



New South Wales

Government Sector Employment (Transport Service Senior Executives) Rules 2017

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 Rules.

GRAEME HEAD
Public Service Commissioner

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Part 1 Preliminary

1 Name of Rules

These Rules are the *Government Sector Employment (Transport Service Senior Executives) Rules 2017*.

2 Commencement

These Rules commence on 1 July 2017 and are required to be published on the NSW legislation website.

3 Definitions

(1) In these Rules:

executive role means a role in the Transport Service that is or is to be assigned to a Transport executive.

GSE Act means the *Government Sector Employment Act 2013*.

Transport executive means a person employed in the Transport Service as a Transport Service senior executive.

Transport Secretary means the Secretary of the Department of Transport.

Note. The GSE Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of these Rules.

(2) Notes included in these Rules do not form part of these Rules.

4 Application of Rules

These Rules apply only in relation to Transport executives.

Note. Various provisions of the *Government Sector Employment (General) Rules 2014* also apply in relation to Transport executives, including Parts 6 and 7.

Part 2 Initial engagement

5 Probation period (cf rule 5 GSE (General) Rules 2014)

- (1) The Transport Secretary may determine that the engagement of a Transport executive in employment in the Transport Service for the first time or following the cessation of any previous employment in the Transport Service is subject to the condition that the executive is required:
 - (a) to serve a period of probation on commencing the executive's employment, and
 - (b) to satisfy the requirements for the executive role to which the executive is assigned during that period of probation.
- (2) Any such period of probation is to be no more than 6 months.
- (3) If a Transport executive is required to serve a period of probation, the Transport Secretary may, at any time during or at the end of the probation period:
 - (a) confirm the executive's employment, or
 - (b) terminate the executive's employment under section 68N of the *Transport Administration Act 1988*.

6 Citizenship or residency requirements (cf rules 6 & 46 (1) GSE (General) Rules 2014)

- (1) A person is not to be employed as a Transport executive unless the person is:
 - (a) an Australian citizen, or
 - (b) a permanent resident of Australia, or
 - (c) a New Zealand citizen with a current New Zealand passport, or
 - (d) a citizen of another country with a current visa that allows the person to work in Australia.
- (2) A Transport executive must ensure that the executive at all times holds and maintains the citizenship or other residency requirements for employment in the Transport Service.

7 Formal qualifications (cf rules 7 & 46 (1) GSE (General) Rules 2014)

- (1) This rule applies to a Transport executive whose engagement in the Transport Service is made subject to a condition that the executive is required to have such qualifications as the Transport Secretary may determine to be necessary for performing the duties of the executive role to which the executive is to be assigned.
- (2) A Transport executive who is required to have any such qualifications but who has not provided evidence of the qualifications may be employed on the condition that the executive provides that evidence in the time and manner determined by the Transport Secretary.
- (3) A Transport executive must ensure that the executive at all times holds and maintains the qualifications required for the executive's role.

8 Security and other clearances (cf rule 8 GSE (General) Rules 2014)

- (1) This rule applies to a Transport executive whose engagement in the Transport Service is made subject to a condition that the executive is required to have such security or other clearances as the Transport Secretary determines are necessary for performing the duties of the executive role to which the executive is to be assigned.
- (2) A Transport executive who is required to have any such security or other clearances must ensure that those clearances are maintained.

9 Health assessment (cf rule 9 GSE (General) Rules 2014)

- (1) This rule applies to a Transport executive whose engagement in the Transport Service is made subject to a condition that the executive's fitness to perform the duties of the executive role to which the executive is assigned has been confirmed by a health assessment.
- (2) For the purposes of this rule, *fitness to perform the duties of a role* includes the ability to carry out the executive role without endangering the health and safety of the public, of other persons employed in the Transport Service or of the Transport executive concerned.
- (3) The form of the health assessment may include (but is not limited to) any one or more of the following:
 - (a) a declaration (which may be a statutory declaration if required) provided by the Transport executive concerning any illness, disability or condition of which the executive is aware that might make the executive unfit to carry out the role,
 - (b) a medical examination by a medical practitioner approved by the Transport Secretary,
 - (c) an examination, by a medical practitioner, optometrist or other appropriately qualified health care professional, approved by the Transport Secretary, of a particular aspect of the executive's health likely to detrimentally affect the executive's capacity to carry out the role.
- (4) The Transport Secretary is to give the health care professional providing a health assessment referred to in subrule (3) (b) or (c) any requested information about the role concerned that is reasonably required for the purpose of providing the assessment.

