

Public Sector Management (General) Regulation 1996

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New South Wales

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Notes—

- **Does not include amendments by**
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New South Wales

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Public Sector Management (General) Regulation 1996



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Public Sector Management (General) Regulation 1996*.

2 Commencement

This Regulation commences on 1 September 1996.

3 Definitions

(1) In this Regulation:

Government Medical Officer means the person, or the nominee of the person, who for the time being holds an office determined by the Public Employment Office for the purposes of this definition.

public servant means an officer or a temporary employee.

public service determination means a determination referred to in section 63 of the Act.

State industrial instrument means an industrial instrument within the meaning of the *Industrial Relations Act 1996*.

Note—

The definition extends to awards, enterprise agreements and agreements referred to in section 64 of the *Public Sector Management Act 1988*.

temporary work location of a public servant, means the place at or from which the public servant temporarily performs official duty.

the Act means the *Public Sector Management Act 1988*.

Note—

Expressions used in this Regulation that are defined in the Act have the meanings given by the Act (see

section 11 of the *Interpretation Act 1987*).

- (2) The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

4 Availability of Act, Regulation and other relevant information

The appropriate Department Head is to make available to public servants employed in the Department, in a reasonably accessible form, the Act, this Regulation, the latest issue of the Public Service Notices and any other relevant information relating to the Public Service.

5 Determinations and approvals

- (1) A determination or an approval of the Public Employment Office or a Department Head under this Regulation is to be published or notified in such manner as the Public Employment Office or the Department Head considers necessary in order to bring the determination or approval to the notice of the public servants to whom it applies.
- (2) A determination or an approval of the Public Employment Office or a Department Head under this Regulation may:
 - (a) apply generally or be limited in its application by reference to specified exceptions or factors, or
 - (b) apply differently according to different factors of a specified kind,or may do a combination of those things.

Part 2 Appointment of public servants

6 Pre-placement health assessments

- (1) A person may not be appointed to an officer's position before the person's fitness to carry out the duties of the position has been confirmed by a health assessment.
- (2) Fitness to carry out duties includes the ability to carry out those duties without endangering the health and safety of the public, of other persons employed in the Department and of the person concerned.
- (3) The health assessment is to be in the form considered necessary by the appropriate Department Head.
- (4) That form may include (but is not limited to) any one or more of the following:
 - (a) a declaration (which may be a statutory declaration if required) provided by the person concerning any illness, disability or condition of which the person is aware that might make the person unfit to carry out the duties of the position,

- (b) a medical examination by a medical practitioner approved by the Department Head,
 - (c) an examination by a medical practitioner, an optometrist or other appropriately qualified health care professional, approved by the Department Head, of a particular aspect of the person's health likely to detrimentally affect the person's capacity to carry out the duties of the position.
- (5) The appropriate Department Head is to give the health care professional providing a health assessment referred to in subclause (4) (c) any requested information about the duties of the position concerned that is reasonably required for the purpose of providing the assessment.
- (6) This clause does not limit any requirements made by the appropriate Department Head with respect to health assessments of persons employed as temporary employees.

7 Temporary employees—approval of PEO

The circumstances in which the approval of the Public Employment Office may be regarded as having been given for the purposes of section 38 (4) or (5) of the Act are where:

- (a) the temporary employment of a person is any one of the following types of employment:
 - (i) apprenticeship,
 - (ii) traineeship,
 - (iii) Commonwealth funded employment,
 - (iv) industry funded employment,
 - (v) employment outside Australia,
 - (vi) Ministerial office private staff, or
- (b) the temporary employment of a person is to carry out the duties of a position on the staff establishment of a Department and the holder of the position is either suspended from duty or absent (including absence on leave, absence while temporarily appointed to another position or absence while relieving in another position), or
- (c) the temporary employment of a person is for the purposes of a specified project for a continuous period not exceeding 3 years or for 2 or more periods not exceeding 3 years, or
- (d) the temporary employment of a person is to carry out the duties of a position on the staff establishment of a Department and the person was originally temporarily

employed under the *Public Service Act 1902* and has since been continuously temporarily employed under the *Public Service Act 1979* and the *Public Sector Management Act 1988*, or

- (e) the temporary employment of a person is part of the work scholarship scheme, as approved by the Public Employment Office, for potential competitors in the 2000 Olympics and Paralympics.

8 Arrangements for use of certain teaching staff—approval of PEO

The circumstances in which the approval of the Public Employment Office may be regarded as having been given for the purposes of section 41 (2) of the Act are where:

- (a) a person's services are obtained by means of the selection on merit of an applicant for an advertised vacancy, or
- (b) the person's services are to be used for the purposes of a specified project for a continuous period not exceeding 3 years or for 2 or more periods not exceeding 3 years.

9 Selection procedures for officers

- (1) Unless the appropriate Department Head otherwise determines, a selection committee is to be established to assess the merit (within the meaning of section 26 of the Act) of applicants for appointment to a vacant officer's position.
- (2) A selection committee should, as far as practicable:
 - (a) consist of at least 3 persons, and
 - (b) include at least one person who does not hold a position in the Department in which the vacant position exists, and
 - (c) be constituted so as to ensure the fairest consideration of all applicants.
- (3) A selection committee must, as far as practicable, deal with each applicant in a similar fashion, but the committee is not required to grant an interview to all applicants.
- (4) A selection committee may use a range of processes as the basis of determining the merit of the applicants, including interviews and objective work-related tests. The committee is not obliged to use any particular process.
- (5) Nothing in this clause requires a Department Head to adopt any recommendation made by a selection committee in relation to the filling of a vacancy.

10 Selection in special cases

- (1) A person (whether or not an officer) may be appointed to an officer's position (other

than a senior executive position) in accordance with the special procedures prescribed by this clause.

- (2) The appropriate Department Head may, with the approval of the Public Employment Office, recommend the appointment of a person belonging to a disadvantaged group of persons to a position in the Department that the Department Head considers suitable for the person.
- (3) A disadvantaged group of persons is a group of persons in the community that the Public Employment Office has designated as a disadvantaged group for the purposes of this clause. The Public Employment Office may so designate any group of persons who suffer a disadvantage in employment, including but not limited to:
 - (a) Aborigines or Torres Strait Islanders, or
 - (b) persons who have a disability within the meaning of the [Anti-Discrimination Act 1977](#).
- (4) A person may be recommended for appointment under this clause only if the person belongs to the relevant disadvantaged group and, in the opinion of the appropriate Department Head, has the greatest merit of the eligible persons seeking appointment in accordance with this clause.
- (5) The Public Employment Office is to determine the general or selective advertising or search procedures to be used for the purposes of seeking eligible persons for appointment under this clause and the selection procedures to be used for selecting a person from among the eligible persons seeking appointment.

10A Entry to positions in Public Service in special cases—long-term temporary employees

- (1) For the purposes of this clause, a **long-term temporary employee** is a temporary employee:
 - (a) who is, as at the date of commencement of this clause, currently employed as a temporary employee in the Public Service, and
 - (b) whose employment as a temporary employee falls within a continuous employment period of at least 2 years.
- (2) A long-term temporary employee may, with the approval of the Public Employment Office, be appointed to an officer's position (other than a senior executive position) in a Department if the appropriate Department Head has made a recommendation in accordance with this clause for the appointment of the employee to the position.
- (3) A recommendation for the appointment of a long-term employee to an officer's position may be made in the following circumstances:
 - (a) the employee was initially employed for a specified purpose or for a limited period

only,

(b) on-going work is available in respect of the employee in the Department,

(c) the appropriate Department Head is satisfied that the employee has the relevant skills, qualifications, experience, work performance standards and personal qualities to enable the employee to perform the duties of the position concerned.

