



New South Wales

Public Sector Employment and Management Amendment Bill 2008

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* as follows:

- (a) to facilitate the appointment of long-term Departmental temporary employees to officer positions in the Public Service by removing the requirement that such a temporary employee can only be appointed to such a position if the position has substantially the same duties as those performed by the person during the period of temporary employment,
- (b) to enable public sector employees who are on long-term secondments (ie for at least 2 years) to be appointed to new positions in the agencies to which they are seconded without having to advertise the position or requiring the person to serve a period of probation, but only if the person has been selected on merit at some stage for a similar graded position,
- (c) to enable an eligibility list that is created for a particular Departmental position to remain current for 12 months and to be used in relation to other similar positions (including similar positions in other Departments),

- (d) to require vacant Public Service positions to be advertised on the NSW Government's recruitment website rather than in the Public Sector Notices,
- (e) to make other amendments of a minor or consequential nature.

This Bill also amends the *Government and Related Employees Appeal Tribunal Act 1980 (the GREAT Act)* to enable notices of appointments to positions in the public sector to appear on the NSW Government's recruitment website and makes amendments of a minor or consequential nature to the regulation made under that Act.

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.

Clause 3 is a formal provision that gives effect to the amendments to the *Public Sector Employment and Management Act 2002* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Act and Regulation set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act on the day after the date of assent. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Public Sector Employment and Management Act 2002

At present under section 18 of the Act, if it is proposed to make an appointment to a vacant position in a Department, the Department Head must advertise the vacancy in the Public Sector Notices. **Schedule 1 [2]** provides instead for the vacancy to be advertised on the NSW Government's recruitment website. **Schedule 1 [1]** removes the definition of *Public Sector Notices* as that term will no longer appear in the Act.

Schedule 1 [3] enables an eligibility list for any Public Service position (being a list of the persons who applied for appointment to the position and who are eligible for appointment, but were not selected for appointment) to remain current for 12 months after the list was created instead of, as is the case at present for positions other than a base grade or entry level position, for only 6 months. **Schedule 1 [4]** enables an eligibility list to apply not only to the relevant position for which it was created but also to any other position that is substantially the same as the relevant position. The other position may be a position in another Department. **Schedule 1 [5]** is a consequential amendment.

Schedule 1 [7] removes a provision that refers to the requirement, under section 19 of the GREAT Act, for notice of a proposed appointment to be published in the Public Sector Notices if the appointment is subject to an appeal under the GREAT

Act. **Schedule 1 [6]** replaces this provision with a note drawing attention to the requirement under the GREAT Act for notice of proposed appointments to be published and distributed to employees.

Schedule 1 [8] makes it clear that the provision requiring persons to serve a period of probation when they first enter the Public Service is subject to exceptions contained elsewhere in the Act and not just the Part in which the provision appears.

Section 31 of the Act currently provides for the appointment of long-term Departmental temporary employees (ie persons who have been employed on a temporary basis in a Department for a continuous period of at least 2 years) to officer positions in the Department. Such an appointment may only be made if the duties of the position concerned are substantially the same as those performed by the employee at the time the employee was selected on merit to perform those duties. **Schedule 1 [9]** removes the requirement that the officer position to which the temporary employee is appointed must have substantially the same duties as those performed by the person as a temporary employee. Instead of this requirement, it is made clear that the employee must have been performing duties at the same or similar grade to the officer position to which the employee is being appointed and that the employee was, at some stage during the temporary employment, selected on merit to perform duties at that grade. **Schedule 1 [10]** is a consequential amendment.

At present under section 86 (6) of the Act, a public sector employee who has voluntarily transferred from one agency to the service of another public sector agency (*the host agency*) becomes an employee of the host agency if the transfer (or the secondment as it is otherwise known) has continued for at least 2 years and the employee decides to remain with the host agency. **Schedule 1 [11]** enables the head of the host agency to appoint the person to a new position in the agency without having to advertise the position or requiring the person to serve a period of probation. Such an appointment is subject to certain requirements (such as the new position must not be above Grade 12 level). Also, if the new position is graded higher than the person's original position in the home agency and the new position is not advertised, the person may be appointed to the new position only if the person has at some stage been selected on merit to perform duties at that higher grade in the host agency.

