

# Government Sector Employment Rules 2014

[2014-65]



New South Wales

## Status Information

### Currency of version

Historical version for 20 February 2014 to 22 September 2014 (accessed 5 January 2025 at 19:34)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

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File last modified 24 February 2014

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New South Wales

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# Government Sector Employment Rules 2014



New South Wales

## Part 1 Preliminary

### 1 Name of Rules

These Rules are the *Government Sector Employment Rules 2014*.

### 2 Commencement

These Rules commence on 24 February 2014 and are required to be published on the NSW legislation website.

### 3 Definitions

(1) In these Rules:

**above-level** means:

- (a) in the case of a non-executive employee—at a higher classification of work than the employee's current classification, or
- (b) in the case of an executive employee—in a band higher than the band in which the executive is employed.

**agency head** means:

- (a) in relation to a Public Service employee—the head of the Public Service agency in which the employee is employed, or
- (b) in relation to an employee of a government sector agency (other than a Public Service agency)—the head of that agency.

**Note—**

The employer functions of the head of a Public Service agency may be delegated under section 27 or 32 of the Act. Accordingly, references to the agency head (in the case of a Public Service agency) will include a reference to any such delegate.

**at-level** means:

- (a) in the case of a non-executive employee—at the same classification of work as the

employee's current classification, or

- (b) in the case of an executive employee—within the same band as the band in which the executive is employed.

**capability-based assessment** means a process that assesses a person's capabilities against those required for a role.

**comparative assessment**—see rule 17.

**employment decision**—see rule 16.

**external advertising** means the process of advertising on the NSW Jobs website. It may also include any other form of advertising that is accessible to the general public.

**government sector employee** means a person who is employed in a government sector agency.

**performance management system** means a performance management system under section 67 of the Act.

**pre-established standards** for a role means the capability, knowledge and experience standards for the role.

**Public Service non-executive employee** means an employee referred to in Division 5 of Part 4 of the Act.

**suitability assessment**—see rule 18.

**talent pool**—see rule 19.

**the Act** means the [Government Sector Employment Act 2013](#).

- (2) Notes included in these Rules do not form part of these Rules.

#### **4 Delegation by Secretaries of Departments of functions relating to Public Service senior executives**

- (1) The following functions cannot be delegated by the Secretary of a Department under section 27 of the Act:
- (a) the initial engagement of a Public Service senior executive and the consequent assignment of the senior executive to a role,
  - (b) the assignment of a Public Service senior executive to a different role (not being a temporary assignment for a period of less than 6 months),
  - (c) the termination of the employment of a Public Service senior executive under section 41, 68 or 69 of the Act.

- (2) However, the Secretary of a Department may delegate to the head of a Public Service executive agency related to the Department a function referred to in subrule (1) (a) in relation to executives in that related agency. If any such function is delegated to the head of the related agency the function cannot be subdelegated.
- (3) A reference in this rule to an assignment to a different role does not include an assignment consequent on the engagement of an existing executive to a role following recruitment action to fill a vacancy in that role.

## **Part 2 General Public Service employment provisions**

### **5 Probation periods**

- (1) The head of a Public Service agency may determine that the engagement of a person in ongoing employment in the Public Service for the first time is subject to the condition that the person is required:
  - (a) to serve a period of probation on commencing his or her employment, and
  - (b) to satisfy the requirements for the role in which the person is employed during that period of probation.
- (2) The period of probation:
  - (a) for a Public Service senior executive is to be no more than 3 months, or
  - (b) for a Public Service non-executive employee is to be 6 months or such longer period as the agency head directs.
- (3) A period of probation for a Public service non-executive employee may, before the period expires, be extended for such further period as the agency head directs.
- (4) However, the probation period for a Public Service non-executive employee cannot exceed 12 months.
- (5) If a Public Service employee is required to serve a period of probation, the employer may, at any time during or at the end of the probation period:
  - (a) confirm the person's employment, or
  - (b) in the case of a Public Service senior executive—terminate the person's employment under section 41 of the Act, or
  - (c) in the case of a Public Service non-executive employee—terminate the person's employment under section 47 of the Act on the ground that the person has not satisfied the requirements for the role in which the person is employed.

## 6 Citizenship or residency requirements

- (1) A person is not to be employed as a Public Service employee unless the person is:
  - (a) an Australian citizen, or
  - (b) a permanent resident of Australia, or
  - (c) a New Zealand citizen with a current New Zealand passport, or
  - (d) a citizen of another country with a current visa that allows the person to work in Australia.
- (2) A person is not to be offered employment in the Public Service if that employment would exceed any limitation imposed by or in accordance with law as to the person's entitlement to work in Australia.

## 7 Formal qualifications

- (1) This rule applies to a Public Service employee whose engagement in a Public Service agency is made subject to a condition that the person is required to have such qualifications as the employer may determine to be necessary for performing the duties of the role to which the person is to be assigned.
- (2) A person who is required to have any such qualifications but who has not provided evidence of the qualifications may be employed on the condition that the person provides that evidence in the time and manner determined by the employer.

## 8 Security and other clearances

- (1) This rule applies to a Public Service employee whose engagement in a Public Service agency is made subject to a condition that the person is required to have such security or other clearances as the employer determines are necessary for performing the duties of the role to which the person is to be assigned.
- (2) A person who is required to have any such security or other clearances must ensure that those clearances are maintained.

## 9 Health assessment

- (1) This rule applies to a Public Service employee whose engagement in a Public Service agency is made subject to a condition that the person's fitness to perform the duties of the role to which the person is assigned has been confirmed by a health assessment.
- (2) For the purposes of this rule, ***fitness to perform the duties of a role*** includes the ability to carry out the role without endangering the health and safety of the public, of other persons employed in the Public Service agency or of the person concerned.