(4) Any such recommendation may only be made within the period of 18 months from the commencement of this clause.

11 Non-application to chief executive officers

This Part does not apply to or in respect of appointments to chief executive positions.

Part 3 Conditions of service

12 Application of Part

The provisions of this Part:

(a) are subject to any State industrial instrument, and

(b) unless the contrary intention appears, apply to all public servants, and

(c) in the case of chief executive officers or senior executive officers—are subject to the contract of employment under Part 2A of the Act between the officer and the officer's employer.

13 Hours of attendance on duty

(1) The hours of attendance on duty of public servants, and the manner of recording their attendance, are to be as determined from time to time by the appropriate Department Head. Any such determination is to be made in accordance with any direction of the Public Employment Office.

(2) The appropriate Department Head or a person authorised by the appropriate Department Head may require a public servant to perform duty beyond the hours determined under subclause (1), but only if it is not unreasonable for the public servant to be required to do so.

Note—

Section 11 of the Act gives the Department Head a general responsibility for the conduct and management of the Department, including determining where and when a public servant is to perform official duty. Accordingly, attendance refers to attendance at the relevant place during the hours the public servant is required to work.

14 Public holidays

(1) In this clause:

local holiday means a public holiday that is not a public holiday throughout the State.

public holiday means a bank or public holiday under the *Banks and Bank Holidays Act 1912*, but does not include:

- (a) a Saturday that is such a holiday by virtue of section 15A of that Act, and
 - (b) 1 August or such other day that is a bank holiday instead of 1 August.
- (2) A public servant is entitled to be absent from duty on the following days unless the public servant is required to attend for duty by the appropriate Department Head or by a person authorised by the appropriate Department Head:
- (a) a day that is a public holiday throughout the State,
 - (b) a day that is a local holiday in that part of the State at or from which the public servant performs duty,
 - (c) a day between Boxing Day and New Year's Day determined by the appropriate Department Head.
- (3) A public servant who is required under this clause to attend for duty on a local holiday is not entitled to overtime or time in lieu on that account.
- (4) If a local holiday falls during a public servant's absence on leave, the public servant is not to be credited with the holiday.

15 Absence from duty

- (1) A public servant must not be absent from duty unless reasonable cause is shown.
- (2) If a public servant is absent from duty because of illness or other emergency, the public servant must, as soon as practicable, provide an explanation for the absence.
- (3) If the public servant fails to provide that explanation to the satisfaction of the appropriate Department Head, the Department Head is to cause to be deducted from the pay of the public servant the amount paid to the public servant for the period of absence.
- (4) Nothing in this clause affects any proceedings for a breach of discipline against a public servant who is absent from duty without authorised leave.

Note—

Section 11 of the Act gives the Department Head a general responsibility for the conduct and management of the Department, including determining where and when a public servant is to perform official duty. Accordingly, attendance refers to attendance at the relevant place during the hours the public servant is required to work.

16 Increments

- (1) This clause does not apply to chief executive officers or senior executive officers.
- (2) The payment to any public servant of an increment in accordance with any State industrial instrument or public service determination is, unless otherwise provided by the instrument or determination, to be made only with the prior approval of the appropriate Department Head.
- (3) The payment of an increment to a public servant is subject to the satisfactory conduct of, and the satisfactory performance of duties by, the public servant as determined by the appropriate Department Head.
- (4) A public servant must be promptly notified in writing by the appropriate Department Head of any decision to defer payment of an increment.
- (5) The payment of an increment may be deferred from time to time, but may not be deferred for more than 12 months at any one time.

17 Health and safety

- (1) For the purposes of this clause, a public servant is not fit for work if the health of the public servant:
 - (a) may render the public servant a danger to other public servants or to the public, or
 - (b) is likely to be seriously affected by the public servant's remaining on duty or, if the public servant is absent from duty, by the public servant's resuming duty.
- (2) The appropriate Department Head may direct a public servant to submit to such medical examination or other health assessment as the Department Head may, on the advice of the Government Medical Officer, consider necessary, if the Department Head has reason to believe that the public servant is not fit for work.
- (3) If the appropriate Department Head has issued any such direction to a public servant, the public servant:
 - (a) must, if on duty, cease duty immediately, and
 - (b) must not resume duty until the completion of the medical examination or other health assessment concerned unless the concurrence of the Government Medical Officer is first obtained or a certificate is furnished by a medical practitioner that the public servant is fit for work.
- (4) If the appropriate Department Head receives a health assessment from the Government Medical Officer that a public servant:
 - (a) is fit for work, the Department Head is to direct in writing that the public servant,

if absent from duty, must resume duty, or

(b) is not fit for work, the Department Head is to direct in writing that the public servant must cease duty immediately or, if absent from duty, must not resume duty.

- (5) If a direction has been given to a public servant under subclause (4), the nature of the leave, if any, to be granted to the public servant during the absence from duty is to be determined by the appropriate Department Head after consideration of any relevant advice of the Government Medical Officer.
- (6) A public servant to whom a direction has been given under subclause (4) (b) must not resume duty unless the appropriate Department Head, on the advice of the Government Medical Officer, approves in writing.
- (7) The appropriate Department Head is to give the health care professional providing a health assessment of a public servant under this clause any requested information about the duties of the public servant's position that is reasonably required for the purpose of providing the assessment.

18 Outside employment—temporary employees

- (1) The provisions of section 80 of the Act apply to and in respect of temporary employees in the same way as those provisions apply to and in respect of officers.
- (2) Subclause (1) does not apply to a temporary employee whose employment in the Public Service is part-time (whether for less than the whole of a working day or for less than 5 working days each week):
- (a) during those times that the temporary employee is not required to be engaged in that employment, and
- (b) if the discharge of the duties of the temporary employee in the Public Service is not adversely affected and if no conflict of interest arises.

Part 4 Discipline

Division 1 Preliminary

19 Definitions

In this Part:

disciplinary inquiry means an inquiry held in accordance with this Part in connection with a breach of discipline alleged to have been committed by an officer other than a chief executive officer.

the senior officer, in relation to an officer, means the senior officer in the branch or

section of the Department in which the officer is employed.

Division 2 Charges and preliminary inquiries

20 Charges and institution of preliminary inquiries for alleged breaches of discipline

- (1) If it appears to the appropriate Department Head or the senior officer that an officer (other than a chief executive officer) has committed a breach of discipline:
 - (a) the officer may be charged with the alleged breach of discipline (either orally or in writing) by the Department Head or senior officer, and if so charged, the Department Head is to institute a preliminary inquiry into the matter, or
 - (b) the Department Head may (without the officer being charged) institute a preliminary inquiry into the matter.
- (2) The senior officer who has charged an officer with an alleged breach of discipline or who considers that an officer should be so charged must immediately report the matter to the appropriate Department Head.
- (3) A person who charges an officer orally must, within 10 days after making the charge, confirm the charge in writing.

21 Appointment of person to conduct preliminary inquiry

- (1) The appropriate Department Head may personally conduct a preliminary inquiry or may appoint a person to conduct the preliminary inquiry.
- (2) The appropriate Department Head may so appoint any public servant, retired public servant or other person that the appropriate Department Head considers suitable to conduct the preliminary inquiry.
- (3) A person who has charged an officer with a breach of discipline is not eligible to conduct the preliminary inquiry.

