

# Government Sector Employment Act 2013 No 40

[2013-40]



New South Wales

## Status Information

### Currency of version

Historical version for 1 January 2016 to 30 June 2016 (accessed 13 December 2024 at 2:02)

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.

### Notes—

- **Does not include amendments by**
  - [Regulatory Reform and Other Legislative Repeals Act 2015 No 48](#) (not commenced — to commence on 1.7.2016)
  - [Government Sector Employment Legislation Amendment Act 2016 No 2](#) (not commenced — to commence on 1.1.2017 or by Proclamation)
  - [Statute Law \(Miscellaneous Provisions\) Act 2016 No 27](#) (not commenced)

### Authorisation

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New South Wales

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# Government Sector Employment Act 2013 No 40



New South Wales

An Act relating to employment in the government sector.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Government Sector Employment Act 2013*.

### 2 Commencement

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

### 3 Definitions

(1) In this Act:

**Department** means a Department of the Public Service listed in Part 1 of Schedule 1.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**government sector** comprises all of the following (other than any service in which persons excluded from this Act by section 5 are employed):

- (a) the Public Service,
- (b) the Teaching Service,
- (c) the NSW Police Force,
- (d) the NSW Health Service,
- (e) the Transport Service of New South Wales,
- (f) any other service of the Crown (including the service of any NSW government agency),
- (g) 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 by the regulations for the purposes of this definition.

**government sector agency** means:

- (a) in the case of the Public Service—a Public Service agency, or
- (b) in the case of any other service in the government sector—the group of staff comprising the service or (subject to the regulations) any separate group of that staff,

and the **head** of a government sector agency means the head of the Public Service agency (where paragraph (a) applies) or the person who exercises employer functions in relation to the relevant staff (where paragraph (b) applies).

**government sector employment rules** means rules made by the Commissioner under section 12.

**head** of a Public Service agency means:

- (a) in the case of a Department—the Secretary of the Department, or
- (b) in any other case—the head of the agency listed in Part 2 or 3 of Schedule 1.

**Public Service** means the Public Service of New South Wales referred to in Part 4.

**Public Service agency** means:

- (a) a Department, or
- (b) a Public Service executive agency (being an agency related to a Department), or
- (c) a separate Public Service agency.

**Public Service Commission Advisory Board** (or **Advisory Board**) means the Public Service Commission Advisory Board established under Division 2 of Part 3.

**Public Service Commissioner** (or **Commissioner**) means the Public Service Commissioner appointed under Division 1 of Part 3.

**Public Service employee** means a person employed in ongoing, term, temporary, casual or other employment, or on secondment, in a Public Service agency (and **employee** of a Public Service agency means a person so employed in a Public Service agency).

**Public Service executive agency** related to a Department means a Public Service agency listed in Part 2 of Schedule 1.

**Public Service senior executive** means the Secretary of a Department and any other Public Service employee to whom Division 4 of Part 4 applies.



**resignation** includes retirement.

**role** of an employee means the duties and responsibilities of the employee.

**senior executive bands determination** means a determination made by the Minister under section 35.

**separate Public Service agency** means a Public Service agency listed in Part 3 of Schedule 1.

(2) Notes included in this Act do not form part of this Act.

#### 4 Objects of Act

The objects of this Act are as follows:

- (a) to develop a modern high performing government sector:
  - (i) that is efficient and effective in serving the Government in the delivery of services to the people of New South Wales, and
  - (ii) that has effective and fair employment arrangements, management and leadership,
- (b) to establish the Public Service as the general service within the government sector,
- (c) to provide transparent governance and employment arrangements for the Public Service, including providing for the employer functions and responsibilities of heads of Public Service agencies,
- (d) to establish an ethical framework for the government sector comprising core values and principles that guide their implementation,
- (e) to make provision for the objectives, functions and responsibilities of the Public Service Commissioner.

#### 5 Persons to whom Act does not apply

- (1) This Act does not apply to any of the following:
  - (a) a judicial officer within the meaning of the *Judicial Officers Act 1986*,
  - (b) an officer or employee of either House of Parliament or any officer or employee under the separate control of the President or Speaker, or under their joint control,
  - (c) persons employed under the *Members of Parliament Staff Act 2013*,
  - (d) staff of the Independent Commission Against Corruption, or of the Inspector of the Independent Commission Against Corruption, employed under the *Independent Commission Against Corruption Act 1988*,

- (e) staff of the Audit Office employed under the *Public Finance and Audit Act 1983*,
- (f) staff of the Judicial Commission of New South Wales employed under the *Judicial Officers Act 1986*.

(2) However, provisions of this Act apply to the extent that this Act expressly so provides.

## **Part 2 Ethical framework for the government sector**

### **6 Objective of Part**

This Part:

- (a) recognises the role of the government sector in preserving the public interest, defending public value and adding professional quality and value to the commitments of the Government of the day, and
- (b) establishes an ethical framework for a merit-based, apolitical and professional government sector that implements the decisions of the Government of the day.

### **7 Government sector core values**

The core values for the government sector and the principles that guide their implementation are as follows:

#### **Integrity**

- (a) Consider people equally without prejudice or favour.
- (b) Act professionally with honesty, consistency and impartiality.
- (c) Take responsibility for situations, showing leadership and courage.
- (d) Place the public interest over personal interest.

#### **Trust**

- (a) Appreciate difference and welcome learning from others.
- (b) Build relationships based on mutual respect.
- (c) Uphold the law, institutions of government and democratic principles.
- (d) Communicate intentions clearly and invite teamwork and collaboration.
- (e) Provide apolitical and non-partisan advice.

#### **Service**

- (a) Provide services fairly with a focus on customer needs.
- (b) Be flexible, innovative and reliable in service delivery.

- (c) Engage with the not-for-profit and business sectors to develop and implement service solutions.
- (d) Focus on quality while maximising service delivery.

**Accountability**

- (a) Recruit and promote employees on merit.
- (b) Take responsibility for decisions and actions.
- (c) Provide transparency to enable public scrutiny.
- (d) Observe standards for safety.
- (e) Be fiscally responsible and focus on efficient, effective and prudent use of resources.

**8 General provisions**

- (1) The Public Service Commissioner has the function of promoting and maintaining the government sector core values.
- (2) There is no hierarchy among the core values and each is of equal importance.
- (3) Nothing in this Part gives rise to, or can be taken into account in, any civil cause of action.

**Part 3 Public Service Commissioner and Advisory Board**

**Division 1 Public Service Commissioner**

**9 Appointment of Commissioner etc**

- (1) The Governor may appoint a Public Service Commissioner.
- (2) A person may only be appointed as Commissioner if the Advisory Board has recommended to the Premier that the person be appointed as the Commissioner.
- (3) The Governor may remove the Commissioner from office for incapacity, incompetence or misbehaviour.
- (4) The Commissioner may only be removed from office:
  - (a) following an independent review of the performance or conduct of the Commissioner, and
  - (b) if the Advisory Board has recommended to the Premier that the Commissioner be removed from office.

- (5) Any such independent review may be initiated:
  - (a) by the Advisory Board at the request of the Premier, or
  - (b) by the Premier.
- (6) An independent review of the performance or conduct of the Commissioner is not required under this section before the Commissioner can be removed from office if the performance or conduct giving rise to the Advisory Board's recommendation for removal has been the subject of:
  - (a) an inquiry and report by the Independent Commission Against Corruption, a Royal Commission, a Special Commission of Inquiry or other body constituted by a judicial officer, or
  - (b) a finding by a court.
- (7) The Premier is, if the Commissioner is removed from office, to cause the reasons for the removal to be tabled in both Houses of Parliament.
- (8) The Commissioner must not be present during any deliberation of the Advisory Board on any matter that relates to the making of a recommendation under this section.
- (9) Schedule 2 contains provisions relating to the Commissioner.

#### **10 Principal objectives of Commissioner**

The principal objectives of the Commissioner are as follows:

- (a) to promote and maintain the highest levels of integrity, impartiality, accountability and leadership across the government sector,
- (b) to improve the capability of the government sector to provide strategic and innovative policy advice, implement the decisions of the Government and meet public expectations,
- (c) to attract and retain a high calibre professional government sector workforce,
- (d) to ensure that government sector recruitment and selection processes comply with the merit principle and adhere to professional standards,
- (e) to foster a public service culture in which customer service, initiative, individual responsibility and the achievement of results are strongly valued,
- (f) to build public confidence in the government sector,
- (g) to support the Government in achieving positive budget outcomes through strengthening the capability of the government sector workforce.

## **11 General functions of Commissioner**

(1) The Commissioner has the following functions:

- (a) to identify reform opportunities for the government sector workforce and to advise the Government on policy innovations and strategy in those areas of reform,
- (b) to lead the strategic development and management of the government sector workforce in relation to the following:
  - (i) workforce planning, including identifying risks and strategies to minimise risks,
  - (ii) recruitment, particularly compliance with the requirements relating to appointment and promotion on merit,
  - (iii) performance management and recognition,
  - (iv) equity and diversity, including strategies to ensure the government sector reflects the diversity of the wider community,
  - (v) general conduct and compliance with ethical practices,
  - (vi) learning and development,
  - (vii) succession planning,
  - (viii) redeployment, including excess employees,
  - (ix) staff mobility,
  - (x) executive employment arrangements,
- (c) to advise the Government on leadership structure for the government sector,
- (d) to advise the Government on appropriate strategies, policies and practices in relation to the structure of the government sector workforce,
- (e) to advise the Government on appropriate strategies, policies and practices in relation to such other government sector matters as the Minister may determine from time to time, and to monitor, co-ordinate and assist the implementation of Government strategies, policies and practices in such other areas as the Minister may determine from time to time,
- (f) to develop and advise the Government on service delivery strategies and models for the government sector through collaboration with the private business sector, the not-for-profit sector and the wider community,
- (g) to set standards, subject to any legislative requirements, for the selection of persons for appointment as members of boards or committees of public authorities (including Government business enterprises).

- (2) The Commissioner has and may exercise such other functions as are conferred or imposed on the Commissioner by or under this or any other Act.

**Note—**

Other functions of the Commissioner include promoting and maintaining the government sector core values (see section 7); making government sector employment rules under section 12; giving directions to government sector agencies under section 13; assigning a senior executive to a role in a Public Service agency under section 38; reporting on workforce diversity under section 63 and conducting inquiries under section 83.

- (3) The Commissioner is to exercise his or her functions in accordance with the general policies and strategic directions determined by the Public Service Commission Advisory Board.

