

Public Sector Management Act 1988 No 33

[1988-33]



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 Act 1988 No 33



New South Wales

An Act for the management of the Public Service of New South Wales and of other public sector employment; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Public Sector Management Act 1988*.

2 Commencement

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

3 Definitions (1979 Act, s 4)

(1) In this Act:

appropriate Department Head means:

- (a) where the expression is used in connection with a Department—the Head of the Department, or
- (b) where the expression is used in connection with an officer or temporary employee—the Head of the Department to which the officer or employee belongs.

appropriate Minister means:

- (a) where the expression is used in connection with a Department—the Minister responsible for the Department, or
- (b) where the expression is used in connection with an officer or temporary employee—the Minister responsible for the Department to which the officer or employee belongs.

chief executive officer means a person holding a position referred to in Schedule 3A.

chief executive position means a position referred to in Schedule 3A.

Council means the Council on the Cost of Government established by this Act.

declared authority means an authority for the time being specified in Schedule 3.

Department means a department of the Public Service specified in Schedule 1 (being the group of staff with the title so specified or the group of staff attached to the body or organisation so specified).

Department Head or Head means a Department Head referred to in section 10.

disciplinary inquiry means an inquiry conducted in accordance with the regulations in connection with a breach of discipline alleged to have been committed by an officer other than a chief executive officer in the Public Service.

management review means an examination of any functions and activities of a Department or declared authority for the purpose of assessing the extent to which any such functions and activities are being carried on in an effective, efficient and economical manner.

notional salary, in relation to a chief executive officer or a senior executive officer, means:

- (a) for the purposes of calculating the amount of an entitlement paid on or before 31 August 1996—72.5 per cent of the amount of the remuneration package for the officer as last determined before the time of payment, or
- (b) for the purposes of calculating the amount of an entitlement paid between 1 September 1996 and 30 June 1998 (inclusive)—94.3 per cent of the amount of the remuneration package for the officer as last determined before the time of payment, or
- (c) for the purposes of calculating the amount of an entitlement paid on or after 1 July 1998—the total amount of the remuneration package for the officer as last determined before the time of payment, less the superannuation guarantee amount payable in respect of the officer.

NSW Health Service has the same meaning as it has in section 16 of the [Health Services Act 1997](#).

officer means a person employed in any capacity under Part 2, and includes:

- (a) a chief executive officer or a senior executive officer appointed under that Part, and
- (b) an officer on probation,

but does not include a temporary employee.

position means a position in the Public Service.

Public Service means the Public Service of New South Wales, as referred to in section 5.

Public Service Notices means any document titled “Public Service Notices” published under the authority of the Government.

senior executive officer means a person holding a position referred to in Schedule 3B.

senior executive position means a position referred to in Schedule 3B.

special inquiry means a special inquiry under section 82.

staff or **members of the staff** means officers or temporary employees or both.

superannuation guarantee amount means the minimum amount payable to a superannuation fund or scheme in respect of an officer that is sufficient to avoid an individual superannuation guarantee shortfall, within the meaning of the [Superannuation Guarantee \(Administration\) Act 1992](#) of the Commonwealth, in respect of the officer.

temporary employee means a departmental temporary employee employed under Division 5 of Part 2 or a special temporary employee employed under Division 5A of Part 2.

Tribunal means the Government and Related Employees Appeal Tribunal established under the [Government and Related Employees Appeal Tribunal Act 1980](#).

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

4 Act not to apply to certain positions (1979 Act, s 9)

- (1) This Act does not apply to any of the following positions or to any person holding such a position (except to the extent that a provision of this Act otherwise expressly provides):
 - (a) any position of a judicial officer within the meaning of the [Judicial Officers Act 1986](#),
 - (b) any position in the Police Service,
 - (c) any position of officer of either House of Parliament or any position under the

separate control of the President or Speaker, or under their joint control.

(d) (Repealed)

(2) (Repealed)

(3) Subsection (1) does not prevent a person holding a position referred to in that subsection from having or exercising any functions of a Department Head.

Part 2 Public Service of New South Wales

Division 1 Structure

5 The Public Service (1979 Act, s 36)

The Public Service of New South Wales consists of the persons who are for the time being employed under this Part.

6 (Repealed)

7 Maximum number of staff of a Department (1979 Act, s 37)

- (1) The Treasurer may, after obtaining a report from the appropriate Department Head on the matter, determine from time to time the maximum number of staff to be employed in a Department (being the number which the Treasurer considers necessary for the effective, efficient and economical management of the functions and activities of the Department).
- (2) The number of staff employed in a Department shall not exceed the maximum number so determined in respect of the Department.

8 Staff positions in a Department (1979 Act, s 38)

- (1) The staff positions in a Department consist of:
 - (a) the position (if any) created under section 9 in relation to the Department, and
 - (b) such other positions as the appropriate Department Head from time to time determines in accordance with this Act.
- (2) Subject to subsection (3), a Department Head may create, abolish or otherwise deal with any staff position in the Department, other than the position created under section 9 in relation to the Department.
- (3) A Department Head must classify and grade each position created under subsection (2), but may only do so:
 - (a) in the case of a senior executive position—with the approval of the Minister, or
 - (b) in any other case—in accordance with such guidelines as may be issued from time

to time by the Public Employment Office.

- (4) A Department Head may establish, or abolish, or change the name of, any branch of the Department.
- (5) If the Governor removes a branch from any Department and adds it to another Department under section 55A (Creation and change in relation to departments):
 - (a) so much of the staff of the first-mentioned Department as relates to the branch becomes correspondingly part of the staff of the other Department, and
 - (b) the staff of the branch continue to occupy their positions in the branch but as members of the staff of that other Department.
- (6) In this section, **branch** means a branch or other part of a Department.

Division 2 Department Heads

9 Creation of Department Head positions (1979 Act, s 45)

- (1) Each position specified in column 2 of Schedule 1 shall be deemed to be created by virtue of this Act if it is not created by some other Act.
- (2) If the title or other description of a position created by virtue of this Act is omitted from column 2 of Schedule 1, the position shall be taken to be abolished by virtue of this Act.
- (3) If this Act is amended by amending the title or other description of a position appearing in column 2 of Schedule 1, being a position created by virtue of this Act, the title or other description of the position shall be taken to be correspondingly amended by virtue of this Act.

10 Department Heads (1979 Act, s 46)

- (1) The person holding the position specified in Column 2 of Schedule 1 opposite the title or other description of a department, body, organisation or group is, for the purposes of this Act, the Department Head in relation to the Department concerned.
- (2) (Repealed)
- (3) For the purposes of this Act, a reference in Schedule 1 to a department, body, organisation or group shall be taken not to include a reference to any part of the department, body, organisation or group specified separately in that Schedule.
- (4) (Repealed)
- (5) A provision contained in any Act enacted before the date of assent to this Act does not have any effect to the extent that it would, but for this subsection, operate:

(a) to make a person a Department Head, or

(b) to authorise or require a person to exercise any functions conferred or imposed by or under this Act on a Department Head.

(6) If a person is duly authorised or required to exercise functions attaching to a position specified in Schedule 1, but is not himself or herself the holder of the position, nothing in subsection (5) prevents the person from exercising any functions that are referred to in subsection (5) (b) and exercisable by the holder (if any) of the position.

(7) (Repealed)

10A Appointments to Public Service Department Head positions

(1) Appointments to vacant Department Head positions in the Public Service are to be made by the Governor.

(2) It does not matter whether the person appointed is or is not already an officer of the Public Service.

(3) The employment under this Part of the Department Head is subject to Part 2A (Public Sector Executives).

(4) (Repealed)

10B Acting appointments to Department Head positions

(1) The Governor may appoint an officer of the Public Service to act in a Department Head position in the Public Service which is vacant or the holder of which is suspended, sick or absent.

(2) An officer, while acting in a Department Head position, has all the functions of the holder of the position (but is not to be taken to be a chief executive officer for the purposes of Part 2A).

(3) The Governor may, at any time, terminate the appointment of an officer to act in a Department Head position.

11 General responsibility of Department Heads (1979 Act, s 47)

(1) A Department Head is responsible to the appropriate Minister for the general conduct and the effective, efficient and economical management of the functions and activities of the Department.

(2) For the purpose of exercising the responsibility imposed by subsection (1), a Department Head may take such action as the Department Head considers appropriate in the circumstances, but may not take action that is inconsistent with the functions of the Minister or the Public Employment Office specified in this Act.

- (3) A Department Head is responsible for the equitable management of staff of the Department.

12 Delegation by Department Head (1979 Act, s 48)

- (1) A Department Head may delegate to an officer of the Department any of the Department Head's functions under this Act, other than this power of delegation.
- (2) If:
- (a) a function of a Department Head is delegated to an officer of the Department in accordance with subsection (1), and
 - (b) the instrument of delegation authorises the sub-delegation of the function,
- then, subject to any conditions to which the delegation is subject, the officer may sub-delegate the function to another officer of the Department.
- (3) In this section:
- (a) a reference to the functions of a Department Head includes a reference to any functions delegated to the Department Head under this Act, and
 - (b) a reference to an officer of a Department includes:
 - (i) a reference to a person holding an appointment to or in the Department, and
 - (ii) where the Department is the group of staff attached to a body, organisation or group specified in Schedule 1—a reference to a person holding an appointment to or in that body, organisation or group, and
 - (iii) a reference to a temporary employee.

Division 3 Senior executive officers

13 Appointments to senior executive positions

- (1) Appointments to vacant senior executive positions in the Public Service are to be made by the Governor on the recommendation of the appropriate Department Head.
- (2) It does not matter whether the person appointed is or is not already an officer of the Public Service.
- (3) The employment under this Part of the senior executive officer is subject to Part 2A (Public Sector Executives).
- (4) Subsection (1) is subject to any express provision to the contrary in this or any other Act.

14 Acting appointments to senior executive positions

- (1) The appropriate Department Head may appoint an officer of the Public Service to act in a senior executive position in the Public Service which is vacant or the holder of which is suspended, sick or absent.
- (2) An officer, while acting in any such senior executive position, has all the functions of the holder of the position (but is not to be taken to be a senior executive officer for the purposes of Part 2A).
- (3) The appropriate Department Head may, at any time, terminate the appointment of an officer to act in any such senior executive position.

15 Merit appointments

- (1) Sections 26 (Selection for appointment to be on merit), 26A (Eligibility lists) and 31 (Advertising vacancies) apply to and in respect of appointments to senior executive positions in the Public Service.
- (2) A Department for the purposes of the application of section 26 (3) includes all senior executive positions in the Public Service or the Education Teaching Service and all notional executive positions referred to in section 42Q (3) (c) in the Public Service or the Education Teaching Service.

16-21 (Repealed)

Division 4 Officers (other than Department Heads and senior executive officers)

22 Officers to whom Division applies

- (1) This Division applies to and in respect of appointments to positions in the Public Service, but does not apply to or in respect of appointments to:
 - (a) chief executive positions, and
 - (b) except in the case of sections 26, 26A and 31—senior executive positions.
- (2) Sections 35-37 do not apply to officers holding positions referred to in subsection (1) (a) or (b).

23 (Repealed)

24 Filling of vacant positions (1979 Act, s 60)

If a vacancy exists in a position in a Department and the appropriate Department Head decides that it is expedient to fill the vacancy, the position may, subject to and in accordance with this Division, be filled:

- (a) by the appointment, by way of transfer or promotion, of an officer, or
- (b) by the appointment of a person who, immediately before his or her appointment, was not an officer.

25 Method of appointment (1979 Act, s 61)

- (1) An appointment (whether by way of transfer or promotion or otherwise) to a position in the Public Service shall be made by the Governor on the recommendation of the appropriate Department Head.
- (2) Subsection (1) is subject to any express provision to the contrary in this or any other Act.

26 Selection for appointment to be on merit (1979 Act, s 62)

- (1) A Department Head shall, for the purpose of determining the merit of the persons eligible for appointment to a vacant position under this section, have regard to:
 - (a) the nature of the duties of the position, and
 - (b) the abilities, qualifications, experience, standard of work performance and personal qualities of those persons that are relevant to the performance of those duties.
- (2) In deciding to make a recommendation for the appointment of a person to a vacant position which has been advertised in accordance with this Act:
 - (a) the appropriate Department Head may only select a person who has duly applied for appointment to the vacant position, and
 - (b) the appropriate Department Head must, from among the applicants eligible for appointment to the vacant position, select the applicant who has, in the opinion of the Department Head, the greatest merit.
- (3) In deciding to make a recommendation for the appointment of a person to a vacant position which has not been advertised in accordance with this Act:
 - (a) the appropriate Department Head may only select an officer holding a position in the Department in which the vacant position exists at the time the decision of the Department Head is made, and
 - (b) the appropriate Department Head must, from among the officers holding positions in that Department, select the officer who has, in the opinion of the Department Head, the greatest merit.
- (4) If the person recommended for appointment to a position under this section is an officer and some other officer has a right of appeal to the Tribunal against the recommendation, the recommendation must not be acted on (except by way of

temporary appointment under section 33):

- (a) until the expiration of the time for lodging a notice of such an appeal under the *Government and Related Employees Appeal Tribunal Act 1980* against the Department Head's decision to make the recommendation, or
 - (b) if such a notice of appeal is lodged within that time, until the Tribunal has determined the appeal or the appeal is withdrawn.
- (5) Notwithstanding anything to the contrary in this section, the appropriate Department Head may decide to make a recommendation for the appointment of a person (whether or not an officer) to a vacant position which has not been advertised if the person has, in accordance with the regulations, passed a competitive examination prescribed for appointment to vacant positions of the class to which that vacant position belongs.

26A Eligibility lists

- (1) When a vacant position is advertised in accordance with this Act, the appropriate Department Head may, in connection with a determination of the merit of the persons eligible for appointment to the position, create an eligibility list for the position.
- (2) An eligibility list for a position is a list of eligible applicants (namely the persons who duly applied for appointment to the position and are eligible for appointment) arranged in order of merit (with merit determined by the appropriate Department Head in accordance with section 26 (1)). An eligibility list for a position remains current:
 - (a) in the case of a list prepared in relation to a base grade or entry level position, for 12 months after the list was created, or
 - (b) in the case of a list prepared in relation to a position that is not a base grade or entry level position, for 6 months after the list was created.
- (3) An eligibility list need not comprise all the eligible applicants so long as the applicants on the list are those of greatest merit. An eligibility list may even comprise only one eligible applicant so long as that applicant is the applicant of greatest merit.
- (4) An eligibility list is applicable not only to the position in relation to which it was created but also to any other position that the appropriate Department Head determines it should be applicable to on the basis that the position is substantially the same as the position in relation to which the list was created.
- (5) In deciding to make a recommendation for the appointment of a person to a vacant position that has not been advertised in accordance with this Act, the appropriate Department Head may (despite section 26 (3)) select from among the persons who are on an eligibility list that is current and applicable to the position (and who are

available for appointment) the person with the greatest merit according to the order of merit in the eligibility list.

(6) In this section:

base grade or entry level position, in relation to a Department, means a position to which no officer in the Department, employed in the same classification of work as that to which the position relates, could be promoted.

27 Legal proceedings not to be brought in respect of appointments etc (1979 Act, s 65A (1)–(3), (6))

- (1) The appointment or failure to appoint a person to a vacant position in the Public Service, or any matter, question or dispute relating to such an appointment or failure, is not an industrial matter for the purposes of the *Industrial Relations Act 1996*.
- (2) Subsection (1) applies whether or not any person has been appointed to the vacant position.
- (3) No proceedings, whether for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, lie in respect of the appointment or failure to appoint a person to a position in the Public Service, the entitlement or non-entitlement of a person to be so appointed or the validity or invalidity of any such appointment.
- (4) Subsection (3) does not affect the operation of the *Government and Related Employees Appeal Tribunal Act 1980*.

28 Appointments on probation (1979 Act, s 68)

- (1) Subject to this Division, every person admitted to the Public Service as an officer shall, in the first instance, be appointed to a position on probation for a period of 6 months or such longer period as the appropriate Department Head directs.
- (2) A person may be appointed to a position in the Public Service without being required to serve such a period of probation if the Department Head thinks it appropriate in the particular case.
- (3) The period for which a person is appointed on probation may not exceed 2 years without the approval of the Public Employment Office.

29 Confirmation or annulment of appointments on probation (1979 Act, s 69)

- (1) If a person is appointed to a position on probation under section 28, the Governor may, on the recommendation of the appropriate Department Head based on inquiry and report:
 - (a) after the period of probation—confirm the appointment, or

(b) during or after the period of probation—annul the appointment.

- (2) If a person's appointment is annulled under subsection (1), the person ceases to be an officer, unless appointed to another position as an officer.
- (3) Section 75 does not prevent the Governor from exercising at any time the power to annul an appointment under subsection (1).

30 Appointment of retired officers (1979 Act, s 70)

- (1) An officer who has been retired from the Public Service or whose services have been dispensed with under section 51 may be appointed to a vacant position.
- (2) An appointment under this section shall be made by the Governor on the recommendation of the appropriate Department Head.
- (3) An appointment under this section may be made without examination or probation.
- (4) (Repealed)

31 Advertising vacancies (1979 Act, s 71)

- (1) If it is proposed to make an appointment under this Division to a vacant position in a Department, the Department Head shall advertise the vacancy in the Public Service Notices and in such other publication (if any) as the Department Head determines.
- (2) The Department Head need not advertise a vacant position if the Public Employment Office so approves.

32 Publication of decisions to make recommendations for in-service appointments (1979 Act, s 72)

- (1) The appropriate Department Head shall cause to be published in the Public Service Notices in accordance with section 19 of the *Government and Related Employees Appeal Tribunal Act 1980* particulars of any decision of the Department Head to make a recommendation to the Governor to appoint an officer to fill a vacant position.
- (2) An officer who:
 - (a) is proceeding on duty outside the State for a period exceeding 6 weeks or on leave for a period exceeding 6 weeks, and
 - (b) has made application to the appropriate Department Head,is entitled to have sent to the officer during that period by the Department Head, by post addressed to the officer at the address specified in that application, a copy of all Public Service Notices published during that period.

33 Temporary appointments (1979 Act, s 75)

If:

- (a) a position in a Department is vacant, or
 - (b) the holder of such a position is suspended from duty, sick or absent,
- the Department Head may appoint an officer to the position temporarily.

34 Restriction on temporary appointment (1979 Act, s 76)

- (1) An officer who is appointed to a position temporarily may not continue in that position for a period of more than 6 months except with the approval of the Public Employment Office.
- (2) The Public Employment Office shall not give an approval for the purpose of subsection (1) unless satisfied that it should be given having regard to the exigencies of the Public Service.

35 (Repealed)

36 Incapable officer may be retired (1979 Act, s 78)

If:

- (a) an officer employed in a Department is found to be unfit to discharge or incapable of discharging the duties of the officer's position, and
- (b) the officer's unfitness or incapacity:
 - (i) appears likely to be of a permanent nature, and
 - (ii) has not arisen from actual misconduct on the part of the officer, or from causes within the officer's control,

the Governor may, on the recommendation of the appropriate Department Head, cause the officer to be retired.

37 Vacation of position (1979 Act, s 79)

- (1) An officer's position becomes vacant if the officer:
 - (a) dies, or
 - (b) is removed, or retires or is retired, from the position in accordance with this Division, or
 - (c) resigns the position in writing addressed and delivered to the appropriate Department Head and that Department Head accepts the resignation.

- (2) This section does not affect any other provision by or under which an officer's position becomes vacant.

Division 5 Departmental temporary employees

38 Appointment of departmental temporary employees (1979 Act, s 80)

- (1) The appropriate Department Head may, if of the opinion that it is necessary to do so, employ temporarily a person who has appropriate qualifications to carry out work in the Department.
 - (1A) Persons employed under this section are departmental temporary employees.
 - (2) The employment of a person under subsection (1) is subject to the regulations (if any) concerning the employment of departmental temporary employees.
 - (3) The appropriate Department Head:
 - (a) may employ a person under this section for a period not exceeding 4 months, and
 - (b) subject to the regulations, may from time to time employ the person at the end of that period, or at the end of any subsequent period, for a further period not exceeding 4 months.
 - (4) A person may not be employed under this section for:
 - (a) a continuous period in excess of 12 months, or
 - (b) 2 or more periods that together are in excess of 12 months in any period of 2 years,except with the approval of the Public Employment Office.
 - (5) The appropriate Department Head may dispense with the services of a departmental temporary employee at any time, but may not dispense with the services of a person employed as referred to in subsection (4) without the approval of the Public Employment Office.

38A Appointment of long-term departmental temporary employees to officer positions

- (1) For the purposes of this section, a ***long-term departmental temporary employee*** is a departmental temporary employee whose employment as such an employee falls within a continuous employment period of at least 2 years.
- (2) A long-term departmental 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 section for the appointment of the employee to the position.

- (3) A recommendation for the appointment of a long-term departmental temporary employee to an officer's position may be made only if each of the following requirements is satisfied:
- (a) the duties of the position concerned must be substantially the same as the duties performed by the employee at the time of the employee's initial employment on merit (that is, the employment referred to in paragraph (e)),
 - (b) the rate of salary or wages proposed to be payable to the holder of the position concerned at the time of appointment must not exceed the maximum rate payable for Grade 12, Administrative and Clerical Division, of the Public Service,
 - (c) the appropriate Department Head must be satisfied that on-going work is available in respect of the employee in the Department,
 - (d) the appropriate Department Head must be 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,
 - (e) the employee must (initially or at some later stage) have been employed as a temporary employee in some form of open competition involving the selection of the employee as the person who, in the opinion of the then relevant Department Head, had the greatest merit among candidates for appointment.
- (4) An appointment under this section is not an appointment to which section 26 (Selection for appointment to be on merit) applies.
- (5) Section 28 (Appointments on probation) does not apply to an appointment under this section unless the Department Head otherwise directs in a particular case.