22 Conduct of preliminary inquiry

- (1) A person conducting a preliminary inquiry must investigate the matter the subject of the inquiry.
- (2) A preliminary inquiry is, subject to this Part and any direction of the appropriate Department Head, to be conducted in such manner as the person conducting the inquiry thinks fit and without legal formality.
- (3) A formal hearing is not to be held before the person conducting the preliminary inquiry and witnesses are not to be called for examination or cross-examination by the officer under investigation or by any person acting on the officer's behalf.
- (4) However, the person conducting a preliminary inquiry must give the officer under

investigation an opportunity to make written representations or, if the person conducting the inquiry approves, oral representations concerning the matter the subject of the inquiry.

23 Report of results of preliminary inquiry

- (1) The person conducting a preliminary inquiry is to prepare a written report of the results of the inquiry.
- (2) If a person other than the appropriate Department Head is conducting the inquiry, the person must furnish the Department Head with the report within the time specified by the Department Head or within such further time as the Department Head may from time to time allow.
- (3) The report:
 - (a) must set out briefly the facts on which the person who conducted the inquiry relies in reaching the conclusions set out in the report, and
 - (b) must recommend whether:
 - (i) the charge should be dismissed or no charge made (as the case requires), or
 - (ii) the inquiry should proceed and the officer be dealt with for a breach of discipline, and
 - (c) may recommend:
 - (i) if the officer has been charged—that the charge should be amended or further charges made, or
 - (ii) if the officer has not been charged—the charges that should be made.

Division 3 Action after preliminary inquiry

24 Action by Department Head after report of result of preliminary inquiry

- (1) The appropriate Department Head may, after considering the report of the results of a preliminary inquiry (but without being bound by the findings or recommendations contained in the report):
 - (a) dismiss the charge or decide that the officer should not be charged (as the case requires), or
 - (b) decide to proceed with the disciplinary inquiry (and for that purpose may charge the officer or, if already charged, amend the charge or make further charges).
- (2) If the appropriate Department Head decides to proceed with the disciplinary inquiry, the Department Head must:

- (a) notify the officer in writing of the charge (including any amended or further charge) and of the particulars of that charge, and attach to that notice a copy of the report of the result of the preliminary inquiry, and
- (b) call on the officer:
 - (i) to deny or admit the truth of the alleged breach of discipline, and
 - (ii) to show cause why the officer should not be punished for that breach of discipline,and to do so in writing within the time stipulated in that notice to the officer.
- (3) The notice must inform the officer that the officer may, in the reply to the notice, request an interview to discuss the matter in person with the Department Head.
- (4) The Department Head may determine the charge without discussing the matter with the officer if:
 - (a) a reply to the notice is not received by the appropriate Department Head within the time stipulated in the notice, or
 - (b) a reply to the notice is received by the Department Head within the time stipulated in the notice but the officer does not request an interview.
- (5) If a reply to the notice is received by the appropriate Department Head within the time stipulated in the notice and the officer requests an interview, the Department Head may determine the charge after duly making arrangements for the interview and, if the officer attends, after duly discussing the matter with the officer.
- (6) A Department Head, in determining whether an officer has or has not committed a breach of discipline, may take into consideration only those matters disclosed at any interview with the Department Head or in any of the following documents:
 - (a) the report of the result of the preliminary inquiry,
 - (b) any reply made by the officer to the charge,
 - (c) the report of the result of any further inquiry instituted by the Department Head.
- (7) Subclause (6) does not prevent a Department Head taking into consideration any matter of which a court is entitled to take judicial notice.

25 Interview with Department Head

- (1) The appropriate Department Head is to give an officer at least 14 days' notice of the time and place at which an interview will be held under this Division to discuss the charge against the officer.

- (2) The person who conducted the preliminary inquiry must, if the appropriate Department Head so directs, also attend the interview.
- (3) The appropriate Department Head is not to hold a formal hearing into the charge or allow witnesses to be called for examination or cross-examination at an interview by the officer charged or by any person acting on the officer's behalf.
- (4) However, the appropriate Department Head may, because of any matter arising at an interview or at any other time, institute further inquiries into the matter and consider further reports on the results of those inquiries.
- (5) If further inquiries are instituted:
 - (a) Division 2 applies to the further inquiries, and
 - (b) the appropriate Department Head may determine the charge without a further interview with the officer charged.

Division 4 General

26 Observers, inspection of documents and other matters

- (1) During any discussion or interview with the appropriate Department Head or other person conducting a disciplinary inquiry:
 - (a) the officer under investigation or charged may nominate a person (other than a practising barrister or practising solicitor) to speak on the officer's behalf if the Department Head or other person conducting the inquiry is satisfied that the officer is not able to speak effectively on his or her own behalf, and
 - (b) the officer is entitled to have a person of the officer's choice present as an observer, but not to take part in the discussion or interview.
- (2) An officer subject to a disciplinary inquiry or any person acting on the officer's behalf may inspect the Departmental papers, correspondence, reports or other documents relating to the matter at such time as may be arranged with the appropriate Department Head or other person conducting the inquiry.
- (3) The appropriate Department Head or other person conducting a disciplinary inquiry must not disclose confidential information obtained during the inquiry except for the purposes of the inquiry or any proceedings arising from the inquiry.

27 Delegation of functions by Department Head

If the appropriate Department Head has delegated the Department Head's functions to deal with a breach of discipline, a reference in this Part to the appropriate Department Head is to be read as a reference to the delegate.

28 Charge not to be recorded if not proven

If an officer is found not to have committed a breach of discipline with which the officer has been charged or for which an inquiry has been instituted, the charge or alleged breach of discipline must not be recorded in any record maintained in relation to the officer by or for the Department.

29 Suspension of officers

If the senior officer suspends an officer under section 77 of the Act, the senior officer must report the suspension immediately to the appropriate Department Head.

30 Report of charges and convictions for serious offences

(1) In this clause:

officer includes a temporary employee.

serious offence means an offence referred to in section 76 of the Act.

- (2) An officer who is charged with having committed, or is convicted of, a serious offence must immediately report that fact in writing to the appropriate Department Head.
- (3) If the senior officer has reason to believe that an officer has been charged with having committed, or has been convicted of, a serious offence but has not reported that fact in accordance with subclause (2), that senior officer must immediately report that fact to the appropriate Department Head.

Part 5 Allowances

Division 1 Preliminary

31 Application of Part

- (1) The provisions of this Part are subject to any State industrial instrument.
- (2) Divisions 3–6 do not apply to chief executive officers or senior executive officers.

32 Determination of rates and conditions of payment of allowances

- (1) The rates and conditions of payment of allowances under this Part are, subject to this Part, to be as determined by the Public Employment Office from time to time.
- (2) The payment of an allowance under this Part to a public servant is to be refused, or the amount of the allowance is to be reduced, if:
- (a) any expenses of the public servant for which the allowance is payable were not properly and reasonably incurred by the public servant in the performance of official duties, or

(b) any purported expenses of the public servant for which the allowance is payable were not in fact incurred by the public servant.

(3) If an allowance under this Part is payable at a daily rate, the amount to be paid for a portion of a day is to be the appropriate proportion of the daily rate and, for the purpose of calculating that amount, any fraction of an hour is to be corrected to the nearest half-hour.

33 Payment where allowance not adequate or available

(1) If the appropriate Department Head is satisfied that, but for this clause, the actual expenses properly and reasonably incurred by a public servant in the performance of official duties:

(a) are not adequately covered by an allowance to which the public servant is entitled under this Part, or

(b) are not covered by any allowance payable under this Part or under any State industrial instrument,

the public servant is to be paid an allowance equivalent to the amount of those additional expenses or the amount of those expenses, as the case may be.

(2) An allowance is not payable under this clause unless the public servant produces official receipts for the expenses incurred by the public servant.

(3) An allowance under this clause may be reduced if it exceeds without good cause any limit approved in advance by the appropriate Department Head for the expenses concerned.

