



New South Wales

Government Sector Employment Regulation 2014

under the

Government Sector Employment Act 2013

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Government Sector Employment Act 2013*.

BARRY O'FARRELL, MP
Premier

Explanatory note

The object of this Regulation is to make provision for matters that are authorised to be made by regulation under the *Government Sector Employment Act 2013*.

This Regulation is made under the *Government Sector Employment Act 2013*, including section 88 (the general regulation-making power).

This Regulation comprises or relates to matters of a machinery nature or matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Government Sector Employment Regulation 2014*.

2 Commencement

This Regulation commences on 24 February 2014 and is required to be published on the NSW legislation website.

3 Definitions

(1) In this Regulation:

agency head means:

- (a) in relation to a Public Service employee—the head of the Public Service agency in which the employee is employed, or
- (b) in relation to an employee of a government sector agency other than a Public Service agency—the head of that agency.

Note. Section 3 of the Act provides that the head of any such government sector agency that is not a Public Service agency is the person who exercises employer functions in relation to the employees concerned. Accordingly, the following are relevant agency heads:

- (a) the Teaching Service—the Secretary of the Department of Education and Communities,
- (b) the NSW Police Force—the Commissioner of Police,
- (c) the NSW Health Service—the Secretary of the Ministry of Health,
- (d) the Transport Service of New South Wales—the Secretary of the Department of Transport.

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

government sector employee means a person who is employed in a government sector agency.

Industrial Relations Secretary has the same meaning as in section 49 of the Act.

Public Service non-executive employee means an employee referred to in Division 5 of Part 4 of the Act.

Public Service senior executive means the Secretary of a Department and any other Public Service employee to whom Division 4 of Part 4 of the Act applies.

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

the Act (or the **new Act**) means the *Government Sector Employment Act 2013*.

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

4 Decisions under Regulation to be notified

- (1) Any decision by a relevant person under this Regulation is to be published or notified in such manner as the person considers necessary in order to bring the decision to the notice of the government sector employees to whom it applies.
- (2) In this clause:
relevant person means any of the following:
 - (a) the Public Service Commissioner,
 - (b) the Industrial Relations Secretary,
 - (c) the head of a government sector agency.

5 Statutory bodies included as part of the government sector for certain purposes

- (1) Each of the following is prescribed as a government sector agency for the purposes of section 16 of the Act (Provision of reports and information by agencies):
 - (a) a State owned corporation,
 - (b) a university referred to in clause 34 (but only in relation to the provision of reports and information relating to workforce diversity).
- (2) For the purposes of section 16 of the Act:
 - (a) the head of a body referred to in subclause (1) (a) is the person holding office as the chief executive (however described) of the body, and
 - (b) the head of any such university is the Vice Chancellor of the university.
- (3) Landcom is prescribed for the purposes of paragraph (g) of the definition of *government sector* in section 3 (1) of the Act but only in relation to section 73 of the Act (Appointment to position in government sector not affected by additional appointment). This subclause does not limit the operation of subclause (1) to the extent that it applies to Landcom.

6 Application of certain provisions to administrative officers of NSW Police Force

The part of the NSW Police Force comprising administrative officers under the *Police Act 1990* is prescribed as a government sector agency for the purposes of the following provisions of the Act:

- (a) section 69 (Misconduct—Public Service and other prescribed government sector employees),
- (b) section 70 (Suspension of employees from duty pending decision in relation to misconduct, criminal charge or corrupt conduct).

Part 2 Public Service employment

Division 1 General provisions

7 Employees not to undertake other paid work without permission

- (1) A Public Service employee is not to undertake any other paid work without the permission of the agency head.
- (2) This clause does not apply to a person who is:
 - (a) employed in casual employment, or
 - (b) working part-time,during the period that the person is not required to perform duties in the Public Service, but only if the performance of those duties is not adversely affected and no conflict of interest arises.

8 Deductions for rent in certain cases

- (1) If a Public Service employee is allowed to use, for residential purposes, any premises belonging to the Government, the Industrial Relations Secretary may direct that a fair and reasonable sum as rent for the premises be deducted from the salary of the employee.
- (2) In giving any such direction, the Industrial Relations Secretary 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 Public Service employee 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 employee and paid to that Authority.
- (4) This clause is subject, in the case of a Public Service senior executive, to the contract of employment of the executive.
- (5) In this clause, *rent* includes payment for board and lodging.

9 Reporting charges and convictions for serious offences

- (1) A Public Service employee who is charged with, or is convicted of, a serious offence must immediately report that fact in writing to the agency head.
- (2) If the manager of a Public Service employee has reason to believe that the employee:
 - (a) has been charged with, or has been convicted of, a serious offence, and
 - (b) has not reported the matter to the agency head,the manager must immediately inform the agency head in writing that the manager has reason to believe that the employee has been charged with, or has been convicted of, the serious offence.
- (3) If the employee required to report under subclause (1) is the head of a Public Service agency, subclause (1) applies as if references to the agency head were references to a Minister to whom the agency is responsible.
- (4) In this clause:
convicted of an offence includes being found guilty of the offence without the court proceeding to a conviction.

manager of a Public Service employee means the manager of the branch or other part of the Public Service agency in which the employee is employed.

serious offence has the same meaning as in section 69 of the Act.

10 Employee to report bankruptcy etc

- (1) If a Public Service employee (other than a person employed in casual employment) becomes bankrupt or makes a composition, arrangement or assignment for the benefit of the employee's creditors, the employee must:
 - (a) immediately notify the agency head in writing of the bankruptcy, composition, arrangement or assignment, and
 - (b) within such period as the agency head specifies, provide the agency head with such further information with respect to the cause of the bankruptcy or of the making of the composition, arrangement or assignment as the agency head requires.
- (2) If any such employee is the head of a Public Service agency, subclause (1) applies as if references to the agency head were references to a Minister to whom the agency is responsible.
- (3) An agency head may, as a condition of the engagement of a person in a role in the Public Service agency relating to financial management in the agency, require the person to declare, before the person is engaged in that role, whether or not the person has at any time been declared bankrupt or made a composition, arrangement or assignment for the benefit of the person's creditors.

Division 2 General conditions of employment

11 Application of Division

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

12 Public holidays

A Public Service employee is entitled to be absent from duty on the following days unless the employee is required to attend for duty by the agency head or by a person authorised by the agency head:

- (a) a day that is a public holiday throughout the State,
- (b) a day (or part of a day) that is a public holiday under the *Public Holidays Act 2010* in that part of the State at or from which the employee is working,
- (c) a day between Boxing Day and New Year's Day determined by the agency head.

13 Absence from duty

- (1) A Public Service employee must not be absent from duty unless reasonable cause is shown.
- (2) If a Public Service employee is absent from duty because of illness or other emergency, the employee must, as soon as practicable, provide an explanation for the absence.
- (3) If the Public Service employee fails to provide that explanation to the satisfaction of the agency head, the agency head is to cause to be deducted from the pay of the employee the amount paid to the employee for the period of absence.
- (4) This clause does not prevent any other action being taken under section 69 of the Act in relation to a Public Service employee who is absent from duty without authorised leave.

14 Increments

- (1) The payment to any Public Service employee of an increment in accordance with any State industrial instrument or determination by the Industrial Relations Secretary under section 52 of the Act is, unless otherwise provided by the instrument or determination, to be made only with the prior approval of the agency head.
- (2) The payment of an increment to a Public Service employee (including any decision by the agency head to accelerate the progression of an employee through the increment scale applying to the employee) is subject to:
 - (a) performance requirements under the agency's performance management system, and
 - (b) the satisfactory conduct of the employee as determined by the agency head.
- (3) The agency's performance management system is to set out the criteria for the payment of an increment in relation to performance.
- (4) Until such time as the agency head is satisfied that such criteria are set out in the agency's performance management system or until 1 July 2015 (whichever is the sooner), the payment of an increment to an employee is subject to the satisfactory performance of duties by, and the satisfactory conduct of, the employee as determined by the agency head.
- (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.
- (6) A Public Service employee must be promptly notified in writing by the agency head of any decision to defer payment of an increment. The notice must include the reasons for the decision.
- (7) This clause does not apply to Public Service senior executives.

