



New South Wales

Government Sector Employment Rules 2014 (Amendment No 2)

under the

Government Sector Employment Act 2013

I, Graeme Head, Public Service Commissioner, in pursuance of the *Government Sector Employment Act 2013*, make the following Rule.

GRAEME HEAD
Public Service Commissioner

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Government Sector Employment Act 2013

1 Name of Rule

This Rule is the *Government Sector Employment Rules 2014 (Amendment No 2)*.

2 Commencement

This Rule commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Government Sector Employment Rules 2014

[1] Rule 9 Health assessment

Omit “an approved medical practitioner” from rule 9 (3) (b).

Insert instead “a medical practitioner approved by the agency head or the Commissioner”.

[2] Rule 9 (3) (c)

Omit “, by an approved medical practitioner, optometrist or other appropriately qualified health care professional,”.

Insert instead “by a medical practitioner, optometrist or other appropriately qualified health care professional, approved by the agency head or the Commissioner,”.

[3] Rule 9 (4)

Insert “person’s” before “employer”.

[4] Rule 9 (5)

Omit the subrule.

[5] Rule 10 Maximum period of temporary employment

Insert after rule 10 (1):

(1A) Despite subrule (1), a Public Service non-executive employee may be employed in temporary employment in the same Public Service agency for a further period or periods of up to 4 years (the *maximum temporary period*) if the decision to employ the person for any such further period is based on a comparative assessment after external advertising. The recruitment process should be commenced not later than 3 months before the start of the proposed further period of temporary employment.

(1B) If a person is employed under subrule (1A) after a comparative assessment (the *initial assessment*) for less than the maximum temporary period and the person is subsequently employed for a further period within the maximum temporary period, a further comparative assessment is not required in connection with the decision to employ the person for that further period if:

- (a) the person is to be assigned to the same role as the role to which the person was assigned after the initial assessment, or
- (b) the agency head is satisfied that it is appropriate to rely on the initial assessment for the role to which the person is to be assigned.

[6] Rule 10 (2)

Omit “The maximum total period of 4 years may, with the approval of the Commissioner”.

Insert instead “The period of 4 years referred to in subrule (1) or (1A) may, with the approval of the Commissioner in any particular case”.

[7] Rule 12 Converting temporary or term employment to ongoing employment at-level

Insert after rule 12 (2):

- (3) The Commissioner may, on application by the head of a Public Service agency, determine that the conversion to ongoing employment at-level of an existing temporary employee (or class of existing temporary employees)

- specified in the determination is not required to comply with subrule (2). An *existing temporary employee* is a person referred to in subrule (1) who:
- (a) is currently employed in the agency as a Public Service non-executive employee, and
 - (b) is an existing temporary employee as referred to in clause 8C of Schedule 4 to the Act.
- (4) If such a determination is made in relation to an existing temporary employee, the agency head may, without complying with subrule (2), convert the person's employment to ongoing employment if the agency head is satisfied that the person has the qualifications, experience, standard of work performance and capabilities to enable the person to perform the duties of the role to which the person is to be assigned in the ongoing employment.
 - (5) A conversion to ongoing employment in accordance with subrule (4) is to be completed by no later than 23 February 2017 or such earlier date as may be specified in the determination.
 - (6) An application for a determination by the Commissioner under this rule must specify the following:
 - (a) the existing temporary employees or class of existing temporary employees to which the application relates,
 - (b) the reasons why the exemption from subrule (2) is required,
 - (c) a timeframe for the conversion (if it is to occur) of existing temporary employees to ongoing employment in accordance with the exemption,
 - (d) a timetable setting out the key milestones that will enable the agency to achieve that timeframe.
 - (7) A determination by the Commissioner under this rule is to be in writing and may be varied or revoked by a further determination.
 - (8) The conversion to ongoing employment of an existing temporary employee in accordance with clause 8C (4) of Schedule 4 to the Act does not require the approval of the Commissioner.