Division 2 Higher duties and acting allowances

34 Entitlement to higher duties allowance when relieving in other positions

(1) This clause applies when the appropriate Department Head directs that the duties of a position which is vacant, or the holder of which is suspended, sick or absent, are to be performed by one or more other public servants.

(2) A public servant who, during a period of relief in another position, satisfactorily performs, in the opinion of the appropriate Department Head, the whole of the duties and assumes the whole of the responsibilities of that position is to be paid by allowance any difference between the public servant's present salary or wage and the salary or wage to which the public servant would have been entitled if appointed to that position.

(3) A public servant who, during a period of relief in another position, does not perform the whole of the duties or assume the whole of the responsibilities of that position is to be paid that proportion of the allowance referred to in subclause (1) that the duties

satisfactorily performed and responsibilities assumed bear to the whole of the duties and responsibilities of that position. The amount of the allowance so paid is to be as determined by the appropriate Department Head.

- (4) In this clause, a reference to the duties and responsibilities of a position is a reference to those duties and responsibilities that, during the period of relief, the public servant appointed to the position would ordinarily have performed or assumed.

35 Payment of allowance when relieving in other positions

- (1) Except where the Public Employment Office otherwise determines, an allowance is not to be paid under clause 34 in respect of a single period of relief in another position of less than 5 ordinary working days.
- (2) An allowance is not to be paid under clause 34 in respect of any unbroken period of leave, exceeding 5 ordinary working days, taken by the public servant during any period of relief in another position.
- (3) Despite subclause (2), if a public servant affords part-time relief in a position on a continuing basis, an allowance is to be paid under clause 34 calculated as though the public servant were relieving on a full-time basis but the amount of the allowance is to be calculated in the same proportion as the ordinary weekly hours actually worked bear to the weekly hours required to be worked by a full-time public servant appointed to the position.
- (4) A public servant appointed to a position the principal purpose of which is to provide relief in certain other positions is not, unless otherwise determined by the appropriate Department Head, to be paid an allowance under clause 34 except in respect of so much of a single period of relief in the same position as exceeds 13 weeks.

36 Allowance for acting or temporary appointments

- (1) This clause applies when an officer is appointed to act in another position, or is temporarily appointed to another position, which is vacant or the holder of which is suspended, sick or absent.
- (2) Any such officer is to be paid by allowance any difference between the officer's present salary or wage and the salary or wage to which the officer would have been entitled if appointed to that position (other than on an acting or temporary basis).

37 Public servant not to suffer reduction in remuneration

A public servant relieving or acting in, or temporarily appointed to, another position is not, as a result, to suffer any reduction in salary or wage.

38 Provisions relating to executive positions

- (1) For the purposes of this Division, the salary or wage of an executive officer is, subject

to this clause, the amount of the remuneration package for the executive position concerned.

- (2) If the remuneration package for an executive position consists of a range of amounts, the salary or wage is the amount within that range to which the officer is entitled (in the case of the officer's present salary or wage) or the amount within that range determined by the officer's employer (in the case of the salary or wage to which the officer would have been entitled if appointed to the executive position concerned).
- (3) If an officer who is not an executive officer relieves or acts in an executive position, the salary or wage to which the officer would have been entitled if appointed to the executive position is to be reduced by the superannuation guarantee amount payable in respect of the officer.
- (4) In this clause, executive officer, executive position, employer and remuneration package have the same meanings they have in Part 2A of the Act.

Division 3 Meal allowances

39 Application of Division

This Division does not apply to a person:

- (a) who is engaged in regular shift work, and
- (b) who is entitled to an allowance of the kind referred to in this Division under a State industrial instrument or public service determination.

40 Breakfast allowance

A public servant, whether entitled to overtime payment or not, is to be paid an allowance at the rate determined by the Public Employment Office for breakfast when required to commence work at or before 6 am and at least 1 hour before the earliest time that the public servant may commence work under the usual arrangements applicable to the public servant.

41 Lunch allowance

A public servant, whether entitled to overtime payment or not, is to be paid an allowance at the rate determined by the Public Employment Office for lunch on any Saturday, Sunday or public holiday throughout the State when required to work until or beyond the expiration of the aggregate period, after commencing duty, of 5 hours.

42 Evening meal allowance

A public servant, whether entitled to overtime payment or not, is to be paid an allowance at the rate determined by the Public Employment Office for an evening meal when required to work until or beyond 6 pm and until or beyond the expiration of the aggregate

period, after commencing duty, of 8 half-hours plus the time taken for lunch.

43 Payment of meal allowance

- (1) An allowance is not payable under this Division unless the appropriate Department Head is satisfied that:
 - (a) the performance of the work concerned at the time at which it was performed was necessary, and
 - (b) the public servant concerned incurred expenditure in obtaining the meal for which the allowance is sought, and
 - (c) if the public servant concerned was able to cease duty for at least 30 minutes to take that meal—the public servant did so.
- (2) An allowance is not payable under this Division for meals taken while a public servant is journeying on official business. However, an allowance is payable if:
 - (a) the public servant is not, because of the journey, required to reside away from the public servant's residence, and
 - (b) the public servant is not entitled to an allowance for the meals under a State industrial instrument.
- (3) This clause does not prevent the payment of an allowance under any other provision of this Part or under a State industrial instrument.

Division 4 Remote area allowances

44 Living allowances

- (1) In this clause, **remote area** means the area of the State situated on or to the west of the line starting from the right bank of the Murray River opposite Swan Hill, then passing through the following towns or localities in the following order, namely, Conargo, Coleambally, Hay, Rankin's Springs, Marsden, Condobolin, Peak Hill, Nevertire, Gulargambone, Coonabarabran, Wee Waa, Moree, Warialda, Ashford and Bonshaw, and including any place situated in any such town or locality.
- (2) A public servant who is:
 - (a) indefinitely stationed, and resident, in a remote area, or
 - (b) not indefinitely stationed in a remote area but compelled, because of the difficulty in obtaining suitable accommodation, to be resident in a remote area,is to be paid an allowance for the increased cost of living and the climatic conditions in that area.

(3) The rate of the allowance under this clause is:

- (a) except as provided by paragraph (b)—a single rate determined by the Public Employment Office, or
- (b) in respect of such towns or localities in the western part of the remote area as are determined by the Public Employment Office—that single rate increased by one-quarter or by one-half or twice that single rate (as determined by the Public Employment Office in respect of each such town or locality).

45 Travelling on recreation leave

(1) In this clause, **remote area** means:

- (a) the area of the State that is situated to the west of the 144th meridian of longitude, or
- (b) such other areas of the State situated to the west of the 145th meridian of longitude as the Public Employment Office may from time to time determine for the purposes of this clause.

(2) A public servant who:

- (a) is indefinitely stationed in a remote area, and
- (b) proceeds on recreation leave to any place which is at least 480 kilometres by the nearest practicable route from the public servant's work location in that area,

is to be paid an allowance at the rate determined by the Public Employment Office for the additional costs of travel.

(3) An allowance under this clause is not to be paid more than once in any period of 12 months.

Division 5 Allowances for absence on official duties

46 Allowances for absences on official duties

(1) A public servant:

- (a) who performs official duty at or from a temporary work location, and
- (b) is thereby compelled to reside temporarily at a place other than the public servant's residence,

is to be paid such travelling and other allowances as are prescribed by the applicable State industrial instrument.

(2) A public servant who is required to camp (whether or not in an established camp) in connection with any such official duty is to be paid an allowance at a rate determined

by the Public Employment Office. If the public servant is required to camp for more than 40 nights in any calendar year, the public servant is to be paid an additional allowance at a rate determined by the Public Employment Office.