Division 5A Special temporary employees

38B Meaning of "political office holder"

In this Division:

political office holder means:

- (a) a Minister, or
- (b) a Parliamentary Secretary, or
- (c) the Leader of the Opposition in the Legislative Assembly.

38C Employment of special temporary employees

- (1) The Director-General of the Premier's Department may, if of the opinion that it is necessary to do so, employ temporarily a person who has appropriate qualifications to

carry out work for a political office holder.

- (2) Persons employed under this section are special temporary employees.
- (3) The instrument of employment of a special temporary employee must specify the name of the political office holder concerned.
- (4) This section does not prevent the appointment or employment of staff to or in an office of a political office holder in any other manner.

38D Period of employment of special temporary employees

- (1) A person may be employed as a special temporary employee for an indefinite term or for a term specified in the instrument of employment.
- (2) However, the employment of a special temporary employee terminates:
 - (a) if the political office holder concerned dies, or
 - (b) if the political office holder concerned ceases to hold the office by reason of which he or she was a political office holder (even if he or she immediately or subsequently becomes a political office holder after ceasing to hold that office), or
 - (c) on the day appointed for the taking of the poll for the next general election, or
 - (d) if the employee resigns by letter addressed to the Director-General of the Premier's Department, or
 - (e) if the services of the employee are dispensed with.
- (3) The Director-General of the Premier's Department may direct in a particular case that the employment of a special temporary employee that would otherwise terminate because of the operation of subsection (2) (a), (b) or (c) does not terminate.
- (4) The Director-General of the Premier's Department may dispense with the services of a special temporary employee at any time.

38E Industrial arbitration or legal proceedings excluded

- (1) In this section, a reference to the employment of a special temporary employee is a reference to:
 - (a) the employment of, or failure to employ, a person as a special temporary employee, or
 - (b) dispensing with the services of, or other termination of the employment of, a special temporary employee, or
 - (c) any disciplinary proceedings or disciplinary action taken against a special temporary employee, or

- (d) the remuneration or conditions of employment of a special temporary employee.
- (2) The employment of a special temporary employee, or any matter, question or dispute relating to any such employment, is not an industrial matter for the purposes of the *Industrial Relations Act 1996*. This subsection applies whether or not any person has been appointed to a vacant position of special temporary employee.
- (3) Part 6 (Unfair dismissals) of Chapter 2 of the *Industrial Relations Act 1996* does not apply to the employment of a special temporary employee.
- (4) Any State industrial instrument (whether made before or after the commencement of this section) does not have effect in so far as it relates to the employment of special temporary employees.
- (5) Subsection (4) does not prevent the regulations or other statutory instruments under this Act from applying the provisions of a State industrial instrument to the employment of a special temporary employee.
- (6) This section does not affect the operation of any determination under section 63 or agreement under section 64, in its application to special temporary employees.
- (7) An appeal does not lie to the Tribunal in relation to the employment of a special temporary employee.
- (8) No proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, lie in respect of the employment of or failure to employ a person as a special temporary employee, the entitlement or non-entitlement of a person to be so employed or the validity or invalidity of any such employment.

38F Delegation by Director-General

- (1) The Director-General of the Premier's Department may delegate any function of the Director-General under this Division (other than this power of delegation) to any other Department Head.
- (2) The power of delegation conferred by this section is in addition to and does not limit the power conferred by section 12 (Delegation by Department Head).

38G Status of special temporary employees

- (1) All special temporary employees are taken to constitute a branch of the Premier's Department, except any who are employed by a Department Head as delegate of the Director-General of the Premier's Department.
- (2) Special temporary employees employed by a Department Head as delegate of the Director-General of the Premier's Department are taken to constitute a branch of the Department concerned.

- (3) Accordingly, the Director-General of the Premier's Department has the functions of Department Head in relation to those special temporary employees who constitute a branch of the Premier's Department, and the relevant Department Head has the functions of Department Head in relation to those special temporary employees who constitute a branch of the Department concerned.

38H Regulations

The employment of a person under this Division is subject to the regulations (if any) concerning the employment of special temporary employees.

Division 6 Miscellaneous matters

39 Requirements as to citizenship etc (1979 Act, s 111)

- (1) A person is eligible to be appointed as an officer only if the person is:
 - (a) an Australian citizen, or
 - (b) a person resident in Australia whose continued presence in Australia is not subject to any limitation as to time imposed by or in accordance with law.
- (2) A person who is seeking appointment as an officer must, if so required by or under the regulations, produce such evidence with respect to the person's Australian citizenship or entitlement to reside in Australia as the regulations require.
- (3) An officer who is not an Australian citizen and who ceases to satisfy or does not satisfy the requirements of subsection (1) (b) is no longer eligible to continue in employment as an officer in the Public Service.
- (4) The Governor shall dismiss from the Public Service an officer who is no longer eligible to continue in employment as an officer by virtue of subsection (3).

40 Notification of appointments etc in special Gazette (1979 Act, s 110)

- (1) Notice of all appointments, promotions, transfers, resignations, retirements and removals of officers under this Act must be published in a special Gazette to be issued, as far as practicable, weekly.
- (2) A notice so published is conclusive evidence of the appointment, promotion, transfer, resignation, retirement or removal specified in the notice.

41 Arrangements for use of Education Teaching Service staff (1979 Act, s 112A)

- (1) The appropriate Department Head may, with the approval of the Director-General of the Department of School Education, on such terms and conditions as may be arranged, make use of the services of any member of the Education Teaching Service.
- (2) The services of a person may not be made use of under subsection (1) for:

- (a) a continuous period exceeding 12 months, or
- (b) 2 or more periods that together exceed 12 months in any period of 2 years, except with the approval of the Public Employment Office.

42 Officers refusing promotion or appointment (1979 Act, s 115 (1))

An officer who has been offered a promotion or appointment in the Public Service may decline the promotion or appointment without prejudice to any rights that the officer would, if the promotion or appointment had not been declined, have had to any future promotion or appointment.

Part 2A Public sector executives

Division 1 Preliminary

42A Definitions

(1) In this Part:

contract of employment means a contract of employment under this Part between an executive officer and the officer's employer.

executive officer means a chief executive officer or a senior executive officer.

executive position means a chief executive position or a senior executive position.

public authority means a declared authority or an authority which is established by or under an Act and which is (or whose governing body is) constituted by persons appointed by the Governor or a Minister, but does not include a Teaching Service or the Police Service.

remuneration package means the remuneration package for an executive officer determined for the time being under the [Statutory and Other Offices Remuneration Act 1975](#).

(2) In this Part, a reference to the employer of an executive officer is a reference to:

- (a) in the case of a chief executive officer—the Minister, or
- (b) in the case of a senior executive officer in the Public Service—the appropriate Department Head, or
- (c) in the case of a senior executive officer in a Teaching Service—the appropriate Director-General within the meaning of the [Teaching Services Act 1980](#), or
- (d) in the case of a senior executive officer in the service of a public authority—the public authority or a person nominated by the public authority, or

(e) in any other case—the Minister or a person nominated for the time being by the Minister.

(3) In this Part, a reference to the remuneration package for an executive officer is, if a range of amounts has been determined by the Statutory and Other Offices Remuneration Tribunal, a reference to:

(a) the amount within that range nominated in the officer's contract of employment,
or

(b) in any other case—the minimum amount within that range.

Division 2 Composition of executive services

42B Composition of Chief Executive Service

The Chief Executive Service comprises the persons holding the positions referred to in Schedule 3A.

42C Composition of Senior Executive Service

The Senior Executive Service comprises the persons holding the positions referred to in Schedule 3B.

42D Amendment or substitution of Schedule 3A or 3B

(1) The Governor may, by proclamation, amend Schedule 3A or 3B by inserting the description of any position, or by omitting or amending any such description.

(2) The Governor may, by proclamation, omit Schedule 3A or 3B and insert instead a Schedule containing descriptions of positions.

42E Positions which may be included in Schedule 3A or 3B

The description of a position may be included in Schedule 3A or 3B by proclamation under this Division only if the position is:

(a) a position in the Public Service, or

(b) a statutory office (being an office that is established by or under an Act and to which appointments are made by the Governor or a Minister), but only if the employment of a person in the office is declared by or under that Act to be subject to this Part, or

(c) a position on the staff of a public authority, or

(d) a position in the Education Teaching Service or the Technical and Further Education Teaching Service.

Division 3 Employment of executive officers

42F Term appointments

Subject to this Act, an executive officer holds office for such period (not exceeding 5 years) as is specified in the officer's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

42G Employment of executive officers to be governed by contract of employment

- (1) The employment of an executive officer shall be governed by a contract of employment between the officer and his or her employer.
- (2) A contract of employment may be made before or after the appointment of the executive officer concerned.
- (3) An executive officer is not appointed by, nor is an executive officer's term of office fixed by, the contract of employment.
- (4) However, a contract of employment may constitute the instrument of appointment if the person authorised to make the appointment is also the person who signs the contract with the executive officer.
- (5) A contract of employment may be varied at any time by a further contract between the parties.
- (6) A contract of employment may not vary or exclude a provision of this Act or of any other Act under which the executive officer concerned is appointed or a provision of the regulations under this Act or any such other Act.
- (7) The employer of an executive officer (being an officer in the service of the Crown) acts for and on behalf of the Crown in any contract of employment between the officer and the employer.

42H Matters regulated by contract of employment

- (1) The matters to be dealt with in a contract of employment between an executive officer and his or her employer include the following:
 - (a) the duties of the executive officer's position (including performance criteria for the purpose of reviews of the officer's performance),
 - (b) the monetary remuneration and employment benefits for the executive officer as referred to in Division 4 (including the nomination of the amount of the remuneration package if a range of amounts has been determined for the remuneration package),
 - (c) any election by the executive officer to retain a right of return to the public sector

under section 42R.

- (2) A contract of employment may provide for any matter to be determined:
 - (a) by further agreement between the parties, or
 - (b) by further agreement between the executive officer and some other person specified in the contract, or
 - (c) by the Minister or other person or body specified in the contract.

42I Performance reviews

- (1) An executive officer's performance must be reviewed, at least annually, by the officer's employer or by some other person nominated by that employer.
- (2) Any such review is to have regard to the agreed performance criteria for the position and any other relevant matter.

42J Industrial arbitration or legal proceedings excluded

- (1) In this section, a reference to the employment of an executive officer is a reference to:
 - (a) the appointment of, or failure to appoint, a person to a vacant executive position, or
 - (b) the removal, retirement, termination of employment or other cessation of office of an executive officer, or
 - (c) any disciplinary proceedings or disciplinary action taken against an executive officer, or
 - (d) the remuneration or conditions of employment of an executive officer.
- (2) The employment of an executive officer, or any matter, question or dispute relating to any such employment, is not an industrial matter for the purposes of the *Industrial Relations Act 1996*.
- (3) Subsection (2) applies whether or not any person has been appointed to a vacant executive position.
- (4) Any award or industrial agreement (whether made before or after the commencement of this section) does not have effect in so far as it relates to the employment of executive officers.
- (5) Subsection (4) does not prevent the regulations or other statutory instruments under this Act (or any other Act under which the executive officer concerned is appointed) from applying the provisions of an award or industrial agreement to the employment of an executive officer.

- (6) An appeal does not lie to the Government and Related Employees Appeal Tribunal in relation to the employment of an executive officer.
- (7) No proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, lie in respect of the appointment of or failure to appoint a person to an executive position, the entitlement or non-entitlement of a person to be so appointed or the validity or invalidity of any such appointment.
- (8) In this section, **industrial agreement** includes any agreement under section 64 and any determination under section 63.

Division 4 Remuneration of executive officers

42K Definitions

- (1) In this Division:

approved means approved for the time being for the purposes of this Division by the Minister in writing, either generally or in relation to any executive officer or class of executive officers.

employment benefit means:

- (a) contributions payable to a superannuation scheme by an executive officer's employer in respect of the officer, including any liability of that employer to make any such contributions or to pay approved costs associated with that scheme, or
- (b) the provision by an executive officer's employer of a motor vehicle for private use by the officer, or
- (c) the right of return to the public sector under section 42R by an executive officer who elects to retain that right, or
- (d) the entitlement of an executive officer to approved leave with pay, or
- (e) any other approved benefit provided to an executive officer at the cost of the officer's employer (being a benefit of a private nature).

monetary remuneration includes allowances paid in money, but does not include:

- (a) travelling or subsistence allowances, or
- (b) allowances in relation to relocation expenses, or
- (c) any other allowances in relation to expenses incurred in the discharge of an executive officer's duties.

superannuation scheme means a superannuation scheme established by or under

an Act or approved for the purposes of this definition.

- (2) A reference in the definition of **employment benefit** to an executive officer's employer is a reference to the person in whose service the officer is employed.

42L Monetary remuneration and employment benefits for executive officers

- (1) Executive officers are entitled to monetary remuneration at such rate, and employment benefits of such kinds, as are provided in their contract of employment.
- (1A) Contributions payable to a superannuation scheme by an executive officer's employer in respect of the officer that are required to be made by the employer under a law of the State relating to superannuation are, until provided for by the officer's contract of employment, taken to be an employment benefit provided in the contract.
- (2) The total amount of:
- (a) the annual rate of monetary remuneration for an executive officer, and
 - (b) the annual cost of employment benefits provided for the executive officer under the contract of employment,
- is to be equal to the amount of the remuneration package for the executive officer.
- (3) The cost of an employment benefit is the approved amount or an amount calculated in the approved manner.
- (4) This section does not affect:
- (a) any approved performance-related incentive payments made to an executive officer, or
 - (b) any remuneration or benefits to which an executive officer is otherwise entitled by law (such as statutory or agreed fees for attendance at meetings or the like).
- (5) A contract of employment may provide for the payment of part of the monetary remuneration under the contract to be made in the form of a periodic leave loading.
- (6) An executive officer is entitled to be paid an amount equivalent to the cost of a part of any entitlement to take annual or extended leave with pay if:
- (a) the officer forgoes (with the approval of the officer's employer) the right to take that part of that leave, and
 - (b) the cost of that part of that leave has been included in the officer's contract of employment as an employment benefit.
- (7) Subsection (6) has effect despite anything to the contrary in the *Annual Holidays Act 1944* or any other Act.

- (8) During any period when the monetary remuneration and employment benefits for an executive officer cannot be determined under subsection (1), the officer is entitled to monetary remuneration at the rate of the amount of the remuneration package for the officer, subject to any subsequent adjustment of payments in accordance with the officer's contract of employment.
- (9) If the remuneration package for an executive officer is varied, the officer is entitled to monetary remuneration and employment benefits in accordance with the officer's contract of employment pending any necessary variation of the contract and adjustment of payments to comply with this section with effect from the date of the variation.
- (10) The cost of an executive officer's entitlement to take annual or extended leave with pay is to be determined on the basis of the officer's notional salary.

42M Travelling and subsistence allowances etc

- (1) An executive officer is entitled to be paid:
 - (a) such travelling and subsistence allowances, and
 - (b) such allowances in relation to relocation expenses, and
 - (c) such other allowances in relation to expenses incurred in the discharge of the officer's duties,as the officer's employer may from time to time determine in respect of the officer.
- (2) An executive officer's contract of employment:
 - (a) may provide for the payment to the officer of allowances of the kind referred to in this section, and
 - (b) may regulate the payment of allowances to the officer under this section.

Division 5 Removal, retirement etc of executive officers

42N Definitions

A reference in this Division to:

- (a) employment in the public sector is a reference to employment as an officer in the Public Service, the NSW Health Service or a Teaching Service, as a member of the Police Service or as an officer in the service of a public authority, and
- (b) engagement in the public sector is a reference to employment in the public sector or to the holding of a statutory office.

42O Vacation of executive positions

- (1) The position of an executive officer becomes vacant if the officer:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) is removed from office, or retires from office, under this or any other Act, or
 - (d) resigns his or her position in writing addressed to the officer's employer and that employer accepts the resignation.
- (2) This section does not affect any other provision by or under which an executive officer vacates his or her position.

42P (Repealed)

42Q Removal of executive officers from office

- (1) The Governor may remove an executive officer from an executive position at any time.
- (2) The Governor:
 - (a) may declare an executive officer who is removed from an executive position under subsection (1) to be an unattached officer in the Public Service, the NSW Health Service, a Teaching Service or another service of the Crown, as the case requires, and
 - (b) may revoke any such declaration.
- (3) While a declaration under subsection (2) remains in force, the person to whom the declaration relates:
 - (a) is to be regarded as an executive officer, although not holding an executive position, and
 - (b) is entitled to monetary remuneration and employment benefits as if the person had not been removed from his or her position, and
 - (c) is, for the purposes of sections 15 (2), 26, 53A and 100A, to be regarded as holding an equivalent (though notional) executive position in the Department or organisation from which he or she was removed.
- (3A) If the person referred to in subsection (3) was removed from a chief executive position, then for the purposes of sections 15 (2), 26, 53A and 100A:
 - (a) the person is to be regarded as a senior executive officer, and

(b) the person's notional executive position referred to in subsection (3) (c) is to be regarded as a senior executive position.

(4) If:

(a) an executive officer is removed from an executive position under subsection (1) and a declaration is not made in relation to the officer under subsection (2), or

(b) a declaration under subsection (2) made in relation to an executive officer is revoked,

the officer ceases to be an executive officer, unless appointed to an executive position.

(5) An officer in the Public Service, the NSW Health Service, a Teaching Service or another service of the Crown who ceases to be an executive officer because of subsection (4) ceases to be an officer in that service, unless appointed to a position in that service.

(6) The making of a declaration under subsection (2) in relation to an executive officer does not prevent the officer from ceasing to be an executive officer because of the completion of the officer's term of office.

(7) In the case of an executive officer in the service of a public authority (other than an authority to which subsection (7A) applies), a reference in this section to:

(a) the Governor is to be read as a reference to the public authority, and

(b) the Public Service, a Teaching Service or another service of the Crown is to be read as a reference to the service of the public authority.

(7A) In the case of an executive officer in the service of a public health organisation within the meaning of the *Health Services Act 1997*:

(a) in the case of a chief executive officer of such an organisation—a reference in this section to the Governor is to be read (except in subsection (1)) as a reference to the Health Administration Corporation constituted by the *Health Administration Act 1982*, and

(b) in the case of an executive officer (other than a chief executive officer) of such an organisation—a reference in this section to the Governor is to be read as a reference to the Health Administration Corporation constituted by the *Health Administration Act 1982*, and

(c) a reference in this section to the NSW Health Service is to be read as a reference to the service of the public health organisation.

(8) This section does not prevent an executive officer being removed from office apart from this section.

42R Right to return to public sector for certain executive officers

- (1) An executive officer may elect to retain a right of return to the public sector if:
 - (a) the officer was engaged in the public sector on a full-time basis when he or she first became an executive officer, and
 - (b) for at least some part of that engagement the person was an employee in the public sector.
- (2) Any such election:
 - (a) may be made in the first contract of employment entered into by the executive officer, but (unless made in that first contract) may not be made in any subsequent contract for the same or another executive position, and
 - (b) is revoked if the election is not made by the executive officer in a subsequent contract of employment, and
 - (c) may be revoked by the executive officer by notice in writing to the officer's employer, and
 - (d) if revoked, may not be made again.
- (2A) Despite any other provision of this section, an executive officer may not make an election under this section after the commencement of this subsection (as inserted by the *Public Sector Management Amendment Act 1995*) unless an election by the executive officer under this section was in force immediately before the commencement of this subsection.
- (3) If an executive officer has elected to retain a right of return to the public sector, the officer's contract of employment must provide for the cost of that right as part of the officer's remuneration package under Division 4.
- (4) An executive officer who has elected to retain a right of return to the public sector is entitled to an engagement in the public sector if the person ceases to be an executive officer and:
 - (a) in the case of a chief executive officer—is not re-appointed to the same or another chief executive position, or
 - (b) in the case of a senior executive officer—is not re-appointed to the same or another senior executive position.
- (5) A person is not entitled to an engagement in the public sector under this section if the person ceased to be an executive officer because the person resigned or was (after due inquiry) removed from office for misbehaviour.
- (6) The engagement in the public sector to which a person is entitled under this section is

to be an engagement:

- (a) in the case of a chief executive officer—as a senior executive officer in any part of the public sector, or
- (b) in the case of a senior executive officer—in any part of the public sector at a salary not lower than the current maximum salary for:
 - (i) the previous engagement of the person as such an employee within the public sector, or
 - (ii) a clerk (grade 12) in the Public Service,

whichever is the lesser.

- (7) A person who is entitled to such an engagement is not entitled to any compensation for ceasing to hold office as an executive officer or to any remuneration in respect of the office for any period afterwards (except remuneration in respect of a subsequent re-appointment to the office).
- (8) Subsection (7) does not prevent the payment of additional remuneration to a person who is engaged in the public sector under this section in order to maintain, in accordance with the employer's redeployment policy, the level of the person's previous remuneration package for a period after the person ceases to be an executive officer.
- (9) If an executive officer has not entered into a contract of employment and is eligible to make an election under this section:
 - (a) the officer is (until the officer enters into a contract of employment) to be taken to have made an election under this section, but may revoke that election, and
 - (b) the cost (under Division 4) of the right of return to the public sector in accordance with that election is to be deducted from the officer's remuneration.
- (10) A reference in this section to an executive officer ceasing to be an executive officer is, in the case of an executive officer removed from office under section 42Q, a reference to an executive officer ceasing to be such an officer as referred to in section 42Q (4).

42S Compensation etc where executive officer has no right to return to public sector

- (1) This section applies to:
 - (a) an executive officer who is removed from office under section 42Q and who ceases to be an executive officer as referred to in section 42Q (4), or
 - (b) an executive officer who is otherwise removed from office (except for misbehaviour after due inquiry), or

(c) (Repealed)

(d) an executive officer who was employed in the public sector when first appointed as an executive officer, whose term of office as an executive officer expires and who is not re-appointed,

being a person who is not entitled to be engaged in the public sector under section 42R. However, this section does not apply to an executive officer who consents to a transfer at a lower level of remuneration.