15 Fitness for duty

- (1) For the purposes of this clause, a Public Service employee is not fit for duty if the health of the employee:
 - (a) may render the employee a risk to the health and safety of other Public Service employees or the general public, or
 - (b) is likely to be seriously affected by the employee remaining on duty or, if the employee is absent from duty, by the employee resuming duty.
- (2) If the agency head has reason to believe that a Public Service employee is not fit for duty, the agency head may direct the employee to submit to such medical examination or other health assessment as the agency head may, on the advice of a nominated medical assessor, consider necessary.
- (3) A Public Service employee to whom an agency head gives a direction under subclause (2):
 - (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 employee is fit for duty.
- (4) If the agency head receives a health assessment from a nominated medical assessor that a Public Service employee is fit for duty and the employee is absent from duty, the agency head is to direct in writing that the employee must resume duty.

- (5) If the agency head receives a health assessment from a nominated medical assessor that a Public Service employee is not fit for duty:
 - (a) the agency head is to direct in writing that the employee must cease duty immediately or, if absent from duty, must not resume duty, and
 - (b) the employee must not resume duty unless the agency head, on the advice of a nominated medical assessor, approves the resumption of duty in writing.
- (6) If a direction has been given to a Public Service employee under subclause (4) or (5), the nature of the leave, if any, to be granted to the employee during the absence from duty is to be determined by the agency head after consideration of any relevant advice of the nominated medical assessor.
- (7) The agency head is to give the health care professional providing a health assessment of a Public Service employee under this clause any requested information about the employment of the employee 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 Public Service Commissioner for the purposes of this clause.

Division 3 Leave

16 Extended leave entitlements

Schedule 1 applies to Public Service employees other than persons employed in casual employment. This clause is subject to Schedule 4 to the Act.

Note. Under transitional provisions in clause 9 of Schedule 4 to the GSE Act, Schedule 1 to this Regulation does not apply to certain groups of staff to whom the general Public Service extended leave entitlements did not apply under the former Act. Schedule 1 also applies to members of the Transport Service (see section 68F of the *Transport Administration Act 1988* and clause 12 of Schedule 4 to the GSE Act).

17 Other leave entitlements for senior executives and certain other employees

- (1) This clause applies to:
 - (a) Public Service senior executives, and
 - (b) Public Service non-executive employees whose entitlement to leave is not subject to a State industrial instrument.
- (2) The provisions of the *Crown Employees (Public Service Conditions of Employment) Award 2009* that relate to leave are taken to apply to a Public Service employee to whom this clause applies and any such employee is entitled to leave in accordance with that award subject to any conditions or limitation set out in that award as if the employee were covered by that award.
- (3) This clause is subject to Schedule 4 to the Act.

18 Accrued leave of non-executive employees who become Public Service senior executives

- (1) This clause applies to a person who, immediately before being employed as a Public Service senior executive, was employed as a Public Service non-executive employee.

- (2) If the person:
 - (a) had a right to accrued extended or annual leave with pay immediately before being employed as a Public Service senior executive, and
 - (b) has not taken that leave before taking up duties as the executive,the person is entitled, on taking up those duties, to be paid instead of that leave (or any part of that leave) the money value of that leave (or part) as a gratuity if the person so elects.
- (3) An election under this clause is to be made within the time and in the manner determined by the head of the Public Service agency in which the person is to be employed as a Public Service senior executive.
- (4) The money value of leave is to be calculated at the rate of pay of the person immediately before employment as a Public Service senior executive.
- (5) A person who was employed in the public sector when employed as a Public Sector senior executive retains any right to extended, annual, sick or other leave accrued or accruing to the person immediately before the employment as a Public Sector senior executive (except any accrued leave which is paid out by a gratuity under subclause (2)).
- (6) A reference in this clause to *employment in the public sector* has the same meaning as it has for the purposes of section 41 of the Act.

Division 4 Allowances

19 Application of Division

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

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

20 Allowance for temporary assignments to higher non-executive roles

- (1) A Public Service non-executive employee who is temporarily assigned by the agency head under the government sector employment rules to another non-executive role in the agency is entitled to be paid an allowance under this clause if the other role is at a higher classification of work than the employee's current classification of work.
- (2) Subject to this clause, the amount of the allowance to be paid to the employee who is temporarily assigned to another role is the difference between the salary of the employee's usual role and the point in the salary range of the other role that the agency head determines is appropriate having regard to the employee's capabilities, knowledge and experience.
- (3) The amount of the allowance to be paid is proportionate to the duties to be performed by the employee in the other role and is to be determined by the agency head before the employee starts the temporary assignment.
- (4) An allowance under this clause is not to be paid:
 - (a) for a temporary assignment to another role that is for a single period of less than 5 ordinary working days (except where the agency head otherwise determines), or
 - (b) in the case where the temporary assignment is for a period of less than 3 months—for any unbroken period of leave of more than 5 ordinary working days taken by the employee during the temporary assignment.
- (5) Subclause (4) (a) does not prevent an allowance being paid under this clause to an employee who works part-time.

21 Allowance for temporary assignments to executive roles

(1) Non-executives assigned to executive roles

A Public Service non-executive employee who is temporarily assigned by the agency head under the government sector employment rules to an executive role in the agency is entitled to be paid an allowance.

(2) Subject to this clause, the amount of the allowance to be paid under subclause (1) is the difference between the salary of the person's usual role and the notional salary of the executive role to which the person is temporarily assigned.

(3) Executives assigned to higher executive roles

A Public Service senior executive who is temporarily assigned by the agency head under the government sector employment rules to an executive role that is:

- (a) in a band higher than the band in which the executive is employed, or
- (b) in the same band in which the executive is employed but at a higher remuneration point within that band,

is entitled to be paid an allowance.

(4) Subject to this clause, the amount of the allowance to be paid under subclause (3) is the difference between the total amount of the executive's remuneration package and the total amount of the remuneration package for the executive role to which the executive is temporarily assigned that corresponds to a point, as determined by the agency head for the purposes of the temporary assignment, within the remuneration range for that executive role.

(5) General provisions

The amount of an allowance to be paid under this clause is proportionate to the duties to be performed by the person in the other role and is to be determined by the agency head before the person starts the temporary assignment.

(6) An allowance under this clause is not to be paid:

- (a) for a temporary assignment to another role for a single period of less than 5 ordinary working days (except where the agency head otherwise determines), or
- (b) in the case where the temporary assignment is for a period of less than 3 months—for any unbroken period of leave of more than 5 ordinary working days taken by the person during the temporary assignment.

(7) Subclause (6) (a) does not prevent an allowance being paid under this clause to a person who works part-time.

(8) In this clause:

agency head in relation to a Public Service senior executive means the employer of the executive if the employer is not otherwise the agency head.

executive role means the role of Public Service senior executive.

notional salary in relation to an executive role to which a non-executive employee is temporarily assigned means the total amount of the remuneration package that corresponds to a point, as determined by the agency head for the purposes of the temporary assignment, within the remuneration range for the executive role, less the superannuation guarantee amount payable in respect of a person employed in the executive role at that remuneration point.

superannuation guarantee amount means the minimum amount payable to a superannuation fund or scheme in respect of a person that is sufficient to avoid an individual superannuation guarantee shortfall, within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth, in respect of the person.

22 Allowance for secondments

A Public Service employee who is seconded under section 64 of the Act to another Public Service agency is entitled to be paid an allowance at the same rate as the employee would be entitled under clause 20 or 21 had the secondment been a temporary assignment for which an allowance is payable under those clauses.

23 Payment where allowance not adequate or available

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

Part 3 Employment in Public Service and other government sector agencies

Division 1 General provisions

24 Repayment of severance or redundancy payments for non-executives on re-employment in public sector: section 88 (3)

- (1) A government sector employee who receives a severance or redundancy payment because of a cessation of employment is not to be employed in the public sector during the period to which the payment relates unless arrangements have been made for a refund of the proportionate amount of the payment.
- (2) The proportionate amount of a payment to be refunded is to be calculated on the basis of the number of weeks (if any) that remain as part of the period to which the payment relates.
- (3) In this clause:
employment of a former government sector employee in the public sector includes:
 - (a) engagement of the former employee as a consultant or contractor to the employer, and
 - (b) engagement of the former employee through a labour hire arrangement with the employer, and
 - (c) engagement of a company or partnership that provides the services of the former employee to the employer.*public sector* means the government sector, the service of a State owned corporation (or a subsidiary), any service excluded by section 5 of the Act or a statutory office.
- (4) This clause does not apply to Public Service senior executives.
Note. See section 41 (3) of the Act and clause 39 of this Regulation.

