



New South Wales

Government Sector Employment Amendment (Health Service Senior Executives) Regulation 2016

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 amend the *Government Sector Employment Regulation 2014* as a consequence of the amendments made by the *Government Sector Employment Legislation Amendment Act 2016* to the *Health Services Act 1997* that align the employment arrangements for senior executives in the NSW Health Service with those that apply to Public Service senior executives.

This Regulation also amends Schedule 4 to the *Government Sector Employment Act 2013* to enable the Public Service Commissioner to extend the date on which senior executives currently employed in the Independent Transport Safety Regulator Staff Agency will transition to the new senior executive employment arrangements under that Act.

This Regulation is made under the *Government Sector Employment Act 2013*, including section 39 (7) (as applied by section 121F (7) of the *Health Services Act 1997*), section 88 (3A) (as applied by section 121H (4) of the *Health Services Act 1997*) 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 (Health Service Senior Executives) Regulation 2016*.

2 Commencement

This Regulation commences on 1 January 2017 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Government Sector Employment Regulation 2014

[1] Clause 3 Definitions

Insert in alphabetical order in clause 3 (1):

employer of a Health Service senior executive means the person who, in accordance with section 116 of the *Health Services Act 1997*, exercises employer functions in relation to the executive.

Health Secretary means the Secretary of the Ministry of Health.

Health Service senior executive means a person employed in the NSW Health Service as a NSW Health Service senior executive.

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

Omit clause 24 (4) (including the note). Insert instead:

- (4) This clause does not apply to Public Service senior executives or Health Service senior executives.

Note. In the case of Public Service senior executives, see section 41 (3) of the Act and clause 39 of this Regulation. In the case of Health Service senior executives, see section 121H (3) of the *Health Services Act 1997* and clause 41 of this Regulation.

[3] Clause 35 Secondments to staff of political office holders

Insert after clause 35 (11):

- (12) The chief executive of a local health district or specialty network governed health corporation (within the meaning of the *Health Services Act 1997*) may not be seconded to the staff of a political office holder under this clause without the concurrence of the Health Secretary.
- (13) The reference in subclause (2) to the head of the agency in which a person is employed is, in the case where the person is a Health Service senior executive, taken to be a reference to the employer of the executive.

[4] Part 5

Insert after Part 4:

Part 5 Additional provisions relating to Health Service senior executives

40 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 in relation to Health Service senior executives:

- (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 Health Secretary, are necessary or convenient to be dealt with in the contract of employment.

41 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 Health 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 of the executive:
 - (a) if the employment is terminated under section 121H of the *Health Services Act 1997* 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 121H of the *Health Services Act 1997*—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 Health Service senior executive's employment is terminated for misconduct.
- (3) The proportionate amount of a payment to be refunded under section 121H (3) of the *Health Services Act 1997* 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 Health 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.

42 Accrued leave of non-executive employees who become Health Service senior executives

- (1) This clause applies to a person who, immediately before being employed as a Health Service senior executive, was employed in the NSW Health Service otherwise than as a Health Service senior executive.
- (2) If the person:
 - (a) had a right to accrued extended or annual leave with pay immediately before being employed as a Health 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 employer of the Health 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 Health Service senior executive.
- (5) A person who was employed in the public sector when employed as a Health Service senior executive retains any right to extended, annual, sick or other leave accrued or accruing to the person immediately before the employment as a Health Service 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.

Schedule 2 Amendment of Government Sector Employment Act 2013 No 40

[1] Schedule 4 Savings, transitional and other provisions

Omit clause 7A (6). Insert instead:

- (6) This clause applies to transitional former senior executives employed in the New South Wales Electoral Commission Staff Agency or the Independent Transport Safety Regulator 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 or the Chief Executive of the Independent Transport Safety Regulator (as the case requires).