



New South Wales

# **Government Sector Employment Rules (Amendment No 4—Model Contracts) 2015**

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

## **Government Sector Employment Rules (Amendment No 4— Model Contracts) 2015**

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### **1 Name of Rule**

This Rule is the *Government Sector Employment Rules (Amendment No 4—Model Contracts) 2015*.

### **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 24 Request for review of promotion decisions relating to non-executive roles

Insert after rule 24 (4):

- (5) A reference in this rule to a role is a reference to a role with a salary that does not exceed the maximum salary for a clerk (grade 12) in the Public Service.

### [2] Rule 43 Model contracts of employment for Public Service senior executives (including Secretaries of Departments and other agency heads) and for certain statutory officers

Omit rule 43 (3). Insert instead:

- (3) The contract of employment specified in Schedule 3 is, for the purposes of section 39 (3) of the Act, prescribed as the model contract of employment for a statutory officer:
  - (a) to whom the senior executive employment provisions apply under and in accordance with the Act under which the statutory officer is appointed, and
  - (b) who is appointed to office after the commencement of the *Government Sector Employment Rules (Amendment No 4—Model Contracts) 2015*.

**Note.** See also clause 14 of Schedule 4 to the Act which provides that the senior executive employment provisions do not apply in relation to certain statutory officers who were holding office on 4.7.2014.
- (4) For the purposes of subrule (3), the *senior executive employment provisions* are the provisions of or made under the *Government Sector Employment Act 2013* relating to the employment of Public Service senior executives.
- (5) The provisions of a model contract of employment prescribed under this rule:
  - (a) are mandatory (except any provisions that are not applicable as indicated in the model contract), and
  - (b) are subject to the Act, the *Government Sector Employment Regulation 2014* and these Rules.
- (6) Subrule (3) does not apply in relation to a Deputy Ombudsman or an Assistant Ombudsman.
- (7) The amendments to Schedules 1 and 2 made by the *Government Sector Employment Rules (Amendment No 4—Model Contracts) 2015* do not apply to contracts of employment entered into before the commencement of those amendments.

### [3] Schedules 1 and 2

Omit “**Contract of employment under Government Sector Employment Act 2013**” wherever occurring.

Insert instead “**Contract of employment under section 39 of the Government Sector Employment Act 2013**”.

### [4] Schedule 1, clause 3.1

Omit “(being the [*insert head of agency in which the Senior Executive is employed*] on the making of this contract)” from the definition of “Employer”.

**[5] Schedules 1 and 2**

Omit the definitions of “GSE Regulations” and “GSE Rules” wherever occurring in clause 3.1.

Insert instead:

“GSE Regulation” means the *Government Sector Employment Regulation 2014*.

“GSE Rules” means the *Government Sector Employment Rules 2014*.

**[6] Schedules 1 and 2**

Insert “that are defined in the GSE Act” after “contract” wherever occurring in clause 3.2.

**[7] Schedules 1 and 2 (except where otherwise amended by this Schedule)**

Omit “GSE Regulations” wherever occurring. Insert instead “GSE Regulation”.

**[8] Schedule 1, clause 12.1**

Insert “Any such increase is at the discretion of the Employer and is not an entitlement.” after “role of the Senior Executive.”.

**[9] Schedule 1, clause 12.2**

Omit “vary”. Insert instead “increase or reduce”.

**[10] Schedule 1, clause 16.2**

Insert after clause 16.1:

16.2 If notice of resignation is provided, the Employer may direct the Senior Executive to cease duties immediately or at some other specified time during the notice period. Any such direction does not affect the Senior Executive’s entitlement to receive remuneration or to accrue leave during the notice period.

**[11] Schedule 1, clause 17.1**

Omit “and under the GSE Act”. Insert instead “clause 39 of the GSE Regulation”.

**[12] Schedule 1, clause 17.2**

Omit “the GSE Regulations”. Insert instead “clause 39 of the GSE Regulation”.

**[13] Schedule 1**

Omit the matter relating to intellectual property. Insert instead:

**Intellectual property**

19.1 Subject to any written agreement to the contrary between the parties, all intellectual property developed by the Senior Executive in the course of his or her employment is the sole property of the Employer.

**[14] Schedule 1**

Re-number clauses 19.1 and 19.2 as clauses 20.1 and 20.2, respectively, and re-number clause 20.1 as clause 21.1.