25 Employment pending cessation of employment

- (1) If a person who is employed in a government sector agency (the *incumbent employee*) notifies the person's employer in writing that the person:
 - (a) intends to resign or retire from the employment on a specified date, or
 - (b) does not intend to seek re-employment on completion of the current term of employment,the employer may, before the person ceases to be employed, take action to recruit and employ another person (the *new employee*) in that employment.
- (2) The employment of the new employee may, if the instrument of employment so provides, take effect before the incumbent employee ceases to be employed.
- (3) In any such case, the incumbent employee and the new employee:
 - (a) are both employed in the same role or position, and
 - (b) may jointly exercise the functions of that role or position.
- (4) If in the joint exercise of any statutory function of that role or position any inconsistency arises in connection with the exercise of that function, the decision of the incumbent employee in relation to the matter prevails.

Division 2 Cross-government sector leave arrangements

26 Definition

In this Division:

cessation of employment includes cessation of employment by resignation, retirement or otherwise.

27 State industrial instruments

This Division applies in addition to any State industrial instrument.

28 Recognition of prior service for extended leave

Schedule 2 applies to government sector employees.

29 Annual leave

- (1) A government sector employee who ceases to be employed in a government sector agency and immediately commences employment in another government sector agency may elect:
 - (a) to be paid the whole or part of the money value of the employee's accrued annual leave, or
 - (b) to retain the entitlement to that accrued annual leave.

Note. The right to cash out leave is, in the case of a Public Service employee, subject to the award requirement to take 10 days of annual leave each year.

- (2) A government sector employee who elects to retain the entitlement to accrued annual leave is taken to have, on commencing employment in the other government sector agency, the amount of accrued annual leave to which the employee was entitled immediately before the end of his or her previous employment. This leave is in addition to any annual leave which accrues after that commencement.
- (3) For the purpose of calculating an entitlement under this clause, the money value of accrued annual leave owing to a Public Service senior executive is to be determined on the basis of the person's notional salary.
- (4) In this clause:

accrued annual leave means annual leave owing to a government sector employee (but not taken), and includes any such leave accrued because of the operation of this clause.

notional salary, in relation to a Public Service senior executive, means the total amount of the remuneration package for the person as last determined before the time of payment, less the superannuation guarantee amount payable in respect of the person.

superannuation guarantee amount means the minimum amount payable to a superannuation fund or scheme in respect of a person that is sufficient to avoid an individual superannuation guarantee shortfall, within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth, in respect of the person.

30 Sick leave

- (1) A government sector employee who ceases to be employed in a government sector agency and immediately commences employment in another government sector agency is taken to have, on commencing that employment, the amount of accrued sick leave to which the employee was entitled before that commencement. This leave is in addition to any sick leave which accrues after that commencement.

- (2) The eligibility of a government sector employee for sick leave that includes any period of accrued sick leave is to be determined in accordance with the conditions relating to the granting of sick leave in the employee's current employment.
- (3) In this clause:
accrued sick leave means the amount of sick leave to which the employee would have been entitled in the event of illness, and includes any such leave accrued because of the operation of this clause.

31 Maternity leave etc

- (1) This clause applies for the purposes of determining whether a government sector employee who ceases to be employed in a government sector agency and immediately commences employment in another government sector agency is entitled to maternity leave, partner leave, adoption leave or any other leave (other than extended leave) for which a condition of eligibility is a minimum period of service.
- (2) For the purposes of determining a government sector employee's entitlement to leave referred to in this clause:
 - (a) service with the employee's previous employer is taken to be service with the employee's current employer, if the previous employment was in another government sector agency and if that period of service was continuous with the employee's current employment, and
 - (b) service with any other former employers is taken to be service with the person's current employer, if the service was in other government sector agencies and the periods of service with those agencies were continuous with each other and the employee's previous employment in a government sector agency.
- (3) Except as provided by this clause, the eligibility of a government sector employee for leave referred to in this clause is to be determined in accordance with the conditions applying to that leave in the employee's current employment.
- (4) A reference in this clause to service with a previous or former employer extends to include a reference to any such service before 24 February 2014.

32 Access to forfeited sick leave—transitional arrangements

- (1) If a government sector employee is eligible for sick leave for any absence from duty but has exhausted his or her sick leave entitlement, the employee's employer may grant to the employee any of the employee's forfeited sick leave as sick leave for the absence.
- (2) An employee's *forfeited sick leave* is the total amount of sick leave that the employee ceased to be entitled to up to 13 October 1995, being sick leave that he or she would presently be entitled to had clause 30 been in force from when the employee was first employed in a government sector agency.
- (3) Once any period of a government sector employee's forfeited sick leave has been granted as sick leave under this clause, it is no longer regarded as forfeited sick leave for the purposes of any further grant of sick leave to the employee under this clause (whether by the same or a different employer).
- (4) In determining whether or not a government sector employee is entitled to sick leave, all the employee's entitlements to sick leave are to be taken into account, including special sick leave and sick leave to which the employee is entitled by operation of clause 30.

- (5) The Commissioner may provide guidance to government sector employers as to the circumstances in which, and the matters to be taken into account in determining whether, forfeited sick leave should or should not be granted as sick leave under this clause.

33 Funding of leave entitlements

The Treasurer may give directions requiring the transfer of funds between government sector employers for the purpose of making due allowance and appropriate adjustments for liabilities incurred by reason of the operation of this Division and Schedule 1, or liabilities with respect to extended or long service leave.

Division 3 Workforce diversity

Note. Under section 63 of the Act, the head of a government sector agency (which includes the service of a SOC) is responsible for workforce diversity within the agency and for ensuring that workforce diversity is integrated into workforce planning in the agency. See the definition of **agency head** in clause 3 (being the person who exercises employer functions in relation to the employees of the agency).

34 Prescribed agencies for purposes of workforce diversity

The following universities are prescribed for the purposes of the definition of **government sector agency** in section 63 of the Act:

- (a) Charles Sturt University,
- (b) Macquarie University,
- (c) Southern Cross University,
- (d) University of New England,
- (e) University of New South Wales,
- (f) University of Newcastle,
- (g) University of Sydney,
- (h) University of Technology, Sydney,
- (i) University of Western Sydney,
- (j) University of Wollongong.

Division 4 Secondments to political office holders

Note. Part 7 of the *Government Sector Employment Rules 2014* provides for transfers and secondments of employees between government sector agencies as defined in section 3 of the Act.

35 Secondments to staff of political office holders

- (1) In this clause:
political office holder has the same meaning as in the *Members of Parliament Staff Act 2013*.
staff of a political office holder means the group of staff who are employed by the political office holder under Part 2 of the *Members of Parliament Staff Act 2013*.
- (2) A government sector employee may, at the request of the employee, be seconded to the staff of a political office holder by agreement between the head of the agency in which the person is employed and the political office holder.
- (3) Any such agreement is to set out the following:
- (a) the period of the secondment,
 - (b) the financial responsibilities relating to the employee's entitlements,

- (c) the procedure to be followed on completion of the secondment,
 - (d) the circumstances in which the secondment may be terminated and the form of notice to be given to terminate the secondment before the end of the agreed period of secondment.
- (4) A copy of the agreement must be provided to the seconded employee.
- (5) The political office holder to whose staff an employee is seconded under this clause is responsible for ensuring that the employee is assigned a suitable role while seconded to that office.
- (6) The seconded employee is, while seconded to the staff of a political office holder under this clause, subject to the conditions of employment applying to the members of that staff under Part 2 of the *Members of Parliament Staff Act 2013*.
- (7) Any annual leave accrued by the seconded employee in the service of a government sector agency may be taken while on secondment to the staff of a political office holder.
- (8) On completion of the secondment, the seconded employee:
 - (a) retains any rights to leave accrued by the person while on secondment, and
 - (b) is entitled to return to the government sector agency from which the employee was seconded at the same work level at which the person was employed immediately before being seconded.
- (9) The period of a person's secondment under this clause is, for the purposes of calculating the person's extended leave entitlements as a government sector employee, taken to be a period of employment in the government sector agency from which the person was seconded.
- (10) Despite any other provision of this clause, the secondment of a government sector employee to the staff of a political office holder may be terminated at any time by the political office holder.
- (11) A political office holder may delegate to a member of the political office holder's staff any of the office holder's functions under this clause.

Part 4 Additional provisions relating to Public Service senior executives

36 Contract of employment—additional matters to be dealt with in contract

The following matters are prescribed for the purposes of section 39 (4) (i) of the Act:

- (a) matters relating to confidentiality and intellectual property,
- (b) capability-based assessments,
- (c) matters of an administrative or ancillary nature that, in the opinion of the Commissioner, are necessary or convenient to be dealt with in the contract of employment.

37 Election to be paid money value of accrued leave

A Public Service senior executive may elect at any time to be paid the whole or part of the money value of the executive's accrued annual or extended leave.

