

**PUBLIC SECTOR MANAGEMENT (EXECUTIVES)  
AMENDMENT BILL 1989**

NEW SOUTH WALES



**EXPLANATORY NOTE**

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:

Statutory and Other Offices Remuneration (Executives) Amendment Bill 1989;

Miscellaneous Acts (Public Sector Executives Employment) Amendment Bill 1989;

Public Sector Executives Superannuation Bill 1989;

Miscellaneous Acts (Public Sector Executives Superannuation) Amendment Bill 1989.

---

The object of this Bill is to establish a new public sector Chief Executive Service and Senior Executive Service. The Chief Executive Service will comprise the heads of government departments, administrative offices, teaching services and public authorities. The Senior Executive Service will comprise specified senior executives in those departments, offices, teaching services and authorities (including certain statutory office holders).

The Bill enacts uniform provisions relating to the employment of chief executive and senior executive officers. The principal features of the employment provisions are as follows:

- (a) Officers will be appointed for a term not exceeding 5 years and will be eligible for re-appointment.
- (b) The employment of the officers will be governed by a contract of employment.

*Public Sector Management (Executives) Amendment 1989*

---

- (c) Officers will be entitled to monetary remuneration and employment benefits as agreed in the contract of employment, subject to the total cost of the remuneration package being as determined by the Statutory and Other Offices Remuneration Tribunal.
- (d) Officers will be subject to removal at any time and will not be entitled to re-appointment (but there is provision for a right of return to the public sector for those officers who elect to retain that right and compensation (maximum 1 year's remuneration) for other officers).

---

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act commences on a proclaimed day or days.

Clause 3 is a formal provision which gives effect to the Schedule of amendments to the Public Sector Management Act 1988.

**SCHEDULE 1 - AMENDMENTS**

Schedule 1 (1) (a) inserts appropriate definitions into the Principal Act. In particular, "chief executive position" means a position referred to in proposed Schedule 3A and "senior executive position" means a position referred to in proposed Schedule 3B.

Schedule 1 (1) (b) - (e) make consequential amendments to the general definition section of the Principal Act.

Schedule 1 (2) makes amendments to the general application section of the Principal Act as a consequence of the extension of the Act to public sector officers outside the Public Service.

Schedule 1 (3) abolishes the Special Division of the Public Service. At present the Special Division comprises Department Heads who are to be included in the Chief Executive Service.

Schedule 1 (4) provides that the grading and classification of senior executive positions in the Public Service created by the Department Head require the approval of the Minister instead of the Public Employment Industrial Relations Authority.

Schedule 1 (5) provides for the appointment of Department Heads and acting Department Heads by the Governor. The existing provisions for their employment have been replaced by proposed Part 2A (Public Sector Executives). As a consequence, all future appointments of Department Heads will be for a term not exceeding 5 years (at present existing officers of the Public Service who are promoted to a Department Head position are not required to be appointed for a term). The Department Head positions concerned are any positions referred to in Schedule 1 of head of a Department and any Public Service positions referred to in Schedule 2 of head of an Administrative Office.

Schedule 1 (6) provides for the appointment of senior executive officers in the Public Service by the Governor and acting senior executive officers by the Department Head. The existing provisions for their employment have been replaced by proposed Part 2A (Public Sector Executives). As a consequence, all future

## *Public Sector Management (Executives) Amendment 1989*

---

appointments to those positions in the Public Service will be for a term not exceeding 5 years (at present those senior executive officers in the Public Service are not appointed for a term). However, the existing provisions (sections 26 and 31) for appointment of officers on merit and for the advertising of vacancies have been retained. If a vacancy is not advertised, an appointment may be made from among all senior executive officers in the Public Service or a Teaching Service as well as from among public service officers in the relevant administrative unit.

Schedule 1 (7) and (8) make consequential amendments as a result of the amendments made by Schedule 1 (5) and (6).

Schedule 1 (9) inserts a new Part 2A into the Principal Act relating to the employment of public sector executives. The new Part contains the following proposed sections:

### **Division 1 - Preliminary**

**Section 42A** defines expressions used in the Part. In particular, "executive officer" means a chief executive officer or a senior executive officer. For the purposes of exercising the functions under the Part of the employer of an executive officer (including the signing of contracts of employment):

- (a) the Minister is to be the employer of chief executive officers;
- (b) the appropriate Department Head is to be the employer of senior executive officers in the Public Service;
- (c) the appropriate Director-General is to be the employer of senior executive officers in the Teaching Services;
- (d) a public authority is to be the employer of senior executive officers employed by the authority, and
- (e) the Minister or a person nominated by the Minister is to be the employer of other senior executive officers such as statutory officers who are not chief executive officers.

### **Division 2 - Composition of Executive Services**

**Section 42b** specifies that the Chief Executive Service comprises the persons holding positions referred to in proposed Schedule 3A.