- (3) The form of the health assessment may include (but is not limited to) any one or more of the following:
  - (a) a declaration (which may be a statutory declaration if required) provided by the person concerning any illness, disability or condition of which the person is aware that might make the person unfit to carry out the role,
  - (b) a medical examination by an approved medical practitioner,
  - (c) an examination, by an approved medical practitioner, optometrist or other appropriately qualified health care professional, of a particular aspect of the person's health likely to detrimentally affect the person's capacity to carry out the role.
- (4) The employer is to give the health care professional providing a health assessment referred to in subrule (3) (b) or (c) any requested information about the role concerned that is reasonably required for the purpose of providing the assessment.
- (5) In this rule, **approved** means approved by the Commissioner.

#### **10 Maximum period of temporary employment**

- (1) The maximum total period for which a Public Service non-executive employee may be employed in temporary employment in the same Public Service agency is 4 years within any continuous period of 5 years.
- (2) The maximum total period of 4 years may, with the approval of the Commissioner, be extended for an additional period of up to 12 months.
- (3) The Commissioner may determine classes of exceptions to this rule. Any such determination is to be made publicly available on a website provided and maintained by the Commissioner.

#### **11 Temporary assignments**

- (1) A person employed in a Public Service agency may be temporarily assigned to another role in the agency (including, in the case of a Public Service senior executive, to another role in another Public Service agency) if:
  - (a) the person who is usually assigned to that other role is unavailable for any reason,  
or
  - (b) there is no person assigned to that other role.

##### **Note—**

The regulations under the Act provide for an allowance in the case where the temporary assignment involves a higher role.

- (2) A temporary assignment under this rule may be made by:

- (a) if the Public Service employee assigned is a Public Service senior executive—the employer of the executive, or
  - (b) if a non-executive employee is assigned to the role of a Public Service senior executive—the employer of the executive, or
  - (c) in any other case—the agency head.
- (3) A Public Service senior executive may not be assigned under this rule to a role in another agency without the agreement of the head of that other agency.
  - (4) A temporary assignment under this rule may be terminated at any time by the relevant employer or agency head.
  - (5) On completion of a person's temporary assignment under this rule, the person, unless assigned to a different role under section 38 or 46 of the Act, continues to have the role assigned to the person under section 38 or 46 of the Act immediately before the start of the temporary assignment.
  - (6) Sections 38 and 46 of the Act do not apply to a temporary assignment under this rule.

## **12 Converting temporary or term employment to ongoing employment**

- (1) An agency head may convert the temporary or term employment of a person to ongoing employment in the agency if the person has been employed in temporary or term employment for a period of at least 12 months and the ongoing employment is at-level.
- (2) The conversion to ongoing employment under this rule:
  - (a) must be based on the results of a comparative assessment after external advertising (whether a previous comparative assessment for the role concerned or a new comparative assessment) and on the employee's most recent performance under the agency's performance management system, and
  - (b) is subject to the satisfactory conduct of the employee.

## **13 Excess non-executive employees**

- (1) The head of a Public Service agency may determine a person who is employed in ongoing employment in the agency other than as a Public Service senior executive to be excess to the requirements of the relevant part of the agency in which the person is employed.
- (2) In making any such determination and in dealing with any such excess employee, the agency head is to have regard to any relevant government policies that were in force immediately before 24 February 2014 and are notified by the Commissioner for the purposes of this rule. Any such policies are to be made publicly available on a website

provided and maintained by the Commissioner.

#### **14 Termination of employment**

- (1) The employment of a Public Service non-executive employee may not be terminated under section 47 of the Act unless:
  - (a) the employee is, to the extent that it is reasonably practicable to do so, notified of the proposed termination and given a reasonable opportunity to make submissions in relation to the proposed termination, and
  - (b) the agency head has taken any such submissions into consideration.
- (2) This rule does not limit any of the other requirements under these Rules that relate to the termination of employment of a Public Service non-executive employee.

### **Part 3 Merit-based employment**

#### **15 Application of Part**

This Part applies to employment in the Public Service.

#### **16 Merit principles to be applied in employment decisions**

- (1) This rule applies to any of the following decisions (an **employment decision**):
  - (a) the employment of persons in any kind of employment and the assignment under section 38 or 46 of the Act of persons to roles,
  - (b) the transfer or secondment of an employee to a Public Service agency from another agency,
  - (c) the conversion to ongoing employment of an employee's temporary or term employment.
- (2) Any employment decision relating to a role in the Public Service is to be based on an assessment of the capabilities, experience and knowledge of the person concerned against the pre-established standards for the role to determine the person best suited to the requirements of the role and the needs of the relevant Public Service agency.
- (3) Without limiting subrule (2), the following principles apply in relation to employment decisions:
  - (a) any recruitment action (whether for ongoing employment, temporary or term employment or casual employment) is to take into account:
    - (i) long and short term capability needs to meet the objectives of the relevant agency, and
    - (ii) existing workforce capabilities,

- (b) pre-established standards for a role are to be expressed as levels against each capability or other requirements for the role,
- (c) any assessment for a role is to include appropriate methods to assess different requirements,
- (d) except in the case where a development opportunity is being provided, a person may be employed in a role only if the person meets the pre-established standards for the role or type of role,
- (e) any employment decision is to be made on balance taking into account all the results provided by the assessment process.

**Note—**

The Commissioner may issue guidance in relation to the application of the merit principles to the assignment of persons to roles.

**17 Comparative assessment**

- (1) A **comparative assessment** for a role is the process of assessing an individual's claim against:
  - (a) the pre-established standards for the role, and
  - (b) any other claimants for the role.
- (2) The process is to include the following:
  - (a) screening for essential requirements such as a qualification or licence,
  - (b) reviewing an application and resume,
  - (c) at least 3 capability-based assessments, one of which is an interview,
  - (d) referee checks against the pre-established standards for the role.
- (3) More than one assessor must be involved in a comparative assessment.

**18 Suitability assessment**

- (1) A **suitability assessment** is the process of assessing an individual against the pre-established standards for a role (and not against other persons).
- (2) The process is to include the following:
  - (a) screening for essential requirements such as a qualification or licence,
  - (b) reviewing a resume,
  - (c) at least 2 capability-based assessments, one of which is an interview,

(d) referee checks against the pre-established standards for the role.