Note. The right to cash out leave is subject to the award requirement (as applied by clause 17) to take 10 days of annual leave each year.

38 Allowances for Public Service senior executives

A Public Service senior executive is entitled to be paid:

- (a) such travelling and subsistence allowances, and
- (b) such allowances in relation to reasonable relocation expenses (whether at the time of being selected for the executive role or during the term of the executive's employment), and
- (c) such other allowances in relation to expenses incurred in the discharge of the executive's duties,

as the executive's employer may from time to time determine in respect of the executive.

39 Compensation for termination of employment and calculation of proportionate amount to be refunded on re-employment in public sector

- (1) The contract of employment of a Public Service senior executive is to provide for the payment of the following compensation to the executive on the termination of the executive's employment by the employer:
 - (a) if the employment is terminated under section 41 of the Act during or at the end of any period of probation imposed as a condition of the executive's engagement—an amount equal to the executive's remuneration package for a period of 4 weeks,
 - (b) if the employment is otherwise terminated under section 41 of the Act—an amount equal to the executive's remuneration package for a period of 38 weeks or for the period remaining on the term of the contract (whichever is the lesser),
 - (c) if the employment is terminated under section 68 of the Act for unsatisfactory performance—an amount equal to the executive's remuneration package for a period of 13 weeks.
- (2) No compensation is payable if the executive's employment is terminated under section 69 of the Act for misconduct.
- (3) The proportionate amount of a payment to be refunded under section 41 (3) of the Act is to be calculated on the basis of the number of weeks (if any) that remain as part of the period to which the payment relates.

- (4) The amount of compensation payable in accordance with this clause to a Public Service senior executive on the termination of the executive's employment by the employer is, in the case of a senior executive who is employed part-time, to be calculated on a pro-rata basis.

Schedule 1 Public Service extended leave entitlements

(Clause 16)

Note. See clause 16 of the Regulation for provisions relating to the application of this Schedule.

1 Definition of “service”

- (1) For the purposes of this Schedule, *service* includes:
 - (a) in the case of a Public Service employee who has completed at least 10 years’ service—any period of leave without pay, not exceeding 6 months, taken after 13 December 1963, and
 - (b) service occurring before 24 February 2014, including service of the kind referred to in paragraph (a).

Note. See also Schedule 2 as to the recognition of former service with certain Government agencies.

- (2) Subject to clauses 2 (3) and 3 (3), for the purpose of determining whether or not a Public Service employee has completed at least 10 years’ service, as referred to in subclause (1) (a), the employee’s period of service is taken:
 - (a) to include any period of leave without pay taken before 13 December 1963, and
 - (b) to exclude any period of leave without pay taken after 13 December 1963.

2 Extended leave entitlements generally

- (1) After service for 7 years or more but not more than 10 years, a Public Service employee is entitled to extended leave, proportionate to his or her length of service, calculated at the rate of:
 - (a) 2 months on full pay, or
 - (b) 4 months on half pay, or
 - (c) one month on double pay,for 10 years served.
- (2) After service for more than 10 years, a Public Service employee is entitled to extended leave under subclause (1) in respect of the first 10 years and additional extended leave, proportionate to his or her length of service, calculated at the rate of:
 - (a) 5 months on full pay, or
 - (b) 10 months on half pay, or
 - (c) 2.5 months on double pay,for each 10 years served after the first 10 years.
- (3) For the purposes of this clause, *service* includes any period of leave without pay taken before 13 December 1963.

3 Entitlement to extended leave if employment terminated in special circumstances

- (1) This clause applies to a Public Service employee with at least 5 years’ service but less than 7 years’ service whose services are terminated:
 - (a) by the employee for reasons of illness, incapacity or domestic or other pressing necessity, or
 - (b) by the employer for reasons other than for misconduct.

- (2) The Public Service employee is entitled to:
 - (a) for 5 years' service—one month's leave on full pay, and
 - (b) for further service in excess of 5 years—additional leave proportionate to the employee's length of service (up to but not including 7 years), calculated at the rate of 3 months' leave for 15 years' service.
- (3) For the purposes of this clause, *service* does not include any period of leave without pay, whether taken before, on or after 13 December 1963.

4 Payment of accrued leave on termination of employment

- (1) If a Public Service employee has acquired a right to extended leave and his or her services are terminated, the employee may not take the extended leave but is instead to be paid the money value of the extended leave.
- (2) Any pension to which any such Public Service employee is entitled under the *Superannuation Act 1916* commences from and including the date on which the employee's extended leave, if taken, would have commenced.

5 Leave to be paid out to dependants in cases of death

- (1) If a Public Service employee has acquired a right to extended leave and dies before starting it, or after starting it dies before completing it:
 - (a) the employee's spouse, or
 - (b) if there is no such spouse, the employee's children, or
 - (c) if there is no such spouse or child, the person who, in the opinion of the agency head, was, at the time of the employee's death, a dependent relative of the employee,is entitled to receive the money value of the extended leave not taken or not completed.
- (2) If a Public Service employee with at least 5 years' service but less than 7 years' service dies:
 - (a) the employee's spouse, or
 - (b) if there is no such spouse, the employee's children, or
 - (c) if there is no such spouse or child, the person who, in the opinion of the agency head, was, at the time of the employee's death, a dependent relative of the employee,is entitled to receive the money value of the extended leave that would have accrued to the employee had his or her services terminated as referred to in clause 3 (1).
- (3) If there is a guardian of any child referred to in subclause (1) (b) or (2) (b), the payment to which the child is entitled may be made to the child's guardian for the child's maintenance, education and advancement.
- (4) If:
 - (a) no person is entitled to receive a payment under subclause (1) or (2), or
 - (b) it appears to the agency head that more than one person is entitled as a spouse to a payment under subclause (1) or (2),the payment must instead be made to the employee's personal representatives.
- (5) Any payment under this clause is in addition to any payment due under any Act under which superannuation benefits are paid.

- (6) In this clause, *spouse* of a Public Service employee includes a de facto partner of the employee at the time of his or her death.

Note. *De facto partner* is defined in section 21C of the *Interpretation Act 1987*.

6 Calculation of money value of extended leave

For the purpose of calculating the amount of an entitlement under this Schedule, the money value of extended leave accrued or payable to a Public Service senior executive is to be determined on the basis of the persons's notional salary within the meaning of clause 29 (Annual leave) of this Regulation.

7 Certain periods to be disregarded

Any period during which a Public Service employee is not employed, as referred to in clause 3 (2) of Schedule 2, is to be disregarded for the purpose of calculating his or her extended leave entitlement.

8 Leave entitlement reduced by leave already taken or paid out

- (1) The following amounts of extended leave are to be deducted from a Public Service employee's extended leave entitlement:
- (a) for each period of extended leave taken on full pay—the number of days (or parts of a day) so taken,
 - (b) for each period of extended leave taken on half pay—half the number of days (or parts of a day) so taken,
 - (c) for each period of extended leave taken on double pay—twice the number of days (or parts of a day) so taken,
 - (d) for each period of extended leave in respect of which the employee has been paid the money value—the number of days of extended leave on full pay that is equivalent to the money paid.
- (2) If a public holiday occurs while a Public Service employee is taking extended leave, the amount of extended leave to be deducted is to be reduced by the length of the holiday (one day or half a day, as the case requires).
- (3) In subclause (2), *public holiday* means any special or public holiday for which the Public Service employee is entitled to payment.

9 Extended leave may be postponed for employees not employed in ongoing employment

If, in the case of a Public Service employee who is not employed in ongoing employment, the period of extended leave to which the employee is entitled under this Schedule exceeds the period for which the employee is employed in the Public Service, the balance of the period of extended leave may be taken during subsequent periods of employment in the Public Service, but only if each subsequent period of employment commences on the termination of a previous period of employment in the Public Service.

Schedule 2 Government sector employees extended leave entitlements—recognition of prior government service

(Clause 28)

Part 1 Preliminary

1 Definitions

In this Schedule:

Australian Defence Force includes the armed forces of the Commonwealth, however described.