**[15] Schedule 2**

Insert before clause 1:

This contract constitutes the Secretary/Agency Head's instrument of appointment to office.

**[16] Schedule 2, clause 3.1**

Omit "(being the *[insert name of the office who makes the appointment]* on the making of this contract)" from the definition of "Employer".

**[17] Schedule 2, clause 11.1**

Insert "Any such increase is at the discretion of the Employer and is not an entitlement." after "office of the Secretary/Agency Head."

**[18] Schedule 2, clause 11.2**

Omit "vary". Insert instead "increase or reduce".

**[19] Schedule 2, clause 14.2**

Insert after clause 14.1:

14.2 If notice of resignation is provided, the Employer may direct the Secretary/Agency Head to cease duties immediately or at some other specified time during the notice period. Any such direction does not affect the Secretary/Agency Head's entitlement to receive remuneration or to accrue leave during the notice period.

**[20] Schedule 2, clause 15.1**

Omit "and under the GSE Act". Insert instead "clause 39 of the GSE Regulation".

**[21] Schedule 2, clause 15.2**

Omit "the GSE Regulations". Insert instead "clause 39 of the GSE Regulation".

**[22] Schedule 2**

Renumber clauses 16.1 and 16.2 as clauses 17.1 and 17.2, renumber clauses 17.1 and 17.2 as clauses 19.1 and 19.2, and renumber clause 18.1 as clause 20.1.

**[23] Schedule 2**

Insert after clause 15.2:

**Other paid work**

16.1 The Secretary/Agency Head will not undertake any other paid work without the permission of the Employer.

**[24] Schedule 2**

Omit the matter relating to intellectual property. Insert instead:

**Intellectual property**

18.1 Subject to any written agreement to the contrary between the parties, all intellectual property developed by the Secretary/Agency Head in the course of his or her employment is the sole property of the Employer.

**[25] Schedule 3**

Insert after Schedule 2:

**Schedule 3 Model contract of employment for statutory office holders**

(Rule 43)

**Contract of employment under section 39 of the Government Sector Employment Act 2013**

**This contract of employment is made**

on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

**Between**

THE GOVERNMENT OF NEW SOUTH WALES

**and**

[*Insert full name*] (the “Office Holder”)

[*This contract may constitute the Office Holder’s instrument of appointment if the Minister is authorised to make the appointment*]

**Parties**

1.1 This contract of employment is between the Office Holder and the Government of New South Wales.

**Appointment to office**

[*Include this provision if this contract constitutes the instrument of appointment*]

2.1 The Office Holder is appointed to the office described in Appendix A on [*insert date*] and the Office Holder’s employment under this contract commences on that date.

**Commencement of employment**

[*Include this provision if the Office Holder is appointed by a separate instrument of appointment*]

2.1 The employment of the Office Holder under this contract commences on the date the Office Holder is appointed to the office described in Appendix A.

**Definitions**

3.1 In this contract:

“GSE Act” means the Government Sector Employment Act 2013.

“GSE Regulation” means the Government Sector Employment Regulation 2014.

“GSE Rules” means the Government Sector Employment Rules 2014.

“Minister” means the Minister administering the provisions of the Act under which the Office Holder is appointed.

3.2 Terms used in this contract that are defined in the GSE Act have the same meanings as they have in the GSE Act.

**Band**

4.1 The Office Holder is employed in Band [*specify band*].

**Office**

5.1 This contract applies to the office described in Appendix A.

5.2 The Office Holder must perform the duties and responsibilities of the office to which the Office Holder is appointed.

### **Core values**

6.1 The Office Holder agrees to perform the duties and responsibilities of the office in accordance with the government sector core values under section 7 of the GSE Act.

### **Term of appointment**

*[Include this provision if this contract constitutes the instrument of appointment]*

7.1 The Office Holder is appointed for *[specify term of office in accordance with the Act under which the person is appointed]*, and the Office Holder's employment under this contract is for that period, unless the Office Holder vacates office sooner in accordance with the Act under which the Office Holder is appointed or *[include only if the Act under which the Office Holder is appointed provides that the provisions of the GSE Act relating to the termination of employment of Public Service senior executives apply to the Office Holder]* the Office Holder's employment is sooner terminated.

