



New South Wales

# Government Sector Employment Amendment (Transitional) Regulation 2015

under the

Government Sector Employment Act 2013

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

MIKE BAIRD, MP  
Premier

## **Explanatory note**

The object of this Regulation is to make further provision with respect to transitional arrangements in relation to Public Service senior executives and other matters.

This Regulation is made under the *Government Sector Employment Act 2013*, including section 88 (the general regulation-making power) and clause 2 of Schedule 4 (Savings, transitional and other provisions).

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### **1 Name of Regulation**

This Regulation is the *Government Sector Employment Amendment (Transitional) Regulation 2015*.

### **2 Commencement**

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

## **Schedule 1      Amendment of Schedule 4 to the Government Sector Employment Act 2013 No 40**

**[1]    Clauses 6 (4) (c), 7 (7) (c), 8 (2) (d) and 8A (3) (c)**

Insert “or as a result of progression within the applicable remuneration range” after “*Statutory and Other Offices Remuneration Act 1975*” wherever occurring.

**[2]    Clauses 6 (4) (d), 7 (7) (d) and 8 (2) (e)**

Insert “(and is subject to any requirements under that section relating to the refund of that compensation)” after “under section 78 of the former Act” wherever occurring.

**[3]    Clause 7A Review of senior executive structure for implementation of new executive employment arrangements under this Act**

Insert after clause 7A (2):

- (2A) After the Secretary of a Department or the head of a separate Public Service agency completes the review, a senior executive implementation plan is to be submitted to the Commissioner that outlines the proposed transition of senior executive employment to the new arrangements under this Act, including a proposed timetable to transition to those new arrangements by 24 February 2017.

**[4]    Clause 7A (3)–(3E)**

Omit clause 7A (3). Insert instead:

- (3) The Commissioner may approve a senior executive implementation plan and 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, is to transition to those new arrangements (the *implementation date* for the agency or part of the agency). The date so determined may be changed by a further determination of the Commissioner (but only to a date before 24 February 2017).
- (3A) The date on which a person ceases to be a transitional former senior executive referred to in clause 8 is the implementation date for the Public Service agency or relevant part of the Public Service agency in which the person is employed, unless another date becomes the implementation date for the executive under subclause (3B), (3C), (3D) or (3E) or a different date is determined for the executive in accordance with this clause (the *implementation date* for the executive).
- (3B) If, before the implementation date for the Public Service agency or relevant part of the Public Service agency, a transitional former senior executive:
- (a) is employed in a role (other than by temporary assignment) in the new senior executive structure of the agency or of another agency and enters into a contract of employment under this Act, or
- (b) is employed in a non-executive role (other than by temporary assignment) under Division 5 of Part 4 of this Act,
- the implementation date for the executive becomes the date on which the executive is so employed.
- (3C) If, before an implementation date is determined for the Public Service agency or relevant part of the Public Service agency, a transitional former senior executive is employed as a Public Service non-executive employee under Division 5 of Part 4 of this Act, the implementation date for the executive becomes the date on which the executive is so employed.

- (3D) If, as the result of a comparative assessment in accordance with the government sector employment rules, a transitional former senior executive:
- (a) is assigned to a different role in a part of the Public Service agency in which the executive is currently employed after the implementation date determined for that part of the agency, and
  - (b) enters into a contract of employment under this Act in relation to that role,
- the implementation date for the executive becomes the date on which the executive is so assigned.
- (3E) If a transitional former senior executive is, as the result of a comparative assessment in accordance with the government sector employment rules, employed and assigned to a role in a different agency after the implementation date determined for the agency or the part of the agency in which the role is located, the implementation date for the executive becomes the date on which the executive is so employed and assigned and enters into a contract of employment under this Act.

**[5] Clause 7A (5) and (6)**

Omit the subclauses. Insert instead:

- (5) Without limiting the date that may be determined under subclause (4) as the implementation date for a transitional former senior executive, the implementation date for an executive may be extended by the Commissioner to a date before 24 February 2017 that is beyond the implementation date for other executives in the Public Service agency concerned. The purposes for extending the implementation date may include 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) This clause applies to transitional former senior executives employed in the NSW Electoral Commission Staff Agency as if references in this clause to 24 February 2017 were references to such later date (not being a date later than 23 August 2017) that the Commissioner may approve on the application of the Electoral Commissioner.