Commonwealth or interstate agency means:

- (a) a body that:
 - (i) is established under an Act of the Commonwealth or another State or Territory, and
 - (ii) is under the control of a Minister of the Commonwealth or other State or Territory, and
 - (iii) is part of the public service (however described) of the Commonwealth or other State or Territory, and
 - (iv) is a body in which persons are employed under conditions substantially equivalent to the conditions under which Public Service employees are employed under the Act, or
- (b) a body that is declared to be a Commonwealth or interstate agency for the purposes of this Schedule pursuant to an order under clause 2,

but, subject to paragraph (b), does not include:

- (c) a local government authority, or
- (d) a university or the governing body of a university, or
- (e) a corporation owned by the Commonwealth or another State or Territory, or by the Crown in right of the Commonwealth or another State or Territory, or
- (f) a body that is declared not to be a Commonwealth or interstate agency for the purposes of this Schedule pursuant to an order under clause 2.

continuous—see clause 3.

government sector employee means a person who is employed in a government sector agency.

immediately follows—see clause 4.

recognised service, in relation to a government sector employee, means service that is recognised service in relation to the employee pursuant to Part 2.

related government service means any service excluded by section 5 of the Act.

2 Declarations concerning Commonwealth or interstate agencies

- (1) The Public Service Commissioner may, by order in writing, declare that a specified body is, or is not, a Commonwealth or interstate agency for the purposes of this Schedule.
- (2) An order under this clause:
 - (a) takes effect on such day as is specified in the order, being a day occurring before, on or after the day on which the order is made, and

- (b) may be subject to specified limitations, but not so as to operate to the prejudice of any person who was a government sector employee immediately before the order took effect.
- (3) There are to be made publicly available on a website provided and maintained by the Public Service Commissioner:
 - (a) a list of the names of each body that is declared under this clause to be a Commonwealth or interstate agency, and
 - (b) a list of the names of each body that is declared under this clause not to be a Commonwealth or interstate agency.
- (4) Any declaration by the Commissioner under clause 2 of Schedule 3A to the former Act and having effect immediately before 24 February 2014 is taken to be a declaration by the Commissioner under this clause.

3 Meaning of “continuous”

- (1) For the purposes of this Schedule, a person’s employment by an employer is *continuous* in relation to a period if the person remains employed by that employer for the whole of the period.
- (2) The person is taken to remain employed by the employer for the whole of any period even if, during that period, the person ceases to be employed by the employer on the grounds of retrenchment or reduction of work but is re-employed by the employer within the next 12 months.

4 Meaning of “immediately follows”

- (1) For the purposes of this Schedule, a person’s period of employment *immediately follows* another period of employment if:
 - (a) the later period commences:
 - (i) except as provided by subparagraph (ii), within 2 months after the end of the earlier period, or
 - (ii) if the earlier period comprises full-time war service as a member of the Australian Defence Force, within 12 months after the end of the earlier period, and
 - (b) the earlier period ends otherwise than by reason of the person’s dismissal for disciplinary reasons.
- (2) For the purposes of subclause (1) (a) (ii), *war service* means:
 - (a) service occurring during, or partly during, a period of war in which the Australian Defence Force is engaged, or
 - (b) service of a kind referred to in subclause (3).
- (3) The following kinds of service are declared to be war service:
 - (a) war service within the meaning of Division 1 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.

Part 2 Recognition of former government service for government sector employees generally

5 Object of Part

The object of this Part is to provide for the recognition of former government service in the calculation of a government sector employee's extended leave entitlement, whether such an entitlement arises:

- (a) under Schedule 1 (in the case of a Public Service employee), or
- (b) under some other Act or law, such as an award or industrial agreement (in any other case).

6 Recognition of former government service

- (1) For the purpose of calculating a government sector employee's extended leave entitlement, the government sector employee's service with his or her current employer is taken to include his or her recognised service.
- (2) The person's employment in a government sector agency or a Commonwealth or interstate agency or in a related government service (the *former agency*) is *recognised service* in relation to the person's subsequent employment in a government sector agency (the *current agency*) if:
 - (a) the period of employment in the former agency has been continuous, and
 - (b) either:
 - (i) the person's employment in the current agency has immediately followed the person's employment in the former agency, or
 - (ii) the person is entitled, by law or administrative practice, to have the service in the former agency form part of the service in the current agency for the purpose of calculating the person's extended leave entitlement.
- (3) A period of recognised service may not be counted more than once for the purpose of calculating the person's extended leave entitlement.

7 Exclusion of leave already taken, paid or deemed to have been taken

- (1) The following amounts of leave are to be deducted from a government sector employee's extended leave entitlement:
 - (a) the amount of any extended leave taken by the government sector employee in relation to recognised service,
 - (b) the amount of any extended leave in respect of which the government sector employee has elected to be paid the money value under clause 8 in respect of recognised service,
 - (c) the amount of any extended leave that the government sector employee is deemed to have taken under clause 9 in respect of recognised service.
- (2) For the purposes of subclause (1) (a), the government sector employee is deemed to have taken extended leave if he or she has been paid the money value of that leave.
- (3) A period of extended leave is not to be deducted more than once under this clause.

8 Government sector employee may elect to be paid money value of accrued leave if commencing work in another agency

- (1) A government sector employee who ceases to be employed in a government sector agency and immediately commences employment in another government sector agency or in a related government agency may elect:
- (a) to be paid the whole or part of the money value of the government sector employee's accrued extended leave, or
 - (b) to retain the entitlement to that accrued extended leave.
- (2) This clause does not apply to a Public Service employee who has been paid the money value of his or her accrued extended leave under clause 4 of Schedule 1.

Note. Whichever election the government sector employee makes, his or her service with the current employer will, pursuant to clause 6 of this Schedule, be deemed to include service with the former employer.

9 Employee who has recognised Commonwealth or interstate service and was entitled to take leave in former agency deemed to have taken leave

- (1) For the purposes of clause 7 (1) (c), a government sector employee:
- (a) whose employment in a government sector agency (the *current agency*) immediately follows employment in a Commonwealth or interstate agency (the *former agency*), or
 - (b) who is entitled, by law or administrative practice, to have the service in the former agency form part of the service in the current agency,
- and who, at any time during his or her employment in the former agency, has been entitled under the relevant Commonwealth or interstate law to take extended leave or be paid the money value of extended leave is deemed to have taken the leave.
- (2) The amount of extended leave that the government sector employee is deemed to have taken is calculated as if:
- (a) leave had accrued in relation to his or her service in the former agency at the same rate as leave accrues in relation to his or her service in the current agency, and
 - (b) the service in the former agency in respect of which leave accrued was the whole of the service recognised by the former agency for the purpose of calculating his or her extended leave entitlement, and
 - (c) the amount of leave taken before the calculation of the entitlement was nil, and
 - (d) the money value of leave paid before the calculation of the entitlement was nil.

Part 3 Additional provisions for former members of Australian Defence Force and for holders of certain statutory offices

10 Recognition of service with Australian Defence Force

For the purposes of this Schedule:

- (a) a government sector employee who has previously been employed, on a full-time basis, as a member of the Australian Defence Force is taken to have been employed in a Commonwealth or interstate agency during the period for which he or she was so employed, and
- (b) the Australian Defence Force is taken to have been the government sector employee's employer during that period.

11 Recognition of service in certain statutory offices

- (1) For the purposes of this Schedule:
 - (a) a person who:
 - (i) in relation to a body referred to in the Table to clause 11 of Schedule 3A to the former Act as in force immediately before its repeal, holds or acts in an office specified in that Table, on a full-time basis, and
 - (ii) has previously been a government sector employee, is taken to be employed in a government sector agency during the period for which the person holds or acts in that office, and
 - (b) the body concerned is taken to be the person's employer during that period.
- (2) For the purposes of this Schedule:
 - (a) a government sector employee who, in relation to a body referred to in the Table to clause 11 of Schedule 3A to the former Act as in force immediately before its repeal, has previously held or acted in an office specified in that Table, on a full-time basis, is taken to have been employed in a government sector agency during the period for which he or she held or acted in that office, and
 - (b) the body concerned is taken to have been the government sector employee's employer during that period.
- (3) Without limiting any other law preserving rights to extended leave, a person who, in relation to a body referred to in the Table to clause 11 of Schedule 3A to the former Act as in force immediately before its repeal, holds an office specified in that Table, on a full-time basis, is entitled to have his or her recognised service as a government sector employee recognised as service for the purposes of the law or arrangement that provides for his or her entitlement, as the holder of the office, to extended leave.

Schedule 3 Amendment of Schedule 4 to the Government Sector Employment Act 2013 No 40

[1] Clause 5 Existing employees of the Government Service become employees of Public Service

Insert after clause 5 (1):

- (1A) Subclause (1) does not apply to any persons employed in the Government Service of New South Wales who are, on the commencement of this Act, transferred to the Transport Service of New South Wales by an administrative arrangements order under the *Constitution Act 1902*. Division 4 of Part 7 of the *Transport Administration Act 1988* applies to any such transferred staff as if they had been transferred by an order under that Division.