Schedule 1 [12] enables regulations of a savings and transitional nature to be made as a consequence of the proposed Act.

Schedule 1 [13] makes it clear that the amendments made by the proposed Act extend to existing eligibility lists, persons who are currently employed as Departmental temporary employees and persons who are on existing voluntary secondments.

Schedule 2 Amendment of other legislation

Schedule 2.1 amends section 19 of the *Government and Related Employees Appeal Tribunal Act 1980* to provide that the notice of appointment that a public sector employer is required to publish can appear on the NSW Government's recruitment

Public Sector Employment and Management Amendment Bill 2008

Explanatory note

website and that the notice is taken to have been distributed in accordance with that section if that website contains the notice and is made available to the employees.

Schedule 2.2 amends the *Government and Related Employees Appeal Tribunal Regulation 2005* to make a minor correction to a cross-reference to a provision of the GREAT Act and to remove a reference to the Public Service Notices in the prescribed form for notice of appointments.



New South Wales

Public Sector Employment and Management Amendment Bill 2008

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Public Sector Employment and Management Act 2002 No 43	2
4 Amendment of other legislation	2
5 Repeal of this Act	2
Schedule 1 Amendment of Public Sector Employment and Management Act 2002	3
Schedule 2 Amendment of other legislation	7



New South Wales

Public Sector Employment and Management Amendment Bill 2008

No. , 2008

A Bill for

An Act to amend the *Public Sector Employment and Management Act 2002* to make further provision with respect to the appointment of long-term temporary employees and persons on long-term secondments, the advertising of public service positions and the use of eligibility lists; and for other purposes.

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 2008</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6
3 Amendment of Public Sector Employment and Management Act 2002 No 43	7 8
The <i>Public Sector Employment and Management Act 2002</i> is amended as set out in Schedule 1.	9 10
4 Amendment of other legislation	11
The Act and Regulation specified in Schedule 2 are amended as set out in that Schedule.	12 13
5 Repeal of this Act	14
(1) This Act is repealed on the day following the day on which this Act commences.	15 16
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	17 18

Schedule 1	Amendment of Public Sector Employment and Management Act 2002	1 2
	(Section 3)	3
[1] Section 3 Definitions		4
	Omit the definition of <i>Public Sector Notices</i> from section 3 (1).	5
[2] Section 18 Advertising vacancies		6
	Omit “in the Public Sector Notices and in such other” from section 18 (1).	7
	Insert instead “on the NSW Government’s recruitment website and in such”.	8
[3] Section 20 Eligibility lists		9
	Omit section 20 (3). Insert instead:	10
	(3) An eligibility list for a position remains current for 12 months after the list was created.	11 12
[4] Section 20 (5) and (5A)		13
	Omit section 20 (5). Insert instead:	14
	(5) An eligibility list is applicable not only to the position in relation to which it was created (<i>the relevant position</i>) but also:	15 16
	(a) to any other position in the Department that the appropriate Department Head determines the list should be applicable to on the basis that the other position is substantially the same as the relevant position, and	17 18 19 20
	(b) to any other position in another Department that the Department Head for that Department determines the list should be applicable to on the basis that the other position is substantially the same as the relevant position.	21 22 23 24
	(5A) Any such determination by the Department Head may be made at any time during the currency of the eligibility list.	25 26
[5] Section 20 (7)		27
	Omit the subsection.	28

[6] Section 21 Appointments subject to promotion appeal	1
Insert at the end of section 21 (2):	2
Note. See section 19 of the <i>Government and Related Employees Appeal Tribunal Act 1980</i> which requires the appropriate Department Head to cause notice of the proposed appointment to be published and distributed to employees.	3 4 5 6
[7] Section 21 (3)	7
Omit the subsection.	8
[8] Section 23 Appointments on probation	9
Omit “this Part” from section 23 (1). Insert instead “this Act”.	10
[9] Section 31 Appointment of long-term employees to officer positions	11
Omit section 31 (3) (a). Insert instead:	12
(a) the employee must, at some stage of the temporary employment, have been selected to perform duties at a grade that is the same as (or similar to) the grade of the position concerned (whether or not the duties of the position are substantially the same as the duties performed during the temporary employment),	13 14 15 16 17 18
(a1) the employee was performing duties at that grade following some form of open competition that involved the selection of the employee as the person who, in the opinion of the Department Head, had the greatest merit among the candidates concerned,	19 20 21 22 23
[10] Section 31 (3) (e)	24
Omit the paragraph.	25
[11] Section 86 Temporary staff transfers (secondments)	26
Insert after section 86 (6):	27
(6A) The head of the host agency may appoint the person who becomes an employee of the agency under subsection (6) (<i>the relevant person</i>) to a position in the agency (<i>the new position</i>) that is:	28 29 30 31
(a) at the same grade as (or at a grade similar to) the relevant person’s original position in the home agency, or	32 33
(b) at any grade higher than the relevant person’s original position in the home agency.	34 35