## **12 Government sector employment rules**

- (1) The Commissioner may make government sector employment rules, not inconsistent with this Act and the regulations, on any matter for which any such rules are authorised to be made by or under this Act.
- (2) The Commissioner may amend or repeal a government sector employment rule by a further rule.
- (3) Government sector employment rules (including any amendment or repeal) are to be published on the NSW legislation website and take effect on the date they are so published or on any later specified date.

## **13 Directions by Commissioner to a government sector agency**

- (1) The Commissioner may, for the purposes of exercising his or her functions or ensuring compliance with this Act, the regulations and the government sector employment rules, give a direction in writing to the head of a government sector agency on a specific matter in relation to the employees of that agency.
- (2) Before giving a direction the Commissioner is to consult the head of the government sector agency to whom the direction is to be given and such other persons affected by the direction as the Commissioner considers appropriate.
- (3) The head of the government sector agency to whom a direction under this section is given must comply with the direction.
- (4) However, the head of a separate Public Service agency is not required to comply with the direction if the head considers that the direction is not consistent with the independent exercise of statutory functions by the head and the agency. The head is required to report to any Parliamentary Committee that oversees the exercise of those functions on the reasons for any non-compliance with the substantive employment outcomes sought by the direction.
- (5) A direction under this section:

- (a) must not be inconsistent with this Act (including the regulations and the government sector employment rules) or with the principal objectives of the Commissioner referred to in this Division, and
- (b) must be made publicly available by the Commissioner as soon as practicable after it is given.

#### **14 Commissioner to report to Premier**

- (1) The Commissioner is to report to the Premier in connection with the exercise of the Commissioner's functions but is not subject to the control and direction of the Premier in the exercise of those functions.
- (2) This section does not limit any other provisions of this Act relating to the exercise of the functions of the Premier or the Commissioner.

#### **15 Annual reports of the Commissioner**

- (1) The Commissioner is, as soon as practicable after 30 June in each year, to prepare and forward to the Premier:
  - (a) a report on the Commissioner's work and activities for the 12 months ending on that 30 June, and
  - (b) a report on the state of the government sector in relation to the period of 12 months ending on that 30 June.
- (2) The report on the state of the government sector is to include the following:
  - (a) an assessment of the performance of the whole of the government sector, including notable achievements, challenges and priorities,
  - (b) an analysis of government sector workforce data.
- (3) The Premier is to table any report under this section, or cause it to be tabled, in both Houses of Parliament as soon as practicable after it is received by the Premier.

#### **16 Provision of reports and information by agencies**

- (1) The Commissioner may require the head of a government sector agency to provide the Commissioner with a report on such matters relating to the employees of the agency, or to the employment policies and practices of the agency, as the Commissioner requires.
- (2) The Commissioner may also require the head of a government sector agency to provide the Commissioner with information collected or held by the agency in dealing with matters relating to government sector employees.
- (3) The head of the government sector agency concerned must comply with a

requirement under this section within such time and in such manner as the Commissioner directs.

- (4) Any law relating to the protection of personal information (within the meaning of the *Privacy and Personal Information Protection Act 1998*) does not operate to prevent the furnishing of information, or affect a duty to furnish information, under this section.
- (5) In this section, **government sector agency** includes any person or body, constituted by or under an Act, that is prescribed by the regulations for the purposes of this section, and the **head** of any such prescribed agency means the person prescribed by the regulations in relation to that agency.

### **17 Miscellaneous provisions relating to Commissioner**

- (1) Persons may be employed in the Public Service to enable the Commissioner to exercise his or her functions. Those persons may be referred to as the staff of the Commissioner or as employees of the Public Service agency in which they are employed.
- (2) The Commissioner may delegate the exercise of any function of the Commissioner (other than this power of delegation) to:
  - (a) the head of any government sector agency or an employee of any government sector agency, or
  - (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.
- (3) The Commissioner is to arrange for government sector employment information to be made available on a website provided and maintained by the Commissioner (including the government sector employment rules, the senior executive bands determination and any guidelines issued by the Commissioner).
- (4) The government sector employment rules may deal with any requirement under this Act for the approval or concurrence of the Commissioner, or for consultation with the Commissioner, and may provide for the circumstances in which the approval, concurrence or consultation is not required.
- (5) The Commissioner is, to the extent that it is reasonable and practicable to do so, to remove any personal information from any report or other document prepared by the Commissioner under this Part that is, or is to be, publicly available. In this subsection, **personal information** means information about an individual whose identity is apparent, or can reasonably be ascertained, from the information.
- (6) The regulations may make provision with respect to the exercise of the functions of the Commissioner.



## **Division 2 Public Service Commission Advisory Board**

### **18 Establishment and members of Advisory Board**

- (1) There is to be a Public Service Commission Advisory Board.
- (2) The Advisory Board is to consist of the following members:
  - (a) a person appointed by the Premier as the Chairperson of the Advisory Board,
  - (b) 4 other persons appointed by the Premier,
  - (c) the Commissioner or a senior member of the staff of the Commissioner nominated by the Commissioner,
  - (d) the Secretary of the Department of Premier and Cabinet or a senior employee of that Department nominated by the Secretary.
- (3) The members appointed by the Premier are to be persons who together have expertise in human resources management, probity and accountability, strategic planning, budget and performance management and service delivery in the public, private, tertiary and not-for-profit sectors.
- (4) Schedule 3 contains provisions relating to the members and procedure of the Advisory Board.

### **19 Functions of Advisory Board**

- (1) The Advisory Board has the following functions:
  - (a) to determine general policies and strategic directions in relation to the functions of the Commissioner,
  - (b) to provide the Premier, either at the request of the Premier or on its own initiative, with advice on any matter relating to the management and performance of the government sector.
- (2) The Advisory Board has such other functions as are conferred or imposed on it by or under this or any other Act.

## **Part 4 The Public Service**

### **Division 1 General**

#### **20 The Public Service**

The Public Service of New South Wales consists of those persons who are employed under this Part by the Government of New South Wales in the service of the Crown.

**Note—**

See section 47A of the *Constitution Act 1902*.

## 21 Employment in the Public Service

- (1) The Government of New South Wales may employ persons in the Public Service in accordance with this and any other Act or law.
- (2) Persons may be so employed for the following purposes:
  - (a) to enable Ministers to exercise their functions,
  - (b) to enable statutory bodies or statutory officers to exercise their functions,
  - (c) for any other purpose.
- (3) This section does not affect any other means (statutory or otherwise) by which a person may be employed in the service of the Crown.

### Note—

Other ways in which persons are employed in the service of the Crown include employment in the Teaching Service, the NSW Health Service or the NSW Police Force—see definition of **government sector** in section 3.

## 22 Departments and other Public Service agencies

- (1) Public Service employees are employed in:
  - (a) Departments (listed in Part 1 of Schedule 1), or
  - (b) Public Service executive agencies related to Departments (listed in Part 2 of Schedule 1), or
  - (c) separate Public Service agencies (listed in Part 3 of Schedule 1).
- (2) A Department or other Public Service agency may comprise such branches or other groups of employees as the Secretary of the Department or the head of the other agency determines from time to time.
- (3) Part 7 of the *Constitution Act 1902* authorises the amendment of Schedule 1 by an administrative arrangements order under that Part. Any such order may also amend Schedule 1 to specify, change or remove the Department to which a Public Service agency is related.

### Note—

An administrative arrangements order may create, abolish or change the name of Departments and other Public Service agencies and transfer employees between agencies.

## **Division 2 Secretaries of Departments**

### **23 Secretaries of Departments**

- (1) The head of a Department is the Secretary of the Department.
- (2) The office of Secretary of a Department is established by this section.
- (3) If a Department is abolished or its name is changed, the office of Secretary of the Department is taken to be abolished or its name correspondingly changed by the operation of this section.
- (4) Appointments to the office of Secretary of a Department are to be made by the Minister.

**Note—**

The Minister may delegate the function of appointing Secretaries—see section 81.

- (5) The appointment of a person to the office of Secretary of a Department is to be made by a contract of employment (under Division 4) between that person and the person who makes the appointment. The person so appointed is a Public Service employee who is employed in the Department.

### **24 Acting appointments as Secretary of a Department**

- (1) The Minister may appoint a Public Service employee to act as the Secretary of a Department if the office of the Secretary is vacant or if the Secretary is unavailable.
- (2) A person, while acting as the Secretary of a Department, has all the functions of the Secretary.
- (3) The Minister may, at any time, terminate an acting appointment.
- (4) The regulations may make provision with respect to the conditions of employment of a person acting as the Secretary of a Department.

### **25 General responsibility of Secretaries of Departments**

- (1) The Secretary of a Department is responsible to the Minister or Ministers to whom the Department is responsible for the general conduct and management of the functions and activities of the Department in accordance with the government sector core values under Part 2.

**Note—**

Section 50C of the [Constitution Act 1902](#) provides for the designation of the Minister or Ministers to whom a Department is responsible.

- (2) Any action taken in the exercise of a responsibility under this section is not to be inconsistent with the functions conferred by this Act of a Minister administering this

Act or the Public Service Commissioner.

**Note—**

The Secretary of a Department is also responsible for workforce diversity under Part 5.

**26 Employer functions of Secretaries of Departments**

- (1) The Secretary of a Department may, subject to this and any other Act or law, exercise on behalf of the Government of New South Wales the employer functions of the Government in relation to the following:
  - (a) the Public Service senior executives assigned to roles in the Department,
  - (b) the other employees of the Department,
  - (c) the head of each Public Service executive agency related to the Department unless:
    - (i) the office of the head is a statutory office established by another Act, or
    - (ii) the head is the Secretary, or
    - (iii) Schedule 1 provides that some other person exercises the employer functions in relation to the head,
  - (d) the Public Service senior executives assigned to roles in each Public Service executive agency related to the Department.
- (2) The Minister may, subject to this and any other Act or law, exercise on behalf of the Government of New South Wales the employer functions of the Government in relation to the Secretary of a Department.
- (3) The employer functions of the Government are all the functions of an employer in respect of employees, including (without limitation) the power to employ persons, to assign them to roles and to terminate their employment.

**Note—**

Division 6 confers on the Industrial Relations Secretary employer functions relating to the determination of the conditions of employment of, and other industrial matters relating to, Public Service employees.

**27 Delegation by Secretaries of Departments**

- (1) The Secretary of a Department may delegate to any employee of the Department or of any other Public Service agency or to any statutory officer:
  - (a) any of the functions of the Secretary under this Act (other than this power of delegation), and
  - (b) any employer functions under any other Act or law that the Secretary exercises on behalf of the Government of New South Wales in relation to Public Service

employees.

(2) If:

(a) a function of the Secretary of a Department is delegated to an employee or officer 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 employee or officer may sub-delegate the function to another employee of the Department or of any other Public Service agency or to a statutory officer.

