

[Act 1996 No 127]



Public Sector Management Amendment (Mobility) Bill 1996

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* to facilitate the employer-sponsored transfer of officers in the public sector (which for this purpose covers Departments and public authorities), and for other purposes.

The Bill makes a series of amendments relating to the transfer of officers, and in particular:

- (a) establishes an employer-sponsored scheme for the transfer of officers between public authorities, and between public authorities and Departments, and
 - (b) enables the transfer of senior executive officers to positions with lower remuneration, but only with their consent, and
 - (c) facilitates the appointment of unattached executive officers to positions in the public sector.
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Broadly, the current position with regard to the transfer of public sector employees is as follows:

- Schedule 5A to the Act deals with the consequences of transfers within the public sector (whether employer-sponsored or employee-initiated) by providing that employees who move between public sector employers retain their entitlements as to annual leave, sick leave, maternity leave etc.
- Sections 50 and 53A of the Act provide a scheme for the employer-sponsored transfer of officers within or between Departments.
- Transfer between other public authorities, or between public authorities and Departments, can generally only be effected by the normal appointment processes (ie resignation from one service following appointment in another service, usually after the lodging of a job application).

The Bill proposes to insert a new section 100A. This section will provide an employer-sponsored scheme for transfers between public authorities, and between public authorities and Departments. Schedule 5A will automatically extend to such transfers, provided the employing authorities concerned are covered by the Schedule.

Outline of provisions

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

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

Clause 3 is a formal provision giving effect to the Schedule of amendments.

Schedule 1 [1] amends section 15. The result of the amendment will be to extend the operation of section 26 (3) to cover unattached executive officers in the Public Service or the Education Teaching Service, so that such an officer is included among those who can be appointed, in certain limited circumstances, without advertisement.

Schedule 1 [2] and [3] amend section 42Q. The first amendment will provide that an unattached executive officer is taken to hold an equivalent (though notional) position in the Department or organisation from which he or she was removed. The second amendment will result in an unattached chief executive officer being regarded as an unattached senior executive officer,

and as holding a (notional) senior executive position, for certain purposes. These amendments will facilitate the appointment of such an officer under section 26 (3), or the transfer of such an officer under section 53A or proposed section 100A.

Schedule 1 [4] and [5] amend section 42Q to contemplate the possibility that an unattached executive officer could be reappointed to his or her previous position.

Schedule 1 [6] amends section 42S to ensure that an executive officer who consents to a transfer to a position with lower remuneration is not entitled to compensation from the Statutory and Other Offices Remuneration Tribunal.

Schedule 1 [7] amends section 53 to enable an officer in the Public Service to be dismissed if he or she has no valid reason for refusing a transfer under proposed section 100A. This arrangement already exists in the case of officers who refuse a transfer within or between Departments.

Schedule 1 [8] amends section 53A to bring terminology used in the section into line with that used in proposed sections 100A and 100C.

Schedule 1 [9] amends section 53A in connection with the transfer of Public Service senior executive officers within or between Departments. Proposed section 53A (5) will enable such officers to be transferred to positions with lower remuneration, but only with their consent.

Schedule 1 [10] inserts new sections 100A, 100C and 100D, and in effect renumbers the existing section 100A as 100B.

Proposed section 100A (1)–(3) enables the transfer of an officer in a Department to a public authority, and vice versa, and also enables the transfer of officers between public authorities. In each case, the officer must first be consulted, and the Head of the organisation to which the officer is being transferred must approve, and the Public Employment Office must also approve. Such a transfer must be to a position with equivalent remuneration. Proposed section 100A (4) provides that a senior executive officer may however consent to a transfer at a lower level of remuneration. Proposed section 100A (5) ensures that an officer must be qualified for the position to which he or she is being transferred. Proposed section 100A (6) provides for the dismissal of an officer of a public authority who refuses a transfer, unless the officer had a valid reason for refusing the transfer (similar provisions operate for public servants under section 53A). Proposed section 100A (7) ensures that other methods of transfer are still available. Proposed section 100A (8) leaves other statutory transfer schemes intact. Proposed section

100A (9) enables the Public Employment Office to impose conditions when giving its approval under the proposed section, including conditions relating to preservation of current entitlements not otherwise covered. Proposed section 100A (10) ensures that probity and integrity requirements relating to the position to which a person is being transferred are complied with, together with other requirements specified by the Public Employment Office or prescribed by the regulations. Proposed section 100A (11) contains definitions of expressions used in the section. It is envisaged that the power to make a regulation prescribing who is the “head” of a public authority for the purposes of the proposed section will be exercised in circumstances where this would not otherwise be clear.

Proposed section 100C (1) recognises arrangements under which, when an officer is transferred at “existing salary” or at an “existing level of remuneration”, a variation of salary or remuneration may be appropriate in accordance with general guidelines of the Public Employment Office. Consequently, a transfer to a position at a lower level of remuneration will not require the officer’s consent (where this would otherwise be required) if the lower level is within the range of variation permitted by the guidelines. Proposed section 100C (2) provides that increases of remuneration resulting from the application of those guidelines will not result in promotion appeals. Proposed section 100C (3) provides that compensation is not payable in the event of a reduction of remuneration on a transfer resulting from the application of those guidelines. Proposed section 100C (4) makes it clear that, where a senior executive officer consents to a transfer to a position with a lower level of remuneration, the position can be a non-executive position that does not involve a remuneration package. Proposed section 100C (5) makes it clear that references to officers in the section are not limited by the definition in section 3 (1).

Proposed section 100D deals with the possibility that a Department or organisation may not be identifiable while a former officer is being regarded as holding a “notional” executive position in it, as provided by the proposed amendment to section 42Q (3).

Schedule 1 [11] inserts a reference to the Sydney Organising Committee for the Olympic Games into Schedule 3, which lists declared authorities. The Committee is already taken to be a declared authority by the Act establishing the Committee, and the amendment is made merely to make its status explicit in the *Public Sector Management Act 1988*. The Committee, being a declared authority, is within the mobility scheme.

Schedule 1 [12] is consequential on the replacement of section 100A by Schedule 1 [10].

Schedule 1 [13]-[15] make amendments of a statute law revision or clarifying nature.

Schedule 1 [16] will have the effect of enabling regulations of a savings or transitional nature to be made consequent on the enactment of the proposed Act, with the usual safeguards.