- (2) A person to whom this section applies is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.
- (3) The Statutory and Other Offices Remuneration Tribunal:
- (a) may determine that compensation is payable for the failure to re-appoint an executive officer only if the Tribunal is satisfied that the person had a reasonable expectation of being re-appointed, and
 - (b) must have regard to any general directions given to the Tribunal by the Minister as to the matters to be taken into consideration when it makes determinations under this section.
- (4) The maximum compensation payable is an amount equal to the person's remuneration package for the period of 38 weeks.
- (5) The person is not entitled to any other compensation for the removal or retirement from office or for the failure to re-appoint the person or to any remuneration in respect of the office for any period afterwards (except remuneration in respect of a subsequent re-appointment to the office).
- (6) An executive officer who is removed from office or not re-appointed is not entitled to compensation under this section if:
- (a) the person is appointed on that removal or expiry of the term of office to another executive position, and
 - (b) the remuneration package for the holder of that position is not less than the remuneration package for the holder of the former position.
- (7) If the Statutory and Other Offices Remuneration Tribunal determines that compensation is payable under this section, it must, in its determination, specify the period to which the compensation relates.
- (8) The person may not be engaged in the public sector or employed in the service of a State owned corporation established under the [State Owned Corporations Act 1989](#) or a subsidiary of such a State owned corporation during the period so specified, unless arrangements are made for a refund of the proportionate amount of the

compensation.

42T Election to take compensation

- (1) An executive officer who is entitled to be engaged in the public sector under section 42R may, before being so engaged, elect in writing to take compensation referred to in section 42S.
- (2) On the election taking effect, the person ceases to be entitled to be engaged in the public sector under section 42R.

Division 6 General

42U Appointment of incumbent officers to senior executive positions

- (1) When a position becomes a senior executive position, the person (if any) holding the position is to continue to hold that position until the person or some other person is duly appointed to the position.
- (2) While the person continues to hold the position, the conditions of employment (including remuneration) of the person are to be the same as those which applied to the person immediately before the position became a senior executive position.
- (3) The person who continues to hold the position may be appointed to the position without the vacancy being advertised.
- (4) If the person who continues to hold the position is not appointed to the position or to any other executive position, sections 42R–42T apply to the person as if he or she had elected to retain a right of return to the public sector.
- (5) This section does not apply to a senior executive position referred to in Part 2 of Schedule 3B (statutory positions).

42V Incumbent officers—accrued leave

- (1) A person who:
 - (a) was engaged in the public sector when appointed to an executive position, and
 - (b) had a right to accrued extended or annual leave with pay immediately before that appointment, and
 - (c) has not taken that leave before taking up duties in the executive position,is entitled, on taking up those duties, to be paid instead of that leave (or any part of that leave) the money value of that leave (or part) as a gratuity if the person so elects.
- (2) An election under this section is to be made within the time and in the manner

determined by the Minister.

- (3) The money value of leave is to be calculated at the rate of pay of the person immediately before appointment to the executive position.
- (4) A person who was engaged in the public sector when appointed to an executive position retains any right to extended, annual, sick or other leave accrued or accruing to the person immediately before the appointment (except any accrued leave which is paid out by a gratuity under subsection (1)).
- (5) A reference in this section to an engagement in the public sector has the same meaning as in Division 5.

42W Change in status of positions

- (1) If a chief executive position becomes a senior executive position or a senior executive position becomes a chief executive position, the existing contract of employment continues in force until a new contract is made under this Part.
- (2) If a position ceases to be an executive position because of its omission from Schedule 3A or 3B by a proclamation:
 - (a) the position is not thereby abolished, and
 - (b) any person holding the position is to be taken to have been appointed to the position in accordance with the relevant provisions.
- (3) However, the proclamation by which a position is omitted from Schedule 3A or 3B may direct that the person holding the position is to cease to hold the position, but only if the person was not employed in the public sector (within the meaning of Division 5) immediately before last becoming an executive officer.
- (4) The person to whom any such direction relates ceases to hold the position concerned and has the same rights and obligations as if the person had ceased to be an executive officer as referred to in section 42Q (4).
- (5) A proclamation which amends Schedule 3A or 3B may contain other provisions of a savings or transitional nature consequent on a position becoming or ceasing to be an executive position or becoming a different kind of executive position.

42X Change in title of positions

A position referred to in Schedule 3A or 3B does not cease to be an executive position merely because of a change in the title of the position.

42Y Approval to engage in other paid employment

An executive officer shall not engage in any paid employment outside the duties of the executive position without the consent of the officer's employer.

42Z Operation of Part

- (1) This Part prevails over any inconsistent provision of any other Act or law or of the terms of appointment of or contract with a person.
- (2) The provisions of this Part apply to a person appointed to an executive position under any Act even though the Act excludes the application of this Act, unless it expressly excludes the application of those provisions.

Part 3 Administration and management of the public sector

Division 1 The Council on the Cost of Government

43 Establishment of Council

A Council on the Cost of Government is established.

44 Composition and procedure of Council

- (1) The Council is to consist of 7 members, as follows:
 - (a) 3 Department Heads, being the Director-General of the Premier's Department, the Director-General of the Cabinet Office and the Secretary of the Treasury,
 - (b) 4 persons appointed by the Governor on the recommendation of the Minister, being persons who are not public sector employees (as defined in subsection (3)).
- (2) The Minister may from time to time nominate some other Department Head in place of any of the Department Heads specified in subsection (1).
- (3) A public sector employee is a person who is an officer or temporary employee under this Act, or an employee or member of staff of a declared authority.
- (4) One of the members appointed by the Governor is, by the instrument of appointment as a member or by another instrument executed by the Governor, to be appointed as Chairperson of the Council.
- (5) Schedule 8 has effect with respect to the members and procedure of the Council.

45 Functions of Council

The Council has the following functions and is to exercise those functions with a view to achieving a cost effective and world class public sector:

- (a) reviewing management and operational effectiveness and efficiency in the public sector, including reporting and making recommendations to the Government on its reviews,
- (b) advising the Government on any changes that are necessary to ensure that the public

sector provides “value for money” and quality services to its customers and the community within the framework of the Government’s policies,

- (c) developing and overseeing the implementation of reform initiatives for the achievement in the longer term of improvements in performance in the public sector and reduction in its costs and of such other public sector initiatives as the Minister may direct,
- (d) advising the Government on recommendations made by the Public Accounts Committee or the Auditor-General, including advice as to whether and how any such recommendations should be implemented, and monitoring the implementation of any of those recommendations that are to be implemented,
- (e) such other functions with respect to the review of matters concerning the public sector as the Minister may direct, including advising and reporting and making recommendations to the Government on the results of any such review and developing and overseeing the implementation of reform initiatives,
- (f) such other functions as are conferred or imposed on it by or under this Act or any other law.

46 Ministerial control

The Council is subject to the control and direction of the Minister, except in relation to the contents of any report or recommendation made by it.

47 Requests to Departments and declared authorities for information etc

- (1) For the purpose of the exercise of the Council’s functions under this Act, a member of the Council authorised by the Council or an officer authorised by the Council may request a Department Head or declared authority:
 - (a) to produce any document in the custody of any member of staff of the Department or declared authority, or
 - (b) to provide any information, or
 - (c) to provide a report into such matters as are specified in the request.
- (2) If the Department Head or declared authority does not comply with the request, the Minister may require the Department Head or declared authority to comply with the request or with any other direction regarding the subject matter of the request.

47A Requests to Auditor-General for information

- (1) For the purpose of the exercise of the Council’s functions under this Act, a member of the Council authorised by the Council or an officer authorised by the Council may request the Auditor-General to provide any information.

- (2) The Auditor-General may provide such information despite the provisions of section 38 (Secrecy) of the *Public Finance and Audit Act 1983*.

47B Management assistance and advice

The Council may provide a Department or declared authority or the Police Service with such assistance and advice as will foster improvement in the efficiency or management and organisational performance of the Department or declared authority or the Police Service.

47C Arrangements for use of staff of others

The Director-General of the Premier's Department may arrange for the use by the Council of the services of any staff (by secondment or otherwise) or facilities of a Department or declared authority.

47D Reports to the Minister

- (1) The Council is to prepare and forward to the Minister a report of the Council's work and activities for each consecutive period of 6 months commencing on the commencement of this section. The report for a period is to be prepared and forwarded to the Minister within 2 months after the end of the period.
- (2) The Minister is to lay each such report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

47E Dissolution of Council

- (1) The Council is dissolved on 1 May 1999.
- (2) On the dissolution of the Council, a person who held office as a member of the Council immediately before that dissolution:
- (a) ceases to hold office as such a member, and
 - (b) is not entitled to any remuneration or compensation because of the loss of that office.

Division 2

48, 49 (Repealed)

Division 2A Public Employment Office

49A Public Employment Office

- (1) There is constituted by this Act a body corporate with the corporate name of the Public Employment Office.
- (2) The Public Employment Office is, for the purposes of any Act, a statutory body

representing the Crown.

49B Commissioner for Public Employment

- (1) The affairs of the Public Employment Office are to be managed by the Commissioner for Public Employment.
- (2) Any act, matter or thing done in the name of, or on behalf of, the Public Employment Office by the Commissioner, or with the authority of the Commissioner, is taken to have been done by the Public Employment Office.
- (3) In this section, **Commissioner for Public Employment** means the Commissioner for Public Employment holding office as such under Part 2 of this Act.

49C Ministerial control

The Public Employment Office is subject to the control and direction of the Minister, except in relation to the following:

- (a) salaries, wages or other remuneration, and other conditions of employment,
- (b) a dispute relating to an industrial matter.

49D Principal functions of the Public Employment Office

The Public Employment Office has the following functions:

- (a) advising the Government on appropriate policies in relation to personnel management and industrial relations in the public sector and, in particular, appropriate policies in relation to the use of consultants by the public sector, standards of conduct for public sector employees and management-staff consultation,
- (b) monitoring the implementation of Government policies in those areas and assisting the implementation of those policies (including the issuing of implementation guidelines),
- (c) monitoring recruitment, appointment and promotion practices in the public sector and, in particular, compliance with requirements relating to appointment and promotion on merit,
- (d) co-ordinating and assisting in the redeployment of excess staff in the public sector,
- (e) advising the Minister on the creation, classification and grading of chief and senior executive officer positions within the public sector,
- (f) assisting in the recruitment, deployment and redeployment of executive officers within the public sector,
- (g) advising the Government on appropriate policies and practices in relation to such

other public sector matters as the Minister may direct from time to time, and monitoring, co-ordinating and assisting the implementation of Government policies and practices in such other areas as the Minister may direct from time to time,

- (h) such other functions as are conferred or imposed on it by or under this Act or any other law.

49E Reports on personnel practices and policies

- (1) The Public Employment Office may require the appropriate Department Head or declared authority to provide the Public Employment Office with a report on such matters relating to the personnel policies and practices of a Department or declared authority as the Public Employment Office requires.
- (2) In particular, the Public Employment Office may require inclusion in the report of information of a kind specified by the Public Employment Office as to:
 - (a) the personnel policies and practices concerning the recruitment, selection, appointment, transfer, promotion or discipline of the staff of the Department or declared authority and the means by which the job satisfaction and opportunities for personal development of the staff are promoted, and
 - (b) the application of any such policies and practices to different groups of members of the staff.
- (3) The Department Head or declared authority concerned must comply with a requirement under this section within such time and in such manner as the Public Employment Office directs.
- (4) This section applies to the Police Service in the same way it applies to a Department, and for that purpose a reference to the Department Head is to be taken to be a reference to the Commissioner of Police.

49F Delegation by Public Employment Office

- (1) The Public Employment Office may delegate to a Department Head or any other officer of a Department any of the functions of the Public Employment Office, other than this power of delegation.
- (2) Any delegation of a function with respect to the making of a determination fixing salaries, wages or other remuneration of officers or temporary employees is subject to the condition that any such determination must be at a level that is lower than the lowest amount of the remuneration packages for executive officers determined for the time being under the *Statutory and Other Offices Remuneration Act 1975*.
- (3) In this section:
 - (a) a reference to the functions of the Public Employment Office includes a reference

to any functions delegated to the Public Employment Office under this Act, and

- (b) a reference to an officer of a Department includes a reference to a person holding an appointment to or in the Department and a reference to a temporary employee, and (where the Department is the group of staff attached to, but not comprising, a body, organisation or group specified in Schedule 1) a reference to a person holding an appointment to or in that body, organisation or group.

49G Regulations relating to functions of Public Employment Office

- (1) The regulations may make provision for or with respect to the principles, practices and procedures to be observed in connection with the exercise of the functions of the Public Employment Office.
- (2) In particular, the regulations may:
 - (a) prescribe the circumstances in which an approval by the Public Employment Office under this or any other Act may be regarded as having been given, or
 - (b) prescribe the procedure for obtaining any such approval.

49H Approvals or directions given by the Public Employment Office

An approval or direction given by the Public Employment Office under this Act may be given so as to apply to a particular case, or to all cases within a class of cases or generally.

Division 3 Miscellaneous matters relating to administration and management of the Public Service

50 Transfers within Department or between Departments (1979 Act, s 112)

- (1) If the Department Head considers it to be in the interests of the Department to do so, the Department Head may direct the transfer of an officer from one position in the Department to another position in the Department at the officer's existing salary, provided the officer possesses the qualifications required for the other position and the work assigned to the other position is appropriate to that salary.
- (2) If the appropriate Department Head considers it to be in the interests of the Public Service to do so, that Department Head may, with the approval of the Department Head of the other Department concerned, transfer an officer from a position in the Department to a position in another Department at the officer's existing salary, provided the officer has the qualifications required for the other position and the work assigned to the other position is appropriate to that salary.

51 Excess staff (1979 Act, s 113)

- (1) If the Minister, after consideration of the report of a relevant management review or

special inquiry, is satisfied that the number of persons who are employed in a Department exceeds the number that appears to be necessary for the effective, efficient and economical management of its functions and activities, then, subject to subsection (3), the appropriate Department Head, as directed by the Minister shall take such steps as are practicable to secure the transfer of the excess persons to vacant positions in other Departments at their existing salaries.

- (2) If the appropriate Department Head is satisfied that the number of persons who are employed in the Department exceeds the number that appears to be necessary for the effective, efficient and economical management of its functions and activities, then, subject to subsection (3), that Department Head shall take such steps as are practicable to secure the transfer of the excess persons to vacant positions in other Departments at their existing salaries.
- (3) If any such excess person cannot be usefully employed in any other Department in accordance with this section, the Governor may, on the recommendation of the appropriate Department Head made with the approval of the Public Employment Office, dispense with the person's services.
- (4) A transfer of a person under this section may be made only by the appropriate Department Head with the approval of the Department Head of the Department to which the person is being transferred.

52 Excessive salaries (1979 Act, s 114)

(1) If:

- (a) the Minister, after consideration of the report of a relevant management review or special inquiry, or
- (b) the appropriate Department Head,

is satisfied that an officer employed in a Department is in receipt of a greater salary than the maximum fairly appropriate to the work performed by the officer, then, subject to subsection (2), the Department Head shall take such steps as are practicable to assign the officer work of a class appropriate to the officer's salary.

(2) If:

- (a) the officer cannot be assigned sufficient work of the kind referred to in subsection (1), or
- (b) the officer is unfitted for or incapable of performing work appropriate to the officer's salary,

the appropriate Department Head shall take such steps as are practicable to secure the officer's transfer to a vacant position in any other Department at the officer's existing salary.

- (3) If a transfer cannot be made in accordance with subsection (2) or the officer is unfitted for or incapable of performing the work attached to a position referred to in that subsection, the appropriate Department Head, with the approval of the Public Employment Office:
 - (a) shall reduce the officer's salary to the maximum determined by that Department Head to be appropriate to the work performed by the officer, and
 - (b) may take such steps as are practicable to secure the officer's transfer to a vacant position in the Department to which the officer belongs or in any other Department at that salary.
- (4) If a reduction of salary of an officer under this section is certified by the appropriate Department Head to have been made on the ground only that appropriate work or an appropriate position is not available, the officer:
 - (a) remains eligible for promotion as if the officer's salary had not been reduced, and
 - (b) is entitled to employment in the class of work to which the officer's previous salary was appropriate, or transfer to a position to which that class of work is attached, as soon as the appropriate work or an appropriate position becomes available, in preference to any other officer whose salary has not been reduced.
- (5) A transfer of an officer under this section may be made only by the appropriate Department Head with the approval of the Department Head of the Department to which the officer is being transferred.

53 Officer refusing transfer (1979 Act, s 115 (2))

- (1) If an officer refuses a transfer under section 50, 51, 52 or 100A, the Governor may, on the recommendation of the appropriate Department Head made with the approval of the Public Employment Office, dismiss the officer from the Public Service, but only if that Department Head has certified that the officer had no valid reason for so refusing.
- (2) If the appropriate Department Head considers that an officer had a valid reason for refusing the transfer, the Department Head may allow the officer to decline the transfer without prejudice to any rights that the officer would, if the transfer had not been declined, have had to any future promotion or appointment.

53A Provisions applying to senior executive officers in the Public Service

- (1) Sections 50-53 do not apply to senior executive officers in the Public Service.
- (2) If the Department Head considers it to be in the interests of the Department to do so, the Department Head may transfer a senior executive officer from one position in the Department to another position in the Department at the officer's existing level of remuneration.

- (3) If the appropriate Department Head considers it to be in the interests of the Public Service to do so, the Department Head may, with the approval of the Public Employment Office and the Department Head of the other Department concerned, transfer a senior executive officer from a position in the Department to a position in another Department at the officer's existing level of remuneration.
- (4) A transfer under this section may be made only if the senior executive officer possesses the qualifications required for the other position.
- (5) However, a senior executive officer may be transferred under this section to a position (whether or not an executive position within the meaning of Part 2A) at a level of remuneration that is lower than the officer's existing level of remuneration, with the consent of the officer.

54 Right of the Crown to dispense with an officer's services not affected by the Act (1979 Act, s 118)

The right or power of the Crown to dispense with the services of any person employed in the Public Service, as it existed immediately before the commencement of this section, is not abrogated or restricted by any of the provisions of this Act.

55 No compensation to be paid where officer's services dispensed with or salary reduced (1979 Act, s 119)

An officer or temporary employee is not, except as provided by this or any other Act, entitled to any compensation as a result of the officer's services being dispensed with or the officer's salary being reduced.

Part 3A Administrative changes

Division 1 Orders concerning departments of the Public Service

55A Creation and change in relation to departments

- (1) The Governor may by order:
 - (a) establish, abolish or change the name or other description of any department of the Public Service or any branch of any department of the Public Service, or
 - (b) remove a branch from any department of the Public Service, or
 - (c) add a branch to any department of the Public Service.
- (2) Any other Act may establish, abolish or change the name or other description of a department of the Public Service by amendment of Schedule 1 to insert, omit or change the name or other description of the Department, respectively.

55B Orders amending or replacing Schedule 1

The Governor may by order:

- (a) amend Column 1 of Schedule 1 by inserting, omitting or changing the name or other description of a department of the Public Service, or
- (b) amend Column 2 of Schedule 1 by inserting the title or other description of an office or position opposite an entry in Column 1 of that Schedule, or by omitting or amending a title or other description in Column 2 of that Schedule, or
- (c) omit Schedule 1 and insert in its place a Schedule containing in Column 1 the names or other descriptions of departments of the Public Service and containing in Column 2 the titles or other descriptions of offices or positions.

55C Orders specifying responsible Minister

The Governor may by order specify the Minister who is to be responsible for a department of the Public Service.

Division 2 Other administrative changes orders

55D Definitions

In this Division:

administrative change means:

- (a) the fact of there ceasing to be a Minister, Department or officer of a particular description, or
- (b) the transfer of the administration of an Act, or a part of an Act, from a Minister to another Minister, or
- (c) the transfer of a function from a Minister, Department or officer to another Minister, Department or officer, respectively.

Department includes any branch or other part of a Department.

description includes title.

Minister means a Minister of the Crown.

officer means a member of staff of a Department.

reference, in relation to a Minister, Department or officer, includes a reference that (whether by or under this or any other Act) is to be read or construed as, or taken to be, or deemed to be, or otherwise treated as, a reference to that Minister, Department or officer.

statutory instrument means an instrument made under an Act or under an instrument made under an Act, and includes a regulation, rule, by-law or ordinance made under an Act.

55E Orders to change references in Acts

- (1) The Governor may make orders containing provisions requiring a reference in any Act or statutory instrument, or in any other instrument, or in any contract or agreement, to a Minister, Department or officer by a specified description to be construed as a reference to a Minister, Department or officer, respectively, by another specified description.
- (2) Such a provision does not apply to or in respect of any Act or statutory instrument, or any other instrument, or any contract or agreement, enacted, made or entered into after the date of publication in the Gazette of the order in which the provision is contained, or the date on which the provision takes effect, whichever is the later.
- (3) An order under this section need not be consequential on or incidental to administrative change.

55F Orders re administrative change and other matters

- (1) The Governor may make orders containing such provisions as in the opinion of the Governor are necessary or convenient to be made for the purpose of dealing with matters that are incidental to or consequential on administrative change, the making of an order under this Division or a requirement imposed by an order under this Division.
- (2) The provisions that may be made by an order under this section include provisions for the transfer of any property, rights and liabilities held, enjoyed or incurred by a superseded authority, and provisions of a transitional or savings nature, including any of the following provisions:
 - (a) provisions for the carrying on or completion of anything commenced by, or under the authority of, or in relation to, a superseded authority,
 - (b) provisions for the continuity of any body constituted by, or having amongst its members, a superseded authority,
 - (c) provisions for the substitution, in any legal proceedings, of a Minister or officer for a superseded authority.
- (3) In this section:

superseded authority means a Minister, Department or officer who is, or whose description is, the subject of an order under this Division.