Part 3 General conditions of employment

10 Transport executive not to undertake other paid work without permission (cf cl 7 GSE Reg 2014)

A Transport executive is not to undertake any other paid work without the permission of the Transport Secretary.

11 Reporting charges and convictions for serious criminal offences (cf cl 9 GSE Reg 2014)

- (1) A Transport executive who is charged with, or is convicted of, a serious criminal offence must immediately report that fact in writing to the Transport Secretary.
- (2) If the manager of a Transport executive has reason to believe that the executive:
 - (a) has been charged with, or has been convicted of, a serious criminal offence, and
 - (b) has not reported the matter to the Transport Secretary,the manager must immediately inform the Transport Secretary in writing that the manager has reason to believe that the executive has been charged with, or has been convicted of, the serious criminal offence.
- (3) In this clause:

convicted of an offence includes being found guilty of the offence without the court proceeding to a conviction.

manager of a Transport executive means the manager of the part of the Transport Service in which the executive is employed.

serious criminal offence means an offence committed in New South Wales that is punishable by imprisonment for 6 months or more or an offence committed elsewhere that, if it had been committed in New South Wales, would be an offence so punishable.

12 Transport executive to report bankruptcy etc (cf cl 10 GSE Reg 2014)

- (1) If a Transport executive becomes bankrupt or makes a composition, arrangement or assignment for the benefit of the executive's creditors, the executive must:
 - (a) immediately notify the Transport Secretary in writing of the bankruptcy, composition, arrangement or assignment, and
 - (b) within such period as the Transport Secretary specifies, provide the Transport Secretary with such further information with respect to the cause of the bankruptcy or of the making of the composition, arrangement or assignment as the Transport Secretary requires.
- (2) The Transport Secretary may, as a condition of the engagement of a person in an executive role relating to financial management, 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.

13 Absence from duty (cf cl 13 GSE Reg 2014)

- (1) A Transport executive must not be absent from duty unless reasonable cause is shown.
- (2) If a Transport executive is absent from duty because of illness or other emergency, the executive must, as soon as practicable, provide an explanation for the absence.

- (3) If the Transport executive fails to provide that explanation to the satisfaction of the Transport Secretary, the Transport Secretary is to cause to be deducted from the pay of the executive the amount paid to the executive for the period of absence.
- (4) This rule does not prevent the Transport Secretary from taking any other action that the Transport Secretary is authorised to take in relation to a Transport executive who is absent from duty without authorised leave.

14 Fitness for duty (cf cl 15 GSE Reg 2014)

- (1) If the Transport Secretary has reason to believe that a Transport executive may be unfit to perform, or be incapable of performing, the duties of the executive's employment, the Transport Secretary may direct the executive to submit to such medical examination or other health assessment as the Transport Secretary may, on the advice of a nominated medical assessor, consider necessary.
- (2) If the Transport Secretary gives a Transport executive a direction under subrule (1), the executive:
 - (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 executive is fit for duty.
- (3) If the Transport Secretary receives a health assessment from a nominated medical assessor that a Transport executive is fit for duty and the executive is absent from duty, the Transport Secretary is to direct in writing that the executive must resume duty.
- (4) If the Transport Secretary receives a health assessment from a nominated medical assessor that a Transport executive is not fit for duty:
 - (a) the Transport Secretary is to direct in writing that the executive must cease duty immediately or, if absent from duty, must not resume duty, and
 - (b) the executive must not resume duty unless the Transport Secretary, on the advice of a nominated medical assessor, approves the resumption of duty in writing.
- (5) If a direction has been given to a Transport executive under subrule (3) or (4), the nature of the leave, if any, to be granted to the executive during the absence from duty is to be determined by the Transport Secretary after consideration of any relevant advice of the nominated medical assessor.
- (6) The Transport Secretary is to give the health care professional providing a health assessment of a Transport executive under this rule any requested information about the employment of the executive that is reasonably required for the purpose of providing the assessment.
- (7) In this rule:
nominated medical assessor means a person or body, or a person who is a member of a class of persons, nominated by the Transport Secretary for the purposes of this rule.

15 Specific conditions of employment (cf rule 46 (2) & (3) GSE (General) Rules 2014)

- (1) The Transport Secretary may attach a specific condition of employment to the role assigned to a Transport executive.
- (2) Any such condition cannot vary the terms of the Transport executive's contract of employment (including changing the executive's remuneration package).