### **Duration of employment**

*[Include this provision if the Office Holder is appointed by a separate instrument of appointment]*

7.1 The Office Holder is employed under this contract for the period of *[specify term of office in accordance with the Act under which the person is appointed]* unless the Office Holder vacates office sooner in accordance with the Act under which the Office Holder is appointed or *[include only if the Act under which the Office Holder is appointed provides that the provisions of the GSE Act relating to the termination of employment of Public Service senior executives apply to the Office Holder]* the Office Holder's employment is sooner terminated.

### **Total remuneration package and allowances**

8.1 The total remuneration package (comprising monetary remuneration and employment benefits) of the Office Holder is specified in Appendix B.

8.2 The Office Holder may elect from time to time to allocate the total remuneration package as between monetary remuneration and employment benefits in accordance with the GSE Act.

8.3 The Office Holder is entitled to the allowances specified in Appendix B and any allowances conferred under the GSE Act and the GSE Regulation.

8.4 The Minister may, subject to the GSE Act, vary the total remuneration package and allowances of the Office Holder from time to time.

### **Progression**

9.1 The Office Holder's total remuneration package may be increased within the range of remuneration applicable to the office. Any such increase is at the discretion of the Minister and is not an entitlement.

9.2 This clause does not limit the Minister's power to increase or reduce the Office Holder's total remuneration package in accordance with the GSE Act.

### **Leave**

10.1 The Office Holder is entitled to leave in accordance with the provisions of the GSE Act, the GSE Regulation and the GSE Rules relating to leave. For that purpose, those provisions apply to the Office Holder as if a reference in any such provision to a Public Service senior executive included a reference to the Office Holder.

### **Compensation for termination**

*[Note. If the Office Holder is removed from office by the Governor under section 77 of the GSE Act, the Office Holder is entitled to compensation in accordance with section 78 of that Act.]*

*[The following provisions are to be included only if the Act under which the Office Holder is appointed provides that the provisions of the GSE Act relating to the termination of employment of Public Service senior executives apply to the Office Holder]*

11.1 The Office Holder is entitled to the payment of compensation, on the termination of employment by the Minister, as determined by clause 39 of the GSE Regulation.

11.2 If the Office Holder's employment is terminated with compensation, the Office Holder agrees that if the Office Holder is re-employed in the public sector (as referred to in section 41 of the GSE Act) within the period to which the compensation relates the Office Holder will repay the proportionate amount, as calculated in accordance with clause 39 of the GSE Regulation, before the commencement of that re-employment. This obligation continues even though the contract of employment is terminated.

### **Resignation**

12.1 The Office Holder may resign by instrument in writing addressed to the Minister.

### **Confidentiality**

*[The following provisions are mandatory to the extent that the contract must contain obligations relating to confidentiality. However, the following provisions may be substituted by a different set of obligations (that are not inconsistent with the following provisions) to suit the particular requirements of the statutory office concerned.]*

13.1 During his or her employment, the Office Holder will not disclose, without lawful authority, any confidential or secret information acquired as a consequence of the employment.

13.2 On termination of employment the Office Holder will not, without lawful authority, disclose or make *[commercial]* use of any confidential or secret information acquired by the Office Holder as a consequence of his or her employment.

### **Intellectual property**

14.1 Subject to any written agreement to the contrary between the parties, all intellectual property developed by the Office Holder in the course of his or her employment is the sole property of the Minister.

### **Variation**

15.1 This contract may only be varied in accordance with the GSE Act and this contract.

## **APPENDICES**

### **Appendix A—Office**

*[insert office to which appointed]*

### **Appendix B—Remuneration package and allowances**

*[This Appendix may be substituted by the Minister]*

The total remuneration package of the Office Holder is *[insert \$ value of package]*, comprising *[insert components of remuneration package]*:

The Office Holder is entitled to allowances under the GSE Regulation and the following additional allowances *[insert any additional allowances]*:

### **Signatures**

#### **The Minister**

Signed

\_\_\_\_\_

Date

\_\_\_\_\_

Name



\_\_\_\_\_

pursuant to the GSE Act on behalf of the Government of NSW.

Witnessed by

\_\_\_\_\_

Witness name in full [*printed*]

\_\_\_\_\_

Witness address

\_\_\_\_\_

**The Office Holder**  
Signed

\_\_\_\_\_

Date

\_\_\_\_\_

Name in full [*printed*]

\_\_\_\_\_

Witnessed by

\_\_\_\_\_

Witness name in full [*printed*]

\_\_\_\_\_

Witness address

\_\_\_\_\_