

Passed by both Houses



New South Wales

Water NSW Amendment (Staff Transfers) Bill 2016

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Legislative Council
2016*

Clerk of the Parliaments



New South Wales

Water NSW Amendment (Staff Transfers) Bill 2016

Act No , 2016

An Act to amend the *Water NSW Act 2014* to provide for the transfer of staff to Water NSW; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Water NSW Amendment (Staff Transfers) Act 2016*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Water NSW Act 2014 No 74

[1] Section 3 Definitions

Omit “Trade and Investment, Regional Infrastructure and Services” from the definition of *Department* in section 3 (1).

Insert instead “Industry, Skills and Regional Development”.

[2] Part 2, Division 9

Insert after Division 8:

Division 9 Staff transfers

28A Transfer of departmental staff to Water NSW

Note. This section operates concurrently with Part 6-3A of the *Fair Work Act 2009* of the Commonwealth which provides that certain terms and conditions of employment of a State public sector employee are transferred when the employee is transferred to the employment of a national system employer such as Water NSW.

- (1) The Minister may, by order in writing, transfer to Water NSW any person employed in the Department who is designated by the Secretary of the Department to be a person required for the purposes of enabling Water NSW to exercise its functions (a *transferred employee*).
- (2) A transfer under this section does not require the consent of the transferred employee.
- (3) On the day specified in the order (the *transfer day*):
 - (a) the employment of the transferred employee in the Public Service is terminated, and
 - (b) the transferred employee becomes an employee of Water NSW.
- (4) On and from the transfer day for a transferred employee:
 - (a) the transferred employee is entitled to continue as a contributor, member or employee for the purposes of any superannuation scheme in respect of which the transferred employee was a contributor, member or employee (as an employee in the Public Service) immediately before the transfer day and remains so entitled subject to any variation to that entitlement made either by agreement or otherwise in accordance with law, and
 - (b) Water NSW is taken to be an employer for the purposes of any superannuation scheme in respect of which the transferred employee continues as a contributor, member or employee pursuant to an entitlement under this section, and
 - (c) the continuity of the transferred employee’s contract of employment is taken not to have been broken by the transfer of employment, and service of the employee in the Public Service (including service deemed to be service with Water NSW) that is continuous service up to the time of transfer is taken for all purposes to be service with Water NSW, and
 - (d) the transferred employee retains any rights to sick leave, annual leave or extended or long service leave accrued or accruing immediately before the transfer day (except accrued leave for which the employee has, on ceasing to be employed in the Public Service, been paid the monetary value in pursuance of any other entitlement of the employee).

- (5) A transferred employee is not entitled in respect of the same period of service to claim a benefit under this section and another law or instrument.
- (6) The Secretary of the Department may, in connection with the transfer of a transferred employee's employment under this section, give a certificate in writing as to the extent of the accrued rights to annual leave, sick leave or extended or long service leave that are retained by the employee under this section, and such a certificate is evidence of the matters certified.
- (7) In the event that Part 6-3A of the *Fair Work Act 2009* of the Commonwealth does not apply to a transferred employee, Water NSW is nevertheless required to provide the transferred employee with the same entitlements to which the employee would have been entitled under that Part had it applied to the employee.
- (8) The following provisions apply in relation to the transfer of a transferred employee's employment under this section:
 - (a) the transfer has effect despite the *Government Sector Employment Act 2013*, the *Industrial Relations Act 1996* or any other law, contract or instrument under a law,
 - (b) the termination of the employee's employment in the Public Service by operation of this section does not preserve, or give rise to, any entitlements or rights other than those provided for by the *Fair Work Act 2009* of the Commonwealth and this section,
 - (c) the transferred employee is not entitled to any payment or other benefit by reason only of having ceased to be an employee in the Public Service as a result of the transfer,
 - (d) the Crown is not required to make any payment to the transferred employee in relation to the transferred employee's accrued rights in respect of annual leave, sick leave or extended or long service leave,
 - (e) the transfer does not affect the transferred employee's appointment (if any) under section 390 of the *Water Management Act 2000* as an authorised officer for the purposes of that Act.

[3] Schedule 2 Savings, transitional and other provisions

Insert after Part 2:

Part 3 Provisions consequent on conferral of certain functions on Water NSW

29 Pending applications and existing compliance notices

- (1) This clause applies if, under section 12 (4), the terms of an operating licence confer on Water NSW specified functions of the kind referred to in that subsection (a *conferred function*).
- (2) If a conferred function relates to the process for determining or otherwise dealing with an application under the *Water Management Act 2000* or the *Water Act 1912*, Water NSW may, in the case of an application that was made but not determined before the conferral of the function on Water NSW, determine or otherwise deal with the application.
- (3) Any notice under the *Water Management Act 2000* or the *Water Act 1912* that relates to a conferred function is taken to have been given by Water NSW, and may be varied, revoked or enforced by Water NSW, if the notice:
 - (a) was given before the conferral of the function, and

- (b) required a person to do, or not to do, things specified in the notice, and
- (c) had not yet been complied with before the conferral of the function.