**Section 42c** specifies that the Senior Executive Service comprises the persons holding positions referred to in proposed Schedule 3B. At this stage, only statutory offices have been included. Positions in the Public Service, a Teaching Service or the service of public authorities are to be included as they are identified. An assessment is to be made of public sector positions with a salary above clerk (grade 12) in the Public Service.

*Public Sector Management (Executives) Amendment 1989*

---

**Section 42b** authorises the Governor to amend or substitute Schedules 3A and 3B by proclamation.

**Section 42e** provides that a position may not be included as an executive position unless it is:

- (a) a position in the Public Service;
- (b) a statutory office under an Act which provides that appointments to that office are subject to Part 2A of the Principal Act;
- (c) a position on the staff of a public authority, or
- (d) a position in the Education Teaching Service or the Technical and Further Education Teaching Service.

**Division 3 - Employment of executive officers**

**Section 42f** provides that executive officers must be appointed for a term not exceeding 5 years.

**Section 42g** provides that the employment of executive officers is to be governed by a contract of employment between the officer and his or her employer. The contract may constitute the instrument of appointment and fix the term of office if the person who signs as employer for the purposes of the new Part is also the person authorised to make the appointment.

**Section 42h** requires a contract of employment to deal with:

- (a) the duties of the executive officer's position (including performance criteria);
- (b) the monetary remuneration and employment benefits for the officer (including nominating the amount of the remuneration package if a range of amounts has been determined for that package); and
- (c) whether or not the officer elects to retain a right of return to the public sector.

**Section 42i** requires annual reviews of an executive officer's performance.

**Section 42j** excludes the employment of executive officers from the Industrial Arbitration Act 1940 and certain proceedings for judicial review.

**Division 4 - Remuneration of executive officers**

**Section 42k** defines expressions used in the Division. In particular, "approved" means approved by the Minister.

"Employment benefit" means:

- (a) employer contributions etc. to superannuation schemes;
- (b) the provision of motor vehicles for private use;
- (c) the right of return to the public sector by an executive officer who elects to retain that right;

## *Public Sector Management (Executives) Amendment 1989*

---

- (d) approved leave entitlements; or
- (e) other approved benefits of a private nature.

"Monetary remuneration" is defined to exclude travelling, subsistence, relocation and other allowances for expenses incurred in the discharge of official duties.

Section 42L provides that the rate of monetary remuneration and the kinds of employment benefits for executive officers are to be as agreed in their contracts of employment. The total amount of monetary remuneration and the cost to the employer of employment benefits is to be the amount of the executive officer's remuneration package as determined by the Statutory and Other Offices Remuneration Tribunal. The value of employment benefits is to be as determined by the Minister. The proposed section does not affect any future arrangement for performance-related incentive payments.

Section 42M authorises the payment to executive officers of travelling, subsistence, relocation and other allowances for expenses incurred in the discharge of official duties.

### **Division 5 - Removal, retirement etc. of executive officers**

Section 42N defines expressions used in the Division. In particular, "employment" in the public sector is defined to mean employment as an officer in the public sector and "engagement" in the public sector is defined to mean any such employment or the holding of a statutory office.

Section 42O provides for the vacation of office of executive officers in the usual circumstances.

Section 42P provides for the retirement of executive officers. There is no limit on the age at which an executive officer may be appointed and no compulsory retiring age. However, an executive officer may be compulsorily retired after reaching the age of 60 years despite the fact that the officer's term of office has not expired.

Section 42Q enables an executive officer to be removed from office at any time. The existing provision of removing Department Heads from their position (but retaining their services as unattached officers) has been retained and extended to all executive officers.

Section 42R enables an executive officer who was previously employed in the public sector to elect (when first becoming an executive officer) to retain a right of return to the public sector. The cost of that right will be deducted from the remuneration package as an employment benefit under the executive officer's contract of employment. If the executive officer is removed from office (except for misbehaviour) or not re-appointed, the officer is entitled (if not over 60 years of age) to an engagement in the public sector. The engagement in the public sector is to be:

- (a) in the case of a chief executive officer - as a senior executive officer;  
or

*Public Sector Management (Executives) Amendment 1989*

---

- (b) in the case of a senior executive officer - in a position with a salary not lower than the current salary for the previous engagement of the officer as an employee in the public sector (but not exceeding the maximum salary for clerk (grade 12) in the Public Service).

Section 42s provides compensation to an executive officer who is removed or retired from office (except for misbehaviour) or not re-appointed and who has not elected to retain a right of return to the public sector. The compensation is to be determined by the Statutory and Other Offices Remuneration Tribunal and is not to exceed 1 year's remuneration. In the case of a failure to re-appoint the executive officer, compensation will not be payable unless the Tribunal determines that there was a reasonable expectation of re-appointment.