Division 3 Requirements concerning orders

55G Publication and commencement of orders

- (1) An order under this Part is to be published in the Gazette.
- (2) The order takes effect on the date of its publication in the Gazette, or on such other date as may be specified in the order. The commencement date can be a date that is earlier than the date of publication of the order in the Gazette (including earlier than the commencement of this Part).

55H Limited, general and differential application of orders

An order under this Part may be made so as:

- (a) to apply generally or be limited in its application by reference to specified exceptions or factors, or
- (b) to apply differently according to different factors of a specified kind.

55I Operation of orders

- (1) An order under this Part does not invalidate anything done or omitted to be done before the date of its publication in the Gazette.
- (2) To the extent to which an order under this Part takes effect from a date that is earlier than the date of its publication in the Gazette, the order does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

55J Combination orders

An order may be made under this Part combining any 2 or more of the provisions authorised by this Part, including provisions authorised under different sections.

Part 4 Industrial matters

Division 1

56-61 (Repealed)

Division 2 Responsibilities of the Public Employment Office with respect to industrial matters

62 Role of the Public Employment Office in industrial proceedings (1979 Act, s 81)

The Public Employment Office shall, for the purposes of any proceedings relating to officers or temporary employees held before a competent tribunal having jurisdiction to deal with industrial matters, be taken to be the employer of the staff of the Public Service.

63 Public Employment Office may determine employment conditions (1979 Act, s 82)

- (1) The Public Employment Office may from time to time make determinations fixing the conditions and benefits of employment of officers and temporary employees (or any group or class of officers or temporary employees) and their salary, wages and other remuneration. Such a determination can provide for redundancy and severance payments and for remuneration packaging.
- (2) The conditions, benefits, salary, wages and other remuneration of an officer or temporary employee is, except in so far as provision is otherwise made by law, such as may be fixed by a determination made under this section.
- (2A) This section does not prevent the relevant Department Head from determining conditions of employment of officers and temporary employees under section 11 or under any other law. However, a determination by the Public Employment Office under this section prevails to the extent of any inconsistency with a determination of a Department Head, unless the Public Employment Office approves of the Department Head's determination.
- (3) An officer or temporary employee may sue for and recover the amount of remuneration of the officer or employee that is determined under this section.
- (4) This section does not apply in relation to remuneration or allowances fixed under Part 2A or under the *Statutory and Other Offices Remuneration Act 1975*.

64 Public Employment Office may enter into agreements (1979 Act, s 83)

- (1) The Public Employment Office may enter into an agreement with any association or organisation representing a group or class of officers or temporary employees with respect to industrial matters.
- (2) Any such agreement binds all officers and temporary employees in the class or group affected by the agreement, and no such officer or employee (whether a member of the association or organisation with which the agreement was entered into or not) has any right of appeal against the terms of the agreement.
- (3) This section does not apply in relation to remuneration or allowances fixed under Part 2A or under the *Statutory and Other Offices Remuneration Act 1975*.
- (4) An agreement under this section is not an enterprise agreement within the meaning of the *Industrial Relations Act 1996*. However, the Public Employment Office (or any

delegate of that Office) may enter into such an enterprise agreement as the employer of the officers or temporary employees concerned.

65 Power of Public Employment Office to enter Department's premises etc (1979 Act, s 84)

The Public Employment Office may, by its authorised officers or delegates:

- (a) enter the premises of any Department, and
 - (b) require the production of and examine any documents in the custody of any member of the staff of any Department, and
 - (c) require any member of the staff of any Department to answer questions,
- for the purposes of enabling the Public Employment Office to exercise its functions.

Part 5 Discipline and conduct of officers of the Public Service

Division 1 Application and interpretation

65A Part applies to public servants (except chief executive officers)

This Part applies to officers in the Public Service but (unless otherwise expressly provided by this Act) does not apply to chief executive officers in the Public Service.

66 Breaches of discipline (1979 Act, s 85)

- (1) An officer is guilty of a breach of discipline if the officer:
- (a) contravenes this Act or the regulations, or
 - (b) engages in any misconduct, or
 - (c) consumes or uses alcohol or drugs to excess, or
 - (d) intentionally disobeys, or intentionally disregards, any lawful order made or given by a person having authority to make or give the order, or
 - (e) is negligent, careless, inefficient or incompetent in the discharge of his or her duties, or
 - (f) engages in any disgraceful or improper conduct, or
 - (g) takes any detrimental action (within the meaning of the [Protected Disclosures Act 1994](#)) against a person that is substantially in reprisal for the person making a protected disclosure within the meaning of that Act, or
 - (h) takes any disciplinary proceedings or disciplinary action against another officer that is substantially in reprisal for an internal disclosure made by that officer.

- (2) In this section, **internal disclosure** means a disclosure made by an officer regarding an alleged breach of discipline by another officer belonging to the same Department as that to which the officer belongs.

Division 2

67-72 (Repealed)

Division 3 Officers (other than chief executive officers)

73 (Repealed)

74 Procedure for dealing with breaches of discipline (1979 Act, s 93)

- (1) A breach of discipline alleged to have been committed by an officer shall be dealt with by the appropriate Department Head.
- (2) Subject to this Division, the regulations may:
- (a) make provision for or with respect to the manner of dealing with alleged breaches of discipline, and
 - (b) prescribe all matters that are necessary or convenient to be prescribed for carrying out or giving effect to this Division.
- (3) Section 83 (Powers of persons conducting special inquiries) applies to a disciplinary inquiry in the same way as it applies to a special inquiry.

75 Punishment of officers for breaches of discipline (1979 Act, ss 94, 100)

- (1) If:
- (a) an alleged breach of discipline is dealt with in accordance with the regulations, and
 - (b) the officer concerned is found to have committed the breach or admits to the person or persons dealing with the breach that the officer committed the breach,
- the appropriate Department Head may decide to:
- (c) impose on the officer one or more of the punishments specified in subsection (2), or
 - (d) dismiss the officer from the Public Service or direct that the officer resign, or be allowed to resign, from the Public Service within such period as the direction specifies, or
 - (e) in the case of an officer on probation—annul the officer's appointment.
- (2) For the purpose of subsection (1) (c), the following punishments are specified:

- (a) a caution,
- (b) a reprimand,
- (c) a fine,
- (d) except in the case of a senior executive officer, reduction of salary or demotion to a lower position in the Public Service.

(3) If:

- (a) the appropriate Department Head, in the exercise of powers conferred by this section, decides to direct an officer to resign, or be allowed to resign, from the Public Service within a period specified in the direction, and
- (b) the officer does not resign within that period,

the Department Head may decide to dismiss the officer from the Public Service.

- (4) A decision of a Department Head under subsection (1) or (3) may be implemented at any time, but a decision of a Department Head under subsection (1) (d) or (e) or subsection (3) to dismiss an officer from the Public Service or to annul an officer's appointment must not be implemented without the approval of the Governor.
- (5) Subsection (4) is subject to Part 3 of the *Government and Related Employees Appeal Tribunal Act 1980*.
- (6) If a Department Head decides to dismiss an officer from the Public Service in accordance with subsection (1) (d) or (3), the decision shall be treated as a decision of the kind referred to in section 23 (1) (f) of the *Government and Related Employees Appeal Tribunal Act 1980* even though the decision has not been approved by the Governor.
- (7) Any appointment required by a punishment specified in subsection (2) (d) shall be made by the appropriate Department Head.
- (8) If a fine is imposed under this section on an officer, the person responsible for paying the officer's salary must, on receiving notice of the imposition of the fine, deduct the amount of the fine from the salary payable to the officer, in such manner as the appropriate Department Head directs.

76 Punishment where officer is guilty of a serious offence (1979 Act, s 95)

If an officer:

- (a) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more, or
- (b) is convicted elsewhere than in New South Wales of an offence that, if it were

committed in New South Wales, would be an offence so punishable,

the appropriate Department Head may decide to impose on the officer any one or more of the punishments that may be imposed under section 75 (1) as if the officer had, in accordance with that provision, been dealt with for a breach of discipline and were liable to those punishments.

77 Suspension of officers from duty in certain cases (1979 Act, s 96)

(1) In this section:

the senior officer, in relation to an officer charged as referred to in subsection (2), means the senior officer in the branch or section of the Department in which the officer is employed.

(2) If an officer:

- (a) is, in accordance with the regulations, charged with a breach of discipline, or
- (b) is charged with having committed an offence referred to in section 76,

either the appropriate Department Head or the senior officer may suspend the officer from duty, until the charge has been dealt with.

(3) Any salary payable to a person as an officer while the person is suspended from duty under this section shall (if the appropriate Department Head so directs) be withheld.

(4) If such a person:

- (a) is found, as referred to in section 75 (1), to have committed a breach of discipline or admits, as referred to in that provision, to having committed the breach, or
- (b) is convicted of an offence referred to in section 76,

then the salary withheld under subsection (3) is forfeited to the Crown, unless:

- (c) the appropriate Department Head otherwise directs, or
- (d) that salary was due to the person in respect of a period before the suspension was imposed.

(5) Subsections (3) and (4) are subject to the [Government and Related Employees Appeal Tribunal Act 1980](#).

(6) If the appropriate Department Head has suspended an officer from duty under this section, that Department Head may at any time remove the suspension.

(7) If a senior officer has suspended an officer from duty under this section, either the appropriate Department Head or the senior officer may at any time remove the suspension.

(8) The regulations may:

- (a) restrict the power of a senior officer to suspend an officer from duty under this section, and
- (b) require a senior officer who has suspended an officer from duty under this section to report the suspension to such officer and in such manner as may be prescribed.

77A Effect of dismissal of senior executive officers

If a senior executive officer is dismissed from the Public Service under this Division:

- (a) the term for which the officer was appointed is to be regarded as having come to an end, and
- (b) no compensation is payable in respect of the dismissal.

78 Posting of notices to an officer whose address is unknown (1979 Act, s 97)

(1) If:

- (a) a charge is pending against an officer, and
- (b) the appropriate Department Head does not know the address of the officer,

the Department Head shall post notices, orders or communications relating to the charge to the address of the officer last known to the Department Head.

(2) Compliance with subsection (1) shall be regarded as sufficient service on the officer of any such notices, orders or communications.

(3) If, within the period (if any) specified in any such notice, order or communication, the appropriate Department Head does not receive an answer to an inquiry asking whether the officer admits or denies the truth of the charge against the officer:

- (a) the officer shall be taken to have denied the truth of the charge, and
- (b) that Department Head may inquire into and deal with the charge in the officer's absence.

Division 4 Miscellaneous matters relating to conduct of officers

79 Officer to report bankruptcy etc (1979 Act, s 98)

(1) If an officer becomes bankrupt or makes a composition, arrangement or assignment for the benefit of the officer's creditors, the officer shall:

- (a) immediately give to the appropriate Department Head notice of the bankruptcy, composition, arrangement or assignment, and

(b) within such period as the Department Head specifies, provide that Department

Head with such further information with respect to the cause of the bankruptcy or of the making of the composition, arrangement or assignment as that Department Head requires.

- (2) If any such officer is the Department Head, subsection (1) applies as if references to the appropriate Department Head were references to the appropriate Minister.

80 Officer not to engage in other employment without permission (1979 Act, s 99)

- (1) An officer shall not:

- (a) accept or continue to hold or discharge the duties of or be employed in any paid office in connection with any banking, insurance, mining, mercantile or other commercial business, whether it is carried on by a corporation, company, firm or individual, or
- (b) engage in or undertake any such business, whether as principal or agent, or
- (c) engage in or continue in the private practice of any profession, occupation or trade, or enter into any employment, whether remunerative or not, with any corporation, company, firm or individual so engaged,

except with the permission of the appropriate Department Head.

- (2) The appropriate Department Head may withdraw any such permission at any time.
- (3) Subsections (1) and (2) are subject to any other Act that expressly applies to officers.
- (4) If an officer:
- (a) is the holder of an office or position, or
 - (b) is engaged in any employment whatever,
- otherwise than in connection with the duties of the officer's position under the Crown, the officer must at once notify the fact to the appropriate Department Head.
- (5) If an officer has given a notification to the appropriate Department Head under subsection (4), that Department Head may require the officer to resign the office or position or to abstain from engaging in the employment.
- (6) Nothing in this section prevents an officer from accepting and continuing to hold office in any friendly society established for the benefit of public servants only.
- (7) This section does not apply to chief executive officers or senior executive officers.

81 Officers retiring or resigning before breach of discipline dealt with

- (1) If an officer who has been charged with a breach of discipline, or who has been informed that such a charge is about to be laid, retires or resigns from the Public

Service, a disciplinary inquiry may be commenced or continued even though the officer has retired or resigned, and:

- (a) the person shall, for the purposes only of the inquiry, be taken to be an officer suspended from duty without pay, and
 - (b) a decision may be made as to the punishment (if any) that would have been imposed under this Part if the officer had not retired or resigned.
- (2) Any such decision (other than a fine) does not affect the former officer's retirement or resignation or the benefits, rights and liabilities arising from the retirement or resignation.
 - (3) A fine imposed under any such decision may be recovered from the former officer as a debt due to the Crown in any court of competent jurisdiction, or out of any money payable to or in respect of the former officer by the Crown, or both.
 - (4) Nothing in this section affects any power under this Act to refuse to accept the resignation of an officer.
 - (5) (Repealed)

Part 6 Special inquiries

82 Minister may direct holding of special inquiry (1979 Act, s 101)

- (1) The Minister may, in the case of any matter relating to a Department or declared authority, direct such person as the Minister specifies in the direction to conduct a special inquiry into the matter.
- (2) A special inquiry may be conducted under this section into a matter involving an alleged breach of discipline by a chief executive officer or a senior executive officer (whether or not the person has ceased to be such an officer).
- (3) If a special inquiry is conducted under this section into a matter involving an alleged breach of discipline by a senior executive officer in the Public Service, a disciplinary inquiry is not required to be held under Part 5.

83 Powers of persons conducting special inquiries (1979 Act, s 102)

- (1) A person conducting a special inquiry may enter the premises of any Department or declared authority in connection with the inquiry.
- (2) A person conducting a special inquiry has, for the purposes of the inquiry, the functions, protections and immunities conferred on a commissioner by Division 1 of Part 2 of the [Royal Commissions Act 1923](#).
- (3) If 2 or more persons are conducting a special inquiry, the person appointed to preside

at the inquiry has, for the purposes of the inquiry, the functions conferred on the chairman of a commission by the *Royal Commissions Act 1923*.

- (4) The provisions of the *Royal Commissions Act 1923* (except section 13 and Division 2 of Part 2) with necessary modifications apply:
 - (a) to a special inquiry, and
 - (b) to any witness or person summoned by or appearing before the inquiry.

84 Procedure and evidence at a special inquiry (1979 Act, s 103)

- (1) If the person conducting a special inquiry agrees, an agent (including a legal practitioner) may represent a person, Department or other body at the inquiry.
- (2) The person conducting a special inquiry is not bound by the rules of evidence and may be informed on any matter in issue at the inquiry in such manner as the person considers appropriate.
- (3) The person conducting a special inquiry may, in respect of a matter not dealt with by or under this Act, give directions as to the procedure to be followed at or in connection with the inquiry.

85 Reports of special inquiries (1979 Act, s 104)

- (1) The person conducting a special inquiry must:
 - (a) within such period as the Minister requires, prepare a report on the conduct and findings, and any recommendations, of the inquiry, and
 - (b) immediately after preparing the report, provide the Minister and the appropriate Minister each with a copy of the report.
- (2) The appropriate Minister must cause a copy of the report, together with information as to any action taken or proposed to be taken in relation to the subject of the report, to be laid before each House of Parliament within 30 sitting days of that House after the day on which that Minister was provided with a copy of the report.

Part 7 Application of provisions to declared authorities

86 Power to amend Schedule 3 relating to declared authorities (1979 Act, s 124)

- (1) The Governor may, by proclamation, amend Schedule 3 by inserting, omitting or amending the name of any authority (whether incorporated or not).
- (2) The Governor may, by proclamation, amend Schedule 3 by inserting (in parentheses after the name of an authority), omitting or amending references to any of the provisions of this Act relating to declared authorities which are not to apply to an authority.

- (3) The Governor may, by proclamation, omit Schedule 3 and insert instead a Schedule containing the names of authorities, with or without references as referred to in subsection (2).
- (4) The name of an authority may be included in Schedule 3 only if the authority is established by or under an Act and it is, or its governing body is, constituted by one or more persons appointed by the Governor or a Minister.

87 Certain provisions not to apply

A provision of this Act relating to declared authorities does not apply to a particular declared authority if the provision is specified after the name of that authority in Schedule 3 as not applying to that authority.

88 Declared authorities to comply with directions of Public Employment Office on industrial matters

- (1) The Public Employment Office may, with the approval of the Minister and by notice in writing to a declared authority, require the declared authority:
 - (a) to notify the Public Employment Office of such industrial matters affecting the declared authority as may be specified in the notice, and
 - (b) to exercise the declared authority's functions in respect of any such industrial matter in such manner as may be specified in the notice.
- (2) A notice may specify the manner and the time within which industrial matters must be notified.
- (3) A declared authority must comply with a requirement under this section.
- (4) This section is subject to section 87 (1).

Part 8 Removal and retirement of certain statutory office holders

89 Definitions

- (1) In this Part:

term appointee means a person appointed by the Governor or a Minister to a statutory office where the Act concerned provides that the holder of the office holds it for a term specified in the Act, in the instrument of appointment or in another instrument.

- (2) For the purposes of this Part, a person is not a term appointee merely because an Act provides that the person ceases to hold office on reaching a particular age.
- (3) A reference in this Part to:

- (a) employment in the public sector is a reference to employment as an officer of the Public Service or a Teaching Service, as a member of the Police Service or as an officer in the service of a public authority established by or under an Act, and
 - (b) engagement in the public sector is a reference to employment in the public sector or to holding a statutory office.
- (4) (Repealed)
- (5) The positions of director or chief executive officer of a statutory State owned corporation as defined in the *State Owned Corporations Act 1989* are statutory offices for the purposes of this Part.

89A Part not to apply to executive officers

This Part does not apply to a person in the person's capacity as a chief executive officer or a senior executive officer.

90 Removal of term appointee from office

- (1) The Governor may remove a term appointee from office at any time.
- (2) This section does not prevent a term appointee from being removed from office apart from this Act.
- (3) This section applies whether the term appointee holds office on a full-time or part-time basis.
- (4) This section does not apply to a person in the person's capacity as:
 - (a) (Repealed)
 - (b) the holder of an office under an Act that provides that the holder may or must be removed from office following an address, declaration, resolution or other involvement of either or both of the Houses of Parliament, or
 - (c) the Crown Advocate, or
 - (d) an Assistant Commissioner for the Independent Commission Against Corruption or any other officer of the Commission.

91 Re-appointment to public sector following removal of term appointee

- (1) This section applies to a person who is removed from office under section 90.
- (2) A person to whom this section applies is entitled to engagement in the public sector, if:
 - (a) for a continuous period ending immediately before appointment to the office the person was at all times engaged in the public sector on a full-time basis, and

(b) for at least some part of that engagement the person was an employee in the public sector.

(3) The engagement to which the person is entitled under this section is to be an engagement:

(a) at a salary not lower than the current salary for the previous engagement of the person as such an employee, and

(b) with duties appropriate to that salary.

(4) The person is not entitled to any compensation for the removal from office or to any remuneration in respect of the office for any period afterwards.

92 Compensation for office holder following removal

(1) This section applies to a person who (being a term appointee):

(a) is removed from an office under section 90, and

(b) is not entitled to be engaged in the public sector under section 91,

but does not apply to a person who held the office concerned on a part-time basis.

(2) A person to whom this section applies is entitled to such compensation (if any) for loss of remuneration as the Statutory and Other Offices Remuneration Tribunal determines.

(3) The maximum compensation payable is an amount equal to the person's gross remuneration for:

(a) the period of 38 weeks, or

(b) if the person was appointed for a term—the period starting from the person's removal from office and ending when the person's term of office would have expired,

(c) (Repealed)

at the rate at which it was payable immediately before the person's removal from office.

(4) If more than one such period is applicable, the maximum compensation is to be calculated by reference to the shorter or shortest period.

(5) The person is not entitled to any other compensation for the removal from office or to any other remuneration in respect of the office for any period afterwards.

(6) If the Statutory and Other Offices Remuneration Tribunal determines that compensation is payable under this section, it must, in its determination, specify the period to which the compensation for loss of remuneration relates.

- (7) The person may not be engaged in the public sector or employed in the service of a State owned corporation established under the *State Owned Corporations Act 1989* or a subsidiary of such a State owned corporation during the period so specified, unless arrangements are made for a refund of the proportionate amount of the compensation.

93 Election by term officer to take compensation

A person to whom section 91 applies may, before being engaged in the public sector under that section, elect in writing to take compensation referred to in section 92, and on the election taking effect the person ceases to be entitled to engagement in the public sector under section 91.

94 Operation of this Part

- (1) This Part prevails over any inconsistent provision of any other Act or law or of the terms of appointment of or contract with a person.
- (2) This Part applies to a person appointed to a statutory office even though the Act concerned excludes the application of this Act, unless it expressly excludes the application of this Part.
- (3) This Part applies to persons holding office at the commencement of this Part, as well as to persons appointed to an office afterwards.
- (4) Disentitlement under this Part to salary of an office does not apply as regards a subsequent re-appointment to the office.
- (5) This Part does not apply to a person in the person's capacity as:
 - (a) the Governor, the Lieutenant-Governor or other officer administering the Government, or
 - (b) a member of the Executive Council, a Minister of the Crown, a member of either House of Parliament or the holder of any other political office, or
 - (c) the holder of a judicial office, or
 - (d) the Parliamentary Remuneration Tribunal, or
 - (e) a member of the Police Service.