(3) For the purposes of this section, the functions of the Secretary of a Department include any functions delegated to the Secretary under this Act.

(4) The government sector employment rules may limit a power of delegation or sub-delegation under this section.

## **Division 3 Heads of other Public Service agencies**

### **28 Heads of agencies other than Departments**

(1) The head of a Public Service agency (other than a Department) is the holder of the office specified in Part 2 or 3 of Schedule 1 in relation to the agency concerned.

(2) The Secretary of a Department may be specified as the head of any other Public Service agency and the same person may be specified as the head of more than one agency.

(3) An administrative arrangements order under Part 7 of the *Constitution Act 1902* may amend Schedule 1 to specify or change the head of a Public Service agency (other than a Department).

(4) The office of head of a Public Service agency (other than a Department) is established by this section, unless it is a statutory office created by another provision of this Act or by any other Act.

**Note—**

The statutory offices established by another provision of this Act or by any other Act are identified in Part 2 or 3 of Schedule 1. Accordingly, the following provisions of this section do not apply to any such head of an agency.

(5) If the description of an office established by this section is omitted or changed by an amendment of Schedule 1, the office is taken to be abolished or its name correspondingly changed by the operation of this section.

(6) Appointments to an office of head established by this section are to be made:

(a) in the case of a Public Service executive agency related to a Department—by the Secretary of the Department, or

(b) in the case of a separate Public Service agency—by the Minister.

However, if Schedule 1 provides that some other person exercises the employer functions of the Government of New South Wales in relation to the head, appointments to the office of the head are to be made by that other person.

(7) The appointment of a person to an office of head established by this section is to be made by a contract of employment (under Division 4) between that person and the person who makes the appointment. The person so appointed is a Public Service employee who is employed in the Public Service agency concerned.

### **29 Acting appointments as head of agency (other than Department)**

(1) The person authorised to appoint the head of a Public Service agency (other than a Department) may appoint a Public Service employee to act as the head of the agency if the office of the head is vacant or if the head is unavailable (and no other person has been duly appointed to act as a statutory officer who is the head of that office).

(2) A person, while acting as the head of any such Public Service agency, has all the functions of the head.

(3) An acting appointment may be terminated, at any time, by the person who made the acting appointment.

(4) The regulations may make provision with respect to the conditions of employment of a person acting as the head of any such Public Service agency.

### **30 General responsibility of heads of agencies (other than Departments)**

(1) The head of a Public Service agency (other than a Department) is responsible to the Minister or Ministers to whom the agency is responsible for the general conduct and management of the functions and activities of the agency in accordance with government sector core values under Part 2.

(2) Any action taken in the exercise of a responsibility under this section is not to be inconsistent with the functions conferred by this Act of a Minister administering this Act or the Public Service Commissioner.

#### **Note—**

The head of any such agency is also responsible for workforce diversity under Part 5.

### **31 Employer functions of heads of agencies (other than Departments)**

(1) The head of a Public Service agency (other than a Department) may, subject to this and any other Act or law, exercise on behalf of the Government of New South Wales

the employer functions of the Government in relation to the employees of the agency (other than Public Service senior executives of an agency that is related to a Department).

- (2) The employer functions of the Government are all the functions of an employer in respect of employees, including (without limitation) the power to employ persons, to assign their roles and to terminate their employment.

**Note—**

The Secretary of the relevant Department exercises employer functions in relation to Public Service senior executives of an agency that is related to the Department.

Division 6 confers on the Industrial Relations Secretary employer functions relating to the determination of the conditions of employment of, and other industrial matters relating to, Public Service employees.

### **32 Delegation by heads of Public Service agencies (other than Departments)**

- (1) The head of a Public Service agency (other than a Department) may delegate to any employee of the agency or of any other Public Service agency or to a statutory officer:
- (a) any of the functions of the head under this Act (other than this power of delegation), and
  - (b) any employer functions under any other Act or law that the head exercises on behalf of the Government of New South Wales in relation to Public Service employees.
- (2) If:
- (a) a function of the head of an agency is delegated to an employee or officer 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 employee or officer may sub-delegate the function to another employee of the agency or of any other Public Service agency or to a statutory officer.
- (3) For the purposes of this section, the functions of the head of an agency include any functions delegated to the head of the agency under this Act.
- (4) The government sector employment rules may limit a power of delegation or sub-delegation under this section.

## **Division 4 Public Service senior executives**

### **33 Application of Division**

- (1) This Division applies to the following:

- (a) the Secretary of a Department,
  - (b) the head of any other Public Service agency if the head is an employee of the agency and not a statutory officer,
  - (c) any other employees of a Public Service agency who are employed in a Public Service senior executive band.
- (2) For the purposes of this Act, the employees to whom this Division applies are **Public Service senior executives**.
- (3) The person who is authorised by this Act to exercise the employer functions of the Government of New South Wales in relation to a Public Service senior executive is referred to in this Division as the **employer** of the executive.

#### **34 Kinds of senior executive employment**

- (1) Employment as a Public Service senior executive may be any one of the following kinds of employment:
- (a) ongoing employment,
  - (b) term employment.
- (2) Ongoing employment is employment that continues until the executive resigns or his or her employment is terminated.
- (3) Term employment is employment for a specified period or for the duration of a specified task (unless the executive sooner resigns or his or her employment is sooner terminated).

#### **35 Minister may determine bands in which senior executives to be employed**

- (1) The Minister may from time to time determine the bands in which Public Service senior executives are to be employed (the **senior executive bands determination**).
- (2) The senior executive bands determination may deal with matters related to bands.
- (3) The Minister may amend or repeal the senior executive bands determination by a further determination.
- (4) Before making, amending or repealing the senior executive bands determination, the Minister is to obtain the advice of the Commissioner.
- (5) The senior executive bands determination (including any amendment or repeal) is to be published on the NSW legislation website and takes effect on the date it is so published or on any later specified date.



**Editorial note—**

See [Government Sector Employment \(Senior Executive Bands\) Determination 2014](#).

**36 Government sector employment rules relating to senior executives**

The government sector employment rules may deal with any matter relating to the employment of Public Service senior executives, including (without limitation) the following matters:

- (a) work level standards for roles in the bands in which those executives are employed,
- (b) methods of job evaluation for the roles of those executives,
- (c) capabilities for the roles of those executives,
- (d) the assignment of those executives to roles,
- (e) contracts of employment of those executives and their contents.

**37 Employment of senior executives in bands**

- (1) A Public Service senior executive is to be employed in a band determined under the senior executive bands determination that the employer of the executive considers appropriate for the role of the executive.
- (2) In determining the number of Public Service senior executives and the appropriate band in which they are employed, the employer is to apply the applicable work level standards and have regard to any guidance provided by the Commissioner.

**38 Assignment of senior executives to roles in bands across Public Service (other than heads of agencies)**

- (1) In this section:

***assign*** to a role includes assign to a different role.

***Public Service senior executive*** does not include the Secretary of a Department or the head of any other Public Service agency.

- (2) A Public Service senior executive may, from time to time, be assigned to a role in any Public Service agency in the band in which the executive is employed.
- (3) A Public Service senior executive may be assigned to a role by the employer of the executive or by the Commissioner.
- (4) Public Service senior executives may be assigned to roles to enable the flexible deployment of staff resources within the Public Service and to develop the capabilities of staff.

- (5) The Secretary of a Department is not to assign a Public Service senior executive to a role in a Public Service executive agency related to the Department without consulting the head of the agency.
- (6) The Commissioner is not to assign a Public Service senior executive to a role in a Department or a Public Service executive agency related to a Department without consulting the Secretary of the Department and the head of any such agency.
- (7) The Commissioner is not to assign a Public Service senior executive to a role in a separate Public Service agency without the agreement of the head of the agency.
- (8) A Public Service senior executive is not to be assigned to a different role unless the executive has been consulted. The remuneration payable to the executive is not to be reduced because of the assignment to the different role without the consent of the executive.

### **39 Contract of employment of senior executives**

- (1) A Public Service senior executive is to be employed under a written contract of employment signed by the executive and by the employer on behalf of the Government.
- (2) The government sector employment rules may deal with contracts of employment of Public Service senior executives and their contents.
- (3) The government sector employment rules may prescribe model contracts of employment and may specify any model provisions that are mandatory and that prevail in the event of any inconsistency with the provisions of a contract of employment.
- (4) Subject to this Act, the government sector employment rules and any direction issued by the Commissioner under this Act, a contract of employment of a Public Service senior executive is to deal with the following matters:
  - (a) the band in which the executive is employed,
  - (b) conditions of engagement (of a kind referred to in section 44),
  - (c) the duration of the contract if the executive is not employed in ongoing employment,
  - (d) the total remuneration package of the executive (comprising monetary remuneration and employment benefits) and any allowances,
  - (e) performance obligations, and reviews of performance, of the executive,
  - (f) progression in the total remuneration package of the executive based on performance,

- (g) leave and other conditions of employment of the executive,
  - (h) the compensation for any termination of employment of the executive by the employer (including the period to which the compensation relates),
  - (i) any other matter prescribed by the regulations.
- (5) The contract of employment of a Public Service senior executive does not limit (and is not affected by) the assignment of the executive to a different role or any other change to the title, place of work or duties of the executive.
- (6) A contract of employment of a Public Service senior executive may, subject to this section, be varied at any time by further agreement.

#### **40 Remuneration, benefits and allowances for senior executives**

- (1) The remuneration package of a Public Service senior executive must be within the range determined under the *Statutory and Other Offices Remuneration Act 1975* for the band in which the executive is employed.
- (2) The kinds and value of employment benefits and the allowances for a Public Service senior executive are to be determined in accordance with the regulations and any guidance provided by the Commissioner.
- (3) A Public Service senior executive is only entitled to the remuneration, employment benefits or allowances provided in the executive's contract of employment.
- (4) For the purposes of this Division, employment benefits for a Public Service senior executive are:
- (a) contributions by the executive's employer to a superannuation scheme or fund of the executive, and
  - (b) other benefits provided to the executive at the cost of the executive's employer that are of a private nature.
- (5) For the purposes of this Division, allowances for a Public Service senior executive are allowances paid in money, other than allowances excluded by the government sector employment rules.

#### **41 Termination of employment of senior executives**

- (1) The employer of a Public Service senior executive may terminate the employment of the executive at any time, for any or no stated reason and without notice.
- (2) A Public Service senior executive whose employment is so terminated is entitled to the compensation provided in the contract of employment of the executive (and to no other compensation or entitlement for the termination of employment).