## **19 Talent pools**

- (1) A ***talent pool*** is a list of those persons (whether or not existing Public Service employees) who have satisfied the pre-established standards for a role or type of role through a comparative assessment.
- (2) A talent pool may be used for recruitment to ongoing employment or for temporary or term employment.
- (3) A talent pool may, without limitation, be established jointly by more than one Public Service agency and may be used for recruitment purposes by any Public Service agency.
- (4) A person may be included in a talent pool for no longer than the period of 12 months following the completion of the comparative assessment that entitled the person to be included in the talent pool.

## **20 Ongoing employment**

The following decisions must be based on a comparative assessment after external advertising:

- (a) the decision to employ a person in ongoing employment in a particular classification of work or band and the initial assignment of the person to a role in that classification or band,
- (b) any subsequent decision to employ the person in a different classification of work or in a different band and the initial assignment of the person to a role in that classification or band.

## **21 Temporary or term employment (up to 6 months)**

- (1) The decision to employ a person in temporary or term employment for a period of up to 6 months must be based on either a suitability assessment or a comparative assessment.
- (2) If the person is employed in temporary or term employment on the basis of a suitability assessment, the person cannot continue in that employment after 6 months unless the person does so on the basis of a comparative assessment after advertising across the Public Service. In such a case, action to undertake the additional requirements of a comparative assessment should commence not later than 3 months after the commencement of the person's temporary or term employment.
- (3) Subrule (2) does not prevent any additional form of advertising from also being used for the purposes of the comparative assessment.

## 22 Temporary or term employment (more than 6 months)

The decision to employ a person in temporary or term employment for a period of more than 6 months must be based on a comparative assessment after advertising across the Public Service. This rule does not prevent any additional form of advertising from also being used for the purposes of the comparative assessment.

## 23 Limited advertising of vacancies arising from agency restructure

- (1) If, during the course of a major restructure affecting one or more Public Service agencies (an **affected agency**), the head of an affected agency considers that a significant number of employees in that or any other affected agency are likely to be determined to be excess employees, the agency head may, in taking recruitment action to fill a vacancy in a non-executive role that arises as part of the restructure, limit the recruitment to the following candidates:
  - (a) persons employed in ongoing employment in affected agencies,
  - (b) persons who have been employed in temporary employment in affected agencies for a period of at least 12 months.
- (2) This rule has effect despite any requirement under these Rules for external advertising in relation to the role concerned.

## Part 4 Review of promotion decisions

### 24 Request for review of promotion decision

- (1) A Public Service non-executive employee (the **relevant employee**) may request a review of the decision to offer, following a selection process, another Public Service non-executive employee ongoing employment in a role for which the relevant employee has unsuccessfully applied (being a role that has a higher remuneration level than the level paid to both the relevant employee and the other employee immediately before the decision was made). Any such decision is referred to in this Part as a **promotion decision**.
- (2) A request for the review of a promotion decision may only be made on the ground that the whole or any part of the selection process for the role concerned was irregular or improper. The review is not a review of the merit of the relevant employee for the role.
- (3) A request for the review of a promotion decision:
  - (a) must be in writing to the head of the Public Service agency in which the role to which the promotion decision relates is to be carried out, and
  - (b) may only be made within the period of 10 business days after the relevant employee is advised of the promotion decision.

- (4) If a request for the review of a promotion decision is made, the engagement of the other employee in the role to which the decision relates cannot be implemented until the review is completed.

## **25 Conduct and findings of review**

- (1) The review of a promotion decision is to be conducted by a Public Service senior executive (the **reviewer**) who was not involved in the selection process to which the decision relates and who is appointed by the agency head to whom the request for the review is made.
- (2) The reviewer is to conduct the review within 10 business days after the request for the review is made.
- (3) After conducting a review of a promotion decision, the reviewer may:
  - (a) if satisfied that the selection process was not in any way improper or irregular, confirm the promotion decision, or
  - (b) if satisfied that the selection process was in any way improper or irregular, make a recommendation to the agency head that the agency head revoke the promotion decision and carry out another selection process for the role concerned.
- (4) The relevant employee is to be notified in writing of the reviewer's decision.
- (5) The decision of the reviewer in respect of the review is final.

## **Part 5 Workforce diversity**

### **26 Employment of eligible persons**

- (1) An eligible person may be employed as a Public Service non-executive employee by the head of a Public Service agency.
- (2) The agency head must be satisfied that the eligible person employed in a role under this rule is suitable for the role and have the greatest merit of the eligible persons seeking to be employed in the role.
- (3) For that purpose, Part 3 applies but with such modifications as are necessary to facilitate the employment of eligible persons. Without limiting the operation of this subrule, the capabilities of eligible persons must be assessed against the pre-established standards for the role using such capability-based assessments as the agency head considers relevant.
- (4) In this rule:

**eligible person** means any of the following:

  - (a) an Aboriginal person or Torres Strait Islander,

- (b) a person with a disability,
  - (c) a person under the age of 25 years,
  - (d) a person who belongs to a group of persons designated by the Commissioner as being disadvantaged in employment.
- (5) The designation by the Commissioner of any such group of persons is to be made publicly available on a website provided and maintained by the Commissioner.

## **27 Information relating to workforce diversity**

The head of a government sector agency is to ensure that information relating to workforce diversity within the agency is collected and is able to be provided to the Commissioner if required to do so under section 16 of the Act.

### **Note—**

Under section 16 of the Act, the Commissioner may require the head of a government sector agency (which for the purposes of that section includes SOCs and universities) to provide reports and information relating to workforce diversity in the agency.

## **Part 6 Transfers and secondments**

### **28 Application of Part**

- (1) This Part applies to transfers or secondments between government sector agencies but not to transfers or secondments within the same government sector agency.
- (2) This Part does not apply in relation to a government sector agency comprising the service of a State owned corporation or any service excluded by section 5 of the Act.