[8] Rule 20 Ongoing employment

Insert at the end of the rule:

- (2) The Commissioner may, on application by the head of a Public Service agency, determine that the decision to employ an existing non-executive employee in ongoing employment at a higher classification of work than the employee's current classification in the agency is not required to comply with subrule (1). An *existing non-executive employee* is a Public Service non-executive employee (or class of existing non-executive employees) specified in the determination who:
 - (a) is currently employed in ongoing employment in the agency, and
 - (b) has been performing duties in the agency at that higher classification or at a classification similar to that higher classification for a period of at least 12 months.
- (3) If such a determination is made in relation to an existing non-executive employee, the agency head may, without complying with subrule (1), employ the person in ongoing employment at that higher classification of work if the agency head is satisfied that the person has the qualifications, experience,

standard of work performance and capabilities to enable the person to perform the duties associated with that higher classification.

Note. Employment in a classification of work only applies to persons who are non-executive employees.

- (4) The process for employing a person in accordance with subrule (3) is to be completed by no later than 23 February 2017 or such earlier date as may be specified in the determination.
- (5) An application under subrule (2) must specify the following:
 - (a) the existing non-executive employees or class of existing non-executive employees to which the application relates,
 - (b) the reasons why the exemption from subrule (1) is required,
 - (c) a timeframe for the employment (if it is to occur) of those employees in ongoing employment in accordance with the exemption,
 - (d) a timetable setting out the key milestones that will enable the agency to achieve that timeframe.
- (6) A determination by the Commissioner under this rule is to be in writing and may be varied or revoked by a further determination.

[9] Rules 22B–22D

Insert after rule 22A:

22B Use of initial suitability and comparative assessments when extending period of temporary or term employment

If a person is employed in accordance with rule 21 or 22 after a suitability or comparative assessment (the *initial assessment*) and the person's temporary or term employment is subsequently extended for a further period, a further suitability or comparative assessment is not required in connection with the decision to employ the person for that further period if:

- (a) the person is to be assigned to the same role as the role to which the person was assigned after the initial assessment, or
- (b) the person's employer is satisfied that it is appropriate to rely on the initial assessment for the role to which the person is to be assigned.

Note. The extension of a person's temporary employment in the same agency is limited by the maximum period of temporary employment under rule 10 (unless an exception under rule 10 (3) applies).

22C Exemption from rules 21 and 22 for temporary employees employed under former recruitment provisions

- (1) This rule applies to a temporary employee who:
 - (a) is employed under the former recruitment provisions as referred to in clause 3 of Schedule 4 to the *Government Sector Employment Regulation 2014*, and
 - (b) is an employee to whom an exception under rule 10 (3) applies.
- (2) The decision to extend the period of employment of any such temporary employee is not required to comply with rule 21 or 22.

22D Exemption from rules 21 and 22 for temporary employees who are subject to Commissioner's determination

- (1) In this rule:
temporary employee means a person who:
 - (a) is an existing temporary employee as referred to in clause 8C of Schedule 4 to the Act, or
 - (b) is employed in temporary employment under the former recruitment provisions as referred to in clause 3 of Schedule 4 to the *Government Sector Employment Regulation 2014*.
- (2) The Commissioner may, on application by the head of a Public Service agency, determine that the decision to extend the period of employment of a temporary employee (or class of temporary employees) specified in the determination is not required to comply with rule 21 or 22.
- (3) If such a determination is made in relation to a temporary employee, the agency head may, without complying with rule 21 or 22, extend the period of employment of the temporary employee to a date that is no later than the date specified in the Commissioner's determination if the agency head is satisfied that the person has the qualifications, experience, standard of work performance and capabilities to enable the person to perform the duties of the role in which the person is employed.
- (4) The date to which the period of employment of a temporary employee may be extended under subrule (3) cannot be later than 23 February 2017.
- (5) An application under this rule must specify the following:
 - (a) the temporary employees or class of temporary employees to which the application relates,
 - (b) the reasons why the exemption from rules 21 and 22 is required,
 - (c) the latest date or dates to which the employment of the temporary employees to which the application relates is proposed to be extended,
 - (d) a timetable setting out the key milestones that will enable the agency to achieve compliance with the requirements of rules 21 and 22 when the proposed exemption ceases to apply.
- (6) A determination by the Commissioner under this rule is to be in writing and may be varied or revoked by a further determination.
- (7) Without affecting the operation of subrule (4), rule 10 does not apply in relation to the extension of the period of employment of a temporary employee under subrule (3).