- (3) A Public Service senior executive whose employment is so terminated is not to be employed in the public sector during the period specified in the contract of employment to which the compensation relates, unless arrangements have been made for a refund of the proportionate amount of the compensation.
- (4) The employment of the head of a Public Service agency that is related to a Department may not be terminated under this section by the Secretary of the Department unless the Secretary has consulted the Commissioner.
- (5) In this section:

**employment** of a former executive in the public sector includes:

- (a) engagement of the former executive as a consultant or contractor to the employer, and
- (b) engagement of the former executive through a labour hire arrangement with the employer, and
- (c) engagement of a company or partnership that provides the services of the former executive to the employer.

**public sector** means the government sector, the service of a State owned corporation (or a subsidiary), any service excluded by section 5 or a statutory office.

## **Division 5 Public Service employees (other than senior executives)**

### **42 Application of Division**

- (1) This Division applies to Public Service employees other than Secretaries of Departments, heads of other Public Service agencies and other Public Service senior executives.
- (2) The employees to whom this Division applies are referred to in this Division as **Public Service non-executive employees**.

### **43 Kinds of employment**

- (1) Employment as a Public Service non-executive employee may be any one of the following kinds of employment:
  - (a) ongoing employment,
  - (b) temporary employment,
  - (c) casual employment.
- (2) Ongoing employment is employment that continues until the employee resigns or his or her employment is terminated.

- (3) Temporary employment is employment for a temporary purpose.
- (4) Casual employment is employment to carry out irregular, intermittent, short-term, urgent or other work as and when required.
- (5) An employee who is employed to assist a specified judicial officer (or other specified officer of a kind prescribed by the regulations) may be employed on the basis that the person's employment may be terminated when the officer ceases to hold office.

#### **44 Conditions of engagement**

- (1) The engagement of a Public Service non-executive employee may be made subject to conditions notified to the employee on his or her engagement.
- (2) The conditions may include (without limitation) conditions dealing with any of the following matters:
  - (a) probation,
  - (b) citizenship or residency requirements,
  - (c) formal qualifications,
  - (d) security and other clearances,
  - (e) health clearances.
- (3) The imposition of conditions is subject to the government sector employment rules.

#### **45 Employment in classifications of work**

- (1) Public Service non-executive employees are to be employed in a classification of work determined by the head of the Public Service agency in which the person is employed in accordance with this Act and any other Act or law.

**Note—**

See Division 6 in relation to classifications determined under industrial instruments.

- (2) A classification of work extends to any kind of work and any grade of that work.

#### **46 Assignment to roles in work classifications**

- (1) In this section:

**assign** to a role includes assign to a different role.

- (2) The head of a Public Service agency may from time to time assign Public Service non-executive employees of the agency to roles in the agency in the classification of work in which the employees are employed.
- (3) Public Service non-executive employees may be assigned to roles to enable the

flexible deployment of staff resources within the agency and to develop the capabilities of staff.

- (4) A Public Service non-executive employee is not to be assigned to a different role unless the employee has been consulted. The remuneration payable to the employee is not to be reduced because of the assignment to the different role without the consent of the employee.

#### **47 Termination of employment**

- (1) The head of a Public Service agency may, by instrument in writing, terminate the employment of a Public Service non-executive employee of the agency on any of the following grounds if the employment is ongoing employment:
- (a) the employee has failed to meet a condition of engagement as an employee imposed under section 44,
  - (b) the employee lacks, or has lost, an essential qualification for performing the duties of the role assigned to the employee,
  - (c) the performance of the employee is determined under section 68 to be unsatisfactory,
  - (d) the employee is unable to perform the duties of the role assigned to the employee because of physical or mental incapacity,
  - (e) the employee is retired on medical grounds under section 56,
  - (f) the employee has refused to perform duties to which the employee has been duly assigned,
  - (g) the employee has abandoned his or her employment,
  - (h) a finding of misconduct has been made against the employee under section 69,
  - (i) a finding has been made under section 69 that the employee has been convicted of a serious offence,
  - (j) the employee is determined in accordance with the regulations and the government sector employment rules to be excess to the requirements of the relevant part of the agency in which he or she is employed,
  - (k) on any other ground prescribed by the regulations.

The instrument is to set out the ground or grounds on which the employment is terminated.

- (2) The head of a Public Service agency may, by instrument in writing, terminate the employment of a Public Service non-executive employee of the agency at any time if

the employment is not ongoing employment.

#### **48 Matters that government sector employment rules may deal with**

The government sector employment rules may deal with any matter relating to the employment of Public Service non-executive employees, including (without limitation) the following matters:

- (a) the recruitment of any such employees (including the recruitment process and the application of the principle of employment on merit),
- (b) the circumstances in which any such employees may be employed in particular kinds of employment,
- (c) the conditions of engagement of any such employees,
- (d) work level standards for roles in classifications of work in which any such employees are employed,
- (e) methods of job evaluation for the roles of any such employees,
- (f) capabilities for the roles of any such employees,
- (g) the assigning of any such employees to roles,
- (h) acting of any such employees in another classification of work or in a Public Service senior executive role,
- (i) the termination of employment of any such employees,
- (j) dealing with any such employees who are excess employees.

### **Division 6 Industrial relations employer functions**

#### **49 Interpretation and application: Division 6**

- (1) In this Division:

***conditions of employment*** and ***industrial matters*** have the same meanings they have in the [Industrial Relations Act 1996](#).

***Industrial Relations Secretary*** means the Secretary of the Treasury.

**Note—**

An administrative arrangements order may be made under Part 7 of the [Constitution Act 1902](#) to change the reference to the Secretary of the Treasury having regard to future administrative changes in the allocation of Ministerial and departmental responsibilities.

- (2) This Division does not apply to the conditions of employment of the Secretary of a Department or a Public Service senior executive. This subsection does not prevent particular conditions of employment under this Division from being adopted by

reference in the contract of employment of the Secretary or executive.

#### **50 Role of Industrial Relations Secretary in industrial proceedings**

The Industrial Relations Secretary is, for the purposes of any proceedings relating to Public Service employees held before a competent tribunal having jurisdiction to deal with industrial matters, taken to be the employer of Public Service employees.

#### **51 Industrial Relations Secretary may enter into agreements**

- (1) The Industrial Relations Secretary may enter into an agreement with any association or organisation representing a group of Public Service employees with respect to industrial matters.
- (2) Any such agreement binds all Public Service employees in the group affected by the agreement, and no such 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) An agreement under this section is not an enterprise agreement within the meaning of the *Industrial Relations Act 1996*. However, the Industrial Relations Secretary (or any delegate of the Industrial Relations Secretary) may enter into such an enterprise agreement as the employer of the employees concerned.

#### **52 Industrial Relations Secretary may determine employment conditions not otherwise lawfully determined**

- (1) The Industrial Relations Secretary may from time to time make determinations fixing conditions of employment of Public Service employees (or any group of them).
- (2) Conditions of employment that are so determined apply to Public Service employees unless inconsistent with this Act, State industrial instruments or any other law.
- (3) This section does not prevent the head of a Public Service agency from determining conditions of employment of employees of the agency for the purposes of the day to day management of the agency in matters not regulated by State industrial instruments and determinations under this section.
- (4) For the purposes of the recovery of any amount owing under a determination under this section, the determination is taken to be a State industrial instrument.

#### **53 Industrial relations provisions**

- (1) The Industrial Relations Secretary is not subject to the control and direction of any Minister:
  - (a) in determining conditions of employment under this Division, or
  - (b) in dealing with a dispute relating to an industrial matter concerning Public Service



employees.

- (2) The Industrial Relations Secretary may delegate any of his or her functions under this Division (other than this power of delegation) to the head of a Public Service agency or any Public Service employee or to a statutory officer.
- (3) The Industrial Relations Secretary has the following functions:
  - (a) advising the Government on appropriate strategies and policies regarding employment conditions and industrial relations in the government sector,
  - (b) monitoring the implementation of Government strategies and policies on employment conditions and industrial relations in the government sector and assisting with the implementation of those strategies and policies.

The Industrial Relations Secretary must consult with the Public Service Commissioner before exercising any function under this subsection.

- (4) The head of a Public Service agency is to notify the Industrial Relations Secretary of such industrial matters affecting the agency as the Industrial Relations Secretary specifies in a notice given to the head of the agency.
- (5) A Public Service employee who is authorised by the Industrial Relations Secretary for the purposes of this subsection may:
  - (a) enter the premises of any Public Service agency, and
  - (b) require the production of and examine any documents in the custody of any Public Service employee, and
  - (c) require any Public Service employee to answer questions,for the purposes of enabling the Industrial Relations Secretary to exercise his or her functions under this Division.

## **Division 7 Additional Public Service employment provisions**

### **54 Entitlement to extended and other leave**

Public Service employees have the entitlements to extended and other leave prescribed by the regulations.

### **55 Resignation**

A Public Service employee may resign his or her employment by written notice to the person who exercises employer functions in relation to the employee.

### **56 Retirement on medical grounds**

The head of a Public Service agency may retire a person who is an employee of the

agency if:

- (a) the person is found to be unfit to perform or incapable of performing the duties of the person's employment, and
- (b) the person'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 person, or from causes within the person's control.

### **57 Crown's dispensation with services**

- (1) The right or power of the Crown to dispense with the services of any Public Service employee, as it existed immediately before the commencement of this section, is not abrogated or restricted by any of the provisions of this Act.
- (2) A Public Service employee is not, except as provided by this or any other Act, entitled to any compensation as a result of the person's services being dispensed with.

### **58 Industrial or legal proceedings excluded**

- (1) In this section, **executive employee** means the Secretary of a Department or other Public Service senior executive, and **non-executive employee** means a Public Service employee other than an executive employee.
- (2) In this section, a reference to the employment of an executive employee is a reference to:
  - (a) the engagement of, or failure to engage, a person as an executive employee, or
  - (b) the assignment or re-assignment of the executive employee to a role in a band, or
  - (c) the removal, retirement, termination of employment or other cessation of employment of an executive employee, or
  - (d) any disciplinary proceedings or action taken against an executive employee, or
  - (e) the remuneration or other conditions of employment of an executive employee.
- (3) The employment of an executive 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](#).
- (4) Parts 6, 7 and 9 of Chapter 2 of the [Industrial Relations Act 1996](#) do not apply to or in respect of the employment of an executive employee.
- (5) 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 executive

employees. This subsection does not prevent the regulations or other statutory instruments or any contract of employment from applying the provisions of any such industrial instrument to the employment of an executive employee.

- (6) The engagement of, or the failure to engage, a person as a non-executive employee, or any matter, question or dispute relating to any such engagement (or failure to engage), is not an industrial matter for the purposes of the *Industrial Relations Act 1996*.
- (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 a matter that is declared by this section not to be an industrial matter for the purposes of the *Industrial Relations Act 1996*.
- (8) Nothing in this section prevents any of the following proceedings from being brought by an employee of a Public Service agency in relation to the employment of another employee of any Public Service agency:
  - (a) proceedings under Part 9 of the *Anti-Discrimination Act 1977* in relation to a complaint under that Part,
  - (b) proceedings under section 213 of the *Industrial Relations Act 1996* to enforce the provisions of section 210 (Freedom from victimisation) of that Act.