47 Periods for which allowance under this Division payable

- (1) An allowance under this Division is not payable for:
 - (a) any period that the public servant returns to the public servant's residence at weekends or public holidays commencing with the time of arrival at that residence and ending at the time of departure from that residence, or
 - (b) any period of leave—except with the approval of the Public Employment Office or as otherwise provided by this Division, or
 - (c) any other period that the public servant is absent from the temporary work location of the public servant otherwise than on official duty.
- (2) A public servant who is in receipt of an allowance under this Division:
 - (a) may return to the public servant's residence on any weekend or public holiday, and
 - (b) is entitled to be paid the actual expenses of travel properly and reasonably incurred by the public servant (including any allowance under Division 6 if the public servant uses a private motor vehicle),

but unless the Public Employment Office otherwise determines the amount so paid is not to exceed the amount to which the public servant would have been entitled by remaining at the temporary work location of the public servant.

48 Public servant may be required to return home or special purpose leave may be granted

- (1) The appropriate Department Head may require a public servant who is in receipt of an allowance under this Division to return to the public servant's residence if that return would achieve a cost saving to the Department equal to or greater than the amount determined by the Public Employment Office from time to time for the purposes of this clause.
- (2) If the public servant cannot return to the public servant's residence without being absent from duty, the public servant may, on the occasions and in the manner set out in subclauses (3) and (4), be granted special purpose leave sufficient to permit the public servant to return to that residence at weekends and there to spend at least 2 consecutive days and nights.
- (3) Special purpose leave may be granted after the public servant concerned has performed duty at the temporary work location for 3 weeks, and after that may be

granted for each further period of duty of 4 weeks.

(4) Special purpose leave:

- (a) may be granted at Christmas and Easter, if special purpose leave for the appropriate 3 or 4 weekly period has not already been granted, and
- (b) is forfeited for the appropriate 3 or 4 weekly period unless the leave is taken at the time at which it falls due or, if the leave could not be taken at that time because of Departmental convenience, unless the leave is taken on the next weekend convenient to the Department, and
- (c) if a period of service at one temporary work location is immediately followed by another such period at a different temporary work location—is to be calculated as though those periods of service were a single period at a single location.

(5) Despite anything to the contrary in this Part, a public servant who is in receipt of an allowance under this Division and who is granted special purpose leave under this clause is entitled to the allowance under this Division for the necessary period of travel:

- (a) for the journey from the temporary work location to the public servant's residence, and
- (b) for the return journey from the public servant's residence to the temporary work location.

(6) Subject to subclause (7), a public servant who is in receipt of an allowance under this Division and who, on ceasing to perform duty at or from a temporary work location, leaves that location is entitled to the allowance under this Division for the necessary period of travel to return to the public servant's residence or to take up duty at another location.

(7) An allowance under subclause (6) is not to be paid for any travel referred to in clause 50.

Division 6 Allowances for work-related expenses

49 Cost of travel to and from work

- (1) A public servant must bear the cost of travel to and from work, unless the appropriate Department Head otherwise determines or subclause (2) applies.
- (2) If a public servant:
 - (a) is directed to report for duty at a locality other than the locality at which the public servant reported for duty at the beginning of the day, or
 - (b) is directed to report for duty on any day or days at a locality other than the

locality at which the public servant is normally required to report for duty and has already incurred expenditure in relation to travel on that day or those days to the locality at which the public servant is normally required to report for duty,

the cost of travel on that day or those days (but not exceeding in total the maximum number referred to in subclause (3)) to the locality at which the public servant is so directed to report for duty is to be borne by the Department.

- (3) For the purposes of subclause (2), the maximum number of days is 5 days in any period or, if the appropriate Department Head is satisfied that special circumstances exist, such greater number of days as the Department Head may determine.

50 Use of private motor vehicle on official business

- (1) A public servant who, with the approval of the appropriate Department Head, uses a private motor vehicle or other means of conveyance for the conduct of official business is to be paid an allowance at the rate determined by the Public Employment Office for its use.
- (2) An allowance is not to be paid under this clause to a public servant using a private motor vehicle on official business unless the public servant has in force, while using the vehicle on official business, a comprehensive motor vehicle insurance policy to an amount, and in a form, approved by the appropriate Department Head.
- (3) An allowance is not to be paid under this clause for a journey if an official motor vehicle was available for the journey.
- (4) If an official motor vehicle was not available for a journey but the appropriate Department Head is of the opinion that public transport was reasonably available for the journey, the amount of any allowance paid under this clause is not to exceed the cost of the journey by public transport.

51 Uniforms and protective or other specialist clothing

- (1) This clause applies when:
 - (a) a public servant is required or authorised by the appropriate Department Head to wear a uniform, protective clothing or other specialised clothing in connection with the performance of official duties, and
 - (b) the cost of purchasing, cleaning and maintaining the uniform or clothing is not paid by the Department.
- (2) The public servant is to be paid an allowance, at a rate determined by the Public Employment Office, to cover the reasonable expenses incurred by the public servant in purchasing, cleaning and maintaining the uniform or clothing.

52 Camping equipment allowance

- (1) This clause applies when:
 - (a) a public servant is required to provide camping equipment for use by the public servant in connection with the performance of official duties, and
 - (b) the cost of providing the camping equipment is not paid by the Department.
- (2) The public servant is to be paid, by way of allowance, an amount to cover the reasonable expenses incurred by the public servant in providing the camping equipment.
- (3) In this clause, ***camping equipment*** includes camping instruments and travelling equipment.

Division 7 Special provisions relating to chief executive officers and senior executive officers

53 Allowances payable to CEO and SES officers

Nothing in this Part affects the allowances payable to a chief executive officer or senior executive officer under section 42M of the Act.

54 Relocation expenses—senior executive officers

- (1) A senior executive officer is, in connection with any relocation during the term of the officer's employment, entitled to any relocation expenses payable under the applicable State industrial instrument to an officer who is not a senior executive officer.
- (2) A senior executive officer is entitled to such relocation expenses as the appropriate Department Head determines if:
 - (a) the officer is required to relocate when selected for the position, and
 - (b) the place to which the officer is required to relocate is of sufficient distance, in the opinion of the Department Head, to warrant relocation expenses.

Part 6 Leave

Division 1 Preliminary

55 Application of Part

- (1) The provisions of this Part are subject to any State industrial instrument.
- (2) The provisions of this Part do not apply to an apprentice to whom an apprenticeship award applies. However, the provisions of this Part relating to recreation leave apply

to any such apprentice if the entitlement to recreation leave under the apprenticeship award is less favourable than the entitlement under this Part.

56 Determinations of Public Employment Office about amount or conditions of leave

The amount of leave of any kind which may be granted to a public servant and the conditions on which it may be granted is, subject to this Part, to be as determined by the Public Employment Office from time to time.

57 Pro-rata adjustments in leave for public servants not working standard hours or period

- (1) Entitlements to leave under this Part are based on a public servant working on a full-time basis. The entitlements are to be adjusted pro-rata for a public servant working other than for 5 days a week on a full-time basis.
- (2) The operation of this clause is subject to any express provision or contrary intention in this Part.

58 References to full pay

A reference in this Part to leave granted to a public servant on full pay or less than full pay is a reference to leave granted to the public servant at the ordinary rate of pay of the public servant or at less than that ordinary rate of pay.

59 Leave for temporary employees

If the period of leave to which a temporary employee is entitled under this Part exceeds the period for which the temporary employee is employed under section 38 of the Act, the balance of that period of leave may be granted during subsequent periods of employment in the Public Service if each such subsequent period of employment commences on the termination of a previous period of employment in the Public Service.