### **29 Transfer of employees between government sector agencies**

- (1) A government sector employee may be transferred to the service of another government sector agency by agreement between the agency heads.
- (2) Except where the employee initiates the transfer or consents to a transfer at a lower level, a government sector employee may only be transferred to another agency at the same or equivalent grade or level.
- (3) A government sector employee who requests a transfer must do so in writing to the head of the agency in which the person is employed.
- (4) Unless it is initiated by the employee, the person who initiates a transfer must:
  - (a) provide reasonable notice to the employee of the transfer, and
  - (b) advise the employee that the employee may request a review of the transfer within 10 business days after the employee is notified of the transfer.



**Note—**

Section 64 (2) of the Act also requires the employee to be consulted.

- (5) The transfer of a government sector employee to another agency has effect only if it is confirmed in writing by the agency heads concerned. A copy of the confirmation is to be provided to the employee.
- (6) This rule does not apply in relation to the assignment under section 38 of the Act of Public Service senior executives to roles in Public Service agencies.

**30 Merit assessment in relation to transfers**

- (1) Any at-level transfer of an employee to a Public Service agency from a non-Public Service government sector agency, or between Public Service agencies, must be based on either a suitability assessment or a comparative assessment.
- (2) If:
  - (a) a Public Service employee is transferred to a non-Public Service government sector agency, or
  - (b) a government sector employee is transferred between non-Public Service government sector agencies,

the head of the government sector agency to which the employee is transferred is to ensure that the employee is suitable for the role, position or work to be assigned to the employee in that agency.

**31 Secondment of employees between government sector agencies**

- (1) A government sector employee may be seconded, for a period not exceeding 2 years, to the service of another government sector agency by agreement between the agency heads.
- (2) Any such agreement is to set out the following:
  - (a) the period of the secondment,
  - (b) the financial responsibilities of the agencies in relation to the employee's entitlements,
  - (c) the procedure to be followed on completion of the secondment,
  - (d) the circumstances in which the secondment may be terminated and the form of notice to be given to terminate the secondment before the end of the agreed period.
- (3) A copy of the agreement must be provided to the employee concerned.

- (4) An employee who requests a secondment must do so in writing to the head of the government sector agency in which the person is employed.
- (5) Unless it is initiated by the employee, the person who initiates a secondment is required:
  - (a) to provide reasonable notice of the secondment to the employee, and
  - (b) to advise the employee that the employee may request a review of the secondment within 10 business days after the employee is notified of the secondment.

**Note—**

Section 64 (2) of the Act also requires the employee to be consulted.

- (6) The head of the government sector agency to which a government sector employee is seconded is, unless the secondment is provided as a development opportunity, to ensure that the employee is suitable for the role, position or work to be assigned to the employee in that agency.
- (7) In the case of a secondment of a Public Service employee to a non-Public Service government sector agency, any merit assessment in relation to the secondment is to be to the satisfaction of the head of that government sector agency.
- (8) A government sector employee who is seconded to another agency is, on completion of the secondment, entitled to return to the government sector agency from which the employee was seconded at the same work level at which the person was employed immediately before being seconded.
- (9) This rule does not apply in relation to the assignment under section 38 of the Act of Public Service senior executives to roles in Public Service agencies.

**32 At-level secondments to Public Service agencies**

An at-level secondment to a Public Service agency must, unless it is provided as a development opportunity, be based on either a suitability assessment or a comparative assessment.

**33 Above-level secondments to Public Service agencies**

- (1) An above-level secondment of up to 6 months to a Public Service agency must be based on either a suitability assessment or a comparative assessment.
- (2) If the person is seconded above-level on the basis of a suitability assessment, the person cannot continue in that employment after 6 months unless the person does so on the basis of a comparative assessment after advertising across the Public Service. In such a case, action to undertake the additional requirements of the comparative assessment should commence not later than 3 months after the commencement of

the above-level secondment.

- (3) The head of a Public Service agency may, in the case of a Public Service employee who has been seconded above-level to the agency for a period of at least 12 months and with the consent of the employee, employ the person in ongoing employment in the agency at that level.

**Note—**

Persons seconded at-level to an agency may be transferred to the agency under rule 29.

- (4) The decision to employ a person in ongoing employment under subrule (3):
  - (a) must be based on the results of the comparative assessment under subrule (2) or a new comparative assessment after external advertising and on the employee's most recent performance under the agency's performance management system, and
  - (b) is subject to the satisfactory conduct of the employee.

### **34 Review of employer-initiated transfers or secondments**

- (1) This rule applies in relation to the transfer or secondment of a government sector employee that has not been initiated by the employee (referred to in this rule as an ***employer-initiated transfer or secondment***).
- (2) The government sector employee in respect of whom an employer-initiated transfer or secondment applies may apply to the head of the government sector agency in which the person is employed for a review of the transfer or secondment.
- (3) If an application is made for the review of an employer-initiated transfer or secondment, the transfer or secondment (as the case requires) of the employee to the service of another government sector agency does not have effect until the review is completed.
- (4) An application by an employee for the review of an employer-initiated transfer or secondment must be made:
  - (a) in writing to the head of the government sector agency in which the person is employed, and
  - (b) no later than 10 business days after the day on which the employee is notified of the transfer or secondment.
- (5) The review of an employer-initiated transfer or secondment is to be conducted by a senior executive (the ***reviewer***) who was not involved in the decision to transfer or temporarily second the employee to another government sector agency.
- (6) The reviewer is to conduct a review of the employer-initiated transfer or secondment within 10 business days after the application for review is made.

- (7) The employee may make submissions to the reviewer, including reasons why the proposed transfer or secondment would cause undue hardship to the employee.
- (8) In conducting a review, the reviewer is:
  - (a) to assess whether or not the employer-initiated transfer or secondment is appropriate having regard to all relevant circumstances (including any submissions provided by the employee), and
  - (b) to make such findings as the reviewer thinks appropriate.
- (9) Any such findings are to be notified to the agency head.
- (10) The agency head is to make a decision in relation to the matter subject to the review and notify the employee concerned in writing of the decision.
- (11) Any decision by the agency head in relation to the matter is final.