Section 42r enables a person with a right of return to the public sector under proposed section 42r to elect instead to take compensation under proposed section 42s.

**Division 6 - General**

Section 42u provides that, when a non-statutory position becomes a senior executive position, the incumbent officer continues to hold the position until an appointment is made. An incumbent officer who is not appointed is entitled to an engagement in the public sector or compensation in similar terms to an officer who elects to retain a right of return to the public sector under proposed section 42r. The position of incumbent Department Heads and other statutory office holders who become executive officers is dealt with by the amendment made by Schedule 1 (42).

Section 42v deals with the accrued leave of incumbent officers. On appointment as an executive officer, an incumbent officer may elect to take the money value of any untaken accrued leave. All accrued leave is otherwise preserved.

Section 42w makes savings and transitional arrangements consequent on positions becoming or ceasing to be executive positions.

Section 42x ensures that positions do not cease to be executive positions merely because of a change in the title of the position.

Section 42y requires an executive officer to obtain the approval of the officer's employer before engaging in other paid employment.

Section 42z makes general provisions with respect to the operation of the proposed Part.

Schedule 1 (10) - (13) amend the provisions of Part 3 of the Principal Act which deal with the management functions of the Minister so that the provisions refer specifically to declared authorities instead of the provisions being applied to declared authorities by Part 7 of the Principal Act ("Declared authorities" are the public authorities listed in Schedule 3 to the Principal Act which employ their own staff).

## *Public Sector Management (Executives) Amendment 1989*

---

**Schedule 1 (14)** excludes the application to senior executive officers in the Public Service of sections 50 - 53 (transfers, excess staff and excessive salaries in the Public Service), but enables transfers within a Department or between Departments to positions with the same remuneration package.

**Schedule 1 (15) and (16)** provide that the power of the Public Employment Industrial Relations Authority to determine the salaries or other remuneration of, and enter into industrial agreements with respect to, public servants does not extend to chief executive or senior executive officers.

**Schedule 1 (17) - (23) and (25)** amend the provisions of Part 5 of the Principal Act relating to discipline and conduct of officers in the Public Service. Apart from consequential changes, the amendments remove the detailed provisions for dealing with disciplinary proceedings against Department Heads and remove the existing power for a Department Head to demote a senior executive officer in the Public Service.

**Schedule 1 (24)** makes a consequential amendment as the result of the enactment of proposed section 42<sub>v</sub> of Part 2<sub>A</sub>.

**Schedule 1 (26)** extends the existing provisions for special inquiries into breaches of discipline by Department Heads to all chief executive and senior executive officers.

**Schedule 1 (27) - (29)** make consequential amendments as a result of the amendments made by Schedule 1 (10) - (13).

**Schedule 1 (30) - (34)** amend Part 8 (Removal and retirement of certain statutory office holders) to delete references to chief executive or senior executive officers whose removal and retirement is to be dealt with in proposed Part 2<sub>A</sub>. The opportunity has been taken to make it clear that the Part applies only to statutory offices to which appointments are made by the Governor or a Minister.

**Schedule 1 (35)** makes a consequential amendment to the provision of the Principal Act which preserves the application of certain other Acts.

**Schedule 1 (36)** provides that the provisions for deductions for rent etc. for officers occupying Government premises is subject in the case of chief executive or senior executive officers to their contracts of employment.

**Schedule 1 (37)** makes a minor consequential amendment.

**Schedule 1 (38)** makes consequential amendments on the abolition of the Special Division of the Public Service.

**Schedule 1 (39)** makes a consequential amendment as a result of the amendments made by Schedule 1 (10) - (13).

**Schedule 1 (40)** inserts proposed Schedules 3<sub>A</sub> and 3<sub>B</sub> into the Principal Act. The Schedules identify the chief executive positions and the senior executive positions, respectively.

**Schedule 1 (41)** omits provisions relating to the preservation of rights of certain Department Heads which are inconsistent with proposed Part 2<sub>A</sub>.

*Public Sector Management (Executives) Amendment 1989*

---

Schedule 1 (42) (a) enables regulations to be made of a savings or transitional nature consequent on the enactment of the proposed Act and the cognate Acts.

Schedule 1 (42) (b) enacts special savings and transitional provisions. The provisions deal with incumbent Department Heads or statutory officers whose positions become chief executive or senior executive positions on the enactment of the proposed Act. The officers concerned will be deemed to have been appointed to the executive positions for the balance of their term of office and, until otherwise determined under proposed Part 2A, subject to their existing conditions of employment. Existing statutory rights of re-engagement in the public sector are also preserved. Provision is made to enable statutory chief executive or senior executive positions to be included in the new arrangements on a progressive basis. A savings provision is included to deal with special division officers who are presently on the unattached list.

---