60 Applications for leave

- (1) An application by a public servant for leave (whether or not granted under this Part) is to be made to and dealt with by the appropriate Department Head.
- (2) A Department Head, in dealing with any such application, is to have regard to the exigencies of the Department, but as far as practicable is to deal with the application in accordance with the wishes of the public servant.

Division 2 Adoption leave

61 Entitlement to adoption leave

- (1) A public servant who adopts a child and is the primary care-giver of the child:
 - (a) is entitled to be granted adoption leave for a maximum period of 12 months if the child has not commenced school at the date of the taking of custody, or

(b) may be granted adoption leave for such period (not exceeding 12 months on a full-time basis) as the appropriate Department Head may determine if the child has commenced school at that date.

(2) A public servant who has been granted adoption leave may, with the permission of the appropriate Department Head, take leave:

(a) full-time for a period not exceeding 12 months, or

(b) part-time over a period not exceeding 2 years, or

(c) partly full-time and partly part-time over a proportionate period.

(3) Adoption leave commences on the date that the public servant takes custody of the child concerned, whether that date is before, on or after the date on which a court makes an order for the adoption of the child by the public servant.

62 Rights of public servant resuming duty

A public servant who resumes duty immediately at the end of adoption leave:

(a) is entitled to be placed in the position occupied by the public servant immediately before the commencement of that leave if the position still exists, or

(b) is entitled to be appointed (subject to the availability of other suitable positions) to another position for which the public servant is qualified in accordance with and subject to sections 50 and 52 of the Act if the position occupied by the public servant has ceased to exist.

63 Payment for adoption leave

(1) Except as otherwise provided by this clause, adoption leave is to be granted without pay.

(2) A public servant who:

(a) applied for adoption leave within such time and in such manner as the Public Employment Office may from time to time determine, and

(b) before the commencement of adoption leave, completed not less than 40 weeks' continuous service,

is entitled to payment at the public servant's ordinary rate of pay for a period of 3 weeks of adoption leave or the period of adoption leave taken, whichever is the lesser period.

Division 3 Maternity leave

64 Definitions

In this Division:

expected date of birth, in relation to a public servant who is pregnant, means a date specified by a medical practitioner to be the date on which the medical practitioner expects the public servant to give birth as a result of the pregnancy.

65 Entitlement to maternity leave

- (1) A public servant who is pregnant is, subject to this clause, entitled to be granted maternity leave:
 - (a) for a period of not more than 9 weeks on a full-time basis before the expected date of birth, and
 - (b) for a further period ending not more than 12 months after the actual date of birth.
- (2) A public servant who has been granted maternity leave may, with the permission of the appropriate Department Head, take leave after the actual date of birth:
 - (a) full-time for a period not exceeding 12 months, or part-time over a period not exceeding 2 years, or
 - (b) partly full-time and partly part-time over a proportionate period.

66 Circumstances in which sick leave may be taken

A public servant who has been granted maternity leave and whose child is stillborn may elect to take available sick leave instead of maternity leave.

67 Rights of public servant on resuming duty

A public servant who resumes duty immediately at the end of maternity leave:

- (a) is entitled to be placed in the position occupied by her immediately before the commencement of that leave if the position still exists, or
- (b) is entitled to be appointed (subject to the availability of other suitable positions) to another position for which she is qualified in accordance with and subject to sections 50 and 52 of the Act if the position occupied by her has ceased to exist.

68 Payment of maternity leave

- (1) Except as otherwise provided by this clause, maternity leave is to be granted without pay.
- (2) A public servant who:

- (a) applied for maternity leave within such time and in such manner as the Public Employment Office may from time to time determine, and
- (b) before the expected date of birth, completed not less than 40 weeks' continuous service,

is entitled to payment at her ordinary rate of pay for a period not exceeding 9 weeks of maternity leave or the period of maternity leave taken, whichever is the lesser period.

Division 4 Parental leave

69 Department Head may grant parental leave

- (1) The appropriate Department Head may grant parental leave for a period not exceeding 12 months to a public servant who becomes a parent but is not entitled to maternity leave or adoption leave.
- (2) Parental leave may commence at any time up to 2 years from the date of birth or adoption of the child.
- (3) A public servant who has been granted parental leave may, with the permission of the appropriate Department Head, take the leave:
 - (a) full-time for a period not exceeding 12 months, or
 - (b) part-time over a period not exceeding 2 years, or
 - (c) partly full-time and partly part-time over a proportionate period.

70 Rights of public servant resuming duties

A public servant who resumes duty immediately at the end of parental leave:

- (a) is entitled to be placed in the position occupied by the public servant immediately before the commencement of that leave if the position still exists, or
- (b) is entitled to be appointed (subject to the availability of other suitable positions) to another position for which the public servant is qualified in accordance with and subject to sections 50 and 52 of the Act if the position occupied by the public servant has ceased to exist.

71 No payment for parental leave

Parental leave is to be granted without pay.

Division 5 Family and community service leave

72 Department Head may grant family and community service leave

- (1) The appropriate Department Head may grant family and community service leave to a public servant:
 - (a) for reasons related to the family responsibilities of the public servant, or
 - (b) for reasons related to the performance of community service by the public servant, or
 - (c) in a case of pressing necessity.
- (2) A public servant is not to be granted family and community service leave for attendance at court to answer a criminal charge, unless the appropriate Department Head approves the grant of leave in the particular case.

73 Maximum amount of family and community service leave

- (1) The maximum amount of family and community service leave on full pay that may be granted to a public servant is:
 - (a) 2½ working days during the first year of service and 5 working days in any period of 2 years after the first year of service, or
 - (b) 1 working day for each year of service after 2 years' continuous service, minus any period of family and community service already taken by the public servant, whichever is the greater period.
- (2) The appropriate Department Head may grant up to 5 days family and community service leave without pay to a public servant in any period of one year if the amount of paid family and community service leave available to the public servant for that period has been used. The amount of any such leave without pay that may be granted in any period of one year is to be reduced by the amount of any paid family and community service leave already taken by the public servant in the same period.
- (3) Additional paid family and community service leave may be granted to a public servant to care for a person for whose care the public servant is responsible if the grant of such leave is authorised by a determination of the Public Employment Office and is in accordance with the determination. Any such leave may only be granted if the public servant has accrued sick leave since 12 May 1995 for the period of leave and, if granted, replaces that sick leave.
- (4) A reference in this clause to family and community service leave granted to a public servant includes a reference to short leave granted to a public servant under the [Public Sector Management \(General\) Regulation 1988](#) as in force before its repeal.

Division 6 Leave without pay

74 Department Head may grant leave without pay

- (1) The appropriate Department Head may grant leave without pay to a public servant if good and sufficient reason is shown.
- (2) Leave without pay may be granted on a full-time or a part-time basis.
- (3) If a public servant is granted leave without pay for a period not exceeding 14 consecutive calendar days, pay may be allowed by the appropriate Department Head for such days occurring during that leave as are public holidays throughout the State.

75 Recreation leave or extended leave may be taken instead of leave without pay

A public servant who has been granted leave without pay may, with the approval of the appropriate Department Head, elect to take available recreation or extended leave instead of leave without pay.

Division 7 Military leave

76 Department Head may grant military leave

The appropriate Department Head may grant to a public servant who is a volunteer part-time member of the Defence Forces military leave on full pay for such absence from duty as is necessarily involved for periods of attendance at training, education, instruction or compulsory parades.

77 Maximum amount of leave

The maximum amount of military leave that may be granted under this Division is an aggregate of 36 days in any one financial year.

