

[Act 1995 No 36]



New South Wales

Public Sector Management Amendment Bill 1995

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 Management Act 1988* (“the PSM Act”)

- to establish a Council on the Cost of Government to assist in achieving a cost effective and “world class” public sector
- to establish a Public Employment Office to, among other things, advise the Government on appropriate policies in relation to personnel management and industrial relations in the public sector
- to abolish the Public Employment Industrial Relations Authority and to transfer its functions to the Public Employment Office

* Amended in committee—see table at end of volume.

- to abolish the “right of return” to the public sector that is currently available to public sector executives who come from positions in the public sector (but without affecting the rights of executives who have currently elected the right of return)
- to decrease from 1 year to 38 weeks the maximum period for which compensation is payable under provisions of the PSM Act dealing with the compensation entitlements of public sector executives who have been removed from their positions
- to remove the distinction between Administrative Offices and Departments
- to provide for the position of head of certain Departments (and current Administrative Offices) to become positions in the Public Service, to reflect the nature of the Departments and offices involved
- to simplify and transfer to the PSM Act provisions for the creation, abolition and change of name of Departments and for the making of certain administrative changes by Governor’s order
- to formalise the practice of creating eligibility lists that remain current for the purpose of the filling of Public Service positions for 6 months
- to provide that employees who move between public sector employers retain their entitlements as to annual leave, sick leave, maternity leave etc and to otherwise ensure the mobility of public sector employees
- to enact consequential savings and transitional provisions.

The amendments to the *PSM Act* are contained in Schedules 1 to 5 and are described in more detail below. The Bill also contains consequential amendments to other Acts.

Establishment of a Council on the Cost of Government (Schedule 1)

A Council on the Cost of Government is established to review and advise on management and operational effectiveness and efficiency in the public sector. The functions of the Council are set out in Schedule 1 (2) (proposed section 45). The Council is to exercise its functions with a view to achieving a cost effective and “world class” public sector. The Council is to consist of 7 members, being 3 Department Heads and 4 persons appointed from the private sector. Schedule 1 (4) contains provisions relating to members of the Council and the procedure of the Council. For the purpose of the exercise of its functions, the Council may require Departments and declared authorities to provide information and may request the Auditor-General to provide information. The Council is required to make an annual report. The Council is to be dissolved 3 years after it is established.

Establishment of Public Employment Office and abolition of Public Employment Industrial Relations Authority (Schedule 2)

The Public Employment Office is established to advise the Government on policies in relation to personnel management and industrial relations in the public sector. The principal functions of the Office are set out in Schedule 2 (10) (proposed section 49D). The Office will be a body corporate representing the Crown. The affairs of the Office are to be managed by a Commissioner for Public Employment. The Office is subject to the control and direction of the Minister, except in relation to the exercise of some of its industrial relations functions (proposed section 49C).

Certain functions of the Minister under the Act relating to the review of management practices and personnel policies in the public sector are transferred either to the Public Employment Office or to the Council on the Cost of Government. The Minister's discretion to waive the requirement to advertise a vacant Public Service position is transferred to the Public Employment Office.

The Public Employment Industrial Relations Authority ("PEIRA") is abolished. Most of PEIRA's functions are transferred to the Public Employment Office. However, the requirements that PEIRA's approval be obtained before a staff member is appointed without a probationary period and before staff (including excess staff or staff in receipt of an excessive salary) are transferred to another Department are removed.

Amendments relating to public sector executives (Schedule 3)

The amendments remove the right of executive officers to elect to retain a "right of return" to the public sector if they are not re-appointed to an executive position. (See Schedule 3 (1))

The amendments reduce the maximum amount of compensation that can be awarded by the Statutory and Other Offices Remuneration Tribunal to an executive officer who is removed from office or is not re-appointed to an amount equal to the person's remuneration package for the period of 38 weeks (at present the maximum is 1 year's remuneration). (See Schedule 3 (2)) The same maximum will apply to statutory office holders who are removed from office and are not entitled to be engaged in the public sector. (See Schedule 3 (3))

Parallel amendments are made to the *Police Service Act 1990* for Police Service executive officers. (See Schedule 6)

Administrative changes (Schedule 4, and see also clauses 4 and 5)

The organisations now known under the Act as “Administrative Offices” will be called “Departments”. Consequential changes are made to a number of provisions of the Act to reflect the change of terminology.

The *Administrative Changes Act 1976* and section 49 of the *Constitution Act 1902* (which provides for the creation and abolition of Departments) are repealed and their provisions are simplified and incorporated in the *PSMA Act*.

Some Department Head positions that are currently not Public Service positions (such as the Director of Planning) are transferred to the Public Service to reflect the public service character of the positions. Schedule 6 contains consequential amendments to other Acts to reflect these changes. Schedule 5 (8) enacts savings and transitional provisions for these amendments (see proposed clause 38).

Mobility of leave entitlements and miscellaneous amendments (Schedule 5)

The amendment made by Schedule 5 (1) formalises eligibility lists whereby applicants for a public service position are listed in order of merit and subsequently offered a position without further interview. Eligibility lists will remain current for 6 months after the initial position is advertised. An eligibility list will be able to be used to fill not only the position for which it was created but also any other position that is substantially the same as the original position.

The amendments made by Schedule 5 (2) and (6) provide for the transfer of entitlements to accrued recreation and sick leave, and entitlements to maternity leave and other leave, of employees who move between public sector employers (including the Public Service, the Education Teaching Service, the Police Service, area health services and statutory authorities). They also make it clear that the *Transferred Officers Extended Leave Act 1961* (which provides for mobility of long service leave entitlements) applies to employees who move between such services. The amendments formalise administrative arrangements that have been in place since 3 May 1993 by direction of the Premier. Employees who moved between public sector employers before these arrangements were in place and, as a result, forfeited accrued sick leave may, at the discretion of their current employer, access that forfeited sick leave.

Schedule 5 (3)–(5) amends the provisions in the Act relating to entitlements to extended leave to make it clear that an officer or temporary employee may, on termination of his or her services, elect to receive the money value of any extended leave or to have the *Transferred Officers Extended Leave Act 1961* apply in respect of that leave. The amendments also revise the procedures for entitlement to be paid the value of extended leave owed to an officer who has died. Payment is to be made to the widow or widower or de facto spouse or, if there is no widow or widower or de facto spouse, to the officer's personal representatives.

Schedule 5 (8) enacts savings and transitional provisions that are consequential on other amendments being made by the Bill.

Outline of provisions

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

Clause 2 provides that the proposed Act will commence on a day or days to be proclaimed.

Clause 3 gives effect to Schedules 1 to 5, which contain the amendments to the *Public Sector Management Act 1988* described above.

Clause 4 repeals section 49 of the *Constitution Act 1902*.

Clause 5 repeals the *Administrative Changes Act 1976*.

Clause 6 gives effect to Schedule 6, which contains consequential amendments to other Acts.