- (3) If the Transport executive assigned to a role to which a specific condition of employment is attached under this rule is assigned to a different role that does not have the condition of employment attached to it, the condition no longer applies in relation to the executive.

16 Assignment to other role—payment of allowances (cf rule 47 GSE (General) Rules 2014)

If an allowance of a particular kind is payable in relation to the role of a Transport executive and the executive is assigned to another role in respect of which the allowance is not payable, the executive is no longer entitled to the allowance.

17 Part-time work (cf rule 48 GSE (General) Rules 2014)

- (1) The Transport Secretary may approve a request by a Transport executive to undertake work on a part-time basis (namely, that the executive is not available for duty during the whole or part of a normal working day).
- (2) An agreement between the Transport Secretary and the Transport executive about part-time work must specify the days or parts of days when the executive is available for duty.
- (3) The remuneration of the Transport executive is to be calculated on a pro-rata basis (excluding allowances in the nature of reimbursement where the part-time executive will receive the same amount as a full-time executive in the same circumstances).

18 Performance management (cf rule 49 GSE (General) Rules 2014)

- (1) A Transport executive must, in accordance with the performance management system applying to the executive under section 67 of the GSE Act:
 - (a) enter into a performance agreement with the Transport Secretary, and
 - (b) have his or her performance reviewed at least annually.
- (2) A Transport executive may be employed under a contract of employment even though the Transport Service's performance management system has not been implemented or the executive has not entered into a performance agreement. In that case, the Transport executive's contract of employment is to be construed accordingly.

19 Capability-based assessments (cf rule 50 GSE (General) Rules 2014)

- (1) A Transport executive must, if directed to do so by the Transport Secretary, participate in:
 - (a) capability-based assessments on a periodic basis, and
 - (b) any assessment relating to the technical requirements of the executive's role.
- (2) A *capability-based assessment* is a process that assesses a person's capabilities against those required for an executive role.

20 Certain leave or payments not available (cf rule 51 GSE (General) Rules 2014)

A Transport executive is not entitled to any allocated day off for working flexible hours or to be paid for working overtime.

21 Election to be paid money value of accrued leave (cf cl 37 GSE Reg 2014)

- (1) A Transport 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.
- (2) The payment of any such accrued leave is subject to the approval of the Transport Secretary.

- (3) A Transport executive is not entitled to elect to be paid the money value of the executive's accrued annual leave if the payment would result in the executive having fewer than 10 days (or equivalent in the case of a part-time executive) annual leave.

Part 4 Contract of employment

22 Model contract of employment for Transport executives (cf rule 43 GSE (General) Rules 2014)

- (1) The contract of employment specified in Schedule 1 is, for the purposes of section 68H (2) of the *Transport Administration Act 1988*, prescribed as the model contract of employment for a Transport executive.
- (2) The provisions of the 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 GSE Act, the *Transport Administration Act 1988*, the *Government Sector Employment Regulation 2014* and these Rules.
- (3) Any amendment made to Schedule 1 does not apply to a contract of employment entered into before the amendment is made.

23 Requirement to comply with contract of employment (cf rule 44 GSE (General) Rules 2014)

A Transport executive must comply with the obligations imposed on the executive under the executive's contract of employment.

24 Contract of employment subject to conditions of engagement being satisfied (cf rule 45 GSE (General) Rules 2014)

The contract of employment of a Transport executive is subject to the conditions to which the engagement of the executive is subject being satisfied.

Part 5 Miscellaneous

25 Report on termination of employment of Transport executives (cf rule 42 GSE (General) Rules 2014)

- (1) If the employment of a Transport executive is terminated under section 68N of the *Transport Administration Act 1988* otherwise than on the ground of redundancy, the Transport Secretary is, as soon as practicable after terminating the executive's employment, to provide a written report to the Public Service Commissioner on the termination.
- (2) The report is to be signed by the Transport Secretary and include the following:
 - (a) a summary of the process taken by the Transport Secretary in terminating the employment,
 - (b) the reasons for terminating the employment.

