



New South Wales

Public Sector Employment and Management Amendment Bill 2010

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 enable members of staff of a Special Employment Division of the Government Service to be appointed on merit to internally advertised vacant positions in a Department that is associated with the Special Employment Division, and
- (b) to provide that the existing prohibition on bringing proceedings in relation to Public Service appointments does not prevent proceedings from being brought in relation to an appointment based on discrimination or victimisation grounds.

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

Schedule 1 [1]–[3] will enable persons who are employed in a Special Employment Division of the Government Service to be eligible for appointment to a position in an associated Department in the case where that position has not been advertised. A Department is taken to be associated with a Special Employment Division if the Department Head is also the Division Head of the Special Employment Division. These Divisions are currently listed in Part 3 of Schedule 1 to the Act and generally comprise groups of staff who are not part of a Public Service Department but who are employed under Chapter 1A of the Act in connection with a statutory corporation that in most cases also has Public Service staff assigned to it. A member of staff of a Special Employment Division will not be eligible to be appointed on merit to a vacant Departmental position that has not been advertised if the member of staff is employed on a casual basis or is a short-term temporary employee.

Section 22 of the Act currently prevents any legal proceedings (other than promotion and disciplinary appeals under the *Industrial Relations Act 1996*) from being brought in relation to appointments to positions in the Public Service. **Schedule 1 [4]** provides that this prohibition on bringing proceedings does not prevent a public servant from bringing proceedings under Part 9 of the *Anti-Discrimination Act 1977* (which relates to discrimination complaints), or under the provisions of the *Industrial Relations Act 1996* relating to freedom from victimisation, in relation to the appointment of another public servant to a position in the Public Service. **Schedule 1 [6]** makes it clear that the proposed amendment only applies in relation to future appointments.

Schedule 1 [5] enables regulations of a savings or transitional nature to be made as a consequence of the proposed Act.

First print



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New South Wales

Public Sector Employment and Management Amendment Bill 2010

No. , 2010

A Bill for

An Act to amend the *Public Sector Employment and Management Act 2002* to make further provision in relation to appointments to positions in the Public Service.

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 2010</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6

Schedule 1	Amendment of Public Sector	1
	Employment and Management Act 2002	2
	No 43	3
[1] Section 19 Merit appointment		4
Insert at the end of section 19 (3A) (b):		5
, or		6
(c) a person who is employed in a Division of the Government		7
Service specified in Part 3 of Schedule 1 (a <i>Special</i>		8
<i>Employment Division</i>) that is associated with the		9
Department, other than any such person who is employed		10
on a casual basis or, if employed on a temporary basis, has		11
not been employed in the Special Employment Division		12
for a continuous period of at least 2 years.		13
[2] Section 19 (3B)		14
Insert after section 19 (3A):		15
(3B) For the purposes of subsection (3A) (c), a Special Employment		16
Division is taken to be <i>associated</i> with a Department if the Head		17
of that Department is also the Division Head of the Special		18
Employment Division.		19
[3] Section 19 (4)		20
Omit “an officer or a Departmental temporary employee”.		21
Insert instead “a qualified member of staff of the Department within the		22
meaning of subsection (3A)”.		23
[4] Section 22 Legal proceedings not to be brought in respect of		24
appointments etc		25
Insert after section 22 (4):		26
(5) Nothing in this section prevents any of the following proceedings		27
being brought by a member of staff of a Department in relation to		28
the appointment of another member of staff of any Department to		29
a position in the Public Service:		30
(a) proceedings under Part 9 of the <i>Anti-Discrimination Act</i>		31
1977 in relation to a complaint under that Part,		32
(b) proceedings under section 213 of the <i>Industrial Relations</i>		33
Act 1996 to enforce the provisions of section 210		34
(Freedom from victimisation) of that Act.		35

[5] Schedule 4 Savings, transitional and other provisions	1
Insert at the end of clause 1 (1):	2
<i>Public Sector Employment and Management Amendment Act 2010</i>	3
	4
[6] Schedule 4	5
Insert at the end of the Schedule with appropriate Part and clause numbering:	6
Part Provision consequent on enactment of Public Sector Employment and Management Amendment Act 2010	7
	8
	9
Proceedings in respect of appointing	10
Section 22 (5), as inserted by the <i>Public Sector Employment and Management Amendment Act 2010</i> , does not apply in relation to any appointment made before the commencement of that subsection.	11
	12
	13
	14