



New South Wales

Public Sector Employment and Management Amendment Bill 2012

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Public Sector Employment and Management Act 2002*:

- (a) to revise the provisions of that Act relating to excess officers of Public Service Departments and the circumstances in which the services of those officers may be dispensed with, and
- (b) to exclude the unfair contracts jurisdiction of the Industrial Relations Commission in connection with any such excess officers and any excess employees of other public sector agencies, and
- (c) to require the heads of public sector agencies to develop and implement performance management systems for their staff and to require the Public Service Commissioner to issue guidelines for that purpose.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Public Sector Employment and Management Act 2002 No 43

Schedule 1 [2] substitutes section 56 to revise the current provisions of the Act relating to excess officers of Public Service Departments and the circumstances in which the services of those officers may be dispensed with. The revised provisions:

- (a) require the Department Head to take all practicable steps to find an on-going position in the public sector for an excess officer, rather than any employment in the public sector, and
- (b) enable the Department Head to dispense with the services of an excess officer if such a position is not found, rather than if useful work in the public sector cannot be found, and
- (c) deal with excess officers arising in connection with the functions and activities of a part of a Department as well as of the whole of a Department.

Schedule 1 [3] makes a comparable amendment about placement in an on-going public sector position in connection with officers who are paid excessive salaries for the work performed in their current positions.

Schedule 1 [4] requires the heads of public sector agencies to develop and implement performance management systems for their staff and requires the Public Service Commissioner to issue guidelines for that purpose. **Schedule 1 [1]** makes a consequential amendment.

Schedule 1 [5] excludes the unfair contracts jurisdiction of the Industrial Relations Commission in connection with excess officers of Public Service Departments and excess employees of other public sector agencies. **Schedule 1 [6]** makes a consequential amendment.

Schedule 1 [7] authorises the making of savings and transitional regulations consequent on the enactment of the proposed Act.

Schedule 1 [8] enacts specific savings and transitional provisions to extend the exclusion of the unfair contracts jurisdiction to existing excess employees and to proceedings instituted after the giving of notice for the introduction of this Bill into Parliament.

First print



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New South Wales

Public Sector Employment and Management Amendment Bill 2012

No. , 2012

A Bill for

An Act to amend the *Public Sector Employment and Management Act 2002* with respect to excess employees and performance management.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Public Sector Employment and Management Amendment Act 2012</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6

Schedule 1	Amendment of Public Sector Employment and Management Act 2002 No 43	1 2 3
[1] Section 3F General functions of Commissioner		4
Omit “and 100 (4) (c)” from the note to section 3F (2).		5
Insert instead “, 100 (4) (c) and 101A”.		6
[2] Section 56		7
Omit the section. Insert instead:		8
56 Excess officers of Departments		9
(1) If the appropriate Department Head is satisfied that the number of officers employed in the Department or in any part of the Department exceeds the number that appears to be necessary for the effective, efficient and economical management of the functions and activities of the Department or part of the Department:		10 11 12 13 14 15
(a) the Department Head is to take all practicable steps to secure the transfer of the excess officers to on-going public sector positions, and		16 17 18
(b) the Department Head may, with the approval of the Commissioner, dispense with the services of any such excess officer who is not transferred to an on-going public sector position.		19 20 21 22
(2) An officer does not cease to be an excess officer merely because the officer is engaged (on a temporary basis) to carry out other work in a public sector agency.		23 24 25
(3) In this section:		26
<i>on-going public sector position</i> means a position in a Department, or in any other public sector service, that is not temporary.		27 28 29
[3] Section 57 Excessive salaries of officers of Departments		30
Omit section 57 (1) (b). Insert instead:		31
(b) the Department Head has taken all practicable steps to secure the transfer of the officer to an on-going public sector position (within the meaning of section 56) that is appropriate to the salary of the officer.		32 33 34 35

[4] Section 101A	1
Insert before section 102:	2
101A Performance management systems for public sector staff	3
(1) The head of a public sector agency is to develop and implement a performance management system with respect to members of staff of the agency.	4 5 6
(2) The Commissioner is to issue guidelines to public sector agencies on the essential elements of such a performance management system.	7 8 9
Note. See section 3J in connection with directions to agencies by the Commissioner.	10 11
[5] Section 103A	12
Insert after section 103:	13
103A Excess employees—jurisdiction of Industrial Relations Commission	14 15
(1) In this section:	16
<i>excess employee</i> means an excess officer referred to in section 56 or any member of staff of a public sector agency who has been notified by the head of the agency:	17 18 19
(a) that his or her position or work in the agency has been abolished or terminated, and	20 21
(b) that he or she is an excess or displaced employee.	22
Any such person does not cease to be an excess employee merely because the person is engaged (on a temporary basis) to carry out other work in the same or any other public sector agency.	23 24 25
<i>termination</i> of the employment of a person includes dispensing with the services of the person.	26 27
(2) Division 2 of Part 9 of Chapter 2 of the <i>Industrial Relations Act 1996</i> (Unfair contracts) does not apply to contracts of employment of members of staff of any public sector agency that are alleged to be unfair for any reason relating to excess employees, including the following:	28 29 30 31 32
(a) when and how members of staff become excess employees,	33 34

(b)	the entitlements of excess employees (including with respect to redeployment, employment retention, salary maintenance and voluntary or other redundancy payments),	1 2 3 4
(c)	the termination of the employment of excess employees.	5
[6]	Section 160 Certain other Acts not to be affected	6
	Omit “or 72” from section 160 (2). Insert instead “, 72 or 103A”.	7
[7]	Schedule 4 Savings, transitional and other provisions	8
	Insert at the end of clause 1 (1):	9
	<i>Public Sector Employment and Management Amendment Act 2012</i>	10 11
[8]	Schedule 4	12
	Insert at the end of the Schedule with appropriate Part and clause numbers:	13
Part	Provisions consequent on enactment of Public Sector Employment and Management Amendment Act 2012	14 15 16
	Operation of amendments	17
(1)	In this clause, <i>amending Act</i> means the <i>Public Sector Employment and Management Amendment Act 2012</i> .	18 19
(2)	Section 103A, as inserted by the amending Act, extends to members of staff of a public sector agency who were excess employees on the date that notice was given in Parliament for the introduction of the Bill for the amending Act and to proceedings instituted on or after that date under Division 2 of Part 9 of Chapter 2 of the <i>Industrial Relations Act 1996</i> .	20 21 22 23 24 25

Public Sector Employment and Management Amendment Bill 2012

Schedule 1 Amendment of Public Sector Employment and Management Act 2002 No 43

- (3) Nothing in this clause affects any order of the Industrial Relations Commission or a court that is made before the commencement of the amending Act. 1
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