[2] Clause 5 (5) and (6)

Omit the subclauses. Insert instead:

- (5) The continued employment of a person taken to be employed in the Public Service under this clause who held a Chief or Senior Executive position or a senior officer position (or equivalent position) under the former Act is subject to clauses 6–8.

[3] Clauses 6–8

Omit the clauses. Insert instead:

6 Secretaries of Departments—transitional arrangements

- (1) In this clause, *former principal Department* means a principal Department of the Public Service listed in Division 1 of Part 1 of Schedule 1 to the former Act immediately before the repeal of the former Act.
- (2) A person holding office as the head of a former principal Department immediately before the repeal of the former Act continues in office as the Secretary of the corresponding Department under this Act:
- (a) for the balance of the person's term of office under the former Act, or
- (b) for the period of 12 months after the commencement of this Act,
- whichever is the longer period. However, the person ceases to hold office as Secretary under this subclause if the person's employment is terminated under section 41 of this Act (or otherwise ceases) or if the person is subsequently appointed as Secretary of the Department under this Act.
- (3) A Department under this Act that is declared, by an administrative arrangements order under the *Constitution Act 1902*, to be the successor and a continuation of a former principal Department is the corresponding Department of that former principal Department for the purposes of this clause. A Department does not cease to be a corresponding Department merely because of a subsequent change in the name of the Department under this Act.
- (4) A person who continues in office as Secretary under subclause (2):
- (a) is employed under Division 2 of Part 4 of this Act in term employment in Band 4 under the senior executive bands determination, and
- (b) is not required to enter into a contract of employment under this Act for the purposes of that temporary period of continued employment, and

- (c) has a remuneration package that is equivalent to the remuneration package of the person immediately before the repeal of the former Act (unless the remuneration package is increased as a result of a determination of the Statutory and Other Offices Remuneration Tribunal made under Part 3A of the *Statutory and Other Offices Remuneration Act 1975*), and
- (d) if the person's employment is terminated under section 41 of this Act on or after the commencement of this Act, is entitled to the compensation provided under section 78 of the former Act as if the termination had been a removal of the person from office under the former Act.

7 Heads of other Public Service agencies—transitional arrangements

- (1) In this clause, *former other Division* means a Division of the Government Service listed in Division 2 of Part 1, or Part 2, of Schedule 1 to the former Act immediately before the repeal of the former Act, but does not include any such Division whose staff are, on the commencement of this Act, transferred to the Transport Service of New South Wales by an administrative arrangements order under the *Constitution Act 1902*.
- (2) A person holding office as the head of a former other Division immediately before the repeal of the former Act (other than the holder of a statutory office) continues in office as the head of the corresponding Public Service agency under this Act:
 - (a) for the balance of the person's term of office under the former Act, or
 - (b) for the period of 12 months after the commencement of this Act,whichever is the longer period. However, the person ceases to hold office as the head of the agency under this subclause if the person's employment is terminated under section 41 of this Act (or otherwise ceases) or if the person is subsequently appointed as head of the agency under this Act.
- (3) A Public Service agency under this Act (other than a Department) that is declared, by an administrative arrangements order under the *Constitution Act 1902*, to be the successor and a continuation of a former other Division is the corresponding Public Service agency of that former other Division for the purposes of this clause. A Public Service agency does not cease to be a corresponding Public Service agency merely because of a subsequent change in the name of the agency under this Act.
- (4) If, on the commencement of this Act, there is no corresponding Public Service agency of a former other Division, the head of the former other Division immediately before that commencement (other than the holder of a statutory office) is a continuing former senior executive under clause 8 in the Public Service agency to which the staff of the former other Division are transferred by an administrative arrangements order under the *Constitution Act 1902*.
- (5) If, on the commencement of this Act, a Public Service agency (other than a Department) is not a corresponding Public Service agency of a former other Division and the head of the agency is not a statutory officer, the person who, immediately before that commencement, was the relevant chief manager of the group of staff transferred to the Public Service agency on that commencement by an administrative arrangements order under the *Constitution Act 1902* holds office as the head of the Public Service agency under this Act:
 - (a) for the balance of the person's term of office as the relevant chief manager under the former Act, or

- (b) for the period of 12 months after the commencement of this Act, whichever is the longer period. However, the person ceases to hold office as the head of the agency under this subclause if the person's employment is terminated under section 41 of this Act (or otherwise ceases) or if the person is subsequently appointed as head of the agency under this Act.
- (6) For the purposes of subclause (5), the relevant chief manager of a transferred group of staff is the person who held, immediately before the repeal of the former Act, the executive position under Part 3.1 of Chapter 3 of the former Act having the duties of the head of that group of staff.
- (7) A person who continues in office as head of a Public Service agency under subclause (2) or who holds office as head of a Public Service agency under subclause (5):
 - (a) is employed under Division 3 of Part 4 of this Act in term employment in the band under the senior executive bands determination that includes the remuneration package to which the head of the agency continues to be entitled under this subclause, and
 - (b) is not required to enter into a contract of employment under this Act for the purposes of that temporary period of continued employment, and
 - (c) has a remuneration package that is equivalent to the remuneration package of the person immediately before the repeal of the former Act (unless the remuneration package is increased as a result of a determination of the Statutory and Other Offices Remuneration Tribunal made under Part 3A of the *Statutory and Other Offices Remuneration Act 1975*), and
 - (d) if the person's employment is terminated under section 41 of this Act on or after the commencement of this Act, is entitled to the compensation provided under section 78 of the former Act as if the termination had been a removal of the person from office under the former Act.
- (8) The following applies to the initial recruitment action under this Act to fill the role of the head of a Public Service agency (other than a Department):
 - (a) the work level and other employment arrangements relating to the role are to be determined under this Act and are not determined by the level and other arrangements that apply to the continued employment of the existing head of the agency under this clause,
 - (b) the existing head may be recruited before or at the end of the temporary period of continued employment of the existing head,
 - (c) the existing head may be recruited without compliance with the government sector employment rules on merit-based employment (but only in term employment not exceeding 2 years if the recruitment did not comply with those rules).

7A Review of senior executive structure for implementation of new executive employment arrangements under this Act

- (1) The Secretary of each Department is to review the senior executive structure of the Department and its related Public Service agencies in order to transition senior executive employment in the Department and related agencies to the new arrangements under this Act.
- (2) The head of a separate Public Service agency is to review the senior executive structure of the agency in order to transition senior executive employment in the agency to the new arrangements under this Act.

- (3) The Commissioner is to determine the date (before 24 February 2017) on which senior executive employment in a Public Service agency or in a part of a Public Service agency will transition to those new arrangements, and on which relevant persons employed in the agency or part of the agency will cease to be transitional former senior executives referred to in clause 8.
- (4) The Commissioner may determine a different date under this clause for a particular transitional former senior executive than the date otherwise determined for the agency or the part of the agency in which the executive is employed. The date determined for an agency, a part of an agency or for a particular transitional former senior executive may be changed by a further determination of the Commissioner (but only to a date before 24 February 2017).
- (5) Without limiting the date that may be determined as the implementation date for a transitional former senior executive, the implementation date for an executive may be extended to a date before 24 February 2017 that is beyond the implementation date for other such executives in the Public Service agency concerned for the purposes of knowledge transfer and continuity of service by the agency in the transition to the new executive employment arrangements under this Act or to enable the executive to take accrued leave before the termination of employment.
- (6) The date on which a relevant person ceases to be a transitional former senior executive is the *implementation date* for the executive for the purposes of this Schedule.
- (7) Determinations of implementation dates by the Commissioner under this clause are to be made in consultation with the relevant Secretaries of Departments and relevant heads of separate Public Service agencies.