78 Certificate of necessity for attendance

Applications for military leave must be accompanied by a certificate signed by the commanding officer or other responsible officer of the necessity for attendance (or other evidence of the necessity for attendance acceptable to the appropriate Department Head).

Division 8 Recreation leave

79 Recreation leave—accrual

- (1) Recreation leave on full pay accrues to public servants at the rate of 20 working days per year.
- (2) Subject to the approval of the appropriate Department Head, additional recreation leave on full pay accrues to public servants indefinitely stationed in a remote area at

the rate of 5 working days per year.

- (3) Recreation leave accrues from day to day.
- (4) In this clause, **remote area** means the Western Division or Central Division of the State.

80 Recreation leave—periods during which no accrual

- (1) Recreation leave does not accrue to a public servant in respect of any period of absence from duty without pay or without leave.
- (2) However, recreation leave accrues in respect of:
 - (a) any period of leave without pay granted on account of incapacity for which compensation has been authorised to be paid under the [Workers Compensation Act 1987](#), or
 - (b) any period of sick leave without pay, or any other period of leave without pay, not exceeding 5 working days in any period of 12 months.

81 Recreation leave—limits on accumulation

- (1) Recreation leave accrued and not taken by a public servant owing to departmental exigencies, or for any other reason the appropriate Department Head considers sufficient, accumulates up to a maximum of 40 working days.
- (2) All recreation leave accruing in excess of 40 working days is forfeited, unless the appropriate Department Head is satisfied that the public servant is prevented from taking recreation leave sufficient to reduce the accrued leave below 40 working days and directs that the leave not be forfeited.
- (3) A direction by the appropriate Department Head that leave not be forfeited is subject to any direction by the Department Head for the public servant to take, at such time as is convenient to the working of the Department, the excess recreation leave accrued. As far as practicable, the wishes of the public servant concerned are to be taken into consideration in directing the time for the taking of that excess leave.

82 Calculation of recreation leave

- (1) Recreation leave is not to be granted for a period less than a quarter-day or in other than multiples of a quarter-day.
- (2) Recreation leave for which a public servant is eligible on cessation of employment is to be calculated to a quarter-day (fractions less than a quarter being rounded up).
- (3) The proportionate deduction to be made in respect of the accrual of recreation leave on account of any period of absence from duty without pay or without leave is to be calculated to a quarter-day (fractions less than a quarter being rounded down).

- (4) If a public servant takes extended leave on less than full pay, the period of that leave is to be taken into account to the extent of the equivalent reduced proportion of the leave only in calculating the public servant's accrual of recreation leave.

83 Payment for untaken leave where public servant ceases to be employed or dies

- (1) A public servant is, on cessation of employment (except by death), entitled to be paid immediately, instead of recreation leave accrued and remaining untaken or unforfeited, the money value of that leave.
- (2) A public servant to whom subclause (1) applies may elect to take either the whole or part of the recreation leave accrued and remaining untaken or unforfeited at cessation of active duty as recreation leave on full pay instead of taking the money value of that leave.
- (3) If a public servant dies, the money value of any recreation leave accrued and remaining untaken or unforfeited is to be paid to the same persons as the money value of accrued extended leave is to be paid in the same circumstances under Schedule 5 to the Act.
- (4) For the purpose of calculating an entitlement under this clause, the money value of recreation leave accrued to a chief executive officer or senior executive officer is to be determined on the basis of the officer's notional salary.

Division 9 Sick leave

84 Granting of sick leave

- (1) If the appropriate Department Head is satisfied that a public servant is unable to perform duty because of illness, the Department Head:
 - (a) must, subject to this Part, grant to the public servant sick leave on full pay, and
 - (b) may, subject to this Part, grant to the public servant sick leave without pay, if the absence of the public servant exceeds the entitlement of the public servant under this Part to sick leave on full pay.
- (2) A public servant may elect to take available recreation or extended leave instead of sick leave without pay.

85 Requirements for medical certificate

- (1) A public servant absent from duty for more than 3 consecutive working days because of illness must furnish a medical certificate in respect of the absence to the appropriate Department Head.
- (2) A public servant absent from duty for 3 consecutive working days or less because of illness must, if required to do so by the appropriate Department Head, furnish a

medical certificate in respect of the absence to the Department Head.

- (3) The appropriate Department Head may at any time require a public servant who has been granted sick leave to furnish medical evidence of the inability of the public servant to resume duty.

86 Action to be taken where medical certificate considered inadequate

- (1) If a public servant applying for sick leave furnishes a medical certificate which appears to the appropriate Department Head to indicate that the condition of the public servant does not warrant the grant of sick leave, the application together with the medical certificate is to be referred immediately by the Department Head to the Government Medical Officer for consideration.
- (2) The nature of the leave to be granted to the public servant is to be determined by the appropriate Department Head on the advice of the Government Medical Officer.
- (3) If sick leave is not granted, the appropriate Department Head must, as far as practicable, take into account the wishes of the public servant concerned when determining the nature of the leave to be granted.

87 Confidentiality

A public servant may elect to have an application for sick leave dealt with confidentially by the Government Medical Officer in accordance with such procedures as may be determined from time to time by the Public Employment Office.

88 Sick leave may be granted for periods of recreation or extended leave

- (1) If a public servant who is on recreation leave or extended leave furnishes to the appropriate Department Head a satisfactory medical certificate in respect of illness occurring during that leave, the Department Head may, subject to the provisions of this Division, grant sick leave to the public servant for the following period:
 - (a) in the case of a public servant on recreation leave—the period set out in the medical certificate,
 - (b) in the case of a public servant on extended leave—the period set out in the medical certificate, except if that period is less than 5 ordinary working days.
- (2) This clause applies to all public servants other than those on leave before resignation or termination of services, unless the resignation or termination of services amounts to a retirement.

89 Calculation of sick leave

- (1) Sick leave on full pay accrues to a public servant at the rate of 15 days each calendar year, and any such accrued leave which is not taken is cumulative.

- (2) Sick leave on full pay accrues at the beginning of the calendar year, but if a public servant is appointed during a calendar year, sick leave on full pay accrues on the date the public servant commences duty at the rate of 1¼ days for each complete month before the next 1 January.
- (3) In the case of a public servant employed at 1 May 1988:
 - (a) sick leave on full pay for the calendar year commencing 1 January 1988 accrues at the rate of 10 days, and
 - (b) in addition to that 10 days, the public servant is to be credited with sick leave on full pay in relation to service before 1 May 1988 for the following number of days less the number of days of sick leave on full pay previously granted to the public servant:
 - (i) after completion of the first year of service and before completion of the second year of service—20 working days,
 - (ii) after completion of the second year of service and before completion of the fifth year of service—40 working days,
 - (iii) after completion of the fifth year of service—60 working days plus an additional 10 working days for each completed year of service after that.
- (4) Except as otherwise provided by this Division or otherwise determined by the Public Employment Office, only service as a public servant is to be taken into account for the purpose of calculating sick leave due.
- (5) Sick leave without pay is not to be counted as service for the accrual of sick leave.
- (6) For the purposes of determining the amount of sick leave accrued if sick leave is granted on less than full pay, the amount of sick leave granted is to be converted to its full pay equivalent.

90 Payment of sick leave during initial period of service

- (1) Not more than 5 days' sick leave on full pay is to be granted to any public servant during the first 3 months of service unless a satisfactory medical certificate in respect of each absence is furnished.
- (2) On completion of the first 12 months' service, payment may be made to a public servant for such portion of sick leave taken without pay during the first 3 months of that service as, with the addition of all sick leave on full pay granted during that period of 12 months, does not exceed a total of 15 working days.