Part 9 Supplementary provisions

95 Certain other Acts not to be affected (1979 Act, ss 8, 126)

- (1) The *Superannuation Act 1916*, the *Industrial Relations Act 1996*, the *State Public Service Superannuation Act 1985*, the *State Authorities Superannuation Act 1987* and the *First State Superannuation Act 1992* are not affected by anything in this Act.

(2) Subsection (1) does not limit section 27 or 42J.

96 Minister's powers to control staff and work of Department not affected (1979 Act, s 128)

The ordinary and necessary departmental authority of a Minister with respect to the direction and control of staff and work is not limited by anything in this Act.

96A Delegation by Minister

The Minister may delegate to any person any of the Minister's functions under this Act, other than this power of delegation.

97 Construction of certain references (1979 Act, s 129)

(1) In any other Act, in any instrument made under any Act or in any other instrument of any kind (enacted, made or executed whether before or after the commencement of this section), except in so far as the context or subject-matter otherwise indicates or requires:

- (a) a reference to the "Public Service" or the "public service" shall be read as a reference to the Public Service within the meaning of this Act, and
- (b) a reference to a "Public Servant" or a "public servant" shall be read as a reference to an officer or temporary employee within the meaning of this Act, and
- (c) a reference to a Department Head shall be read as including a reference to a person who has the functions of a Department Head.

(2) (Repealed)

(3) Subsection (1) does not apply to particular references specified for the purposes of this subsection by the Governor by order published in the Gazette.

98 Evidence as to Public Service Notices (1979 Act, s 132)

A document purporting to be an issue of the Public Service Notices:

- (a) is admissible in evidence in any proceedings, including proceedings before the Tribunal, and
- (b) shall, until the contrary is proved, be presumed to be a copy of an issue of the Public Service Notices.

99 Deductions for rent etc in certain cases (1979 Act, s 130)

(1) Except as provided in subsection (3), if any officer or temporary employee is allowed to use, for residential purposes, any premises belonging to the Government, the Public Employment Office may direct that a fair and reasonable sum as rent for the premises be deducted from the salary of the officer or employee.

- (2) When giving a direction under subsection (1), the Public Employment Office shall either fix the amount of rent to be deducted or specify a person by whom the amount of rent to be deducted is to be fixed.
- (3) If an officer or temporary employee is allowed to use, for residential purposes, any premises or any land vested in or managed by the Teacher Housing Authority of New South Wales, an amount fixed by that Authority in respect of rent shall be deducted from the salary of that officer or employee and paid to that Authority.
- (4) In this section, **rent** includes payment for board and lodging.
- (5) This section is subject, in the case of a chief executive officer or senior executive officer, to the contract of employment entered into by the officer under Part 2A.

100 Extended leave for officers etc (1979 Act, ss 120-122)

Schedule 5 has effect in relation to officers and temporary employees.

100A Employer-sponsored transfers involving public authorities

- (1) The Head of a Department may transfer an officer of the Department to a position in the service of a public authority at the officer's existing level of remuneration, following consultation with the officer, and with the approval of the Head of the public authority and of the Public Employment Office.
- (2) The Head of a public authority may transfer an officer of the public authority to a position in a Department at the officer's existing level of remuneration, following consultation with the officer, and with the approval of the appropriate Department Head and of the Public Employment Office.
- (3) The Head of a public authority may transfer an officer of the public authority to a position in the service of another public authority at the officer's existing level of remuneration, following consultation with the officer, and with the approval of the Head of the other public authority and of the Public Employment Office.
- (4) However, a senior executive officer may be transferred under this section to a position (whether or not an executive position within the meaning of Part 2A) at a level of remuneration that is lower than the officer's existing level of remuneration, with the consent of the officer.
- (5) A transfer under this section may be made only if the officer possesses the qualifications required for the position to which the officer is being transferred.
- (6) An officer of a public authority who refuses a transfer under this section may be dismissed from the service of the public authority in accordance with any dismissal procedures applicable to the public authority, but only if the Head of the public authority has certified that the officer had no valid reason for so refusing. This

subsection does not affect the power of removal under section 42Q.

- (7) This section does not affect any other method (statutory or otherwise) by which officers of Departments or public authorities can transfer or be transferred.
- (8) This section does not affect any provisions of any other Act to the extent that they specifically deal with the transfer of any officers from a Department or a public authority.
- (9) The approval of the Public Employment Office under this section may be given unconditionally or subject to conditions. Without limitation, such a condition may provide for the retention of accrued or accruing rights or benefits where they are not covered by Schedule 5A or where that Schedule is not applicable.
- (10) The approval of the Head of a Department or public authority to the transfer of an officer to a protected position in or with the Department or public authority (that is, a position that is subject to the requirements of some other Act or law with respect to appointments to such a position) is effective only after substantial compliance with:
 - (a) such of those requirements as relate to probity or integrity, and
 - (b) such of those requirements as are specified in any conditions subject to which the approval of the Public Employment Office is given, and
 - (c) such of those requirements as are prescribed by the regulations.

For the purposes of this subsection, the relevant provisions of the other Act or law imposing any such requirement apply with any necessary modifications.

- (11) In this section:

Head of a public authority means:

- (a) (subject to paragraph (b)) the person who is or exercises the functions of chief executive officer of the authority, or
- (b) the person prescribed by the regulations.

officer of a Department means an officer, as defined in section 3 (1), of the Department.

officer of a public authority means an officer or employee of the public authority.

public authority means:

- (a) the whole or a part of a public sector service or an employer constituting, or within, or for the purposes of, a public sector service, or
- (b) (without limiting paragraph (a)) a State owned corporation,

but does not include a Department.

public sector service has the same meaning as in Schedule 5A.

100B Provisions relating to mobility of public sector employees

Schedule 5A has effect.

100C Variations in remuneration on transfer

- (1) A reference in this Act to an officer's existing salary or an officer's existing level of remuneration includes a reference to that salary or level of remuneration as varied in accordance with general guidelines issued from time to time by the Public Employment Office in connection with the transfer of officers.
- (2) A person is not entitled to appeal under section 20 of the *Government and Related Employees Appeal Tribunal Act 1980* in respect of a decision relating to a vacant office, where the maximum salary applicable to the vacant office is greater than the salary paid to an employee, because of the application of the guidelines.
- (3) An officer is not entitled to any compensation in respect of any reduction of remuneration because of the application of the guidelines.
- (4) A reference in this Act to the transfer of a senior executive officer at a level of remuneration that is lower than the officer's existing level of remuneration includes a reference to the transfer of the officer to a position without a remuneration package (within the meaning of Part 2A) and with a salary and other benefits that are lower in value than the officer's existing remuneration package (within the meaning of that Part). The relative values are to be determined in accordance with any relevant principles in the guidelines.
- (5) This section extends to officers referred to in section 100A.

100D Departmental or organisational changes affecting notional executive positions

If a Department or organisation referred to in section 42Q (3) (c) ceases to exist or to be identifiable, the Public Employment Office may determine that the executive position concerned is to be regarded for the purposes of that paragraph as being in some other specified Department or organisation.

101 Attachment of wages or salary of officers etc (1979 Act, s 131)

Schedule 6 has effect in relation to officers and temporary employees.

102 Regulations (1979 Act, s 133)

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) In particular, the regulations may make provision for or with respect to the following:
- (a) providing for the medical examination and standards of medical fitness for the appointment of persons to positions in the Public Service,
 - (b) prescribing the educational qualifications for appointments to positions in the Public Service,
 - (c) providing for the conduct of examinations in connection with any such appointments,
 - (d) prescribing the procedure to be adopted for selecting an appointee from among candidates for a vacant position (other than a chief executive position), but not so as to limit the power of the appropriate Department Head to make a recommendation in relation to the filling of the vacancy,
 - (e) determining the eligibility of persons for appointment as temporary employees,
 - (f) providing for the transfer of staff between Departments,
 - (g) providing for the hours of attendance of staff,
 - (h) prescribing the leave which may be granted to staff,
 - (i) providing for the payment of travelling and subsistence allowances for staff, allowances for the increased cost of living in remote areas, and other allowances for staff,
 - (j) prescribing the procedures to be adopted consequent on the appointment of a person to a position,
 - (k) providing for the exercise of the functions of suspended, sick or absent staff by other staff, and the exercise by staff of the functions attaching to vacant positions,
 - (l) providing for the acquisition of stores, equipment, materials and services for the Public Service,
 - (m) providing for entry to positions in the Public Service in special cases.
- (3) A regulation may:
- (a) create an offence for a breach of the regulations punishable by, or
 - (b) prescribe for a minor offence against discipline,
a penalty not exceeding 1 penalty unit.
- (4) The regulations are not capable of altering or affecting any duty that is required to be performed by or under any Act.

- (5) The Governor may determine and implement methods for acquiring stores, equipment, materials and services for the Public Service, whether or not by means of public tender.
- (6) The power conferred by subsection (5) is not affected by subsection (2) or anything in the regulations.

103, 104 (Repealed)

105 Repeal

The *Public Service Act 1979* is repealed.

106 Savings, transitional and other provisions

Schedule 7 has effect.

Part 10 Competitive neutrality in tendering

Division 1 Preliminary

107 Purpose and application of Part

- (1) The purpose of this Part is to provide the State Contracts Control Board with a role under the State's complaints mechanism, in connection with competitive neutrality principles, as contemplated by the Competition Principles Agreement, so far as they are applicable to public authorities. Other bodies (including the Independent Pricing and Regulatory Tribunal and the Department of Local Government) may also have roles under the complaints mechanism.
- (2) This Part applies only to a complaint that a public authority has failed to comply with competitive neutrality principles in relation to a tender bid made by the authority in response to an invitation for tenders.
- (3) However, this Part does not apply to a complaint so far as it is the subject of a direction under section 24G (3) of the *Independent Pricing and Regulatory Tribunal Act 1992*.

108 Definitions

In this Part:

Board means the State Contracts Control Board established by the regulations.

Chairperson means the Chairperson of the Board.

Competition Principles Agreement means the Competition Principles Agreement made on 11 April 1995 by the Commonwealth, the Territories and the States, as in force for the time being.

competitive neutrality principles means:

- (a) the competitive neutrality principles referred to in the Competition Principles Agreement, and
- (b) any policies adopted by the State for the purpose of complying with or giving effect to those principles.

complaint includes any part or aspect of a complaint.

portfolio Minister has the same meaning as in the *Independent Pricing and Regulatory Tribunal Act 1992*.

public authority means a public authority of the State.

public trading activities of a public authority means significant business activities relating to goods or services in which the authority is engaged.

public trading agency means a public authority that is engaged in public trading activities, and includes a public authority prescribed by the regulations as a public trading agency, but does not include a local council or any other local authority or a public authority prescribed by the regulations as not being a public trading agency.

State includes the Government or a Minister.

Division 2 Complaints

109 Complaints about competitive neutrality

- (1) The Minister may refer to the Board, for investigation and report, a complaint about a public trading agency with respect to:
 - (a) a failure of the agency to comply with competitive neutrality principles in relation to any or all of its public trading activities, or
 - (b) the inappropriate manner in which competitive neutrality principles are applied by or to the agency in relation to any or all of its public trading activities,so far as the complaint relates to a tender bid made by the agency in response to an invitation for tenders.
- (2) The Minister is not to refer a complaint to the Board unless satisfied:
 - (a) that the complaint relates to any or all of the public trading activities of the agency, and
 - (b) that the complainant is able to demonstrate that a person (the **competitor**) competes, or seeks to compete, in a particular market with the agency and is hindered or is likely to be hindered from or in doing so by the matters complained

of, and

- (c) that the competitor is materially affected by the matters complained of or is likely to be so affected, and
 - (d) that the complaint has been made by the competitor or by a person or body authorised by the competitor to make the complaint on behalf of the competitor, and
 - (e) that the subject-matter of the complaint has been raised with the agency and the complainant has reasonable grounds for not being satisfied with the response to the complaint.
- (3) The Board is required to notify the complainant, the agency, the agency's portfolio Minister and the Treasurer of the reference and that an investigation will be conducted into the complaint.
 - (4) If the Minister has referred a complaint to the Board for investigation and report, the Minister may withdraw or amend the reference at any time before the Minister has received the report from the Board.
 - (5) The regulations may make provision for or with respect to the manner of making complaints for the purposes of this Part.

110 Investigation and report

- (1) The Board is to conduct an investigation into and make a report on any complaint referred to it and not withdrawn by the Minister.
- (2) The Board is, as far as possible, to use its best endeavours to complete the investigation and report within 10 weeks after receiving the complaint or such other period as the Minister may approve from time to time.

111 Reports

- (1) The report of the Board with respect to a complaint is to contain a statement of its findings and recommendations about the complaint.
- (2) If the Board finds that the complaint has been wholly or partly substantiated, the report is to contain a statement about:
 - (a) any need for changes to the conduct of the public trading agency to ensure future compliance with competitive neutrality principles with regard to tendering bids made by it in response to invitations for tenders, and
 - (b) any policy changes that should be considered by the State.
- (3) Copies of the report are to be furnished to the complainant, the agency, the agency's portfolio Minister, the Treasurer, and the Minister.

- (4) The Board is to arrange for the report to be publicly available.

112 Portfolio Minister's response to report

- (1) Within 8 weeks after a report about a public trading agency has been furnished to the agency's portfolio Minister, the portfolio Minister is to prepare a written response to the report. This requirement does not apply where the report states that the investigation concerned was terminated because the complainant did not comply or did not fully comply with a request under section 116.
- (2) The response must include a statement as to whether or not the recommendations have been adopted or are proposed to be adopted and must include a statement of the reasons why any recommendation will not be adopted (whether wholly or partly).
- (3) Copies of the response are to be furnished to the complainant, the agency, the Treasurer, the Minister, and the Board.
- (4) The Board is to arrange for the response to be publicly available.

Division 3 Investigations

113 Definition

In this Division:

investigation means an investigation by the Board for the purposes of this Part.

114 Conduct of investigations

- (1) Subject to this Part, in an investigation, the Board:
 - (a) is to act with as little formality as possible, and
 - (b) may inform itself on any matter in any way it thinks fit and is not bound by the rules of evidence, and
 - (c) may receive information or submissions in the form of oral or written statements, and
 - (d) may consult with such persons as it thinks fit.
- (2) The investigation is to be conducted in private as far as possible, and accordingly the Board is not to conduct public hearings, public seminars and public workshops except with the approval of the Minister.
- (3) Nothing in this section prevents the Board from holding one or more meetings for the purposes of the investigation, but all such meetings are to be held privately.
- (4) The Board is required to seek and consider submissions from the public trading agency that is the subject of the complaint to which the investigation relates and the

Treasurer, but is not required to seek or consider submissions from any other person.

- (5) The regulations may make provision for or with respect to the conduct of investigations.

115 Public trading agency to provide information, documents and evidence

- (1) For the purposes of an investigation, the Chairperson may, by notice in writing served on an officer of the public trading agency that is the subject of the complaint to which the investigation relates, require the officer to do any one or more of the following:
- (a) to send to the Board, on or before a day specified in the notice, a statement setting out such information as is so specified,
 - (b) to send to the Board, on or before a day specified in the notice, such documents as are so specified,
 - (c) to attend a meeting of the Board to give evidence.
- (2) If documents are given to the Board under this section, the Board:
- (a) may take possession of, and make copies of or take extracts from, the documents, and
 - (b) may keep possession of the documents for such period as is necessary for the purposes of the investigation to which they relate, and
 - (c) during that period must permit them to be inspected at all reasonable times by persons who would be entitled to inspect them if they were not in the possession of the Board.

116 Complainant may be requested to provide information, documents and evidence

- (1) For the purposes of an investigation, the Chairperson may, by notice in writing served on the complainant, request the complainant to do any one or more of the following:
- (a) to send to the Board, on or before a day specified in the notice, a statement setting out such information as is so specified,
 - (b) to send to the Board, on or before a day specified in the notice, such documents as are so specified,
 - (c) to attend a meeting of the Board to give evidence.
- (2) If documents are given to the Board under this section, the Board:
- (a) may take possession of, and make copies of or take extracts from, the documents, and
 - (b) may keep possession of the documents for such period as is necessary for the

purposes of the investigation to which they relate, and

(c) during that period must permit them to be inspected at all reasonable times by persons who would be entitled to inspect them if they were not in the possession of the Board.

(3) If the complainant does not comply or fully comply with a request under this section, the Board may terminate the investigation, and the Board's report may be limited to a statement that the investigation was terminated for that reason.

117 Confidential information

(1) If a person provides information (***protected information***) to the Board on the understanding that the information is confidential and will not be divulged, the Board is required to ensure that the information is not divulged by it to any person, except:

(a) with the consent of the person who provided the information, or

(b) to the extent that the Board is satisfied that the information is not confidential in nature, or

(c) to a member of the Board or an officer working for the Board.

(2) If:

(a) the Board is satisfied that protected information provided to the Board by a complainant needs to be divulged to a person in order that the complaint can be properly dealt with, and

(b) the exceptions in subsection (1) (a)–(c) are not applicable,

the Board may notify the complainant that the Board proposes to divulge the information to a specified person, or in its report, after a specified period.

(3) After the specified period, and despite subsection (1), the Board may divulge the information to the specified person or in its report, unless the complainant withdraws the complaint.

(4) If the Board is satisfied that it is desirable to do so because of the confidential nature of any information provided to the Board for the purposes of an investigation, it may give directions prohibiting or restricting the divulging of the information.

(5) A person must not contravene a direction given under subsection (4).

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

(6) A reference in this section to information includes information contained in any evidence given at a meeting of or hearing before the Board and information contained in any documents given to the Board.

118 Offences

- (1) A person must not, without reasonable excuse:
 - (a) refuse or fail to comply with a notice served under this Division, or
 - (b) refuse or fail to answer a question that the person is required to answer by the Chairperson at any meeting of or hearing before the Board under this Division.
- (2) It is a reasonable excuse for the purposes of subsection (1) that to comply with the notice or to answer the question might tend to incriminate the person or make the person liable to any forfeiture or penalty.
- (3) A person must not:
 - (a) give to the Board, whether orally or in writing, information that the person knows to be false or misleading in a material particular (unless the person informs the Board of that fact), or
 - (b) at a meeting of or hearing before the Board, give evidence that the person knows to be false or misleading in a material particular.
- (4) A person must not hinder, obstruct or interfere with the Chairperson or any other member of the Board in the exercise of functions for the purposes of this Division as Chairperson or other member.
- (5) A person must not take any action that detrimentally affects the employment of another person, or threaten to do so, because that other person has assisted the Board in any investigation.
- (6) Subsection (1) does not apply to a complainant in relation to a notice served on the complainant under section 116.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

119 Proceedings for offences

Proceedings for an offence under this Division may be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

120 Cabinet documents and proceedings

- (1) This Part does not enable the Board:
 - (a) to require any person to give any statement of information or answer any question that relates to confidential proceedings of Cabinet, or
 - (b) to require any person to produce a Cabinet document, or
 - (c) to inspect a Cabinet document.

(2) For the purposes of this section, a certificate of the head of The Cabinet Office that any information or question relates to the confidential proceedings of Cabinet or that a document is a Cabinet document is conclusive of the matter certified.

(3) In this section:

Cabinet includes a committee of Cabinet or a subcommittee of such a committee.

Cabinet document means a document that is a restricted document by virtue of clause 1 of Part 1 of Schedule 1 to the *Freedom of Information Act 1989*.

121 Report of complaints

The Board, or the Department whose annual report covers the Board, is required to include in its annual report a statistical summary of complaints received by the Board, investigations conducted by the Board, and complaints disposed of by the Board, during the period covered by the annual report.

Schedule 1 Departments

(Sections 3, 9, 55B)

Column 1	Column 2
Department	Department Head
Department of Aboriginal Affairs	Director-General of the Department
Aboriginal Housing Office	Chief Executive Officer of the Office
Department of Ageing, Disability and Home Care	Director-General of the Department
Department of Agriculture	Director-General of the Department
Ministry for the Arts	Director-General of the Ministry
Attorney General's Department	Director-General of the Department
The Audit Office of New South Wales	* Auditor-General
Office of the Board of Studies	General Manager of the Office
Cabinet Office	Director-General of the Office
Commission for Children and Young People	Commissioner for the Commission for Children and Young People
Office of the Children's Guardian	* Children's Guardian
Community Services Commission	* Commissioner for Community Services
Office of Co-ordinator General of Rail	Co-ordinator General of Rail
Department of Corrective Services	Commissioner of Corrective Services

New South Wales Crime Commission	Commissioner of the New South Wales Crime Commission
Department of Community Services	Director-General of the Department
Office of the Director of Public Prosecutions	* Director of Public Prosecutions
Department of Education and Training	Director-General of the Department
Ministry of Energy and Utilities	Director-General of the Ministry
Environment Protection Authority	Director-General of the Authority
Community Relations Commission	Chairperson of the Commission
Department of Fair Trading	Director-General of the Department
NSW Fisheries	Director of NSW Fisheries
Forestry Commission (except State Forests)	* Commissioner constituting the Forestry Commission
Department of Gaming and Racing	Director-General of the Department
Department of Health	Director-General of the Department
Health Care Complaints Commission	* Commissioner of the Health Care Complaints Commission
Heritage Office	Director of the Office
Department of Housing	Director-General of the Department
Department of Industrial Relations	Director-General of the Department
Department of Information Technology and Management	Director-General of the Department
Department of Juvenile Justice	Director-General of the Department
Department of Land and Water Conservation	Director-General of the Department
Legal Aid Commission	* Chief Executive Officer of the Commission
Department of Local Government	Director-General of the Department
Department of Mineral Resources	Director-General of the Department
Motor Accidents Authority	General Manager of the Authority
National Parks and Wildlife Service	Director-General of National Parks and Wildlife
New South Wales Fire Brigades	Commissioner of New South Wales Fire Brigades
Olympic Co-ordination Authority	Director-General of the Authority
Ombudsman's Office	* Ombudsman
Parliamentary Counsel's Office	Director-General of the Cabinet Office
Department of Planning	Director-General of the Department

Ministry for Police	Director-General of the Ministry
Police Integrity Commission	* Commissioner for the Police Integrity Commission
Premier's Department	Director-General of the Department
Public Trust Office	* Public Trustee
Department of Public Works and Services	Director-General of the Department
Resource NSW	Chief Executive of Resource NSW
Royal Botanic Gardens and Domain Trust	Director of the Royal Botanic Gardens and Domain
Rural Assistance Authority	* Chief Executive of the Authority
Department of Rural Fire Service	Commissioner of the NSW Rural Fire Service
Safe Food Production NSW	Chief Executive Officer of Safe Food Production NSW
Department of Sport and Recreation	Director-General of the Department
Department of State and Regional Development	Director-General of the Department
State Electoral Office	* Electoral Commissioner
State Emergency Service	Director-General of the Service
State Forests, Forestry Commission	Managing Director of State Forests
Sydney Harbour Foreshore Authority	Chief Executive Officer of the Authority
Sydney Olympic Park Authority	Chief Executive Officer of the Authority
Tourism New South Wales	* General Manager
Department of Transport	Director-General of the Department
The Treasury	Secretary of the Treasury
Department for Women	Director-General of the Department
WorkCover Authority	General Manager of the Authority

Note—

The positions above marked with an asterisk are positions that are created by another Act and are not Public Service positions. The other positions are created by this Act (see section 9) and are Public Service positions. This note is an explanatory note and does not form part of this Schedule.