## **Part 7 Performance management**

### **35 Core requirements of performance management systems**

- (1) The core requirements of a performance management system are as follows:
  - (a) to set and clarify expectations for employees,
  - (b) to monitor employee performance,
  - (c) to plan and review employee performance,
  - (d) to develop employee capability,
  - (e) to recognise employee achievements,
  - (f) to resolve unsatisfactory employee performance.
- (2) The Commissioner may determine the essential elements of those core requirements.

### **36 Dealing with unsatisfactory performance**

- (1) The head of a government sector agency may not take any action under section 68 (2) of the Act in relation to an employee unless:
  - (a) the employee's performance is determined by the agency head to be unsatisfactory in accordance with the agency's performance management system, and
  - (b) reasonable steps have been taken to advise the employee that the employee's performance is unsatisfactory and the basis on which it is unsatisfactory, and
  - (c) the employee is notified that the agency head is proposing to take specified action

under section 68 (2) of the Act in respect of the employee, and

- (d) the employee is given a reasonable opportunity to respond to the notice, and
- (e) the agency head has taken any such response into consideration.

(2) This rule does not apply in relation to police officers or to the staff of the following:

- (a) Rail Corporation New South Wales,
- (b) Sydney Trains,
- (c) NSW Trains,
- (d) Transport Cleaning Services.

## **Part 8 Misconduct—procedural requirements**

### **37 Definition**

In this Part:

**government sector agency** has the same meaning as in section 69 of the Act.

**Note—**

The term covers Public Service agencies and any other government sector agency prescribed by the regulations. The part of the NSW Police Force comprising administrative officers is prescribed by the regulations for that purpose.

### **38 Initial stage for dealing with allegations of misconduct**

- (1) An allegation of misconduct by an employee of a government sector agency may be made by any person to the agency head. The employee in respect of whom the allegation is made is referred to in this Part as the **relevant employee**.
- (2) After making an initial assessment of the allegation, the agency head may decide not to proceed with the matter if the agency head is satisfied that:
  - (a) the allegation is vexatious or trivial, or
  - (b) the incident or conduct concerned does not amount to misconduct, or
  - (c) there is likely to be difficulty in establishing the facts of the matter.
- (3) If, after making an initial assessment, the agency head decides to proceed with the matter, the relevant employee is to be advised:
  - (a) of the details of the allegation of misconduct, and
  - (b) of the action that may be taken under section 69 (4) of the Act against the employee.

- (4) The relevant employee is to be given a reasonable opportunity to make a statement in relation to the allegation.
- (5) The agency head may, as a result of any such statement by the relevant employee:
  - (a) decide to proceed to deal with the matter in accordance with this Part, or
  - (b) decide not to proceed any further with the matter.

The relevant employee is to be notified of the agency head's decision.

- (6) The person making an allegation of misconduct is to be informed of any decision by the agency head under this rule not to proceed with the matter.

### **39 Inquiries**

- (1) An agency head may, in dealing with an allegation of misconduct by an employee of the agency, conduct such inquiries as the agency head thinks appropriate for the purposes of determining whether the misconduct has occurred.
- (2) A formal hearing involving the legal representation of the relevant employee or any other person and the calling and cross-examination of witnesses is not to be held in relation to an allegation of misconduct and the taking of any action with respect to the employee.

### **40 Findings by agency head**

- (1) An agency head may, in dealing with an allegation of misconduct:
  - (a) make a finding of misconduct by the relevant employee (in which case the employee is to be notified of the finding in writing), or
  - (b) make a finding that misconduct by the relevant employee has not occurred (in which case the agency head is to dismiss the allegation and advise the relevant employee in writing).
- (2) The agency head may not take any action under section 69 (4) of the Act in relation to an employee unless:
  - (a) the employee is notified of the proposed action to be taken, and
  - (b) the employee is given a reasonable opportunity to make submissions in relation to the proposed action, and
  - (c) if any such submissions are made, the agency head has taken those submissions into consideration.
- (3) If the agency head makes a finding of misconduct in relation to an employee, the agency head may, instead of taking action under section 69 (4) of the Act, require the

conduct of the employee to be monitored over a specified period notified to the employee.

- (4) If, during that specified period, the agency head is satisfied that the employee has engaged in misconduct of the same or similar kind as the misconduct the subject of the previous finding, the agency head may take any action under section 69 (4) of the Act in respect of the employee.
- (5) In that case, the employee is not required to be given an opportunity to make submissions in relation to the action proposed to be taken by the agency head.

#### **41 Records relating to misconduct**

- (1) The head of a government sector agency is to keep a written record of the proceedings and action taken in respect of any allegation of misconduct by an employee of the agency.
- (2) Any personnel file kept by the agency head on such an employee is to include information about any finding of misconduct by the employee that is, in the opinion of the agency head, in the public interest to be included. In forming that opinion, the agency head is to have regard to the nature and seriousness of the misconduct and the need to minimise any unnecessary or prejudicial information being kept on a person's file.

### **Part 9 Additional provisions relating to Public Service senior executives**

#### **42 Report on termination of employment of Public Service senior executives**

- (1) If the employment of a Public Service senior executive is terminated by the executive's employer under section 41 of the Act, the employer is, as soon as practicable after terminating the executive's employment, to provide a written report to the Commissioner on the termination.
- (2) The report is to be signed by the agency head and include the following:
  - (a) a summary of the process taken by the employer in terminating the employment,
  - (b) the reasons for terminating the employment.
- (3) For the purposes of this rule, the **employer** of a Public Service senior executive does not include a Minister.

#### **43 Model contracts of employment for Public Service senior executives (including Secretaries of Departments and other agency heads)**

- (1) The contract of employment specified in Schedule 1 is, for the purposes of section 39 (3) of the Act, prescribed as the model contract of employment for a Public Service

senior executive other than the Secretary of a Department or the head of any other Public Service agency.