8 Senior executives (other than Secretaries and other heads of agencies)—transitional arrangements

- (1) In this clause:
implementation date for a transitional former senior executive—see clause 7A.
transitional former senior executive means a person who was, immediately before the repeal of the former Act:
 - (a) an executive officer within the meaning of Part 3.1 of Chapter 3 of the former Act (a *former SES executive*), or
 - (b) employed in the Government Service in the classification or grade of senior officer (or in any equivalent classification or grade determined by the Commissioner for the purposes of this clause) and whose salary was more than the maximum salary for a clerk (Grade 12) in the Public Service (a *former SO executive*),but does not include a statutory officer or a person holding office as Secretary of a Department under clause 6 or holding office as the head of a Public Service agency (other than a Department) under clause 7.
- (2) Until the implementation date for a transitional former senior executive of a Public Service agency who is a former SES executive, this Act applies to the executive subject to the following:
 - (a) the executive is employed under Division 4 of Part 4 of this Act 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 clause):
 - (i) the balance of the person's term of office as a former SES executive, and
 - (ii) any additional period before the implementation date that the agency head may approve,
 - (c) the executive is not required to enter into a contract of employment under this Act for the purposes of that temporary period of continued employment,
 - (d) the executive has a remuneration package that is equivalent to the remuneration package of the person immediately before the repeal of the former Act (unless the remuneration package is increased as a result of a determination of the Statutory and Other Offices Remuneration Tribunal made under Part 3A of the *Statutory and Other Offices Remuneration Act 1975*),
 - (e) if the executive's employment is terminated under section 41 of this Act on or after the commencement of this Act, the executive is entitled to the compensation provided under section 78 of the former Act as if the termination had been a removal of the executive from office under the former Act.
- (3) Until the implementation date for a transitional former senior executive of a Public Service agency who is a former SO executive, this Act applies to the executive subject to the following:
- (a) the executive is employed under Division 5 of Part 4 of this Act in ongoing employment or, if the executive was employed for a term under the former Act, in term employment,
 - (b) the executive is not employed in a band under the senior executive bands determination and is not subject to re-assignment to a role in another Public Service agency without the agreement of the executive,
 - (c) the conditions of employment of the executive that are preserved by clause 9 are subject to this clause.
- (4) On the implementation date for a transitional former senior executive of a Public Service agency:
- (a) the person ceases to be a transitional former senior executive, and
 - (b) the employment of the person in the agency is terminated unless the person is employed in the agency on and from the implementation date in accordance with this Act (whether as a Public Service senior executive or as a Public Service non-executive employee), and
 - (c) any such termination of the employment of a person who was a former SES executive is taken to be a termination under section 41 of this Act to which subclause (2) (e) applies, and
 - (d) any such termination of the employment of a person who was a former SO executive is taken to be a termination under section 47 of this Act to which this Act (including the conditions of employment preserved by clause 9) applies, and
 - (e) section 58 of this Act applies to any such termination of employment of a person (whether a former SES executive or a former 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 a Public Service agency (other than agency head) 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 agency,
 - (b) transitional former senior executives may be recruited to any such new role before or at the end of the period of their continued employment as transitional former senior executives,
 - (c) a person is to be recruited to any such new role in accordance with government sector employment rules on merit-based employment,
 - (d) 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 former senior executives who occupy a similar role in the relevant parts of the agency,
 - (ii) any Public Service senior executives employed in the relevant parts of the agency in a similar role after the commencement of this Act,
 - (iii) any other Public Service employees (or groups of Public Service employees) in the relevant parts of the agency whom the agency head considers appropriate.

[4] Clauses 8A–8C

Insert after clause 8:

8A Statutory senior executives

- (1) This clause applies to the following statutory officers whose employment was, immediately before the repeal of the former Act, subject to Part 3.1 of Chapter 3 of the former Act:
- (a) President of the Board of Studies, Teaching and Educational Standards,
 - (b) Children’s Guardian,
 - (c) Commissioner for the Commission for Children and Young People,
 - (d) Registrar of Community Housing appointed under section 10 of the *Community Housing Providers (Adoption of National Law) Act 2012*,
 - (e) Chief Executive Officer of Destination NSW,
 - (f) chief executive of a development corporation appointed under section 6B of the *Growth Centres (Development Corporations) Act 1974*,
 - (g) Chairperson of the Environment Protection Authority,
 - (h) Commissioner of the Health Care Complaints Commission,
 - (i) Chief Executive of the Independent Transport Safety Regulator,
 - (j) Chief Executive of the Internal Audit Bureau,
 - (k) Chief Executive Officer of the Legal Aid Commission,
 - (l) Legal Services Commissioner,
 - (m) chief executive of a major event authority constituted under the *Major Events Act 2009*,

- (n) Managing Director of the New South Wales Government Telecommunications Authority,
 - (o) Chief Executive Officer of the NSW Trustee and Guardian,
 - (p) Deputy or Assistant Ombudsman,
 - (q) Chief Executive of the Rural Assistance Authority,
 - (r) Commissioner of the Soil Conservation Service,
 - (s) Chief Executive of the Sydney Catchment Authority,
 - (t) Managing Director of the TAFE Commission,
 - (u) Chief Investigator of the Office of Transport Safety Investigations,
 - (v) Director of the Zoological Parks Board.
- (2) On the repeal of the former Act, the employment of a statutory officer to whom this clause applies is subject to Division 4 of Part 4 of this Act and this clause.
- (3) Any such statutory officer:
- (a) is employed in the band under the senior executive bands determination that includes the remuneration package to which the officer continues to be entitled under this subclause, and
 - (b) is not required to enter into a contract of employment under this Act, and
 - (c) has a remuneration package that is equivalent to the remuneration package of the officer immediately before the repeal of the former Act (unless the remuneration package is increased as a result of a determination of the Statutory and Other Offices Remuneration Tribunal made under Part 3A of the *Statutory and Other Offices Remuneration Act 1975*), and
 - (d) if the officer's employment is terminated under section 41 of this Act on or after the commencement of this Act, is entitled to the compensation provided under section 78 of the former Act as if the termination had been a removal of the statutory officer from office under the former Act, and
 - (e) cannot be removed from office (or otherwise have the officer's employment terminated) on a ground other than a ground on which the officer could have been removed from office immediately before the repeal of the former Act.

8B Transitional provisions relating to remuneration of senior executives

- (1) For the purposes of clauses 6, 7, 8 and 8A, the remuneration package of a person under the former Act includes any of the following determined by the Statutory and Other Offices Remuneration Tribunal and payable to the person under the former Act:
- (a) a remuneration package that is payable to the person as the holder of the relevant position under the former Act 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 provisions of this Act as a Public Service 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 former SES executive referred to in clause 8 who is subsequently employed in accordance with the provisions of this Act as a Public Service senior executive and who is assigned to a role (or subsequently assigned to different role) that is of equivalent work value as the person's position under the former Act. The remuneration package of the person in any such role is to be not less than the remuneration package of the person immediately before the repeal of the former Act.
- (4) This subclause applies to a former SO executive referred to in clause 8 who is subsequently employed in accordance with the provisions of this Act as a Public Service senior executive and who is assigned to a role (when first so employed) that is of equivalent work value as the person's position under the former Act. The person may be paid an allowance, determined by the agency head in accordance with guidance provided by the Commissioner, to avoid any financial disadvantage as a Public Service senior executive in that role (or any other assigned role of equivalent work value) compared to the remuneration payable immediately before the repeal of the former Act.
- (5) A retention allowance payable under the former Act to a person to whom clause 6, 7, 8 or 8A 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).

8C Existing temporary employees

- (1) This clause applies to a person who, immediately before 24 February 2014, was employed on a temporary basis under the former Act (an *existing temporary employee*). This clause does not apply to persons employed under the former Act as special temporary employees.

Note. Clause 5 provides that persons employed under the former Act are taken to be employed under this Act in the same kind of employment.

- (2) **Extension of existing term of temporary employment**

If the term of employment of an existing temporary employee is due to expire before 24 February 2015, the person's temporary employment may be extended before it expires in accordance with the provisions of the former Act as if that Act had not been repealed. However, if the temporary employment is to be extended beyond 24 February 2015, the extension of the existing temporary employee's employment must satisfy the requirements of the government sector employment rules relating to temporary employment.

- (3) On and from 24 February 2015, any extension of an existing temporary employee's employment must be made in accordance with the provisions of the government sector employment rules relating to temporary employment.

- (4) **Conversion to ongoing employment**

Despite its repeal, section 31 of the former Act continues to apply, until 24 February 2015, in relation to an existing temporary employee who is a long-term 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.

- (5) On and from 24 February 2015, 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.