Schedule 1 Model contract of employment for Transport Service senior executives

(Rule 22)

Contract of employment under section 68H of the Transport Administration Act 1988

This contract of employment is made

on the _____ day of _____ 20____

Between

THE GOVERNMENT OF NEW SOUTH WALES

and

[*Insert full name*] (the “Transport Executive”)

Parties

1.1 This contract of employment is between the Transport Executive and the Government of New South Wales.

Commencement

2.1 The employment of the Transport Executive under this contract commences on [*insert date*].

Definitions

3.1 In this contract:

“Employer” of the Transport Executive means the person who, in accordance with section 68C of the TA Act, exercises the employer functions of the Government of New South Wales in relation to the Transport Executive.

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

“TA Act” means the Transport Administration Act 1988.

“the Rules” means the Government Sector Employment (Transport Service Senior Executives) Rules 2017 made under the GSE Act.

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

Band

4.1 The Transport Executive is employed in Band [*specify band*].

Role

5.1 The role in the Transport Service assigned to the Transport Executive is described in Appendix A.

5.2 The Employer may vary the description of the role to which the Transport Executive is assigned at any time.

5.3 The Transport Executive acknowledges that he or she may be assigned to another role in any part of the Transport Service, or be transferred to another government sector agency and assigned to a role, in the band in which the Transport Executive is employed.

5.4 The Transport Executive must perform the duties and responsibilities of the role to which the Transport Executive is duly assigned.

Core values

6.1 The Transport Executive agrees to perform the duties and responsibilities of the assigned role in accordance with the government sector core values under section 7 of the GSE Act.

Probation period

7.1 The Transport Executive's employment in the Transport Service is subject to a probation period in accordance with the Rules.

[OR]

The Transport Executive's employment is not subject to a probation period.

Duration of employment

8.1 The employment of the Transport Executive under this contract is ongoing employment (that is, employment that continues until the Transport Executive resigns or the Transport Executive's employment is terminated).

[OR]

Unless the Transport Executive sooner resigns or the Transport Executive's employment is sooner terminated, the employment of the Transport Executive under this contract is for the period ending on [*specify date*] [OR] continues until the end of [*specify project or task*]. The employment of the Transport Executive may, however, be extended by the Employer and this contract continues to apply during that extended period.

Annual performance agreement

9.1 The Transport Executive is required to enter into an annual performance agreement with the Employer setting out the performance obligations of the Transport Executive, and reviews of performance, for the year. The performance agreement continues until a new agreement is signed.

Capability-based assessments

10.1 The Transport Executive agrees to participate in periodic capability-based assessments if directed to do so in accordance with the Rules.

10.2 The Transport Executive agrees to the use of these assessments for workforce planning purposes.

Total remuneration package and allowances

Note: The total remuneration package is for full-time work. Under the Rules, pro-rata remuneration is payable for part-time work.

11.1 The total remuneration package (comprising monetary remuneration and employment benefits) of the Transport Executive is specified in Appendix B.

11.2 The Transport Executive may elect from time to time to allocate the total remuneration package as between monetary remuneration and employment benefits in accordance with the TA Act.

11.3 The Transport Executive is entitled to the allowances specified in Appendix B and any allowances as may be determined by the Employer under the TA Act or the GSE Act.

11.4 The Employer may, subject to the TA Act and the GSE Act, vary the total remuneration package and allowances of the Transport Executive from time to time.

Progression

12.1 If the Transport Executive meets the performance requirements under the Transport Service's performance management system, the Transport Executive's total remuneration package may be increased within the range of remuneration applicable to the assigned role of the Transport Executive. Any such increase is at the discretion of the Employer and is not an entitlement.

12.2 Clause 12.1 does not limit the Employer's power to increase or reduce the Transport Executive's total remuneration package in accordance with the TA Act or the GSE Act.

Hours of duty

13.1 The Transport Executive must work the hours necessary to perform the duties and responsibilities of the Transport Executive's role.

13.2 The Transport Executive's total remuneration package compensates the Transport Executive for any hours worked.

Part-time work

14.1 If the Employer agrees to the Transport Executive undertaking work on a part-time basis, the Transport Executive must work the agreed days or parts of days.

Leave

15.1 The Transport Executive is entitled to leave in accordance with Transport Service policies and procedures, the TA Act and regulations under the TA Act.

15.2 Clause 15.1 only applies to the Transport Executive while the Transport Executive is employed in the Transport Service.

Notice of resignation by Transport Executive

16.1 The Transport Executive may resign his or her employment by providing [*specify number of weeks—not to exceed 4 weeks*] written notice to the Employer or as agreed to by the Employer.