- (2) The contract of employment specified in Schedule 2 is, for the purposes of section 39 (3) of the Act, prescribed as the model contract of employment for the Secretary of a Department or the head of any other Public Service agency.
- (3) The provisions of any such model contract of employment are mandatory (except any provisions that are not applicable as indicated in the model contract).

#### **44 Requirement to comply with contract of employment**

A Public Service senior executive must comply with any of the obligations imposed on the executive under the executive's contract of employment.

#### **45 Contract of employment subject to conditions of engagement being satisfied**

The contract of employment of a Public Service senior executive is subject to all the conditions to which the engagement of the executive is subject being satisfied.

#### **46 Ongoing conditions of employment**

- (1) A Public Service senior executive must ensure that the executive at all times holds and maintains:
  - (a) the citizenship or other residency requirements for employment as a Public Service employee, and
  - (b) the formal qualifications or clearances (if any) required for his or her role.
- (2) The employer of a Public Service senior executive may attach a specific condition of employment to a particular role.
- (3) If the Public Service senior executive assigned to a role to which any such condition is attached is assigned to a different role that does not have the condition of employment attached to it, the condition no longer applies in relation to the executive.

#### **47 Assignment to other role—payment of allowances**

If an allowance of a particular kind is payable in relation to the role of a Public Service senior executive and the senior executive is assigned to another role in respect of which the allowance is not payable, the senior executive is no longer entitled to the allowance.

#### **48 Part-time work**

- (1) The employer of a Public Service senior executive may approve a request by the executive to undertake work on a part-time basis (namely, that the executive is not available for duty during the whole or part of a normal working day).



- (2) An agreement between the employer and the Public Service senior executive about part-time work must specify the days or parts of days when the executive is available for duty.
- (3) The remuneration of the executive is to be calculated on a pro-rata basis (excluding allowances in the nature of reimbursement where the part-time employee will receive the same amount as a full-time employee in the same circumstances).

#### **49 Performance management**

- (1) A Public Service senior executive must, in accordance with the performance management system applying to the executive under section 67 of the Act:
  - (a) enter into a performance agreement with his or her employer, and
  - (b) have his or her performance reviewed at least annually.
- (2) A Public Service senior executive may be employed under a contract of employment even though the agency's performance management system has not been implemented or the executive has not entered into a performance agreement. In that case, the executive's contract of employment is to be construed accordingly.

#### **50 Capability-based assessments**

A Public Service senior executive (other than the Secretary of a Department) must participate in:

- (a) periodic capability-based assessments, and
- (b) any assessment relating to the technical requirements of the executive's role.

#### **51 Certain leave or payments not available**

A Public Service senior executive is not entitled to any flex leave for working flexible hours or to be paid for working overtime.

### **Schedule 1 Model contract of employment for Public Service senior executives (other than Secretaries and agency heads)**

(Rule 43)

#### **Contract of employment under [Government Sector Employment Act 2013](#)**

##### **This contract of employment is made**

on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

##### **Between**

THE GOVERNMENT OF NEW SOUTH WALES

**and**

[*Insert full name*] (the “Senior Executive”)

**Parties**

**1.1**

This contract of employment is between the Senior Executive and the Government of New South Wales.

**Commencement**

**2.1**

The employment of the Senior Executive under this contract commences on [*insert date*].

**Definitions**

**3.1**

In this contract:

“Employer” of the Senior Executive means the person who exercises the employer functions of the Government of New South Wales in relation to the Senior Executive (being the [*insert head of agency in which the Senior Executive is employed*] on the making of this contract).

“GSE Act” means the [Government Sector Employment Act 2013](#).

“GSE Regulations” means the regulations made under the GSE Act.

“GSE Rules” means the government sector employment rules made under the GSE Act.

**3.2**

Terms used in this contract have the same meanings as they have in the GSE Act.

**Band**

**4.1**

The Senior Executive is employed in Band [*specify band*].

**Role**

**5.1**

The role in the Public Service assigned to the Senior Executive is described in Appendix A.

**5.2**

The Employer may vary the description of the role to which the Senior Executive is assigned at any time.

**5.3**

The Senior Executive acknowledges that he or she may be assigned to another role in any Public Service agency in the band in which the Senior Executive is employed.

#### **5.4**

The Senior Executive must perform the duties and responsibilities of the role to which the Senior Executive is duly assigned.

### **Core values**

#### **6.1**

The Senior Executive agrees to perform the duties and responsibilities of the assigned role in accordance with the government sector core values under section 7 of the GSE Act.

### **Probation period**

#### **7.1**

The Senior Executive's employment is subject to a probation period of [*insert number of months—not exceeding 3 months*].

[OR]

The Senior Executive's employment is not subject to a probation period.

### **Duration of employment**

#### **8.1**

The employment of the Senior Executive under this contract is ongoing employment (that is, employment that continues until the Senior Executive resigns or the Senior Executive's employment is terminated).

[OR]

The employment of the Senior Executive under this contract is, unless the Senior Executive sooner resigns or the Senior Executive's employment is sooner terminated, for the period ending on [*specify date*]. The period of employment may be extended by the Employer.

### **Annual performance agreement**

#### **9.1**

The Senior Executive is required to enter into an annual performance agreement with the Employer setting out the performance obligations of the Executive, and reviews of performance, for the year. The performance agreement continues until a new agreement is signed.

#### **9.2**

A copy of the current annual performance agreement is set out in Appendix B.

### **Capability-based assessments**

#### **10.1**

The Senior Executive agrees to participate in periodic capability-based assessments.

#### **10.2**

The Senior Executive agrees to the use of these assessments for workforce planning purposes.

## **Total remuneration package and allowances**

### **Note—**

The total remuneration package is for full-time work. Under the GSE Regulations, pro-rata remuneration is payable for part-time work.

#### **11.1**

The total remuneration package (comprising monetary remuneration and employment benefits) of the Senior Executive is specified in Appendix C.