**59 How references to employees etc of statutory body to be construed in other Acts, instruments and contracts**

- (1) In any other Act, in any statutory or other instrument, or in any contract or agreement (whether enacted, made or executed before or after the commencement of this section):
  - (a) a reference to an officer or employee, or a member of staff, of a statutory body is to be read as including a reference:
    - (i) to a Public Service employee who is employed to enable the statutory body to exercise its functions, and
    - (ii) to any other person whose services the statutory body makes use of (whether by way of secondment or otherwise), and
  - (b) a reference to a statutory body in its capacity as an employer of persons is, to the extent that the persons concerned comprise persons employed in the Public Service to enable the statutory body to exercise its functions, to be read as including a reference to the Government of New South Wales or, as the case requires, to the head of the Public Service agency in which the persons are employed.
- (2) This section is subject to the regulations.

## 60 Employer costs for Public Service staff of statutory bodies

- (1) The Minister or the Treasurer may give directions to a statutory body requiring the payment by the statutory body, on behalf of the Government of New South Wales, of the remuneration and other employment-related costs (such as superannuation, workers compensation and public liability insurance) in respect of those Public Service employees who are employed to enable the statutory body to exercise its functions.
- (2) If a fund is established under any Act in connection with a statutory body and the provisions of that Act authorise the payment of amounts from the fund in connection with the employment of persons, the statutory body is authorised to apply the fund for the purposes of any payment required to be made by the body under subsection (1).

## 61 Civil liability with respect to staff of statutory bodies

If:

- (a) a person is employed in the Public Service to enable a statutory body to exercise its functions, and
- (b) the Government of New South Wales is, as the person's employer, proceeded against for any negligence or other tort of the person (whether the damages are recoverable in an action for tort or breach of contract or in any other action), and
- (c) the statutory body is entitled under a policy of insurance or indemnity to be indemnified in respect of liability that the body may incur in respect of that negligence or other tort,

the Government is subrogated to the rights of the statutory body under that policy in respect of the liability incurred by the Government arising from that negligence or other tort.

## 62 Operation of privacy legislation

A group of Public Service employees employed to enable a statutory body to exercise its functions is, for the purposes of the [Privacy and Personal Information Protection Act 1998](#) and the [Health Records and Information Privacy Act 2002](#), taken to be part of the statutory body.

## Part 5 Government sector employees

### 63 Workforce diversity

- (1) In this section:

**government sector agency** includes the service of a State owned corporation, and any university or other service or agency prescribed by the regulations.

**workforce diversity** includes (but is not limited to) diversity of the workforce in

respect of gender, cultural and linguistic background, Aboriginal people and people with a disability.

- (2) The head of a government sector agency is responsible for workforce diversity within the agency and for ensuring that workforce diversity is integrated into workforce planning in the agency.
- (3) The government sector employment rules may deal with workforce diversity in any government sector agency. The head of the agency is to ensure that any obligations of the agency under those rules are complied with.
- (4) The Commissioner is to include in annual or other reports under Part 3 periodic reports on workforce diversity across government sector agencies.
- (5) The obligations of those rules prevail over any inconsistent obligations under the *Anti-Discrimination Act 1977*.

#### **64 Employee transfers and secondments**

- (1) The government sector employment rules may deal with the transfer of employees between government sector agencies by way of secondment or permanent transfers of employees (whether or not at the request of the employees).

**Note—**

See also Part 4 with respect to assignment of Public Service senior executives to roles.

- (2) Unless a transfer is initiated by the employee, the person who initiates a transfer is required to consult the employee.
- (3) The remuneration of an employee who is transferred is not to be reduced without the approval of the employee.
- (4) The government sector employment rules are to set out the circumstances in which employees have the right to have a transfer they have not initiated reviewed.
- (5) In this section, **government sector agency** includes:
  - (a) the service of a State owned corporation (or a subsidiary), and
  - (b) any service excluded by section 5 (but only for transfers initiated by the employee).

#### **65 Cross-agency employment**

- (1) A person may be employed in 2 or more government sector agencies (whether those agencies are Public Service agencies, other agencies or a combination of Public Service agencies and other agencies).
- (2) If the person is employed in 2 or more government sector agencies, the heads of

those agencies may determine that the person is to be regarded as employed in one of those agencies for the purposes of all or any conditions of employment of the person (including for the purposes of provisions of or made under this Act or any other Act relating to the employment of the person).

**66 Temporary assignments of staff between government sector agencies and other relevant bodies**

(1) Arrangements may be made under this section under which:

- (a) a person who is employed in a government sector agency is temporarily assigned to carry out work in or for another government sector agency, or
- (b) a person who is employed in a government sector agency is temporarily assigned to carry out work in or for a non-government sector body, or
- (c) a person who is employed in or by a non-government sector body is temporarily assigned to carry out work in or for a government sector agency.

Any such assignment may be on a full-time or part-time basis.

(2) An arrangement for a temporary assignment under this section is to be made between the heads of the government sector agencies or between the head of the government sector agency and the person responsible for the employment of persons in or by the non-government sector body.

(3) A person employed in or by a non-government sector body (other than a local council or State owned corporation) is not to be temporarily assigned under this section to carry out work in or for a government sector agency unless:

(a) the head of the agency is satisfied that the temporary assignment is justified because of the special skills of the person or the special circumstances of the case, and

(b) the period of any one assignment does not exceed 2 years.

(4) The government sector employment rules may deal with temporary assignments under this section.

(5) A person's employment in a government sector agency (including the continuity of that employment) is not affected by the temporary assignment of the person under this section.

(6) In this section:

**non-government sector body** means any of the following:

- (a) a local council,

- (b) a State owned corporation,
- (c) a private sector entity (including a not-for-profit sector entity),
- (d) a public authority or government agency of the Commonwealth or of another State or Territory,
- (e) a political office holder under the *Members of Parliament Staff Act 2013* (except in relation to an assignment to carry out work in or for a government sector agency),
- (f) a university.

#### **67 Performance management systems**

- (1) The head of a government sector agency is responsible for developing and implementing a performance management system with respect to employees of the agency.
- (2) The government sector employment rules may deal with the core requirements of any such performance management system.

#### **68 Unsatisfactory performance of government sector employees**

- (1) The government sector employment rules may deal with the procedural requirements for dealing with unsatisfactory performance (consistently with procedural fairness).
- (2) If the performance of an employee of a government sector agency is determined to be unsatisfactory in accordance with those rules, the head of the agency may (without limitation on relevant action) take any of the following actions:
  - (a) terminate the employment of the employee (after giving the employee an opportunity to resign),
  - (b) reduce the remuneration payable to the employee,
  - (c) reduce the classification or grade of the employee,
  - (d) assign the employee to a different role.

#### **69 Misconduct—Public Service and other prescribed government sector employees**

- (1) In this section:

**government sector agency** means:

- (a) a Public Service agency, and
- (b) any other government sector agency prescribed by the regulations for the purposes of this section.

**misconduct** extends to the following:

- (a) a contravention of this Act or an instrument made under this Act,
- (b) taking any detrimental action (within the meaning of the *Public Interest Disclosures Act 1994*) against a person that is substantially in reprisal for the person making a public interest disclosure within the meaning of that Act,
- (c) taking any action against another employee of a government sector agency that is substantially in reprisal for a disclosure made by that employee of the alleged misconduct of the employee taking that action.

The subject matter of any misconduct by an employee may relate to an incident or conduct that happened while the employee was not on duty or before his or her employment.

**serious offence** means an offence punishable by imprisonment for 12 months or more.

- (2) The head of a government sector agency is responsible for dealing with any misconduct by employees of the agency (or any conviction for a serious offence by any such employee) in accordance with this section.
- (3) The government sector employment rules may deal with the following:
  - (a) misconduct by employees of government sector agencies or the conviction of any such employees for a serious offence,
  - (b) the procedural requirements for dealing with allegations of misconduct by employees of government sector agencies (consistently with procedural fairness).
- (4) If, in accordance with those rules, there is a finding of misconduct by an employee of a government sector agency or any such employee is found to have been convicted of a serious offence, the head of the agency may take any of the following actions:
  - (a) terminate the employment of the employee (without giving the employee an opportunity to resign),
  - (b) terminate the employment of the employee (after giving the employee an opportunity to resign),
  - (c) impose a fine on the employee (which may be deducted from the remuneration payable to the employee),
  - (d) reduce the remuneration payable to the employee,
  - (e) reduce the classification or grade of the employee,
  - (f) assign the employee to a different role,
  - (g) caution or reprimand the employee.



- (5) Proceedings and actions under this section may be taken or continued despite the employee resigning or otherwise ceasing to be an employee of the agency concerned. Any such action may be expressed to be a termination of employment even if the person has ceased to be an employee.
- (6) This section does not apply to any employees of a government sector agency who are excluded by the regulations.

**Note—**

See section 82 (2) for inquiries into conduct of heads of agencies.

**70 Suspension of employees from duty pending decision in relation to misconduct, criminal charge or corrupt conduct**

- (1) In this section:

**government sector agency** means:

- (a) a Public Service agency, and
- (b) any other government sector agency prescribed by the regulations for the purposes of this section.

- (2) If:

- (a) an allegation of misconduct by an employee of a government sector agency is being dealt with by the head of the agency, or
- (b) an employee of a government sector agency is charged with a serious offence referred to in section 69,

the head of the agency may suspend the employee from duty until the allegation of misconduct or the criminal charge has been dealt with and any subsequent action has been taken by the head of the agency.

- (3) If the Independent Commission Against Corruption:

- (a) has made a corrupt conduct finding against an employee of a government sector agency of a kind referred to in section 114A of the *Independent Commission Against Corruption Act 1988*, or
- (b) is conducting an investigation into the conduct of any such employee that may lead to such a finding,

the head of the agency may suspend the employee from duty until the completion of any such investigation and, in the case of any such finding, until any subsequent action has been taken by the head of the agency.

- (4) The head of the agency may direct that any remuneration payable to an employee

while the employee is suspended from duty under this section is to be withheld.

(5) If:

(a) the head of the agency takes action against the employee for the misconduct or the corrupt conduct finding, or

(b) the employee is convicted of the offence concerned,

any remuneration so withheld is forfeited to the State unless the head of the agency otherwise directs or that remuneration was due to the employee in respect of a period before the suspension was imposed.

(6) The head of the agency may at any time remove a suspension under this section.