[5] Clause 9

Omit the clause. Insert instead:

9 Existing conditions of employment under former Act

- (1) In this clause:
former non-Public Service group of staff means a group of staff:
- (a) who, immediately before the commencement of this Act, were employed in the Government Service of New South Wales (but not in the Public Service of New South Wales) or in the NSW Health Service and who become Public Service employees on that commencement, and
 - (b) who comprise a Public Service agency or a discrete branch or other part of a Public Service agency,
- and includes any persons who become members of that group of staff after the commencement of this Act.
- (2) Conditions of employment applying to any group of Public Service employees immediately before the commencement of this Act (whether under State industrial instruments, determinations under section 4E of the former Act or contracts of employment) continue to apply, subject to this clause, to that group of Public Service employees. This subclause extends to members of a former non-Public Service group of staff.
- (3) The conditions of employment of Public Service employees who are members of a former non-Public Service group of staff do not include any conditions of employment relating to leave or other matters that are conferred by the regulations under this Act on Public Service employees generally unless they apply because of conditions of employment applying to that group of staff immediately before the repeal of the former Act. In this subclause, a reference to conditions of employment conferred by the regulations includes conditions relating to extended leave and to conditions under the *Crown Employees (Public Service Conditions of Employment) Award 2009* for groups of staff to which that award did not apply immediately before the repeal of the former Act.
- (4) A determination under section 130 of the former Act, or an industrial agreement under section 131 of the former Act, that is in force immediately before the repeal of the former Act is, subject to this clause, taken to be a determination under section 52 of this Act or an industrial agreement under section 51 of this Act (as the case requires).
- (5) A condition of employment that applies because of this clause applies until such time as provision is otherwise made under this Act or any other law.

[6] Clause 12 Superseded references

Insert at the end of the clause:

- , and
- (g) a reference to the former Act, the *Public Sector Management Act 1988* or the *Public Service Act 1979* or to a provision of any such Act is to be construed as extending to a reference to this Act or to the corresponding provision of this Act, except as provided by this clause or except in so far as a contrary intention appears in the Act concerned, and

- (h) a reference to Part 2.5 of the former Act or to a provision of that Part is to be construed as a reference to Part 2 of the *Members of Parliament Staff Act 2013*, and
- (i) a reference to Schedule 3 or 3A to the former Act (or that is required to be construed as such a reference) is to be construed as a reference to Schedule 1 or 2, respectively, to the *Government Sector Employment Regulation 2014*.

[7] Clauses 13A and 13B

Insert after clause 13:

13A Staff of Internal Audit Bureau, Treasury Corporation and SAS Trustee Corporation

Despite the repeal of the former Act, that Act continues to apply to the employment of staff under Chapter 1A of that Act:

- (a) in the Internal Audit Bureau Division to enable the Internal Audit Bureau to exercise its functions, but only until 1 July 2015 or until such time as the Internal Audit Bureau is authorised by legislation to employ staff (whichever is the sooner), and
- (b) in the Treasury Corporation Division to enable the Treasury Corporation to exercise its functions, but only until 1 July 2015 or until such time as the Treasury Corporation is authorised by legislation to employ staff (whichever is the sooner), and
- (c) in the SAS Trustee Corporation Division to enable the SAS Trustee Corporation to exercise its functions, but only until 1 July 2015 or until such time as the SAS Trustee Corporation is authorised by legislation to employ staff (whichever is the sooner).

13B Staff previously employed under section 47 of the Constitution Act 1902

- (1) The enactment of sections 47 and 47A of the *Constitution Act 1902*, as inserted by the amendments made to that Act by Schedule 6.2 to this Act, does not affect the continued employment of persons who were appointed to public offices under the Government under section 47 of the *Constitution Act 1902*, as in force before its substitution by Schedule 6.2 to this Act (and does not prevent appointments under section 47 as so in force to fill vacancies in those public offices during the period of 12 months after the commencement of this Act).
- (2) During the period of 12 months after the commencement of this Act, any of those persons who are no longer authorised to be employed under section 47A of the *Constitution Act 1902* are to be transferred to employment that is authorised by that section if their continued employment is required.

Schedule 4 Additional savings, transitional and other provisions

1 Existing inquiries under former Act

- (1) Any inquiry under section 3K of the former Act that was commenced but not completed before 24 February 2014 may continue to be conducted by the Commissioner under section 83 of the new Act. For that purpose, any authorisation under section 3K or 3L of the former Act that had effect immediately before 24 February 2014 continues to have effect under section 83 of the new Act.
- (2) Any special inquiry under section 159 of the former Act that was commenced but not completed before 24 February 2014 may continue to be conducted under section 82 of the new Act.
- (3) Any inquiry under section 159A of the former Act that was commenced but not completed before 24 February 2014 may continue to be conducted by the Secretary of the Department of Premier and Cabinet under section 83 of the new Act. For that purpose, any authorisation under section 159A of the former Act that had effect immediately before 24 February 2014 continues to have effect under section 83 of the new Act.

2 Existing directions by Commissioner

Any direction given by the Commissioner under section 3J of the former Act is, to the extent that it had effect immediately before 24 February 2014 and is consistent with the new Act, taken to be a direction given under section 13 of the new Act.

3 Recruitment action

- (1) Any recruitment action commenced within the period of 12 months immediately before 24 February 2014 but not completed before that date may be completed as if the former Act had not been repealed.
- (2) Without limiting the operation of subclause (1), the head of a Public Service agency may, in relation to any recruitment action that was pending under the former Act immediately before 24 February 2014 or that is commenced under the new Act before 24 February 2015, choose to proceed:
 - (a) under the provisions of the former Act and the regulations made under that Act relating to the recruitment of employees (the *former recruitment provisions*), in which case those provisions continue, despite their repeal, to have effect in relation to the recruitment action, or
 - (b) under the provisions of the new Act, the regulations made under the new Act and the government sector employment rules relating to the recruitment of employees (the *new recruitment procedures*).
- (3) However, if a person is employed in the Public Service under the former recruitment provisions, the person is to be assigned to a role in the Public Service and not be appointed to a position.
- (4) A person may not be employed in temporary employment under the former recruitment provisions for a period that extends beyond 24 February 2015.
- (5) Any recruitment action taken by the head of a Public Service agency on and from 24 February 2015 must comply with the new recruitment procedures.

4 Eligibility lists

- (1) An eligibility list that was current under section 20 of the former Act immediately before 24 February 2014 may continue to be used in relation to a role that is comparable to the position for which the list was created, but only until such time as the list would otherwise cease to have effect under section 20 (3) of the former Act.
- (2) If, in accordance with clause 3 (2) (a) of this Schedule, recruitment action is taken under the provisions of the former Act and the regulations made under that Act, an eligibility list for the purposes of that recruitment may be created under section 20 of the former Act as if the former Act had not been repealed.
- (3) Any such eligibility list ceases to have effect on 24 February 2015.

5 Pending promotion appeals before IRC

The amendments made to the *Industrial Relations Act 1996* by Schedule 6.4 to the new Act do not apply in relation to a promotion appeal that was lodged under Part 7 of Chapter 2 of the *Industrial Relations Act 1996* before 24 February 2014 and any such appeal may continue to be heard and dealt with as if those amendments had not been made.

6 Existing appointments on probation

Any appointment on probation made under section 23 of the former Act that had effect immediately before 24 February 2014 continues to have effect under the government sector employment rules as a condition of the person's engagement as a Public Service employee.

7 Existing acting appointments

Any appointment to act in a position under section 24 of the former Act that had effect immediately before 24 February 2014 is taken to be a temporary assignment under the new Act to a role that is comparable to the position concerned.

8 Retirement on medical grounds

If any action to retire a person under section 25 of the former Act was commenced but not completed before 24 February 2014 that action may be completed under section 56 of the new Act.

9 Dealing with excess employees under former Act

If any action was being taken in respect of a person under section 56 of the former Act immediately before 24 February 2014, the person may continue to be dealt with under that section as if it had not been repealed. For that purpose, section 103A of the former Act continues to apply despite its repeal.

10 Existing EEO plans

- (1) The head of a government sector agency is taken to have complied with the requirements of section 63 of the new Act in relation to workforce diversity within the agency if the agency head complies with an equal employment opportunity management plan in force under Part 9A of the *Anti-Discrimination Act 1977* immediately before 24 February 2014.
- (2) This clause ceases to have effect on 24 February 2015.

11 Existing transfers and secondments

- (1) Any transfer (whether by way of secondment or otherwise) under section 86 or 87 (1) of the former Act that had effect immediately before 24 February 2014 is taken to have effect under section 64 of the new Act.

- (2) In the case of any such existing transfer that is by way of a temporary secondment, the person is entitled to return to the government sector agency from which the person was seconded under the former Act at the same work level at which the person was employed immediately before being assigned.

12 Existing temporary assignments

- (1) Any assignment under section 88 or 88A of the former Act that had effect immediately before 24 February 2014 is taken to have effect under section 66 of the new Act.
- (2) In the case of any such existing assignment involving a person who is a Public Service employee, the person is entitled to return to the Public Service agency from which the person was assigned under the former Act at the same work level at which the person was employed immediately before being assigned.

13 Existing performance management systems

Any performance management system in operation under section 101A of the former Act immediately before 24 February 2014 is taken to be a performance management system under section 67 of the new Act.