Schedule 2 (Repealed)

Schedule 3 Declared authorities

(Sections 3, 86)

Cobar Water Board
 FSS Trustee Corporation
 Greyhound Racing Authority (NSW)
 Harness Racing New South Wales

Home Care Service of New South Wales
Pacific Power
Roads and Traffic Authority of New South Wales
SAS Trustee Corporation
State Rail Authority of New South Wales
State Transit Authority of New South Wales
Sustainable Energy Development Authority
Sydney Organising Committee for the Olympic Games
TAFE Commission
Waterways Authority
Zoological Parks Board of New South Wales

Schedule 3A Chief executive positions

(Section 42B)

Part 1 Heads of Government Departments

Positions specified in Column 2 of Schedule 1, except the following positions:

Auditor-General
Director of Public Prosecutions
Ombudsman
Public Trustee
Chairperson of the State Crime Commission
Electoral Commissioner

Part 2

(Repealed)

Part 3 Heads of public authorities

Chief Executive of the Casino Control Authority
Chief Executive of the FSS Trustee Corporation
Chief Executive of the Greyhound Racing Authority (NSW)
General Manager of Harness Racing New South Wales
Chief Executive of the Internal Audit Bureau of New South Wales
Chief Executive of Pacific Power
Chief Executive of the Roads and Traffic Authority
Chief Executive of the SAS Trustee Corporation
Chief Executive of the State Rail Authority
Chief Executive of the State Transit Authority
Chief Executive of the Sydney Catchment Authority
Managing Director of the TAFE Commission
Director of the Zoological Parks Board
Full-time member of a Water Supply Authority

Schedule 3B Senior executive positions

(Section 42C)

Part 1 Positions (other than statutory positions)

Department of Aboriginal Affairs

Deputy Director-General

Aboriginal Housing Office

Director, Aboriginal and Torres Strait Islander Housing

Director, Housing Strategy Division

Department of Ageing, Disability and Home Care

Executive Director, Strategic Policy, Planning and Funding

Director, Strategic Policy and Planning

Director, Program Performance

Chief Executive Officer, Hunter Residences

Chief Executive Officer, Metropolitan West Residences

Executive Director, Business Improvement

Executive Director, Corporate Services

Executive Director, Disability Services

Chief Financial Officer

Operational Director of Disability (2 positions)

Department of Agriculture

Deputy Director-General

Executive Director, Regulatory

Executive Director, Research, Advisory and Education

Executive Director, Policy and Corporate Planning

Executive Director, Administration

Chief, Division of Animal Industries

Chief, Division of Plant Industries

Chief, Division of Corporate Services

Deputy Chief, Division of Animal Industries and Director, Elizabeth MacArthur Agricultural Institute

General Manager, Economic Services Unit

General Manager, Strategic Review

General Manager, Business Services Unit

Deputy Chief, Division of Plant Industries and Director, Biological and Chemical Research Institute

Regional Director:

North Coast

Sydney, South Coast

General Manager, Meat, Dairy and Intensive Livestock Products

Ambulance Service of New South Wales

General Manager, Corporate and Business Services

Ministry for the Arts

Deputy Director-General
Director, State Records Authority
Director, Art Gallery of New South Wales
Director, Australian Museum
Director, Historic Houses Trust
Director, Museum of Applied Arts and Sciences
Director of New South Wales Library Services and State Librarian
General Manager, Sydney Opera House
Director, Film and Television Office
Director, Library and Information Services
Director, Information Technology
Mitchell Librarian and Director, Collection Management
Deputy Director, Australian Museum
Director, Organisational Performance
Director, Commercial Performance
Director, Facilities and Precinct Performance
Director, Programming and Venue Performance
Deputy Director, Collections and Exhibitions
Associate Director, Corporate Services
Associate Director, Knowledge and Information Management
Associate Director, Programs and Commercial Services
Head, Corporate and Commercial Services, Australian Museum

Attorney General's Department

Deputy Director-General
Crown Solicitor
Director, Bureau of Crime Statistics and Research
Executive Director, Law Reform Commission
Protective Commissioner and Public Guardian
Director, Community Relations Division
Principal Courts Administrator (District Court)
Director, Local Courts
Sheriff
Director, Reporting Services
Director, Financial Services
Regional Co-ordinator, Northern Region
Chief Executive Officer (Supreme Court)
Deputy Crown Solicitor
Practice Manager, Crown Solicitor's Office
Principal Courts Administrator (Compensation Court)
Director, Victims Services
Principal Registrar of Births, Deaths and Marriages
Director, State Debt Recovery Office
Director, Office of the Public Guardian

Director, Crime Prevention Division
Director, Legislation and Policy Division
Principal Courts Administrator (Industrial Relations Commission) and Industrial Registrar
Director, Executive and Strategic Services
Director, Information Technology
Director, Children's Court Clinic
Director, Management Services

The Audit Office of New South Wales

Deputy Auditor General
Assistant Auditor General (5 positions)
Director of Audit (9 positions)
Principal Auditor (5 positions)
Director (Performance Audit) (2 positions)
Principal Auditor (Performance Audit)
Principal Auditor (Structure Finance and Treasury)
Director, Information Systems Audit

Office of the Board of Studies

Director, Finance and Administration
Director, Curriculum
Director, Examinations and Certification
Director, Information Services

Cabinet Office

Deputy Director-General
Assistant Director-General
Policy Manager, Legal Branch
Policy Manager, Natural Resources Branch
Policy Manager, Economic Development Branch
Policy Manager, Social Policy
Policy Manager, Intergovernmental and Regulatory Reform Branch
Director, Office of Children and Young People
Policy Manager, Justice and Drug Policy
Branch Manager, Cabinet Secretariat

Casino Control Authority

Director, Casino Surveillance

Commission for Children and Young People

Director, Commission for Children and Young People

Department of Community Services

Deputy Director-General, Business Services
Executive Director, Community Partners
Executive Director, Child and Family Services

Executive Director, Strategic Policy and Planning
Area Director (8 positions)
Executive Director, Business Services and Communications
Director, Finance and Property
Operations Manager DoCS Helpline

Office of Co-ordinator General of Rail

Executive Director, Strategy
Executive Director, Communications
General Manager, Asset Management

Department of Corrective Services

Executive Director, Office of the Commissioner
Assistant Commissioner, Probation and Parole
Senior Assistant Commissioner, Inmate and Custodial Services
Assistant Commissioner, Inmate Management
Regional Commander, Metropolitan
Regional Commander, North West
Regional Commander, South West
Executive Director, Finance and Asset Management
Director, Corrective Services Industries
Corporate Counsel
Regional Director, Probation and Parole, Southern
Regional Director, Probation and Parole, Northern
Regional Director, Probation and Parole, Western
Executive Director, Human Resources Management
Executive Director, Information Management
Executive Director, Probity and Performance and Chief Ethical Strategist
Commander, Security and Investigations

New South Wales Crime Commission

Director, Investigation Division
Director, Confiscation Division

Darling Harbour Authority

Manager, Development, Property and Assets

Office of the Director of Public Prosecutions

Deputy Solicitor for Public Prosecutions (Legal)
Deputy Solicitor for Public Prosecutions (Operations)
Assistant Solicitor for Public Prosecutions (Country)
Assistant Solicitor for Public Prosecutions (Sydney)
Assistant Solicitor for Public Prosecutions (Sydney West)
Manager, Corporate Services

Department of Education and Training

Deputy Director-General, Corporate Services
Deputy Director-General, Schools
Deputy Director-General, Strategic Planning and Regulation
Deputy Director-General, Technical and Further Education
Assistant Director-General, Primary Education
Assistant Director-General, School Educational Services
Assistant Director-General, Secondary Education
Assistant Director-General, State Training Services
Assistant Director-General, Student Services and Equity
Assistant Director-General, TAFE Educational Services
General Manager, Finance
General Manager, Information Technology and Chief Information Officer
General Manager, Personnel
General Manager, Properties
District Superintendent (40 positions)
Executive Director of Early Childhood, Primary and Rural Education
Executive Director of Secondary Education
Director of Administrative Services
Director of Adult and Community Education
Director of Audit
Director of Financial Accounting
Director of Higher Education
Director of National Art School
Director of Personnel Programs
Director of Properties Services
Director of Properties Support
Director of Public Affairs
Director of Recognition Services
Director of School Accountability and Improvement
Director of Specialist Units
Director of Strategic Research
Director of Student Services and Equity
Director of Technical and Further Education
Director of Training and Development
Director, Adult Migrant English Service
Director, Business Development
Director, Child Protection Investigation Unit
Director, Corporate Applications
Director, Corporate Management
Director, Disability Programs
Director, External Relations Policy
Director, Industry Programs
Director, Office of Director-General
Director, OTEN—Distance Education
Director, Personnel Services
Director, Professional Support and Curriculum
Director, Quality Initiatives and Promotion of Public Education
Director, School Operations

Director, Skills Development and Workforce Policy
Director, Staffing Services
Director, Strategic Information and Planning
Director, Strategic Projects
Director, TAFE Division (7 positions)
Director, Technology Services
Director, Vocational Education and Training (VET) in Schools
Director, Hunter Institute
Director, Illawarra Institute
Director, New England Institute
Director, North Coast Institute
Director, Northern Sydney Institute
Director, Riverina Institute
Director, South Western Sydney Institute
Director, Southern Sydney Institute
Director, Sydney Institute
Director, Western Institute
Director, Western Sydney Institute
Deputy Director, Hunter Institute
Deputy Director, Northern Sydney Institute
Deputy Director, South Western Sydney Institute
Deputy Director, Southern Sydney Institute
Deputy Director, Sydney Institute and College Director, Ultimo
Deputy Director, Corporate Services, Sydney Institute
Deputy Director, Western Sydney Institute
Assistant Director of Audit
Convenor, Teacher Education Review

Ministry of Energy and Utilities

Executive Director, Strategy
Executive Director, Energy and Utilities Policy
Executive Director, Industry Performance

Environment Protection Authority

Director, Special Operations Project
Director, Western Regions
Director, Coastal Region
Director, Litigation
Assistant Director-General (Operations)
Assistant Director-General (Water and Air)
Assistant Director-General (Chemicals and Waste)
Executive Director Finance and Administration
Executive Director Strategic Services
Executive Director Legal Services
Executive Director Education and Community Programs
Executive Director Economics and Environmental Reporting
Executive Director Environmental Science

Executive Director Sydney Region

Department of Fair Trading

Assistant Director-General, Operations
Assistant Director-General, Policy and Strategy
Assistant Director-General, Property and Licensing
Director, Policy Division
Director, Licensing and Registration Services Division
Director, Legal Services
Director, Projects, Funding and Equity

New South Wales Fire Brigades

Regional Commander, North
Regional Commander, West
Regional Commander, South
Director, Risk Management
Director, Logistics Support
Director, State Operations
Director, Capability Development
Director, Corporate Strategy
Director, Human Resources
Director, Finance and Administration

NSW Fisheries

Director, Fisheries Research
Director, Fisheries Services
Director, Aquaculture
Deputy Director and Director of Conservation

Forestry Commission

Executive General Manager, Investor Services Division
Manager, Forest Resources
General Manager, Financial and Related Services
General Manager, Marketing
General Manager, Softwood Plantations
General Manager, Operational Services
General Manager, Hardwood Plantations
General Manager, Native Forests
General Manager, Forest Research and Development Division
Manager, Public Affairs
Group Manager, Strategic Support

Department of Gaming and Racing

Deputy Director-General
Director, Policy and Development
Director, Revenue and Resource Management

Department of Health

Deputy Director-General, Policy
Deputy Director-General, Operations
Deputy Director-General, Public Health, and Chief Health Officer
Associate Director, Areas and Financial Planning
Director, Financial Management and Planning
Director, Capital and Asset Management
Director, Aboriginal Health
Director, Research and Clinical Policy Development
Director, AIDS and Infectious Diseases
Director, Health and Business Applications
Chief Executive Officer, Corrections Health Service
Director, Audit
Director, Executive Support
Chief Dental Officer
Chief Nursing Officer
Director, Health Protection
Director, Centre for Mental Health
General Manager, Performance Management Division
Director, Structural and Funding Policy
Director, Contract Performance
Director, Evaluation and Monitoring
General Manager, Finance and Commercial Services
Director, Human Resources Management
Director, Statewide Services Development
Associate Director, Financial Management
Director, Corporate Information and Technology
Director, Information Management and Clinical Systems
Director, Executive and Corporate Support
Director, Employee Relations
Director, Change Management
Manager, Human Resources Policy and Programs
Clinical Director, Drug Dependency
Director, Legal and Legislative Services
Deputy Director, Legal and Legislative Services
Director, Drug Programs Bureau
Director, Communications
Director, Counter Disaster Planning and Response
Director, Government Relations
Director, Primary Health and Community
Director of Information Management and Chief Information Officer
Assistant Director, Drug Programs Bureau
Associate Director, Health Public Affairs
Manager, Environmental Health
Manager, Communicable Diseases Surveillance and Control
Manager, Industrial Relations (2 positions)

Area Health Services

Central Coast Area Health Service

Director, Nursing

Central Sydney Area Health Service

Deputy Chief Executive Officer

Director, Finance and Budget

Director, Corporate Services

Director, Health Services Development

Director, Nursing

Illawarra Area Health Service

Director, Health Services Development

Director, Nursing

Director, Finance and Administration

General Manager, Wollongong Hospital

Northern Sydney Area Health Service

Director of Nursing, Community and Extended Services

Director, Finance, Corporate Services and Performance

South Eastern Sydney Area Health Service

Deputy Chief Executive and Director, Operational Services

Director, Finance and Information Technology

South Western Sydney Area Health Service

Deputy Chief Executive Officer

Director, Division of Planning

General Manager, Liverpool Health Services

Wentworth Area Health Service

Director, Finance and Budget

Director, Health Services Development

Director, Nursing

Western Sydney Area Health Service

Director, Health Services Development

Director, Analytical Laboratories

Director of Systems, Information and Resources

Home Care Service of New South Wales

General Manager

Director, Operations

Chief Information Officer

Department of Housing

Deputy Director-General
Deputy Director-General, Public Housing
Regional Director, Central Sydney
Regional Director, Southern Sydney
Regional Director, South Western Sydney
Regional Director, Western Sydney
Regional Director, Hunter Region
Regional Director, South Eastern Region
Regional Director, Northern Region
Regional Director, Western Regions
General Manager, Residential Technologies
Director Operations, Residential Technologies
Director Resources, Residential Technologies
Director Business Development and Marketing, Residential Technologies
Executive Director, Home Purchase Assistance Division
Director Operations, Home Purchase Assistance Division
Executive Director, Community Housing
Chief Financial Officer
General Manager, Share Services Network and Human Resources Strategy
Executive Director, Information Technology Services
Executive Director, Strategic Asset Management
Executive Director, Policy and Strategy
Executive Director to the Human Resources CEOs Group

Department of Industrial Relations

Deputy Director-General
Assistant Director-General (Workplace Services)
Assistant Director-General (Compliance Services)
Assistant Director-General (Business Development and Support)
Director, Building Industry Long Service Payments Corporation
Principal Conciliator, Workers Compensation Resolution Service

Department of Information Technology and Management

Surveyor-General
Registrar-General
General Manager, Land and Property Information NSW
Division Manager, Information Systems
Division Manager, Information Sourcing
Division Manager, Production and Business Development
Manager, Information Management and Technology Services
Manager, Legal Services
Executive Director, Corporate Governance
Executive Director, Office of Information Technology
Director, Strategy and Policy
Chief Valuer

Executive Director, Office of Western Sydney
Director, Corporate Strategy and Reform
Director, Operations
Director, Electronic Services
Division Manager, Titling and Registry Services
Program Manager, Human Services Better Service Delivery Program

New South Wales Institute of Sport

Director

Department of Juvenile Justice

Director of Operations
Director, Management Services

Department of Land and Water Conservation

Deputy Director-General, Natural Resource Management
Deputy Director-General, Regional and Commercial Services
Assistant Director-General, Strategy and Policy
Regional Director, Barwon
Regional Director, Central West
Regional Director, Far West and Western Lands Commissioner
Regional Director, Hunter
Regional Director, Murray
Regional Director, Murrumbidgee
Regional Director, North Coast
Regional Director, Sydney South Coast
Executive Director, Centre for Natural Resources
Executive Director, Information Technology
Executive Director, Landscape Management
Executive Director, Natural Resource Products
Executive Director, Performance Improvement
Executive Director, Regional and Commercial Services
Executive Director, Resources Policy
Executive Director, Water Management Act Implementation
Director, Corporate Finance
Director, Ecosystems
Director, Human Resources
Director, Legal and Compliance
Director, Native Title and Aboriginal Land Claims
Director, Natural Environmental Services
Director, Water Management Systems
General Manager, Land NSW
General Manager, Soil Services
General Manager, State Water
General Manager, Town Water Treatment and Recycling
General Manager, Water Efficiency Investment Group

Legal Aid Commission

Director, Business Services
Director, Criminal Law
Director, Family and Civil Law
Director, Grants
Director, Regional and Community Services

Department of Local Government

Deputy Director-General
Director, Policy and Reform

Department of Mineral Resources

Executive Director
Director, Geological Survey of New South Wales
Chief Executive Officer, Coal Compensation Board
Chief Executive Officer, Mine Subsidence Board
Director, Mine Safety and Environment
Director, Information and Corporate Services
Director, Resource Planning and Development
Director, Strategic Planning and Policy
Assistant Director, Environment Unit
Assistant Director, Performance Improvement
Assistant Director, Safety Operations

Motor Accidents Authority

Manager, Insurance Division
Change Manager

National Parks and Wildlife Service

Regional Director, Southern
Regional Director, Central
Regional Director, Northern
Regional Director, Western
Director, Legal Services
Director, Education and Community Programs
Director, Corporate Services
Director, Policy and Science

Olympic Co-ordination Authority

Deputy Director-General and Executive Director, Development
Assistant Director-General, Operations
Executive Director, Operations
Executive Director, Finance and Corporate Services
Senior Director, Development Services
Senior Director, Planning and Compliance

Senior Director, Environment
Senior Director, Operations Development
Director, Sport
Director, Government Strategies
Director, Government Co-ordination
Director, Financial Services
Director, Community Relations
Director, Construction Services

Pacific Power

Manager, Power Plant Engineering
Treasurer
General Manager, Contracts
Manager, Information Systems
Commercial Manager/Pacific Power International
Manager, Maintenance
Manager, Central Coast Coal and Environment
Manager, Energy Trading and Development
Production Manager, Eraring
Manager, Property and Survey
Manager, Environmental Services
Manager, Hydro and Gas Turbines
Chief Manager, Commercial
Chief Manager, Engineering
Manager, Environment Fuel and Technology Development
Manager, Business Development
Manager, Organisation Development
Manager, Western Engineering Services
Engineering Manager, Boilers, Fuel and Water Systems
Engineering Manager/Turbines Generator Systems
Engineering Manager, Controls and Instrumentation
Manager, Technical Services
Corporate Solicitor
Manager, Eraring
Manager, Pacific Power Energy Services
Manager, Demand Planning
Manager, Management and Financial Accounting
General Manager, Marketing, Pacific Power International
Manager, Project Services
General Manager, Development
General Manager, Commercial
Chief General Manager, Pacific Power International

Parliamentary Counsel's Office

Parliamentary Counsel
Deputy Parliamentary Counsel (2 positions)
Assistant Parliamentary Counsel (4 positions)

Senior Legislative Drafting Officer (4 positions)

Department of Planning

General Manager, Honeysuckle Development Corporation
Harbour Manager
Executive Director, Regional NSW Planning
Executive Director, Planning System
Executive Director, Metropolitan Planning
Executive Director, Resource and Conservation
Executive Director, Sustainable Development
Executive Director, Corporate and Business Management
General Manager, Festival Development Corporation
Operations Manager, Honeysuckle Development Corporation
Director, Sydney Strategy