### **71 Employees contesting State elections**

(1) If a person who is employed in any government sector agency is nominated for election to the Legislative Assembly or Legislative Council, the person is to be granted leave of absence until the day on which the result of the election is declared.

(2) If the person is elected, the person is required to resign from the government sector agency concerned.

(3) Unless the person is entitled to leave with pay (and duly applies for that leave), any leave of absence under this section is to be leave without pay.

(4) In this section:

**government sector agency** includes the service of a State owned corporation (or a subsidiary) or any service excluded by section 5.

### **72 Re-employment of employees resigning to contest Commonwealth elections**

(1) If a person who is employed in any government sector agency:

(a) resigns in writing from the government sector agency and the resignation takes effect not earlier than 3 months before polling day at an election of a member or members of either House of Parliament of the Commonwealth and before the day fixed for nominations for the election, and

(b) includes in the resignation notice of the person's intention to become a candidate at that election, and

(c) becomes a candidate at that election, and

(d) fails to be elected at that election, and

(e) makes written application for re-employment in the government sector agency concerned within 2 months after the declaration of the result of that election,

the person is entitled to be re-employed in the government sector agency not lower in remuneration than the current remuneration for the employment of the person at the date of the person's resignation (or a similar employment).

- (2) A person, on being re-employed under this section, is taken:
- (a) to have never resigned from the government sector agency concerned, and
  - (b) to have been on leave without pay during the period between resignation and re-employment.
- (3) In this section:

**government sector agency** includes the service of a State owned corporation (or a subsidiary) or any service excluded by section 5.

### **73 Appointment to position in government sector not affected by additional appointment**

- (1) The doctrine of incompatibility of office:
- (a) does not operate to prevent the holder of a position in any government sector agency (the **original position**) from being appointed to another position in that or any other government sector agency (the **additional position**), and
  - (b) does not operate to effect or require the holder of the original position to surrender or vacate that position as a result of the appointment to the additional position.
- (2) This section:
- (a) applies even if the original position or the additional position is held on an acting or temporary basis, and
  - (b) extends to an appointment made before the commencement of this section (and applies to such an appointment as if this section had been in force when the appointment was made).

### **74 Excess employees—jurisdiction of Industrial Relations Commission**

- (1) In this section:
- excess employee** means an employee of a government sector agency who is determined by the head of the agency to be excess to the requirements of the relevant part of the agency in which the employee is employed, and includes an employee of a government sector agency who has been notified by the head of the agency:
- (a) that his or her role, position or work in the agency has been abolished or terminated, and

(b) that he or she is an excess or displaced employee.

Any such person does not cease to be an excess employee merely because the person is engaged (on a temporary basis) to carry out other work in the same or any other government sector agency.

**termination** of the employment of a person includes dispensing with the services of the person.

- (2) Division 2 of Part 9 of Chapter 2 of the *Industrial Relations Act 1996* does not apply to contracts of employment of employees of any government sector agency that are alleged to be unfair for any reason relating to excess employees, including the following:
- (a) when and how employees become excess employees,
  - (b) the entitlements of excess employees (including with respect to redeployment, employment retention, salary maintenance and voluntary or other redundancy payments),
  - (c) the termination of the employment of excess employees.

## **Part 6 Removal of statutory officers**

### **75 Statutory officers to whom Part applies**

- (1) This Part applies to:
- (a) 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, and
  - (b) a director or chief executive officer of a statutory State owned corporation.
- (2) This Part applies whether the person holds office on a full-time or part-time basis.
- (3) This Part does not apply to a person merely because an Act provides that the person ceases to hold office on reaching a particular age.

### **76 Statutory officers to whom Part does not apply**

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 NSW Police Force, or
- (f) the Secretary of a Department or other Public Service senior executive, or
- (g) 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
- (h) the Crown Advocate, or
- (i) an Assistant Commissioner for the Independent Commission Against Corruption or any other officer of the Commission, or
- (j) the Public Service Commissioner.

**77 Removal from office of statutory officers to whom Part applies**

- (1) The Governor may remove a person to whom this Part applies from office at any time for any or no stated reason and without notice.
- (2) This section does not prevent any such person from being removed from office apart from this Act.

**78 Compensation for office holder following removal**

- (1) This section applies to a person who is removed from an office under this Part, 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) the period starting from the person's removal from office and ending when the person's term of office would have expired,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 is not to be employed in the public sector during the period so specified, unless arrangements have been made for a refund of the proportionate amount of the compensation.
- (8) In this section:

**employment** of a person in the public sector includes:

- (a) engagement of the person as a consultant or contractor to the employer, and
- (b) engagement of the person through a labour hire arrangement with the employer, and
- (c) engagement of a company or partnership that provides the services of the person to the employer.

**public sector** means the government sector, the service of a State owned corporation (or a subsidiary), any service excluded by section 5 or a statutory office.

## **79 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) Parts 6 and 9 of Chapter 2 of the *Industrial Relations Act 1996* do not apply to or in respect of the removal of a person from office under this Part.
- (3) 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.
- (4) This Part applies to persons holding office at the commencement of this Part, as well as to persons appointed to an office afterwards.

## **Part 7 Miscellaneous**

### **80 Act to bind Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

### **81 Delegation by Minister**

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

(2) In this section:

**authorised person** means the holder of a statutory office, a person employed in the government sector or a person authorised by the regulations.

## 82 Special Ministerial inquiries

- (1) The Minister may, in the case of any matter relating to a government sector agency or a NSW government agency, direct such person as the Minister specifies in the direction to conduct a special inquiry into the matter.
- (2) A special inquiry may (without limitation) be conducted under this section into a matter involving the conduct or performance of the head of a government sector agency or a Public Service senior executive (whether or not the person has ceased to be such an agency head or executive).
- (3) A person conducting a special inquiry may enter the premises of any government sector agency or NSW government agency in connection with the inquiry.
- (4) 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*. 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 chairperson of a commission by the *Royal Commissions Act 1923*.
- (5) The provisions of the *Royal Commissions Act 1923* (except section 13 and Division 2 of Part 2) apply, with necessary modifications:
  - (a) to a special inquiry, and
  - (b) to any witness or person summoned by or appearing before the inquiry or providing material to the inquiry.
- (6) If the person conducting a special inquiry agrees, an agent (including an Australian legal practitioner) may represent a person, government sector agency or other agency at the inquiry.
- (7) 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.
- (8) 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.
- (9) 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 with a copy of the report.
- (10) The 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 the Minister was provided with a copy of the report.

**83 Inquiries by Public Service Commissioner or DPC Secretary into government sector agencies**

- (1) In this section:

***DPC Secretary*** means the Secretary of the Department of Premier and Cabinet.

- (2) The Commissioner or DPC Secretary, or a person authorised by the Commissioner or DPC Secretary, may conduct an inquiry into any matter relating to the administration or management of a government sector agency.
- (3) An inquiry is not to be conducted by or on behalf of the DPC Secretary into any matter that is the subject of an inquiry by or on behalf of the Commissioner, except with the concurrence of the Commissioner.
- (4) The Commissioner or DPC Secretary, or a person authorised by the Commissioner or DPC Secretary, may, for the purposes of conducting an inquiry under this section:
  - (a) enter and inspect the premises of a government sector agency, and
  - (b) require the production of, and take copies of, any documents in the custody of an employee of the government sector agency, and
  - (c) for the purposes of further examination, take possession of, and remove, any of those documents, and
  - (d) require an employee of the government sector agency to answer questions, and
  - (e) require an employee of the government sector agency to provide such assistance and facilities as is or are necessary to enable the Commissioner, Secretary or authorised person to exercise functions under this section.

A reference in this subsection to an employee of a government sector agency includes a reference to any person who is engaged by the agency (whether directly or indirectly) under a contract for services.

- (5) This section does not affect the operation of section 82.



- (6) The DPC Secretary cannot conduct (or authorise the conduct of) an inquiry under this section into the NSW Police Force.

#### **84 Minister's powers to control staff and work of Department not affected**

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

#### **85 Operation of industrial relations and superannuation legislation**

- (1) This Act does not affect the operation of the *Industrial Relations Act 1996*. This subsection does not limit section 58 (Industrial or legal proceedings excluded) and section 74 (Excess employees—jurisdiction of Industrial Relations Commission).
- (2) This Act does not affect the operation of provisions of the *Superannuation Act 1916* or any other superannuation legislation relating to retirement and other cessation of employment (and to entitlement to pensions and other benefits) of employees to whom this Act applies.

#### **86 Appointment to other statutory offices**

Nothing in this Act prevents the head of a Public Service agency or other Public Service employee from also being appointed to a statutory office under any Act.

#### **87 Proceedings for offences**

Proceedings for an offence against the regulations may be dealt with summarily before the Local Court.

#### **88 Regulations**

- (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) the employment of persons in the government sector (including employment in special cases, leave, redeployment, mobility and termination),
  - (b) any matter that may be dealt with in the government sector employment rules (in which case the regulations prevail to the extent of any inconsistency with those rules).
- (3) The regulations may preclude an employee of a government sector agency who receives a severance or redundancy payment because of a cessation of employment from being engaged in the public sector (referred to in section 41) during a period after that cessation of employment unless arrangements have been made for a refund of a proportionate amount of the payment.

- (4) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

## **89 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Public Service agencies**

(Section 22)

### **Note—**

Section 47A of the [Constitution Act 1902](#) precludes a statutory body or statutory officer from employing staff unless specifically authorised to do so by legislation.

Section 21 of this Act enables staff to be employed under this Act in Departments or other Public Service agencies to enable Ministers, statutory bodies or statutory officers to exercise their functions. For example, the Public Service agencies referred to in this Schedule as staff agencies comprise persons who are employed under this Act to enable the statutory body included in the name of the agency to exercise its functions.

Under section 59 of this Act, the persons employed in a Department or other Public Service agency to enable a statutory body to exercise functions may be referred to as the officers or employees, or members of staff, of the statutory body.

## **Part 1 Departments**

Department of Education

Department of Family and Community Services

Department of Finance, Services and Innovation

Ministry of Health

Department of Industry, Skills and Regional Development

Department of Justice

Department of Planning and Environment

Department of Premier and Cabinet

Department of Transport

The Treasury

## Part 2 Executive agencies related to Departments

The agency heads marked with an asterisk are statutory officers and do not hold offices established by this Act in the Public Service.