#### **11.2**

The Senior Executive may elect from time to time to allocate the total remuneration package as between monetary remuneration and employment benefits in accordance with the GSE Act.

#### **11.3**

The Senior Executive is entitled to the allowances specified in Appendix C and any allowances conferred under the GSE Act and GSE Regulations.

#### **11.4**

The Employer may, subject to the GSE Act, vary the total remuneration package and allowances of the Senior Executive from time to time.

## **Progression**

#### **12.1**

If the Senior Executive meets the performance requirements under the agency's performance management system, the Senior Executive's total remuneration package may be increased within the range of remuneration applicable to the assigned role of the Senior Executive.

#### **12.2**

This clause does not limit the Employer's power to vary the Senior Executive's total remuneration package in accordance with the GSE Act.

## **Hours of duty**

#### **13.1**

The Senior Executive must work the hours necessary to perform the duties and responsibilities of the Senior Executive's role.

#### **13.2**

The Senior Executive's total remuneration package compensates the Senior Executive for any hours worked.

## **Part-time work**

#### **14.1**

If the Employer agrees to the Senior Executive undertaking work on a part-time basis, the Senior Executive must work the agreed days or parts of days.

## **Leave**

### **15.1**

The Senior Executive is entitled to leave in accordance with the GSE Act, the GSE Regulations and the GSE Rules.

## **Notice of resignation**

### **16.1**

The Senior Executive may resign his or her employment by providing 4 weeks written notice to the Employer or as agreed to by the Employer.

## **Compensation for termination**

### **17.1**

The Senior Executive is entitled to the payment of compensation, on the termination of employment by the Employer, as determined by and under the GSE Act.

### **17.2**

If the Senior Executive's employment is terminated with compensation, the Senior Executive agrees that if the Senior Executive is re-employed in the public sector (as referred to in section 41 of the GSE Act) within the period to which the compensation relates the Senior Executive will repay the proportionate amount, as calculated in accordance with the GSE Regulations, before the commencement of that re-employment. This obligation continues even though the contract of employment is terminated.

## **Confidentiality**

*[The following provisions are mandatory to the extent that the contract must contain obligations relating to confidentiality. However, the following provisions may be substituted by a different set of obligations (that are not inconsistent with the following provisions) to suit the particular requirements of the Public Service agency concerned.]*

### **18.1**

During his or her employment, the Senior Executive will not disclose, without lawful authority, any confidential or secret information acquired as a consequence of the employment.

### **18.2**

On termination of employment the Senior Executive will not, without lawful authority, disclose or make *[commercial]* use of any confidential or secret information acquired by the Senior Executive as a consequence of his or her employment.

## **Intellectual property**

*[A provision relating to intellectual property may be included if relevant to the particular requirements of the Public Service agency concerned. If included, the following clauses should be renumbered accordingly.]*

## **Employment policies**

### **19.1**

The Senior Executive agrees to act in accordance with any applicable employment policies of the Employer.

**19.2**

However, those employment policies do not form part of this contract and do not create any express or implied contractual rights or obligations between the Senior Executive and the Employer.

**Variation**

**20.1**

This contract may only be varied in accordance with the GSE Act and this contract.

**APPENDICES**

The Appendices to this contract may be substituted by the Employer.

**Appendix A—Assigned role**

*[insert description of assigned role]*

**Appendix B—Performance agreement**

*[attach copy of current performance agreement]*

**Appendix C—Remuneration package and allowances**

The total remuneration package of the Senior Executive is *[insert \$ value of package]*, comprising *[insert components of remuneration package]*:

The Senior Executive is entitled to allowances under the GSE Regulations and the following additional allowances *[insert any additional allowances]*:

**Signatures**

**The Employer**

Signed

\_\_\_\_\_

Date

\_\_\_\_\_

Name

\_\_\_\_\_

*[Insert job title and office]*

\_\_\_\_\_

pursuant to the GSE Act on behalf of the Government of NSW.

Witnessed by

\_\_\_\_\_

Witness name in full [*printed*]

\_\_\_\_\_

Witness address

\_\_\_\_\_

\_\_\_\_\_

**The Senior Executive**

Signed

\_\_\_\_\_

Date

\_\_\_\_\_

Name in full [*printed*]

\_\_\_\_\_

Witnessed by

\_\_\_\_\_

Witness name in full [*printed*]

\_\_\_\_\_

Witness address

\_\_\_\_\_

\_\_\_\_\_

**Schedule 2 Model contract of employment for Secretaries of  
Departments and heads of other Public Service agencies**

(Rule 43)

**Contract of employment under [Government Sector Employment Act 2013](#)**

**This contract of employment is made**

on the            day of            20

\_\_\_\_\_

**Between**

THE GOVERNMENT OF NEW SOUTH WALES

**and**

[*Insert full name*] (the "Secretary/Agency Head") [*both here and elsewhere in this contract, delete whichever is not applicable*]

**Parties**

## **1.1**

This contract of employment is between the Secretary/Agency Head and the Government of New South Wales.

## **Commencement**

### **2.1**

The employment of the Secretary/Agency Head under this contract commences on *[insert date]*.

## **Definitions**

### **3.1**

In this contract:

“Employer” of the Secretary/Agency Head means the person who exercises the employer functions of the Government of New South Wales in relation to the Secretary/Agency Head (being the *[insert name of the office who makes the appointment]* on the making of this contract).

“GSE Act” means the [Government Sector Employment Act 2013](#).

“GSE Regulations” means the regulations made under the GSE Act.

“GSE Rules” means the government sector employment rules made under the GSE Act.

### **3.2**

Terms used in this contract have the same meanings as they have in the GSE Act.

## **Band**

### **4.1**

The Secretary/Agency Head is employed in Band *[specify band]*.

## **Office**

### **5.1**

The Secretary/Agency Head is appointed to the office described in Appendix A.

### **5.2**

The Secretary/Agency Head must perform the duties and responsibilities of the office to which the Secretary/Agency Head is appointed.

