

[Act 1998 No 65]



New South Wales

Public Sector Management Amendment Bill 1998

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* as follows:

- (a) to provide for the employment of staff for Ministers and other political office holders as a special class of temporary Public Service employees (to be called special temporary employees) with other temporary employees to be called departmental temporary employees,
 - (b) to provide a mechanism for the appointment of certain long-term departmental temporary employees to permanent public service positions.
 - (c) to extend the power of the Public Employment Office (the PEO) to make determinations with respect to the remuneration of public servants so as to allow determinations with respect to the conditions and benefits of employment (including remuneration packaging, redundancy and severance payments),
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- (d) to provide specifically that Department Heads are responsible for the equitable management of staff of their Departments,
- (e) to enact consequential, savings and transitional provisions.

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 commences on a day or days to be appointed by proclamation.

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

Schedule 1 Amendments

Special temporary employees

Schedule 1 [8] inserts new provisions that deal with the appointment of persons as temporary employees in the Public Service to carry out work for a Minister, a Parliamentary Secretary or the Leader of the Opposition in the Legislative Assembly. These employees will be called special temporary employees. Their employment can be for a fixed or indefinite period. The services of a special temporary employee can be dispensed with at any time and the employee's employment is terminated when the next general election is held or the political office holder concerned dies or ceases to hold office. A matter relating to the employment of a special temporary employee is not an industrial matter for the purposes of the *Industrial Relations Act 1996* and is not subject to any award or industrial agreement.

Schedule 1 [4]–[6] amend existing provisions of the Act that deal with the employment of temporary employees to continue those provisions (with those employees to be called departmental temporary employees) subject to existing requirements and restrictions.

Schedule 1 [1] and **[3]** make consequential amendments.

Appointment of long-term departmental temporary employees to permanent positions

Schedule 1 [7] (new section 38A) provides a mechanism by which long-term departmental temporary employees (those who are in continuous temporary employment for at least 2 years) can be appointed to permanent public service positions. The new section contains a list of preconditions to such an appointment, including the following:

- (a) the employee must have been employed as a temporary employee in some form of open competition involving selection on merit,
- (b) the duties of the permanent position must be substantially the same as the duties to which the temporary employee was initially appointed on merit,
- (c) there must be on-going work available in respect of the employee in the Department.

An appointment under the new section is not subject to existing requirements for selection on merit and is not subject to a probation period unless the Department Head otherwise directs in a particular case.

Power of PEO to make determinations on conditions and benefits of employment

Schedule 1 [9] extends the power of the Public Employment Office to make determinations with respect to the remuneration of Public Servants so as to enable determinations to be made with respect to the conditions and benefits of employment of Public Service officers and temporary employees. The extended power includes power to make determinations with respect to the packaging of remuneration, and for redundancy and severance payments. Packaging of remuneration can involve salary sacrifice whereby an employee forgoes salary in return for employer funded benefits.

The amendment makes it clear that a Department Head is not prevented from determining conditions of employment under existing provisions, to the extent that is not inconsistent with a PEO determination.

The amendment also makes it clear that determinations can relate to a group or class of officers or temporary employees.

Responsibility of Department Heads for equitable staff management

Schedule 1 [2] provides that a Department Head is responsible to the appropriate Minister for the equitable management of staff of the Department.

Savings and transitional provisions

Schedule 1 [10] makes consequential savings and transitional provisions, including a provision that converts the employment of existing temporary employees who are employed to do work for a political office holder to employment in the new category of special temporary employee.