Executive agency	Head of agency	Related Department
Art Gallery of New South Wales Trust Staff Agency	Director of the Art Gallery of New South Wales	Department of Justice. The Minister administering the <i>Art Gallery of New South Wales Act 1980</i> is to exercise the employer functions of the Government in relation to the Director.
Australian Museum Trust Staff Agency	Director of the Australian Museum	Department of Justice. The Minister administering the <i>Australian Museum Trust Act 1975</i> is to exercise the employer functions of the Government in relation to the Director.
Barangaroo Delivery Authority Staff Agency	Chief Executive Officer of the Barangaroo Delivery Authority	Department of Premier and Cabinet
Crown Solicitor's Office	Crown Solicitor	Department of Justice
Destination NSW Staff Agency	Chief Executive Officer of Destination NSW	Department of Premier and Cabinet. The Minister administering the <i>Destination NSW Act 2011</i> is to exercise the employer functions of the Government in relation to the Chief Executive Officer.
Office of Environment and Heritage	Chief Executive of the Office	Department of Planning and Environment
Fire and Rescue NSW	Commissioner of Fire and Rescue NSW	Department of Justice. The Minister administering the <i>Fire Brigades Act 1989</i> is to exercise the employer functions of the Government in relation to the Commissioner.
Health Professional Councils Authority Office	Secretary of the Ministry of Health	Ministry of Health
Home Care Service Staff Agency	Secretary of the Department of Family and Community Services	Department of Family and Community Services
Infrastructure NSW Staff Agency	Chief Executive Officer and Co-ordinator General, Infrastructure NSW	Department of Premier and Cabinet. The Minister administering the <i>Infrastructure NSW Act 2011</i> is to exercise the employer functions of the Government in relation to the Chief Executive Officer and Co-ordinator General.

Library Council of New South Wales Staff Agency	State Librarian	Department of Justice. The Minister administering the <a href="#">Library Act 1939</a> is to exercise the employer functions of the Government in relation to the State Librarian.
Office of Local Government	Chief Executive of the Office	Department of Planning and Environment
Local Land Services Staff Agency	Chair of the Board of Chairs under the <a href="#">Local Land Services Act 2013</a>	Department of Industry, Skills and Regional Development
Mental Health Commission Staff Agency	Secretary of the Ministry of Health	Ministry of Health
Multicultural NSW Staff Agency	Chief Executive Officer of Multicultural NSW	Department of Family and Community Services. The Minister administering the <a href="#">Multicultural NSW Act 2000</a> is to exercise the employer functions of the Government in relation to the Chief Executive Officer.
Natural Resources Commission Staff Agency	*Commissioner for the Commission	Department of Premier and Cabinet
NSW Institute of Psychiatry Staff Agency	Secretary of the Ministry of Health	Ministry of Health
Office of the NSW Rural Fire Service	Commissioner of the NSW Rural Fire Service	Department of Justice. The Minister administering the <a href="#">Rural Fires Act 1997</a> is to exercise the employer functions of the Government in relation to the Commissioner.
Office of the NSW State Emergency Service	Commissioner of the NSW State Emergency Service	Department of Justice. The Minister administering the <a href="#">State Emergency Service Act 1989</a> is to exercise the employer functions of the Government in relation to the Commissioner.
Parliamentary Counsel's Office	Parliamentary Counsel	Department of Premier and Cabinet
SAS Trustee Corporation Staff Agency	*Chief Executive Officer of the SAS Trustee Corporation	The Treasury
Service NSW	Chief Executive Officer of Service NSW	Department of Finance, Services and Innovation
Office of Sport	Chief Executive of the Office	Department of Premier and Cabinet
Sydney Cricket and Sports Ground Trust Staff Agency	Secretary of the Sydney Cricket and Sports Ground Trust	Department of Premier and Cabinet

Sydney Opera House Trust Staff Agency	Chief Executive of the Sydney Opera House Trust	Department of Justice. The Minister administering the <i>Sydney Opera House Trust Act 1961</i> is to exercise the employer functions of the Government in relation to the Chief Executive.
Trustees of the Museum of Applied Arts and Sciences Staff Agency	Director of the Museum of Applied Arts and Sciences	Department of Justice. The Minister administering the <i>Museum of Applied Arts and Sciences Act 1945</i> is to exercise the employer functions of the Government in relation to the Director.
UrbanGrowth NSW Development Corporation Staff Agency	Chief Executive of the UrbanGrowth NSW Development Corporation	Department of Planning and Environment. The Minister administering the <i>Growth Centres (Development Corporations) Act 1974</i> is to exercise the employer functions of the Government in relation to the Chief Executive.

### Part 3 Separate agencies

The agency heads marked with an asterisk are statutory officers and do not hold offices established by this Act in the Public Service.

<b>Agency</b>	<b>Head of agency</b>
Board of Studies, Teaching and Educational Standards Staff Agency	*President of the Board of Studies, Teaching and Educational Standards
Office of the Children’s Guardian	*Children’s Guardian
Office of the Director of Public Prosecutions	*Director of Public Prosecutions
Environment Protection Authority Staff Agency	*Chairperson of the Environment Protection Authority
Health Care Complaints Commission Staff Agency	*Commissioner of the Health Care Complaints Commission
Independent Pricing and Regulatory Tribunal Staff Agency	*Chairperson of the Independent Pricing and Regulatory Tribunal
Independent Transport Safety Regulator Staff Agency	*Chief Executive of the Independent Transport Safety Regulator
Information and Privacy Commission	*Information Commissioner
Legal Aid Commission Staff Agency	*Chief Executive Officer of the Legal Aid Commission
New South Wales Crime Commission Staff Agency	*Commissioner for the New South Wales Crime Commission
New South Wales Electoral Commission Staff Agency	*Electoral Commissioner

Ombudsman's Office	*Ombudsman
Police Integrity Commission Staff Agency	*Commissioner for the Police Integrity Commission
Public Service Commission	* Public Service Commissioner
TAFE Commission (Senior Executives) Staff Agency	*Managing Director of the TAFE Commission

## Schedule 2 Provisions relating to Public Service Commissioner

(Section 9)

### 1 Basis of office of Commissioner

- (1) The office of Commissioner is a full-time office and the holder of the office is required to hold it on that basis, except to the extent permitted by the Governor.
- (2) The office of Commissioner is a statutory office under this Act and the holder of the office is not employed in the Public Service.

### 2 Term of office

- (1) Subject to this Schedule, the Commissioner holds office for such term not exceeding 7 years as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A person may not hold the office of Commissioner for terms totalling more than 7 years.

### 3 Remuneration

The Commissioner is entitled to be paid:

- (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and
- (b) such travelling and subsistence allowances as the Premier may from time to time determine.

### 4 Vacancy in office

The office of Commissioner becomes vacant if the holder:

- (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 Governor, or
- (d) 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

- (e) becomes a mentally incapacitated person, or
- (f) 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, or
- (g) is removed from office by the Governor under section 9.

## **5 Filling of vacancy**

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

## **6 Appointment of acting Commissioner**

- (1) The Premier may, from time to time, appoint a person to act in the office of the Commissioner during the illness or absence of the Commissioner or during a vacancy in the office of the Commissioner. The person, while so acting, has all the functions of the Commissioner and is taken to be the Commissioner (including as a member of the Public Service Commission Advisory Board).
- (2) The Premier may, at any time, remove a person from office as acting Commissioner.
- (3) An acting Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Premier may from time to time determine.

## **7 Personal liability of Commissioner**

A matter or thing done (or omitted to be done) by:

- (a) the Commissioner, or
- (b) a person acting under the direction of the Commissioner,

does not, if the matter or thing was done (or omitted to be done) in good faith for the purposes of executing this Act (or any other Act that confers functions on the Commissioner), subject the Commissioner or a person so acting personally to any action, liability, claim or demand.

## **Schedule 3 Members and procedure of Public Service Commission**

## Advisory Board

(Section 18)

### Part 1 Preliminary

#### 1 Definitions

In this Schedule:

**appointed member** means the Chairperson of the Advisory Board or other member of the Advisory Board who is appointed by the Premier.

**member** means an appointed or ex-officio member of the Advisory Board.

### Part 2 Members

#### 2 Terms of office of appointed members

- (1) Subject to this Schedule and the regulations, an appointed member holds office for the period (not exceeding 3 years) specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A person may not be an appointed member for consecutive terms totalling more than 6 years unless the Premier determines otherwise.

#### 3 Remuneration of appointed members

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Premier may from time to time determine in respect of the member.

#### 4 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 Premier, or
  - (d) is removed from office by the Premier under this clause, or
  - (e) is absent from 3 consecutive meetings of the Advisory Board of which reasonable notice has been given to the member personally or by post, except on leave granted by the Premier or unless the member is excused by the Premier for having been absent from those meetings, or
  - (f) 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

(g) becomes a mentally incapacitated person, or

(h) 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 Premier may remove an appointed member from office at any time.

## **5 Filling of vacancy in office of appointed member**

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

## **6 Appointed members not prevented from holding other offices**

If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as an appointed member.

## **7 Appointed member holds statutory office**

An appointed member holds a statutory office and is not employed in the Public Service.

## **8 Disclosure of pecuniary or other interests**

(1) If:

(a) a member has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered at a meeting of the Advisory Board, and

(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Advisory Board.

(2) A disclosure by a member at a meeting of the Advisory Board that the member:

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause must be recorded by the Advisory Board and the record must be available at all reasonable hours to inspection by any person.

(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Premier or the Advisory Board otherwise determines:

(a) be present during any deliberation of the Advisory Board with respect to the matter, or

(b) take part in any decision of the Advisory Board with respect to the matter.

(5) For the purposes of the making of a determination by the Advisory Board under subclause (4), a member who has a direct or indirect pecuniary or other interest in a matter to which the disclosure relates must not:

(a) be present during any deliberation of the Advisory Board for the purpose of making the determination, or

(b) take part in the making by the Advisory Board of the determination.

(6) A contravention of this clause does not invalidate any decision of the Advisory Board.

## **9 Personal liability of members**

A matter or thing done (or omitted to be done) by:

(a) the Advisory Board, or

(b) a person acting under the direction of the Advisory Board,

does not, if the matter or thing was done (or omitted to be done) in good faith for the purposes of executing this Act (or any other Act that confers functions on the Advisory Board), subject a member of the Advisory Board or a person so acting personally to any action, liability, claim or demand.

## **Part 3 Procedure**

### **10 General procedure**

The procedure for the calling of meetings of the Advisory Board and for the conduct of

business at those meetings is, subject to this Act and the regulations, to be as determined by the Advisory Board.

### **11 Quorum**

The quorum for a meeting of the Advisory Board is a majority of the members for the time being.

### **12 Presiding member**

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

### **13 Voting**

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

### **14 Transaction of business outside meetings or by telephone**

- (1) The Advisory Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Advisory Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Advisory Board.
- (2) The Advisory Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Advisory Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Advisory Board.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## 15 Frequency of meetings

The Advisory Board is to meet at least on a quarterly basis each year (but no more than 6 times each year).