## **Core values**

### **6.1**

The Secretary/Agency Head agrees to perform the duties and responsibilities of the office in accordance with the government sector core values under section 7 of the GSE Act.

## **Duration of employment**

### **7.1**



The employment of the Secretary/Agency Head under this contract is ongoing employment (that is, employment that continues until the Secretary/Agency Head resigns or the Secretary/Agency Head's employment is terminated).

[OR]

The employment of the Secretary/Agency Head under this contract is, unless the Secretary/Agency Head sooner resigns or the Secretary/Agency Head's employment is sooner terminated, for the period ending on [*specify date*]. The period of employment may be extended by the Employer.

### **Annual performance agreement**

#### **8.1**

The Secretary/Agency Head is required to enter into an annual performance agreement with the Employer setting out the performance obligations of the Secretary/Agency Head, and reviews of performance, for the year. The performance agreement continues until a new agreement is signed.

#### **8.2**

A copy of the current annual performance agreement is set out in Appendix B.

### **Capability-based assessments**

*[The following provisions only apply in relation to Agency Heads. In the case of Secretaries they should not be included in the contract and the following clauses should be renumbered accordingly.]*

#### **9.1**

The Agency Head agrees to participate in periodic capability-based assessments.

#### **9.2**

The Agency Head agrees to the use of these assessments for workforce planning purposes.

### **Total remuneration package and allowances**

#### **10.1**

The total remuneration package (comprising monetary remuneration and employment benefits) of the Secretary/Agency Head is specified in Appendix C.

#### **10.2**

The Secretary/Agency Head may elect from time to time to allocate the total remuneration package as between monetary remuneration and employment benefits in accordance with the GSE Act.

#### **10.3**

The Secretary/Agency Head is entitled to the allowances specified in Appendix C and any allowances conferred under the GSE Act and GSE Regulations.

#### **10.4**

The Employer may, subject to the GSE Act, vary the total remuneration package and allowances of the Secretary/Agency Head from time to time.

### **Progression**

### **11.1**

If the Secretary/Agency Head meets the requirements of the annual performance agreement, the Secretary/Agency Head's total remuneration package may be increased within the range of remuneration applicable to the office of the Secretary/Agency Head.

### **11.2**

This clause does not limit the Employer's power to vary the Secretary/Agency Head's total remuneration package in accordance with the GSE Act.

## **Hours of duty**

### **12.1**

The Secretary/Agency Head must work the hours necessary to perform the duties and responsibilities of the office.

### **12.2**

The Secretary/Agency Head's total remuneration package compensates the Secretary/Agency Head for any hours worked.

## **Leave**

### **13.1**

The Secretary/Agency Head is entitled to leave in accordance with the GSE Act, the GSE Regulations and the GSE Rules.

## **Notice of resignation**

### **14.1**

The Secretary/Agency Head may resign his or her employment by providing 4 weeks written notice to the Employer or as agreed to by the Employer.

## **Compensation for termination**

### **15.1**

The Secretary/Agency Head is entitled to the payment of compensation, on the termination of employment by the Employer, as determined by and under the GSE Act.

### **15.2**

If the Secretary/Agency Head's employment is terminated with compensation, the Secretary/Agency Head agrees that if the Secretary/Agency Head is re-employed in the public sector (as referred to in section 41 of the GSE Act) within the period to which the compensation relates the Secretary/Agency Head will repay the proportionate amount, as calculated in accordance with the GSE Regulations, before the commencement of that re-employment. This obligation continues even though the contract of employment is terminated.

## **Confidentiality**

*[The following provisions are mandatory to the extent that the contract must contain obligations relating to confidentiality. However, the following provisions may be substituted by a different set of obligations (that are not inconsistent with the following provisions) to suit the particular requirements*

*of the Public Service agency concerned.]*

**16.1**

During his or her employment, the Secretary/Agency Head will not disclose, without lawful authority, any confidential or secret information acquired as a consequence of the employment.

**16.2**

On termination of employment the Secretary/Agency Head will not, without lawful authority, disclose or make [*commercial*] use of any confidential or secret information acquired by the Secretary/Agency Head as a consequence of his or her employment.

**Intellectual property**

*[A provision relating to intellectual property may be included if relevant to the particular requirements of the Public Service agency concerned. If included, the following clauses should be renumbered accordingly.]*

**Employment policies**

**17.1**

The Secretary/Agency Head agrees to act in accordance with any applicable employment policies of the Employer.

**17.2**

However, those employment policies do not form part of this contract and do not create any express or implied contractual rights or obligations between the Secretary/Agency Head and the Employer.

**Variation**

**18.1**

This contract may only be varied in accordance with the GSE Act and this contract.

**APPENDICES**

The Appendices to this contract (other than Appendix A) may be substituted by the Employer.

**Appendix A—Office**

*[insert office to which appointed]*

**Appendix B—Performance agreement**

*[attach copy of current performance agreement]*

**Appendix C—Remuneration package and allowances**

The total remuneration package of the Secretary/Agency Head is *[insert \$ value of package]*, comprising *[insert components of remuneration package]*:

The Secretary/Agency Head is entitled to allowances under the GSE Regulations and the following

additional allowances [*insert any additional allowances*]:

**Signatures**

**The Employer**

Signed

\_\_\_\_\_

Date

\_\_\_\_\_

Name

\_\_\_\_\_

[*Insert office*]

\_\_\_\_\_

pursuant to the GSE Act on behalf of the Government of NSW.

Witnessed by

\_\_\_\_\_

Witness name in full [*printed*]

\_\_\_\_\_

Witness address

\_\_\_\_\_

\_\_\_\_\_

**The Secretary/Agency Head**

Signed

\_\_\_\_\_

Date

\_\_\_\_\_

Name in full [*printed*]

\_\_\_\_\_

Witnessed by

\_\_\_\_\_

Witness name in full [*printed*]

\_\_\_\_\_

Witness address

\_\_\_\_\_

\_\_\_\_\_