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

Compensation for termination

17.1 Subject to clauses 17.2 and 17.4, the Transport Executive is, on the termination of employment by the Employer, entitled to the following compensation:

(a) If the employment is terminated under section 68N of the TA Act during or at the end of any period of probation—an amount equal to the Transport Executive's remuneration package for a period of [*specify number of weeks—not to exceed 4 weeks*].

(b) If the Transport Executive is employed in ongoing employment and the employment is terminated under section 68N of the TA Act otherwise than during or at the end of any period of probation—an amount equal to the Transport Executive's remuneration package for a period of [*specify number of weeks—not to exceed 38 weeks*].

(c) If the Transport Executive is employed in term employment and the employment is terminated under section 68N of the TA Act otherwise than during or at the end of any period of probation—an amount equal to the Transport Executive's remuneration package for a period of [*specify number of weeks—not to exceed the period remaining on the term of the contract*].

(d) If the employment is terminated by the Employer for unsatisfactory performance (whether under section 68 of the GSE Act or the regulations made under the TA Act) otherwise than during or at the end of any period of probation—an amount equal to the Transport Executive's remuneration package for a period of [*specify number of weeks—not to exceed 13 weeks*].

17.2 No compensation is payable if the employment of the Transport Executive is terminated by the Employer for misconduct under section 68N of the TA Act and in accordance with the regulations made under the TA Act or any applicable policies and procedures of the Transport Service.

17.3 The Employer may give the Transport Executive notice in writing that the Transport Executive's employment is to be terminated on the date specified in the notice. The period between the date on which the notice is given and the date specified as the date on which the employment is to be terminated is referred to as the **termination notice period**. If the Transport Executive is employed in term employment, the termination notice period cannot extend beyond the term of the employment.

17.4 If a notice under clause 17.3 is given to the Transport Executive, any compensation that would otherwise be payable under clause 17.1 is reduced, for each week of the termination notice period, by an amount equal to one week's salary.

17.5 The Employer may, at any time during the termination notice period, direct the Transport Executive to cease working in the Transport Service or assign the Transport Executive to another role in the Transport Service. Any such direction does not affect the Transport Executive's entitlement to receive remuneration or to accrue leave during the termination notice period.

17.6 The amount of any compensation payable in accordance with clause 17.1 or 17.4 is, if the Transport Executive is employed part-time, to be calculated on a pro-rata basis.

17.7 If the Transport Executive's employment is terminated with compensation, the Transport Executive agrees that if the Transport Executive is re-employed in the public sector (as referred to in section 68N of the TA Act) within the period to which the compensation relates the Transport Executive will repay the proportionate amount, as calculated in accordance with clause 44 of the Government Sector Employment Regulation 2014, before the commencement of that re-employment. This obligation continues even though the contract of employment is terminated.

17.8 Clauses 17.1–17.6 apply in relation to the Transport Executive only while the Transport Executive is employed in the Transport Service.

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 Transport Service.]

18.1 During his or her employment, the Transport Executive will not disclose, without lawful authority, any confidential or secret information acquired as a consequence of the employment.

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

Intellectual property

[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 Transport Service.]

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

Employment policies and procedures

20.1 The Transport Executive agrees to comply with any applicable employment policies and procedures of the Transport Service and with any lawful and reasonable direction of the Employer relating to the employment of the Transport Executive.

20.2 However, those employment policies, procedures and directions do not form part of this contract and do not create any express or implied contractual rights or obligations between the Transport Executive and the Employer.

Variation

21.1 This contract may only be varied in accordance with the TA Act, the GSE Act and this contract.

21.2 Any variation must be in writing and signed by the Employer and the Transport Executive.

Additional provisions

[Special provisions may be included as part of the Transport Executive's contract. However, the following provision must be included in any clause containing special provisions:]

22.1 Any such special provision applies to the Transport Executive only while the Transport Executive is employed in the Transport Service.

APPENDICES

The Appendices to this contract may be substituted by the Employer.

Appendix A—Assigned role

[insert description of assigned role]

Appendix B—Remuneration package and allowance

The total remuneration package of the Transport Executive is *[insert \$ value of package]*.

The Transport Executive is entitled to the following allowances *[insert any additional allowances]*:

Signatures

The Employer

Signed

Date

Name

[Insert job title and office]

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

The Transport Executive

Signed

Date

Name in full *[printed]*