91 Workers' compensation

- (1) This clause applies if a public servant is or becomes unable to attend for duty or to

continue on duty in circumstances which may give the public servant a right to claim compensation under the *Workers Compensation Act 1987*.

- (2) If a public servant has made a claim, the public servant may, pending the determination of the claim and subject to this Division, be granted by the appropriate Department Head sick leave on full pay for which the public servant is eligible, and if that claim is accepted the equivalent period of sick leave is to be restored to the credit of the public servant.
- (3) A public servant who continues in receipt of compensation after the completion of the period of 26 weeks referred to in section 36 of the *Workers Compensation Act 1987* may, subject to this Division, be paid an amount representing the difference between the amount of compensation payable under that Act and the ordinary rate of pay of the public servant, but sick leave equivalent to the amount of the difference so paid is to be debited against the public servant.
- (4) If a public servant referred to in subclause (1) notifies the appropriate Department Head that the public servant does not intend to make a claim, the Department Head may direct that sick leave on full pay is not to be granted to the public servant.
- (5) If a public servant, who is required to submit to a medical examination under the *Workers Compensation Act 1987* in relation to a claim for compensation under that Act, refuses to submit to or in any way obstructs the examination, the public servant is not to be granted sick leave on full pay until the examination has taken place and a medical certificate has been given indicating that the public servant is not fit to resume duty.
- (6) If as a result of the medical examination:
 - (a) a certificate is given under the *Workers Compensation Act 1987* setting out the condition and fitness for employment of the public servant or the kind of employment for which the public servant is fit, and
 - (b) the appropriate Department Head makes available to the public servant employment falling within the terms of that certificate, and
 - (c) the public servant refuses or fails to resume or perform the employment so provided,all payments in accordance with this clause are to cease from the date of that refusal or failure.
- (7) Despite subclauses (2) and (3), if there is a commutation of weekly payments of compensation by the payment of a lump sum in accordance with section 51 of the *Workers Compensation Act 1987*, no further sick leave is then to be granted on full pay.

92 Sick leave where there is a claim for damages or other compensation

- (1) This clause applies to a claim for damages or to compensation, other than compensation under the *Workers Compensation Act 1987*.
- (2) If the circumstances of any injury to or illness of a public servant may give rise to a claim, sick leave on full pay may, subject to and in accordance with this Division, be granted to the public servant on completion by the public servant of an undertaking, in a form approved by the appropriate Department Head:
 - (a) that any claim to which this clause applies if made will include a claim for the value of any period of sick leave on full pay granted, and
 - (b) that, in the event that the public servant receives or recovers damages or compensation from that claim for loss of salary or wages during any such period of sick leave, the public servant will repay to the Crown any money paid by the Crown in respect of any such period of sick leave.
- (3) Sick leave on full pay is not to be granted to a public servant who refuses or fails to complete an undertaking, except with the express approval of the appropriate Department Head given on the grounds that the refusal or failure is unavoidable in the circumstances.
- (4) On repayment made to the Crown in accordance with an undertaking given by a public servant, sick leave equivalent to that repayment, calculated at the ordinary rate of pay of the public servant, is to be restored to the credit of the public servant.

Division 10 Special purpose leave

93 Special purpose leave—general

Special purpose leave on full pay may be granted to public servants for such purposes and during such periods and subject to such conditions as may be determined from time to time by the Public Employment Office.

94 Special purpose leave—jury service

- (1) A public servant must, as soon as possible, notify the appropriate Department Head of the details of any jury summons served on the public servant.
- (2) A public servant who, during any period when otherwise required to be on duty, attends a court in answer to a jury summons must, on return to duty after discharge from jury service, furnish to the appropriate Department Head any certificate of attendance issued by the Sheriff or by the Registrar of the court giving particulars of the following:
 - (a) attendances by the public servant during any such period,

(b) the details of any payment or payments made to the public servant under section 72 of the *Jury Act 1977* in respect of any such period.

(3) The appropriate Department Head must, in respect of any period during which a public servant was required to be on duty:

(a) on receipt of any such certificate of attendance—grant, in respect of any such period for which the public servant has been paid out-of-pocket expenses only, special purpose leave on full pay, or

(b) in any other case—grant at the sole election of the public servant:

(i) subject to this Part, recreation leave on full pay, or

(ii) leave without pay.

95 Special purpose leave—witness at court

(1) This clause does not apply to a public servant who is subpoenaed or called as a witness in an official capacity.

(2) A public servant who is subpoenaed or called as a witness by the Crown (whether in right of the Commonwealth or in right of any State or Territory):

(a) is to be granted, for the whole of the period necessary to attend as a witness, special purpose leave on full pay, and

(b) must pay into the Treasury all money paid to the public servant under or in respect of the subpoena or call other than any money so paid in respect of reimbursement of necessary expenses properly incurred in answer to that subpoena or call.

(3) A public servant who is subpoenaed or called as a witness otherwise than as referred to in subclause (2) is, for the whole of the period necessary to attend as a witness, to be granted at the sole election of the public servant:

(a) subject to this Part, recreation leave on full pay, or

(b) leave without pay.

96 Special purpose leave—2000 Olympians and Paralympians

(1) Special purpose leave on full pay may be granted to any temporary employee whose employment is part of the work scholarship scheme, as approved by the Public Employment Office, for potential competitors in the 2000 Olympics and Paralympics.

(2) Subject to any determinations of the Public Employment Office as to the amount of the leave that is available to such a temporary employee, any special purpose leave available to a temporary employee under this clause may extend up to 50% of the

time that the temporary employee is required to be on duty.

Division 11 Study leave

97 Study leave—time for study for approved courses

The appropriate Department Head may grant study leave on full pay to a public servant, up to a maximum of 4 hours each week, for the purpose of attending at any course approved by the Department Head.

98 Study leave—approved examinations

- (1) The appropriate Department Head may grant study leave on full pay to a public servant, up to a maximum of 5 days in any 1 year, for the purpose of attending at any examination approved by the Department Head.
- (2) Study leave granted for the purposes of attending at an examination is to include leave for any necessary travel to or from the place at which the examination is held.

99 Study leave—other studies

The appropriate Department Head may grant study leave to a public servant, whether on full pay, less than full pay or without pay (or a combination), for the requirements of any course of study considered to be of strategic importance to the Department or the Public Service.

Division 12 Mobility

99A Bodies providing public sector services

For the purposes of paragraph (i) of the definition of **public sector service** in clause 1 (1) of Schedule 5A to the Act, the following bodies are prescribed:

- (a) the Hawkesbury-Nepean Catchment Management Trust constituted under the [Catchment Management Act 1989](#),
- (b) the Hunter Catchment Management Trust constituted under the [Catchment Management Act 1989](#),
- (c) the Upper Parramatta River Catchment Trust constituted under the [Water Supply Authorities Act 1987](#).

Part 7 Miscellaneous

100 Repeal

The [Public Sector Management \(General\) Regulation 1988](#) is repealed.

101 Savings and transitional provisions

- (1) Any act, matter or thing that, immediately before the repeal of the *Public Sector Management (General) Regulation 1988*, had effect under that Regulation continues to have effect under this Regulation (but only to the extent that it relates to this Regulation and it is not inconsistent with this Regulation and the acts, matters or things done under this Regulation).
- (2) Without limiting subclause (1):
 - (a) any procedures, actions or other matters commenced under Part 4 of the *Public Sector Management (General) Regulation 1988* may be continued under Part 4 of this Regulation, and any consequential procedures, actions or other matters may be taken under Part 4 of this Regulation, and
 - (b) Part 4 of this Regulation extends to alleged breaches of discipline and other matters occurring before the commencement of this Regulation.