Premier's Department

Deputy Director-General
Assistant Director-General (3 positions)
Assistant Government Actuary (2 positions)
Deputy Government Actuary
Director of Centennial Park and Moore Park
Director, Community Projects and Management Services
Director, Disaster Response and Special Services
Director, Employee Relations
Director, Performance Review, Council on the Cost of Government
Director, Performance Review
Director, Performance Measurement
Director, Performance Improvement
Director of Special Studies
Director, Strategic Policy and Reform
Director, Strategic Projects (3 positions)
Director, Workforce Policy
Executive Director and Chief of Staff, Office of the Director-General
Executive Director, Development Projects
Executive Director, Infrastructure Co-ordination Unit
Executive Director, Review and Reform
General Manager, Council on the Cost of Government
Government Actuary
Regional Co-ordinator (2 positions)
Manager, Business Strategy
Project Director, Strengthening Communities Unit
Project Director, Community Drug Strategies

Public Trust Office

General Manager, Operations
Corporate Counsel
General Manager, Business Development

Department of Public Works and Services

Director, Executive Services Division
Director, Policy Services Division
Operations Director, PMG
Technical Director, Infrastructure and Environmental Services, Asset and Environmental Services Group
Group General Manager, Asset and Environmental Services
Group General Manager, Corporate and Business Services Group
Group General Manager, Strategic Procurement Services
General Manager, Asset Management Services
General Manager, BDS and Government Architect
General Manager, Central Corporate Services Unit
General Manager, CMS and Government Printer
General Manager, Corporate Development
General Manager, Environmental Services and Manly Hydraulics Laboratory
General Manager, HaBS
General Manager, NSW Supply
General Manager, Procurement Consultancies
General Manager, Project Management Group
General Manager, Project Services Branch
General Manager, Q Store
General Manager, Shared Business Support Group
General Manager, State Fleet Services
General Manager, State Mail Service
General Manager, State Valuation Office
Manager, Contracts
Manager, Corporate Finance
Manager, Corporate Strategy
Manager, Dams and Civil Engineering and Principal Engineer
Manager, Financial Services, CCSU
Manager, Information Services and Technology
Manager, Information Technology Services, CCSU
Manager, Procurement Policy
Manager, Procurement and Industry Policy
Manager, Programs Branch
Manager, Strategic Solutions Development and Ministerial Projects
Commercial Business Manager
Corporate Marketing Manager
Cost Centre Manager (2 positions)
Regional Manager, Hunter/New England
Regional Manager, North Coast Region
Regional Manager, Riverina/Western Region
Regional Manager, South Coast
Regional Manager, South Coast Region
Regional Manager, Sydney Region
Assistant Manager, Building Design Services
Assistant Government Architect
Chief Information Officer

Client Executive, Healthcare
Client Executive, Justice Portfolio
Client Executive, Local Government Portfolio
Corporate Solicitor

Roads and Traffic Authority

Director, Corporate Services
General Manager, Property Services
Director Finance
General Manager, Environmental and Community Impact
General Manager, Group Audit
General Manager, Treasury and Revenue Administration
General Manager, Pavements
Director, Road Network Infrastructure
General Manager, Traffic Management
General Manager, Network Development
Corporate Counsel
General Manager, Financial and Management Accounting
General Manager, Human Resources
Chief Information Officer
Pacific Highway Development Manager
Regional Manager, Hunter
Regional Manager, Northern
Regional Manager, Southern
Regional Manager, South Western
Regional Manager, Western
Manager, Project Management Services (Sydney)
General Manager, Corporate Strategy
General Manager, Infrastructure Maintenance
General Manager, Infrastructure Contracts
General Manager, Driver and Vehicle Policy
General Manager, Transport Management Centre
Director, Operations
Director, Client Services
General Manager, Human Resources/Project Director, Change Management
Director, Road Safety and Road User Management
General Manager, Road Safety Strategy
General Manager, Sydney Client Services
General Manager, Road Services
General Manager, DVS
General Manager, Technical Services
Director, Strategic Communications
Group General Manager, Business Services
Director, Strategic Projects
Director, Traffic and Transport
Private Sector Infrastructure Project Manager
General Manager, Traffic Systems

Royal Botanic Gardens and Domain Trust

Director, Botanic Gardens and Public Programs
Director, Plant Sciences

Rural Assistance Authority

General Manager

Department of Rural Fire Service

Director, Office for Emergency Services

Safe Food Production NSW

Executive Director, Meat Division
Executive Director, Horticulture Division
Executive Director, Seafood Division
Executive Director, Dairy Division
Executive Director, Policy, Science and Planning

Department of Sport and Recreation

Deputy Director-General (Operations)
Deputy Director-General (Management Services)

Department of State and Regional Development

Director, Technology and Post-Olympic Business
Executive Director, Regional Development
Executive Director, Industry
Executive Director, Investment
Executive Director, Policy and Resources
Executive Director, Small Business Development

State Emergency Service

Deputy Director-General, State Emergency Service

State Rail Authority

Manager, RailCover
General Manager, Planning and Development
General Manager, Customer Services
General Manager, Passenger Fleet Maintenance
Chief Operations Manager
General Manager, CityRail Stations
Deputy Chief Operations Manager
Manager, Train Crewing
Manager, Quality and Technical Support
Manager, CityRail Marketing and Business Development
Manager, HR Systems and Payroll
Manager Finance, Passenger Fleet Maintenance

Project Manager, Millennium Train
Director, Capital Works
Project Director, Strategic Projects
Corporate Counsel
Executive Director, Communications and Marketing
Executive Director, Human Resources
Executive Director, Safety
Executive Director, Finance
Executive Director, Capital Works and Development
General Manager, Audit and Investigations
Manager, Train Operations
Manager, Corporate Finance
Manager, Station Operations

State Transit Authority

Corporate Counsel
Director, Business Development
Director, Engineering Safety and Environment
Financial Controller, Finance and Business Services
General Manager, Finance and Business
General Manager, Human Resources
General Manager, Marketing and Communications
General Manager, Eastern Suburbs Services
General Manager, Newcastle Services
General Manager, North Western Services
General Manager, South Western Services
General Manager, Sydney Ferries
General Manager, Warringah Services
Manager, Computer Systems and Technology

Sydney Harbour Foreshore Authority

Director, Business Services
Director, Development
Director, Property
General Manager, Darling Harbour Precinct

Tourism New South Wales

Director, Marketing Services and Brand Management
Director, Strategy and Alliances
Director, Business Services, Corporate Affairs and CIO
Director, NSW Holidays
Director, International Sales and Operations
Director, Industry Development
Director, Visitor Services Agencies Shared Services

Department of Transport

Deputy Director-General and Executive Director, Industry Reform
Executive Director, Transport Finance and Asset Management
Executive Director, Portfolio Corporate Business and Customer Services
Executive Director, Transport Master Planning and Infrastructure
Executive Director, Transport Safety Bureau
Director, Infrastructure and Interchange Planning and Development
Director, Bus and Ferry Reform
Director, Rail
Director, Cabinet and Executive Services
Director, Transport Communications
Director, Service Performance
Director, Metropolitan Strategic Planning

The Treasury

Deputy Director, Compliance
Deputy Director, Revenue Advisory Services
Director, Reporting and Co-ordination
Director, Client Services
Director, Compliance
Director, Corporate Management
Director, Financial Management
Director, Information Services
Director, Management Services
Director, Revenue Advisory Services
Executive Director, Financial Management
Executive Director, Fiscal Strategy
Executive Director, Office of State Revenue
Executive Director, Resource Allocation (2 positions)
Executive Director, Structural Reform
Project Manager, Electricity Reform Taskforce
Director, Resource Allocation (6 positions)
Director, Energy Reform
Director, Economic Strategy
Director, Energy Ownership
Director, Financial Management Policy
Director, Fiscal Strategy
Director, Revenue Strategy
Senior Director, Financial Management Improvement

Waterways Authority

General Manager, Operations
General Manager, Business Services
General Manager, Policy, Planning and Research
Executive Director, Maritime Assets Division
Director, Maritime Assets Strategy

Department for Women

Deputy Director-General

WorkCover Authority

Manager, Londonderry Occupational Safety Centre
Assistant General Manager, Corporate Governance Division
Assistant General Manager, Insurance Division
Assistant General Manager, Occupational Health and Safety Division
Director, Information Management
Manager, Risk Management Services Executive Support Group
Manager, Policy and Legislation Group
Director, Strategic Operations Group
Director, Service Delivery Group
Director, Insurance Service Delivery Group
Director, Insurance Strategic Management Group
Director of Finance

Zoological Parks Board of New South Wales

Deputy Director
Director, Scientific Policy and Research
Director, Western Plains Zoo
Director, Marketing Division
General Manager, Marketing and Sales

Part 2 Statutory positions

Chief executive officer of an area health board
President of the Board of Studies
Chairman of Commissioners of Inquiry (under the [Environmental Planning and Assessment Act 1979](#))
Deputy Chairman of Commissioners of Inquiry (under the [Environmental Planning and Assessment Act 1979](#))
Commissioner of Inquiry (under the [Environmental Planning and Assessment Act 1979](#)) (2 positions)
Commissioner for Corporate Affairs
Director of Equal Opportunity in Public Employment
Assistant Commissioner under the [Forestry Act 1916](#)
Deputy Managing Director of the Hunter Water Board
Managing Director of the New South Wales Government Telecommunications Authority
Commissioner of the Soil Conservation Service
Deputy Ombudsman
An Assistant Ombudsman
Chief Executive Officer of the Ambulance Service Board
Legal Services Commissioner
Executive Director of the Sustainable Energy Development Authority
Valuer-General

Schedule 4 (Repealed)

Schedule 5 Extended leave for officers etc of Public Service

(Section 100)

1 Officer to be entitled to extended leave after a certain period of service (1979 Act, s 120)

- (1) Subject to this Schedule, an officer is entitled:
 - (a) after service for 10 years, to leave for 2 months on full pay or 4 months on half pay, and
 - (b) after service in excess of 10 years, to:
 - (i) leave as provided by paragraph (a), and
 - (ii) in addition, an amount of leave proportionate to the officer's length of service after 10 years, calculated on the basis of 5 months on full pay, or 10 months on half pay, for 10 years served after service for 10 years.
- (2) For the purpose of calculating the entitlement of a person to extended leave under this clause at any time:
 - (a) service referred to in this clause includes service before the commencement of this Schedule, and
 - (b) there must be deducted from the amount of extended leave to which, but for this paragraph, that person would be entitled:
 - (i) any extended leave, or leave in the nature of extended leave, and
 - (ii) the equivalent, in extended leave, of any benefit instead of extended leave or leave in the nature of extended leave, taken or received by that person before that time, including any such leave taken, or benefit received, by that person in accordance with the *Public Service (Amendment) Act 1919* as in force at any time, and
 - (c) the provisions of the *Transferred Officers Extended Leave Act 1961* have effect.
- (3) Nothing in subclause (2) shall be regarded as authorising, in respect of the same period of leave taken or the same benefit received, a deduction under both subclause (2) (b) and section 3 (7) of the *Transferred Officers Extended Leave Act 1961*.
- (4) If the services of an officer with at least 5 years' service and less than 10 years' service are terminated:
 - (a) by the Crown, the Governor or the appropriate Department Head for any reason other than the officer's serious and intentional misconduct, or
 - (b) by the officer on account of illness, incapacity or domestic or other pressing

necessity,

the officer is entitled:

(c) for 5 years' service, to 1 month's leave on full pay, and

(d) for service after 5 years, to a proportionate amount of leave on full pay calculated on the basis of 3 months' leave for 15 years' service.

(5) (Repealed)

(6) For the purposes of subclause (1), **service** includes:

(a) service under the *Teaching Services Act 1980*, and

(a1) service as an administrative officer under the *Police Service Act 1990*, and

(b) any period of leave without pay taken before the commencement of the *Public Service and Other Statutory Bodies (Extended Leave) Amendment Act 1963*, and

(c) in the case of an officer who has completed at least 10 years' service—any period of leave without pay, not exceeding 6 months, taken after that commencement.

(7) In subclause (6) (c), for the purpose of determining whether or not an officer has completed at least 10 years' service, the officer's period of service shall be taken:

(a) to include any period of leave without pay taken before the commencement of the *Public Service and Other Statutory Bodies (Extended Leave) Amendment Act 1963*, and

(b) to exclude any period of leave without pay taken after that commencement.

(8) For the purposes of subclause (4), **service** does not include any period of leave without pay whether taken before or after the commencement of the *Public Service and Other Statutory Bodies (Extended Leave) Amendment Act 1963*.

2 Certain officers to be entitled to be paid a gratuity instead of extended leave (1979 Act, s 121)

(1) An officer who has acquired a right to extended leave with pay under clause 1 is entitled, immediately on the termination of the officer's services, to be paid instead of that leave the money value of the extended leave as a gratuity in addition to any gratuity to which the officer may be otherwise entitled.

(2) Any pension to which any such officer is entitled under the *Superannuation Act 1916* commences from and including the date on which the officer's extended leave, if taken, would have commenced.

(3) Any officer may elect, on termination of the officer's services, to be paid the money

value of extended leave under subclause (1) or may elect to have the *Transferred Officers Extended Leave Act 1961* apply to the periods of service for which the leave has accrued.

3 Payment to be made where an officer entitled to extended leave has died (1979 Act, s 122)

(1) If an officer has acquired a right under clause 1 to extended leave with pay and dies before starting it, or after starting it dies before completing it:

- (a) the widow or widower of the officer, or
- (b) if there is no such widow or widower, the children of the officer, or
- (c) if there is no such widow, widower or children, the person who, in the opinion of the appropriate Department Head, was, at the time of the officer's death, a dependent relative of the officer,

is entitled to receive the money value of the leave not taken, or not completed, computed at the rate of salary that the officer received at the time of his or her death, less any amount paid to the officer in respect of the leave not taken, or not completed.

(2) If an officer with at least 5 years' service and less than 10 years' service as referred to in clause 1 (4) dies:

- (a) the widow or widower of the officer, or
- (b) if there is no such widow or widower, the children of the officer, or
- (c) if there is no such widow, widower or children, the person who, in the opinion of the appropriate Department Head, was, at the time of the death of the officer, a dependent relative of the officer,

is entitled to receive the money value of the leave which would have accrued to the officer had his or her services terminated as referred to in clause 1 (4), computed at the rate of salary that the officer was receiving at the time of his or her death.

(3) If there is a guardian of any children entitled under subclause (1) or (2), the payment to which those children are entitled may be made to that guardian for their maintenance, education and advancement.

(4) If there is no person entitled under subclause (1) or (2) to receive the money value of any leave not taken or not completed by an officer or which would have accrued to an officer, payment in respect of that leave must be made to the officer's personal representatives.

(5) Any payment under this clause is in addition to any payment due under any Act under which superannuation benefits are paid.

- (6) If payment of the money value of leave has been made under this Act, the Crown ceases to be liable for payment of any amount in respect of that leave.

4 Extended leave for temporary employees

- (1) In this Schedule, a reference to an officer includes a reference to a temporary employee.
- (2) If the period of leave to which a temporary employee is entitled under this Schedule exceeds the period for which the temporary employee is employed under this Act, the balance of that period of leave may be granted during subsequent periods of employment in the Public Service if each subsequent period of employment commences on the termination of a previous period of employment in the Public Service.

5 Calculation of money value of extended leave

For the purpose of calculating the amount of an entitlement under clause 2 or 3, the money value of extended leave accrued or payable to a chief executive officer or senior executive officer is to be determined on the basis of the officer's notional salary.

Schedule 5A Provisions relating to mobility of public sector employees

(Section 100B)

1 Definitions

- (1) In this Schedule:

employee means a person who is:

- (a) a member of the Public Service, or
- (b) a member of the Education Teaching Service, or
- (c) a member of the Police Service, or
- (d) employed in the service of a declared authority or other statutory body representing the Crown, or
- (e) employed in a position referred to in section 4 (1) (c), or
- (f) employed in any other public sector service.

public sector service means:

- (a) the Public Service, or
- (b) the Education Teaching Service, or
- (c) the Police Service, or

- (d) the service of a declared authority or of a statutory body representing the Crown, or
- (e) the service of either House of Parliament, or the President or Speaker, or the President and the Speaker jointly, or
- (f) any other service of the Crown, or
- (g) the service of a public health organisation within the meaning of the *Health Services Act 1997*, or
- (h) (Repealed)
- (i) the service of any other person or body constituted by or under an Act or exercising public functions (such as a State owned corporation), being a person or body that is prescribed, or that is of a class prescribed, for the purposes of this paragraph.

(2) A reference in this Schedule to cessation of employment is a reference to the cessation of employment by resignation, retirement or otherwise.

2 Schedule applies despite awards and agreements

This Schedule has effect despite any provision of any award or agreement.

3 Extended (long service) leave

- (1) Each public sector service that is not covered by the *Transferred Officers Extended Leave Act 1961* is declared to be a State authority for the purposes of that Act.
- (2) A public sector service is regarded as “not covered” by the *Transferred Officers Extended Leave Act 1961* if service in or with that public sector service would not (in the absence of this clause) be Governmental service under that Act.

4 Annual leave

- (1) This clause is taken to have commenced on 3 May 1993.
- (2) An employee who ceases to be employed in a public sector service and immediately commences employment in another public sector service may elect to be paid the money value of the employee’s accrued annual leave or to retain the entitlement to that accrued annual leave.
- (3) An employee who elects to retain the entitlement to accrued annual leave is taken to have, on commencing employment in the other public sector service, the amount of accrued annual leave to which the employee was entitled immediately before the end of his or her previous employment. This leave is in addition to any annual leave which accrues after that commencement.

(3A) For the purpose of calculating an entitlement under this clause, the money value of accrued annual leave owing to a chief executive officer or senior executive officer is to be determined on the basis of the officer's notional salary.

(4) In this clause:

accrued annual leave means annual leave owing to an employee (but not taken), and includes any such leave accrued because of the operation of this clause.

5 Sick leave

(1) This clause is taken to have commenced on 3 May 1993.

(2) An employee who ceases to be employed in a public sector service and immediately commences employment in another public sector service is taken to have, on commencing that employment, the amount of accrued sick leave to which the employee was entitled before that commencement. This leave is in addition to any sick leave which accrues after that commencement.

(3) The eligibility of an employee for sick leave that includes any period of accrued sick leave is to be determined in accordance with the conditions relating to the granting of sick leave in the employee's current employment.

(4) In this clause:

accrued sick leave means the amount of sick leave to which the employee would have been entitled in the event of illness, and includes any such leave accrued because of the operation of this clause.

6 Maternity leave etc

(1) This clause is taken to have commenced on 3 May 1993.

(2) This clause applies for the purposes of determining whether an employee who ceases to be employed in a public sector service and immediately commences employment in another public sector service is entitled to maternity leave, paternity leave, adoption leave or any other leave (other than extended leave) for which a condition of eligibility is a minimum period of service.

(3) For the purposes of determining an employee's entitlement to leave referred to in this clause:

(a) service with the employee's previous employer is taken to be service with the employee's current employer, if the previous employment was in another public sector service and if that period of service was continuous with the employee's current employment, and

(b) service with any other former employers is taken to be service with the person's

current employer, if the service was in other public sector services and the periods of service with those bodies were continuous with each other and the employee's previous employment in a public sector service.

- (4) Except as provided by this clause, the eligibility of an employee for leave referred to in this clause is to be determined in accordance with the conditions applying to that leave in the employee's current employment.
- (5) A reference in this clause to service with a previous or former employer extends to include a reference to any such service before the commencement of this clause.

7 Access to forfeited sick leave—transitional arrangements

- (1) If an employee is eligible for sick leave for any absence from duty but has exhausted his or her sick leave entitlement, the employee's employer may grant to the employee any of the employee's forfeited sick leave as sick leave for the absence.
- (2) An employee's "forfeited sick leave" is the total amount of sick leave that the employee ceased to be entitled to up to the commencement of this clause, being sick leave that he or she would presently be entitled to had clause 5 been in force from when the employee was first employed in a public sector service.
- (3) Once any period of an employee's forfeited sick leave has been granted as sick leave under this clause, it is no longer regarded as forfeited sick leave for the purposes of any further grant of sick leave to the employee under this clause (whether by the same or a different employer).
- (4) For the purposes of this clause, the employer of an employee is the person who exercises the functions of chief executive officer in relation to the public sector service in which the employee is employed (being the appropriate Department Head in the case of a member of the Public Service for example).
- (5) In determining whether or not an employee is entitled to sick leave, all the employee's entitlements to sick leave are to be taken into account, including special sick leave and sick leave to which the employee is entitled by operation of clause 5.
- (6) The Public Employment Office may issue guidelines to employers of employees as to the circumstances in which, and the matters to be taken into account in determining whether, forfeited sick leave should or should not be granted as sick leave under this clause.

8 Funding of leave entitlements

The Treasurer may give directions and issue guidelines requiring the transfer of funds between public sector employers for the purpose of making due allowance and appropriate adjustments for liabilities incurred by reason of the operation of this Schedule and Schedule 5, or liabilities with respect to extended or long service leave.

Schedule 6 Attachment of wages or salary of officers etc of Public Service

(Section 101)

1 Definition etc (1979 Act, s 131 (9), (13))

(1) In this Schedule:

judgment includes a judgment against joint defendants.

(2) This Schedule does not apply in relation to an officer or temporary employee who is an undischarged bankrupt.

2 Salary or wages of officers and temporary employees may be attached (1979 Act, s 131 (1)-(6))

(1) If judgment has been entered in a court against an officer or temporary employee for the payment of a sum of money, the person in whose favour the judgment is entered may serve on the Head of the Department to which the officer or temporary employee belongs:

- (a) a copy of the judgment certified under the hand of the registrar or other proper officer of the court in which the judgment is entered, and
- (b) a statutory declaration stating that the judgment has not been satisfied by the judgment debtor, and setting out the amount due by the judgment debtor under the judgment.

(2) As soon as practicable after the service on a Department Head of a copy of a judgment and a statutory declaration in accordance with this clause, the Department Head must:

- (a) notify the judgment debtor in writing of the service of the copy of the judgment and statutory declaration, and
- (b) require the judgment debtor:
 - (i) to state in writing within a time to be specified by the Department Head whether the judgment has been satisfied, and
 - (ii) if so, to provide evidence that the judgment has been satisfied, and
 - (iii) if the judgment has not been satisfied, to state the amount then due under the judgment.