(6B)	The new position may, but need not, be advertised. Accordingly, if the new position is a position in the Public Service and it is not advertised, an appointment under subsection (6A) is not an appointment to which section 19 applies.	1 2 3 4
(6C)	If the relevant person is appointed to the new position, the head of the host agency may decide to make the appointment without requiring the person to serve any period of probation.	5 6 7
(6D)	The relevant person may be appointed to the new position only if each of the following requirements is satisfied:	8 9
(a)	the rate of salary or wages payable to the person at the time of appointment to the new position must not exceed the maximum rate payable for Grade 12, Administrative and Clerical Division, of the Public Service,	10 11 12 13
(b)	the head of the host agency must be satisfied that ongoing work is available in respect of the person in the agency,	14 15
(c)	the head of the host agency must be satisfied that the person has the relevant skills, qualifications, experience, work performance standards and personal qualities to enable the person to perform the duties of the new position.	16 17 18 19
(6E)	Without limiting subsection (6D), if:	20
(a)	the grade of the new position is higher than the grade of the relevant person's original position in the home agency, and	21 22
(b)	the new position has not been advertised,	23
	the relevant person may be appointed to the new position only if the person has been performing duties in the host agency at a grade that is the same as (or similar to) the grade of the new position and was performing those duties following some form of open competition that involved the selection of the person as the person who, in the opinion of the head of the host agency, had the greatest merit among the candidates concerned.	24 25 26 27 28 29 30
[12]	Schedule 4, Savings, transitional and other provisions	31
	Insert at the end of clause 1 (1);	32
	<i>Public Sector Employment and Management Amendment Act 2008</i>	33 34

[13] Schedule 4, Part 5	1
Insert after Part 4:	2
Part 5 Provisions consequent on enactment of Public Sector Employment and Management Amendment Act 2008	3 4 5
27 Operation of amendments	6
(1) In this clause, <i>amending Act</i> means the <i>Public Sector Employment and Management Amendment Act 2008</i> .	7 8
(2) Existing eligibility lists	9
Section 20, as amended by the amending Act, extends to eligibility lists having effect immediately before the commencement of those amendments.	10 11 12
(3) Existing temporary employees	13
Section 31, as amended by the amending Act, extends to persons employed as Departmental temporary employees as at the commencement of those amendments.	14 15 16
(4) Existing secondments	17
The amendment to section 86 made by the amending Act extends to a person who, as at the commencement of that amendment, is the subject of an employee-initiated temporary transfer under that section but who has not yet become an employee of the host agency concerned.	18 19 20 21 22

Schedule 2	Amendment of other legislation	1
	(Section 4)	2
2.1	Government and Related Employees Appeal Tribunal Act 1980 No 39	3
		4
	Section 19 Publication of notices	5
	Insert after section 19 (1A):	6
	(1B) A notice under subsection (1):	7
	(a) may, without limiting the manner in which it may otherwise be published, appear on the NSW Government's recruitment website, and	8
		9
		10
	(b) is taken to have been distributed in accordance with subsection (1) if that website contains the notice and is made available to the employees of the employer.	11
		12
		13
2.2	Government and Related Employees Appeal Tribunal Regulation 2005	14
		15
[1]	Clause 4 Publication of notices	16
	Omit "section 19 (1)". Insert instead "section 19 (4)".	17
[2]	Schedule 1 Forms	18
	Omit "circulated in the Public Service Notices and/or advertised outside the Service" from Form 1.	19
		20
	Insert instead "advertised".	21