeds without good cause any limit approved in advance by the appropriate Department Head for the expenses concerned.

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### **Division 2          Higher duties and acting allowances**

#### **17    Entitlement to allowance when relieving in other positions**

- (1) This clause applies when the appropriate Department Head directs that the duties of a position which is vacant, or the holder of which is suspended, sick or absent, are to be performed by one or more other members of staff.
- (2) A member of staff who, during a period of relief in another position, satisfactorily performs, in the opinion of the appropriate Department Head, the whole of the duties and assumes the whole of the responsibilities of that position is to be paid by allowance any difference between the staff member's present salary or wage and the salary or wage to which the member of staff would have been entitled if appointed to that position.
- (3) A member of staff who, during a period of relief in another position, does not perform the whole of the duties or assume the whole of the responsibilities of that position is to be paid that proportion of the allowance referred to in subclause (2) that the duties satisfactorily performed and responsibilities assumed bear to the whole of the duties and responsibilities of that position. The amount of the allowance so paid is to be as determined by the appropriate Department Head.
- (4) In this clause, a reference to the duties and responsibilities of a position is a reference to those duties and responsibilities that, during the period of relief, the member of staff appointed to the position would ordinarily have performed or assumed.
- (5) Except where the Director of Public Employment otherwise determines, an allowance is not to be paid under this clause in respect of a single period of relief in another position of less than 5 ordinary working days.
- (6) An allowance is not to be paid under this clause in respect of any unbroken period of leave, exceeding 5 ordinary working days, taken by the member of staff during any period of relief in another position.
- (7) Despite subclause (6), if a member of staff affords part-time relief in a position on a continuing basis, an allowance is to be paid under this clause calculated as though the member of staff were relieving on a full-time basis but the amount of the allowance is to be calculated in the same proportion as the ordinary weekly hours actually worked bear to the weekly hours required to be worked by a full-time member of staff appointed to the position.
- (8) A member of staff appointed to a position the principal purpose of which is to provide relief in certain other positions is not, unless otherwise determined by the appropriate Department Head, to be paid

an allowance under this clause except in respect of so much of a single period of relief in the same position as exceeds 13 weeks.

**18 Allowance for acting or temporary appointments**

- (1) This clause applies when an officer is appointed to act in another position, or is temporarily appointed to another position, which is vacant or the holder of which is suspended, sick or absent.
- (2) Any such officer is to be paid by allowance any difference between the officer's present salary or wage and the salary or wage to which the officer would have been entitled if appointed to that position (other than on an acting or temporary basis).

**19 Member of staff not to suffer reduction in remuneration**

A member of staff relieving, acting in, or temporarily appointed to another position is not, as a result, to suffer any reduction in salary or wage.

**20 Provisions relating to executive positions**

- (1) For the purposes of this Division, the salary or wage of an executive officer is, subject to this clause, the amount of the remuneration package for the executive position concerned.
- (2) If the remuneration package for an executive position consists of a range of amounts, the salary or wage is the amount within that range to which the officer is entitled (in the case of the officer's present salary or wage) or the amount within that range determined by the officer's employer (in the case of the salary or wage to which the officer would have been entitled if appointed to the executive position concerned).
- (3) If an officer who is not an executive officer relieves or acts in an executive position, the salary or wage to which the officer would have been entitled if appointed to the executive position is to be reduced by the superannuation guarantee amount payable in respect of the officer.
- (4) In this clause, *executive position* and *remuneration package* have the same meanings they have in Part 3.1 of the Act.

**Division 3 Relocation expenses**

**21 Relocation expenses—senior executive officers**

- (1) A senior executive officer is, in connection with any relocation during the term of the officer's employment, entitled to any relocation expenses payable under the applicable State industrial instrument to an officer who is not a senior executive officer.

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- (2) A senior executive officer is entitled to such relocation expenses as the appropriate Department Head determines if:
  - (a) the officer is required to relocate when selected for the position, and
  - (b) the place to which the officer is required to relocate is of sufficient distance, in the opinion of the Department Head, to warrant relocation expenses.



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## Part 5 Miscellaneous

### 22 Leave

- (1) The provisions of this clause apply:
  - (a) to members of staff who are executive officers or special temporary employees employed under Part 2.5 of the Act, and
  - (b) to any other members of staff not covered by a State industrial instrument.

**Note.** Leave entitlements for members of staff covered by a State industrial instrument are set out in the *Crown Employees (Public Service Conditions of Employment) Award 2009*.
- (2) The provisions of the *Crown Employees (Public Service Conditions of Employment) Award 2009* that relate to leave are taken to apply to a member of staff to which this clause applies and any such person is entitled to leave in accordance with that award subject to any conditions or limitation set out in that award as if the person were covered by that award.
- (3) The amount of leave of any kind which may be granted to a member of staff and the conditions on which it may be granted is, subject to this clause, to be as determined by the Director of Public Employment from time to time.

### 23 Availability of Act, Regulation and other relevant information

The appropriate Department Head is to make available to members of staff employed in the Department, in a reasonably accessible form, the Act, this Regulation and any other relevant information relating to the Public Service.

### 24 Determinations and approvals

- (1) A determination or an approval of the Director of Public Employment or a Department Head under this Regulation is to be published or notified in such manner as the Director of Public Employment or the Department Head considers necessary in order to bring the determination or approval to the notice of the members of staff to whom it applies.
- (2) A determination or an approval of the Director of Public Employment or a Department Head under this Regulation may do either or both of the following:
  - (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind.

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Part 5 Miscellaneous

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### 25 Deductions for rent in certain cases

- (1) Except as provided in subclause (3), if any member of staff of a Department is allowed to use, for residential purposes, any premises belonging to the Government, the Director of Public Employment may direct that a fair and reasonable sum as rent for the premises be deducted from the salary of the member of staff.
- (2) When giving a direction under subclause (1), the Director of Public Employment is to either fix the amount of rent to be deducted or specify a person by whom the amount of rent to be deducted is to be fixed.
- (3) If a member of staff of a Department is allowed to use, for residential purposes, any premises or any land vested in or managed by the Teacher Housing Authority of New South Wales, an amount fixed by that Authority in respect of rent is to be deducted from the salary of the member of staff and paid to that Authority.
- (4) In this clause, *rent* includes payment for board and lodging.
- (5) This clause is subject, in the case of an executive officer, to the contract of employment entered into by the executive officer under Part 3.1 of the Act.

### 26 SOCs prescribed as public sector service

For the purposes of paragraph (g) of the definition of *public sector service* in section 3 (1) of the Act, State owned corporations are prescribed as a class but only in relation to sections 102 and 103 of the Act.

### 27 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.

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

#### **28 War service**

The following kinds of service are declared to be war service for the purposes of clause 4 of Schedule 3A to the Act:

- (a) war service within the meaning of Division 8 of Part III of the *Repatriation Act 1920* of the Commonwealth,
- (b) service outside Australia as a member of the Interim Forces within the meaning of the *Interim Forces Benefits Act 1947* of the Commonwealth,
- (c) Malayan service within the meaning of the *Repatriation (Far East Strategic Reserve) Act 1956* of the Commonwealth,
- (d) special service within the meaning of the *Repatriation (Special Overseas Service) Act 1962* of the Commonwealth,

as those Acts were in force immediately before their repeal on 22 May 1986.

#### **29 Saving**

Any act, matter or thing that, immediately before the repeal of the *Public Sector Employment and Management (General) Regulation 1996*, had effect under that Regulation continues to have effect under this Regulation.