(3) If the officer or temporary employee fails to prove to the satisfaction of the Department Head that the judgment has been satisfied, the Department Head may:

- (a) from time to time cause to be deducted from any money due to the officer or

temporary employee such sums as are, in the Department Head's opinion, necessary to enable the judgment to be satisfied, and

(b) apply those sums in the manner provided by clause 4.

- (4) A deduction must not be made under this clause if it would reduce the amount to be received by the officer or temporary employee to less than a sum per week equivalent to the amount ascertained in accordance with subclause (5).
- (5) The amount that is to be ascertained in accordance with this subclause is to be ascertained by deducting \$8 from the basic wage in force under clause 15 of Schedule 4 to the *Industrial Relations Act 1996* immediately before the deduction under subclause (3) is made.
- (6) If copies of more than one judgment and statutory declaration are served on the Department Head in respect of a single judgment debtor, the judgment must be dealt with under this clause in the order in which copies of the judgments are served on the Department Head.
- (7) Any deductions made under subclause (3) from money due to an officer or temporary employee shall, as between the Crown and the officer or employee, be regarded as a payment by the Crown to the officer or employee.

3 Offence for a person to fail to notify certain payments (1979 Act, s 131 (7))

If a person to whom a payment has been made in accordance with clause 2 fails to notify the Department Head as soon as the judgment debt in respect of which the payment was made is satisfied, or is deemed to be satisfied, the person is liable on conviction by a Local Court to a penalty not exceeding 1 penalty unit.

4 How deductions under clause 2 are to be disposed of (1979 Act, s 131 (8), (10)-(12))

- (1) If any deduction made in accordance with clause 2 from money due to a judgment debtor exceeds the amount due under the judgment against the judgment debtor:
- (a) the Department Head concerned must repay the amount of the excess, and
- (b) in default of payment, the judgment debtor may recover that amount from the Crown in any court of competent jurisdiction.
- (2) A Department Head who has deducted sums in accordance with clause 2:
- (a) must retain out of those sums an amount equal to the prescribed percentage of those sums and pay that amount to the Treasurer for crediting to the Consolidated Fund, and
- (b) must pay the balance of those sums to the judgment creditor concerned.
- (3) Whenever a payment is made to a judgment creditor under subclause (2), the

Department Head must forward to the judgment creditor a statement showing:

- (a) the sums deducted under clause 2 in respect of the judgment from money due to the officer or temporary employee concerned, and
 - (b) the amount retained by the Department Head under subclause (2) out of those sums, and
 - (c) the balance of those sums paid to the judgment creditor under subclause (2).
- (4) On payment being made to the judgment creditor under subclause (2):
- (a) the judgment creditor must credit the officer or temporary employee concerned with the sums referred to in subclause (3) (a), as shown in the statement forwarded to the judgment creditor, and
 - (b) the judgment in respect of which the payment was made shall for all purposes be taken to be satisfied to the extent of those sums, as shown in that statement.

Schedule 7 Savings, transitional and other provisions

(Section 106)

Part 1 General

1 Definitions

In this Schedule:

former Act means the *Public Service Act 1979*.

Public Service Board means the Public Service Board of New South Wales constituted under the former Act.

2 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings and transitional nature consequent on the enactment of the following Acts:

This Act

Miscellaneous Acts (Public Sector Management) Amendment Act 1988

Public Sector Management (Executives) Amendment Act 1989

Statutory and Other Offices Remuneration (Executives) Amendment Act 1989

Miscellaneous Acts (Public Sector Executives Employment) Amendment Act 1989

Anti-Discrimination (Compulsory Retirement) Amendment Act 1990

Public Sector Management Amendment Act 1995

Public Sector Management Amendment (Mobility) Act 1996.

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

3 Abolition of Public Service Board

The Public Service Board is abolished.

4 Members of Public Service Board

- (1) A person who, immediately before the commencement of this clause, held office as a member of the Public Service Board:
 - (a) ceases to hold office as such on that commencement, and
 - (b) is not entitled to any remuneration or compensation because of the loss of that office.
- (2) Nothing in this Act affects any arrangement made by or on behalf of the Government for the appointment of any such person to a position in the service of the Government or for the payment of any compensation.

5 Transfer of assets, liabilities etc of Public Service Board

Any assets, rights, liabilities or obligations of the Public Service Board shall be assets, rights, liabilities or obligations of the Crown.

6 Superseded references

In any other Act, or in any instrument made under any Act or in any other instrument of any kind:

- (a) a reference to the Public Service Board (or the Chairman or a member of that Board) shall be read as a reference to:

- (i) subject to subparagraph (ii)—the Public Employment Industrial Relations Authority,
or
 - (ii) in the case of any particular reference—such person or body as is prescribed by
the regulations in respect of that reference, and
- (b) a reference to the *Public Service Act 1902* or the *Public Service Act 1979* shall be read
as a reference to this Act.

7 Existing public service staff

- (1) Any officers and temporary employees employed under the former Act shall be taken
to be officers and temporary employees respectively employed under this Act.
- (2) If any procedures have been commenced before the commencement of this clause in
relation to the filling of a vacancy in the Public Service or the appointment of a person
to any position in the Public Service, the procedures must be completed in accordance
with this Act (unless the regulations otherwise provide).

8 Divisions

- (1) For the purposes of any Act, statutory instrument, award, industrial agreement or
other instrument, a reference to a Division of the Public Service is a reference to such
class of officers as the regulations prescribe.
- (2) Until the regulations otherwise provide, the officers included in any such Division shall
be determined by the Industrial Authority.

9 Staff positions

The staff establishments of the Departments and Administrative Offices determined by
the Public Service Board under section 38 of the former Act and in force immediately
before the commencement of this clause shall, on that commencement, be taken to have
been determined by the appropriate Department Heads under section 8 of this Act as the
staff positions of those Departments and Administrative Offices.

10 Administrative units

A list and declaration in force under section 59 of the former Act immediately before the
commencement of this clause shall be taken to be in force under section 23 of this Act.

11 Public Service Notices

A reference in this Act to Public Service Notices includes a reference to Public Service
Notices issued under the former Act.

12 Agreements

Any agreement between the Public Service Board and an association or organisation

(under section 83 of the former Act or under any other law relating to industrial matters) and in force immediately before the commencement of this clause shall be taken to be, after that commencement, an agreement between the Industrial Authority and the association or organisation made under section 64 of this Act or under that other law.

13 Determinations of remuneration

Any determination by the Public Service Board of remuneration of officers and temporary employees under section 82 of the former Act, and in force immediately before the commencement of this clause, shall be taken to be, after that commencement, a determination made by the Industrial Authority under section 63 of this Act.

14 Discipline and conduct

- (1) Part 5 of this Act applies to and in respect of acts and omissions committed or alleged to have been committed before as well as after the commencement of that Part.
- (2) Any disciplinary proceedings pending under the former Act immediately before the relevant commencement shall be taken to be pending under this Act and may continue to be heard and disposed of by the persons delegated under the former Act to do so, unless replaced by such persons as the appropriate Department Head may delegate under this Act to do so.
- (3) Any suspension in force under section 96 of the former Act immediately before the commencement of this clause shall be taken to have been imposed under section 77 of this Act.

15 Special inquiries

A special inquiry pending under section 101 of the former Act immediately before the commencement of this clause shall be taken to be pending under this Act and may continue to be conducted by the persons delegated under the former Act to conduct the inquiry, unless replaced by such persons as the Minister may delegate under this Act to conduct the inquiry.

16 Appeals to Public Service Board

- (1) Any appeal pending under section 116 of the former Act immediately before the commencement of this clause may continue to be heard by the persons delegated under the former Act to hear the appeal, unless replaced by persons nominated by the Industrial Authority.
- (2) The Industrial Authority may decide any such appeal and, for that purpose, exercise the functions of the Public Service Board under the former Act.

17 Appeals to Government and Related Employees Appeal Tribunal etc

- (1) Notwithstanding the amendment made to section 21 (1) (g) of the *Government and*

Related Employees Appeal Tribunal Act 1980 by the *Miscellaneous Acts (Public Sector Management) Amendment Act 1988*, that paragraph, as in force immediately before the commencement of that amendment continues to apply to decisions against which an appeal has been lodged under section 20 of that Act before the commencement of that amendment.

- (2) An appeal to the Tribunal against a decision of the Public Service Board which is pending on the commencement of this clause, shall, for the purposes of the appeal, be taken to be a decision of the appropriate Department Head.
- (3) A person nominated by the Public Service Board in accordance with Schedule 2 to the *Government and Related Employees Appeal Tribunal Act 1980* as an employer's representative does not cease to be so nominated because of this Act or the *Miscellaneous Acts (Public Sector Management) Amendment Act 1988*, but may be removed as an employer's representative by the Industrial Authority.

18 Industrial Arbitration Act 1940

- (1) A person who is a member of a committee under the *Industrial Arbitration Act 1940* immediately before the commencement of this clause and who was nominated by the Public Service Board as an employer's representative does not cease to be so nominated because of this Act or the *Miscellaneous Acts (Public Sector Management) Amendment Act 1988*.
- (2) The Industrial Authority may, in accordance with the *Industrial Arbitration Act 1940*, withdraw the nomination of any such person.

19 Judgments

Anything done or omitted under section 131 of the former Act shall be taken to have been done or omitted under Schedule 6 to this Act.

20 Deductions for residence

Any directions made under section 130 (1) of the former Act and in force immediately before the commencement of this Act shall be taken to be directions under section 99 (1) and (2).

21 Repeal of regulations under former Act

- (1) The *Public Service (General) Regulation 1984* is repealed.
- (2) The *Public Service (Stores and Services) Regulation 1984* is repealed.
- (3) The *Public Service (Savings and Transitional Provisions) Regulation 1980* is repealed.

Part 3 Provisions consequent on enactment of Public Sector

Management (Executives) Amendment Act 1989 and cognate Acts

22 Existing chief executive and other statutory office holders

- (1) A person who, immediately before the commencement of Part 2A of this Act:
 - (a) was holding a position referred to in Schedule 3A or Part 2 of Schedule 3B, and
 - (b) was appointed to that position for a term,shall, on that commencement, be taken to have been appointed to that position for the balance of the person's term of office.
- (2) A person who, immediately before the commencement of Part 2A of this Act:
 - (a) was holding a position referred to in Schedule 3A or Part 2 of Schedule 3B, and
 - (b) was not appointed to that position for a term,shall, on that commencement, be taken to have been appointed to that position for a term ending on the date on which the person reaches the age of 60 years or the fifth anniversary of that commencement, whichever is the earlier.
- (3) Until otherwise determined under Part 2A of this Act, the conditions of employment (including remuneration) of a person continued in office under this clause shall be the same as those which applied to the person immediately before the commencement of Part 2A.
- (4) A person who:
 - (a) is continued in office under this clause, and
 - (b) immediately before the commencement of Part 2A of this Act, held a special division position and was not holding office for a term, and
 - (c) resigns or is removed from office (except for misbehaviour) during the term for which the person is continued in office under this clause or completes that term and is not re-appointed to the same position, and
 - (d) has not reached the age of 60 years,is entitled to be appointed to a position in the Public Service:
 - (e) not lower in salary than the current salary for the position in the Public Service which the person held immediately before becoming a special division officer (or a similar position), and
 - (f) with duties appropriate to that salary.
- (5) In subclause (4), **special division position** and **special division officer** have the

same meanings they had in the *Public Service Act 1979* (before its repeal) and in this Act (before the commencement of Part 2A of this Act).

(6) A person who:

- (a) is continued in office under this clause, and
- (b) immediately before the commencement of Part 2A of this Act, held a statutory office, and
- (c) had an entitlement by law to an appointment in the service of the Government on ceasing to hold that office, and
- (d) resigns or is removed from office (except for misbehaviour) during the term for which the person is continued in office under this clause or completes that term and is not re-appointed to the same position, and
- (e) has not reached the age of 60 years,

retains the entitlement to that appointment in the service of the Government.

23 Progressive commencement of Schedules 3A and 3B

A position:

- (a) which is referred to in Schedule 3A or 3B on the commencement of that Schedule, and
- (b) which is established by or under an Act (other than this Act),

does not become a chief executive position or a senior executive position until the employment of a person in that position is declared by or under that Act to be subject to Part 2A of this Act.

24 Saving for officers on unattached list

An officer who was, immediately before the repeal of section 16, an unattached officer in the special division because of that section or section 52 of the *Public Service Act 1979* shall, on that repeal, be taken to be an unattached officer in the Public Service under section 42Q.

25 Anti-Discrimination (Compulsory Retirement) Amendment Act 1990

The amendments made by Schedule 2 to the *Anti-Discrimination (Compulsory Retirement) Amendment Act 1990* do not apply to a person referred to in section 49ZU (1) (c) of that Act before 1 January 1993.

Part 5 Provisions consequent on enactment of Public Sector

Management Amendment Act 1995

27 Definitions

In this Part:

Industrial Authority means the Public Employment Industrial Relations Authority as constituted under this Act before its abolition by the 1995 Act.

the 1995 Act means the *Public Sector Management Amendment Act 1995*.

28 Abolition of Industrial Authority

The Public Employment Industrial Relations Authority is abolished on the commencement of section 49A of this Act. The assets, rights and liabilities of that Authority immediately before its abolition become assets, right and liabilities of the Public Employment Office.

29 References to Industrial Authority

After the abolition of the Industrial Authority, a reference to that Authority in any other Act, or in any instrument made under any Act or in any other instrument of any kind, is taken to be a reference to the Public Employment Office.

30 Agreements

Any agreement between the Industrial Authority and any association, organisation or person with respect to industrial matters (including any enterprise agreement) that is in force immediately before the abolition of the Industrial Authority is taken on and from that abolition to have been entered into between the Public Employment Office and the association, organisation or person.

31 Determinations of remuneration by Industrial Authority

Any determination by the Industrial Authority under this Act of the salary, wages or other remuneration of officers and temporary employees that is in force immediately before the abolition of the Industrial Authority is taken on and from that abolition to have been made by the Public Employment Office.

32 Approvals, delegations, directions and notifications given by the Industrial Authority

Any approval, delegation, direction or notification given by the Industrial Authority under this Act that is in force immediately before the abolition of the Industrial Authority is taken on and from that abolition to have been given by the Public Employment Office.

33 Transitional arrangements for compensation entitlements of executive officers and term appointees

The amendment made to section 42S or 92 by the 1995 Act does not apply in respect of a person during a term of office as an executive officer (even as an unattached officer) or

term appointee that commenced before the commencement of the amendment.

34 Saving of Constitution Act proclamations

A proclamation under section 49 of the *Constitution Act 1902* is taken to have been made as an order under Division 1 of Part 3A of this Act (and may be amended or repealed accordingly).

35 Saving of Administrative Changes Act orders

An order under the *Administrative Changes Act 1976* is taken to have been made under Division 2 of Part 3A of this Act (and may be amended or repealed accordingly).

36 Existing appointments under Darling Harbour Authority Act not affected

The amendments to the *Darling Harbour Authority Act 1984* made by the 1995 Act do not affect the appointment or term of office of any part-time member of the Authority under that Act.

37 Saving of existing Department Head appointments

- (1) A position specified in Column 1 of the Table to this clause is referred to in this clause as an abolished position and the position specified opposite that position in Column 2 of that Table is referred to in this clause as the equivalent Department Head position for the abolished position.
- (2) The person holding office in an abolished position immediately before its abolition by the 1995 Act is taken to have been appointed under this Act to the equivalent Department Head position for the abolished position. Such an appointment is for the remainder of the period of appointment to the abolished position.
- (3) Appointment by virtue of this clause to an equivalent Department Head position does not change the contract of employment under Part 2A between the person as an executive officer and the executive officer's employer. The contract is taken to be with the executive officer's employer in the equivalent Department Head position.
- (4) A person holding an appointment (whether as deputy or otherwise) to act in the office of the holder of an abolished position immediately before its abolition by the 1995 Act is taken to have been appointed by the Governor under section 10B to act in the equivalent Department Head position (even if the person appointed is not an officer of the Public Service). This subclause only applies to an appointment for 6 months after the commencement of this clause (unless the appointment is sooner terminated by the Governor under section 10B).

Table

Column 1

Column 2

Abolished position

New public service position

Director of Planning under the *Environmental Planning and Assessment Act 1979*.

Director-General of the Department of Urban Affairs and Planning.

Director-General of National Parks and Wildlife under the *National Parks and Wildlife Act 1974*.

Director-General of National Parks and Wildlife.

Commissioner of Corrective Services under the *Prisons Act 1952*.

Commissioner of Corrective Services.

Deputy Commissioner of Corrective Services under the *Prisons Act 1952*.

Deputy Commissioner of Corrective Services.

General Manager of the Motor Accidents Authority under the *Motor Accidents Act 1988*.

General Manager of the Motor Accidents Authority.

Deputy General Manager of the Motor Accidents Authority under the *Motor Accidents Act 1988*.

Deputy General Manager of the Motor Accidents Authority.

General Manager of the Darling Harbour Authority under the *Darling Harbour Authority Act 1984*.

General Manager of the Darling Harbour Authority.

Chief Executive Officer of the Home Purchase Assistance Authority under the *Home Purchase Assistance Authority Act 1993*.

Chief Executive Officer of the Home Purchase Assistance Authority.

Chairperson of the Ethnic Affairs Commission under the *Ethnic Affairs Commission Act 1979*.

Chairperson of the Ethnic Affairs Commission.

General Manager of the WorkCover Authority under the *WorkCover Administration Act 1989*.

General Manager of the WorkCover Authority.

Director-General of the Environment Protection Authority under the *Protection of the Environment Administration Act 1991*.

Director-General of the Environment Protection Authority.

Part 6 Provisions consequent on enactment of Public Sector Management Amendment Act 1998

38 Meaning of “1998 amending Act”

In this Part:

1998 amending Act means the *Public Sector Management Amendment Act 1998*.

39 Saving of existing appointment of temporary employees

- (1) An amendment made by the 1998 amending Act does not affect the employment of a person as a temporary employee that commenced before the commencement of the amendment, except as provided by this clause.
- (2) The employee becomes a departmental temporary employee unless a determination is made under subclause (3) in relation to the employee.
- (3) The Director-General of the Premier's Department can make a determination that the employee was, immediately before the commencement of section 38B, employed to do work for a political office holder as defined in that section, and such a determination has the following effect:
 - (a) the employee becomes a special temporary employee,
 - (b) the employee is to be issued with an instrument of employment specifying the name of the political office holder concerned and specifying an indefinite term as the term of that employment.

40 Appointment of long-term departmental temporary employees

Section 38A extends to periods of employment that occurred before the commencement of that section.

41 Determinations of PEO

A determination in force under section 63 immediately before the commencement of the amendment of that section by the 1998 amending Act is taken to have been made under that section as so amended.

Part 7 Provisions consequent on enactment of *Public Sector Management Amendment (Council on the Cost of Government) Act 1998*

42 Definitions

In this Part:

amending Act means the *Public Sector Management Amendment (Council on the Cost of Government) Act 1998*.

appointed member means a member referred to in section 44 (1) (b).

43 Saving of Council

The Council is taken not to have been dissolved by the operation of section 47E (1) merely

because the amending Act is assented to on or after 13 October 1998.

44 Members

- (1) A member of the Council is taken not to have ceased to hold office as a member of the Council merely because the amending Act is assented to on or after 13 October 1998.
- (2) Despite clause 3 of Schedule 8, the term of office of a person who is or was an appointed member immediately before 13 October 1998 expires on 31 December 1998.

45 Validation

Anything done or omitted to be done in the name of the Council:

- (a) on or after 13 October 1998, and
- (b) before the date of assent to the amending Act,

is as valid as it would have been had this Act, as amended by the amending Act, been in force when the thing was done or omitted to be done.

Schedule 8 Provisions relating to members and procedure of the Council

(Section 44)

1 Definitions

In this Schedule:

appointed member means a member referred to in section 44 (1) (b).

member means a member of the Council.

2 Deputy members

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and may at any time revoke any such appointment.
- (2) In the absence of a member, the member's deputy:
 - (a) may, if available, act in the place of the member, and
 - (b) while so acting, has all the functions of the member and is taken to be the member.
- (3) A person while acting in the place of an appointed member is entitled to be paid such fees and allowances as the Minister may from time to time determine in respect of the person.

3 Terms of office of appointed members

Subject to this Schedule, an appointed member holds office for such term (not exceeding 3 years) as is specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

4 Fees and allowances for appointed members

An appointed member is entitled to be paid such fees and allowances as the Minister from time to time determines in respect of the member.

5 Vacancy in office of appointed member

(1) The office of an appointed member becomes vacant if the member:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office by the Minister under this clause, or
- (e) becomes a public sector employee (as defined in subclause (3)), or
- (f) is absent from 3 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings, or
- (g) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (h) becomes a mentally incapacitated person, or
- (i) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove an appointed member from office at any time.

(3) A public sector employee is a person who is an officer or temporary employee under this Act, or an employee or member of staff of a declared authority.

6 Filling of vacancy in office of appointed member

If the office of an appointed member becomes vacant, a person is, subject to this Act, required to be appointed to fill the vacancy.

7 Personal liability

A matter or thing done by the Council, a member of the Council or any person acting under the direction of the Council does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the member or a person so acting personally to any action, liability, claim or demand.

8 General procedure for calling and holding meetings of Council

The procedure for the calling and holding of meetings of the Council is to be determined by the Council.

9 Quorum

The quorum for a meeting of the Council is 4 of its members.

10 Presiding member and voting rights

- (1) The Chairperson of the Council or, in the absence of the Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the Council.
- (2) The person presiding at a meeting of the Council has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

11 Voting

A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present is the decision of the Council.