**[6] Clause 8 Senior executives (other than Secretaries and other heads of agencies)—transitional arrangements**

Omit “was employed for a term under the former Act, in term employment” from clause 8 (3) (a).

Insert instead “was a temporary employee under the former Act, in temporary employment”.

**[7] Clause 8 (3) (b)**

Omit “and is not subject to re-assignment to a role in another Public Service agency without the agreement of the executive”.

**[8] Clause 8 (3) (d)**

Insert at the end of clause 8 (3) (c):

- (d) if the executive’s employment is terminated under section 47 of this Act on or after the commencement of this Act, the executive is entitled to such payments (such as a severance or redundancy payment) as are

provided under this Act in connection with the termination (including under the conditions of employment preserved by clause 9).

**[9] Clause 8 (3A)**

Insert after clause 8 (3):

- (3A) If a transitional former senior executive is (in accordance with this Act) assigned to a different role in a Public Service agency, or employed and assigned to a role in a different agency:
- (a) the person does not (except as provided by clause 7A (3D) or (3E)) cease to be a transitional former senior executive, and
  - (b) the remuneration package of the transitional former senior executive is, despite subclause (2) (d) and subject to section 38 (8), the remuneration package for the role to which the executive has been so assigned (or so employed and assigned).

**[10] Clause 8 (4) (b)**

Insert “, and whether following recruitment action or redeployment as an excess employee” after “non-executive employee”.

**[11] Clause 8 (5) (c)**

Insert “as they apply to the recruitment of a person who is not a Public Service employee” after “employment” where secondly occurring.

**[12] Clause 8 (5) (d)**

Omit “any such role”. Insert instead “any such new role”.

**[13] Clause 8 (5)**

Insert at the end of clause 8 (5) (d):

For the purposes of this paragraph, executives or other employees in a relevant part of the agency includes executives or other employees in any related agency (whether a Department or a Public Service executive agency) whose roles are being consolidated in connection with the recruitment action. Transitional former senior executives may be included in more than one pool for the purposes of initial recruitment action for different roles.

**[14] Clause 8 (6) and (7)**

Insert after clause 8 (5):

- (6) Initial recruitment action to fill a role within the new senior executive structure of a Public Service agency is not required to be limited as referred to in subclause (5) (d) if:
- (a) there are no candidates of the kind referred to in subclause (5) (d) (i) or (ii) for the recruitment action concerned, or
  - (b) the role is not similar to any role in the former executive structure of the agency.
- (7) If a transitional former senior executive is temporarily assigned to work in or outside the agency in which the executive is employed:
- (a) the person does not cease to be a transitional former senior executive, and the implementation date for the executive does not change, because of that temporary assignment, and

- (b) the person retains his or her eligibility under subclause (5) as a candidate for initial recruitment action in that agency, and
- (c) the person is also eligible under subclause (5) as a candidate for initial recruitment action in relation to a similar role in the other agency to which the person is temporarily assigned.

**[15] Clause 8A Statutory senior executives**

Insert at the end of clause 8A (3):

, and

- (f) is to be included in any initial recruitment action referred to in clause 8 (5) to fill a role that replaces the statutory office of the officer or that is a similar role.

**[16] Clause 8B Transitional provisions relating to remuneration of senior executives**

Omit clause 8B (3). Insert instead:

- (3) This subclause applies to a former SES executive referred to in clause 8 (or an officer referred to in clause 8A) who is subsequently employed in accordance with the provisions of this Act as a Public Service senior executive and who is assigned to a new role (or subsequently assigned to a different role) that is of equivalent work value as the person's former position, office or role. The remuneration package of the person in any such new or different role is to be not less than the remuneration package of the person immediately before the person was so subsequently employed.

**[17] Clause 8B (4)**

Omit "remuneration payable immediately before the repeal of the former Act".

Insert instead "remuneration payable immediately before the person was so subsequently employed".

**[18] Clause 14 Continuation in office of statutory and other officers**

Insert "(and any conditions of employment that apply under clause 8A)" after "The appointment and term of office".