## Schedule 4 Savings, transitional and other provisions

### Part 1 General

#### 1 Definition

In this Schedule:

**former Act** means the *Public Sector Employment and Management Act 2002*.

#### 2 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (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 on the NSW legislation website, 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 or omitted to be done before the date of its publication.
- (4) Any such provision has effect despite anything to the contrary in this Schedule.
- (5) The regulations may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.

### Part 2 Provisions consequent on enactment of this Act

#### 3 Continuation in office of Public Service Commissioner

- (1) The person holding office as the Public Service Commissioner under the former Act immediately before the repeal of that Act is taken to have been appointed as the Public Service Commissioner under this Act for the balance of the Commissioner's term of office under the former Act.

- (2) For the purpose of determining the maximum total terms that a person may hold office as Public Service Commissioner under this Act, a term of office under the former Act is taken to be a term of office under this Act.

#### **4 Continuation in office of members of Public Service Commission Advisory Board**

- (1) A person holding office as a member of the Public Service Commission Advisory Board under the former Act immediately before the repeal of that Act is taken to have been appointed as a member of the Public Service Commission Advisory Board under this Act for the balance of the member's term of office under the former Act.
- (2) For the purpose of determining the maximum total terms that a person may hold office as a member of the Public Service Commission Advisory Board under this Act, a term of office under the former Act is taken to be a term of office under this Act.

#### **5 Existing employees of the Government Service become employees of Public Service**

- (1) A person who was employed in the Government Service of New South Wales immediately before the repeal of the former Act is, on that repeal, taken to be employed in the Public Service of New South Wales in the same kind of employment. For that purpose, employment (other than for a term) in an officer's position or in a permanent position is the same kind of employment as ongoing employment.
- (1A) Subclause (1) does not apply to any persons employed in the Government Service of New South Wales who are, on the commencement of this Act, transferred to the Transport Service of New South Wales by an administrative arrangements order under the *Constitution Act 1902*. Division 4 of Part 7 of the *Transport Administration Act 1988* applies to any such transferred staff as if they had been transferred by an order under that Division.
- (2) The application of the provisions of this Act, the regulations and the government sector employment rules to any such person is subject to the provisions of this Schedule.
- (3) The repeal of the former Act does not affect the continuity of service of a person taken to be employed in the Public Service under this clause, any accrued rights to leave under the former Act or any accrual of rights to leave under this Act.
- (4) A person who is taken to be employed in the Public Service under this clause is taken to be employed in a role or classification of work that corresponds to the kind and grade of work of the person's position or work on the repeal of the former Act.
- (5) The continued employment of a person taken to be employed in the Public Service under this clause who held a Chief or Senior Executive position or a senior officer position (or equivalent position) under the former Act is subject to clauses 6-8.
- (6) (Repealed)

- (7) This clause does not apply to persons employed under the former Act as special temporary employees.

## 6 Secretaries of Departments—transitional arrangements

- (1) In this clause, **former principal Department** means a principal Department of the Public Service listed in Division 1 of Part 1 of Schedule 1 to the former Act immediately before the repeal of the former Act.
- (2) A person holding office as the head of a former principal Department immediately before the repeal of the former Act continues in office as the Secretary of the corresponding Department under this Act:

- (a) for the balance of the person's term of office under the former Act, or
- (b) for the period of 12 months after the commencement of this Act,

whichever is the longer period. However, the person ceases to hold office as Secretary under this subclause if the person's employment is terminated under section 41 of this Act (or otherwise ceases) or if the person is subsequently appointed as Secretary of the Department under this Act.

- (3) A Department under this Act that is declared, by an administrative arrangements order under the [Constitution Act 1902](#), to be the successor and a continuation of a former principal Department is the corresponding Department of that former principal Department for the purposes of this clause. A Department does not cease to be a corresponding Department merely because of a subsequent change in the name of the Department under this Act.
- (4) A person who continues in office as Secretary under subclause (2):
- (a) is employed under Division 2 of Part 4 of this Act in term employment in Band 4 under the senior executive bands determination, and
- (b) is not required to enter into a contract of employment under this Act for the purposes of that temporary period of continued employment, and
- (c) has a remuneration package that is equivalent to the remuneration package of the person immediately before the repeal of the former Act (unless the remuneration package is increased as a result of a determination of the Statutory and Other Offices Remuneration Tribunal made under Part 3A of the [Statutory and Other Offices Remuneration Act 1975](#) or as a result of progression within the applicable remuneration range), and
- (d) if the person's employment is terminated under section 41 of this Act on or after the commencement of this Act, is entitled to the compensation provided under section 78 of the former Act (and is subject to any requirements under that section relating to the refund of that compensation) as if the termination had been a

removal of the person from office under the former Act.

## **7 Heads of other Public Service agencies—transitional arrangements**

- (1) In this clause, **former other Division** means a Division of the Government Service listed in Division 2 of Part 1, or Part 2, of Schedule 1 to the former Act immediately before the repeal of the former Act, but does not include any such Division whose staff are, on the commencement of this Act, transferred to the Transport Service of New South Wales by an administrative arrangements order under the *Constitution Act 1902*.
- (2) A person holding office as the head of a former other Division immediately before the repeal of the former Act (other than the holder of a statutory office) continues in office as the head of the corresponding Public Service agency under this Act:
  - (a) for the balance of the person's term of office under the former Act, or
  - (b) for the period of 12 months after the commencement of this Act,whichever is the longer period. However, the person ceases to hold office as the head of the agency under this subclause if the person's employment is terminated under section 41 of this Act (or otherwise ceases) or if the person is subsequently appointed as head of the agency under this Act.
- (3) A Public Service agency under this Act (other than a Department) that is declared, by an administrative arrangements order under the *Constitution Act 1902*, to be the successor and a continuation of a former other Division is the corresponding Public Service agency of that former other Division for the purposes of this clause. A Public Service agency does not cease to be a corresponding Public Service agency merely because of a subsequent change in the name of the agency under this Act.
- (4) If, on the commencement of this Act, there is no corresponding Public Service agency of a former other Division, the head of the former other Division immediately before that commencement (other than the holder of a statutory office) is a continuing former senior executive under clause 8 in the Public Service agency to which the staff of the former other Division are transferred by an administrative arrangements order under the *Constitution Act 1902*.
- (5) If, on the commencement of this Act, a Public Service agency (other than a Department) is not a corresponding Public Service agency of a former other Division and the head of the agency is not a statutory officer, the person who, immediately before that commencement, was the relevant chief manager of the group of staff transferred to the Public Service agency on that commencement by an administrative arrangements order under the *Constitution Act 1902* holds office as the head of the Public Service agency under this Act:
  - (a) for the balance of the person's term of office as the relevant chief manager under

the former Act, or

(b) for the period of 12 months after the commencement of this Act,

whichever is the longer period. However, the person ceases to hold office as the head of the agency under this subclause if the person's employment is terminated under section 41 of this Act (or otherwise ceases) or if the person is subsequently appointed as head of the agency under this Act.

- (6) For the purposes of subclause (5), the relevant chief manager of a transferred group of staff is the person who held, immediately before the repeal of the former Act, the executive position under Part 3.1 of Chapter 3 of the former Act having the duties of the head of that group of staff.
- (7) A person who continues in office as head of a Public Service agency under subclause (2) or who holds office as head of a Public Service agency under subclause (5):
- (a) is employed under Division 3 of Part 4 of this Act in term employment in the band under the senior executive bands determination that includes the remuneration package to which the head of the agency continues to be entitled under this subclause, and
  - (b) is not required to enter into a contract of employment under this Act for the purposes of that temporary period of continued employment, and
  - (c) has a remuneration package that is equivalent to the remuneration package of the person immediately before the repeal of the former Act (unless the remuneration package is increased as a result of a determination of the Statutory and Other Offices Remuneration Tribunal made under Part 3A of the *Statutory and Other Offices Remuneration Act 1975* or as a result of progression within the applicable remuneration range), and
  - (d) if the person's employment is terminated under section 41 of this Act on or after the commencement of this Act, is entitled to the compensation provided under section 78 of the former Act (and is subject to any requirements under that section relating to the refund of that compensation) as if the termination had been a removal of the person from office under the former Act.
- (8) The following applies to the initial recruitment action under this Act to fill the role of the head of a Public Service agency (other than a Department):
- (a) the work level and other employment arrangements relating to the role are to be determined under this Act and are not determined by the level and other arrangements that apply to the continued employment of the existing head of the agency under this clause,
  - (b) the existing head may be recruited before or at the end of the temporary period of



continued employment of the existing head,

- (c) the existing head may be recruited without compliance with the government sector employment rules on merit-based employment (but only in term employment not exceeding 2 years if the recruitment did not comply with those rules).

**7A Review of senior executive structure for implementation of new executive employment arrangements under this Act**

- (1) The Secretary of each Department is to review the senior executive structure of the Department and its related Public Service agencies in order to transition senior executive employment in the Department and related agencies to the new arrangements under this Act.
- (2) The head of a separate Public Service agency is to review the senior executive structure of the agency in order to transition senior executive employment in the agency to the new arrangements under this Act.
- (2A) After the Secretary of a Department or the head of a separate Public Service agency completes the review, a senior executive implementation plan is to be submitted to the Commissioner that outlines the proposed transition of senior executive employment to the new arrangements under this Act, including a proposed timetable to transition to those new arrangements by 24 February 2017.
- (3) The Commissioner may approve a senior executive implementation plan and determine the date (before 24 February 2017) on which senior executive employment in a Public Service agency, or in a part of a Public Service agency, is to transition to those new arrangements (the **implementation date** for the agency or part of the agency). The date so determined may be changed by a further determination of the Commissioner (but only to a date before 24 February 2017).
- (3A) The date on which a person ceases to be a transitional former senior executive referred to in clause 8 is the implementation date for the Public Service agency or relevant part of the Public Service agency in which the person is employed, unless another date becomes the implementation date for the executive under subclause (3B), (3C), (3D) or (3E) or a different date is determined for the executive in accordance with this clause (the **implementation date** for the executive).
- (3B) If, before the implementation date for the Public Service agency or relevant part of the Public Service agency, a transitional former senior executive:
  - (a) is employed in a role (other than by temporary assignment) in the new senior executive structure of the agency or of another agency and enters into a contract of employment under this Act, or
  - (b) is employed in a non-executive role (other than by temporary assignment) under

Division 5 of Part 4 of this Act,

the implementation date for the executive becomes the date on which the executive is so employed.

- (3C) If, before an implementation date is determined for the Public Service agency or relevant part of the Public Service agency, a transitional former senior executive is employed as a Public Service non-executive employee under Division 5 of Part 4 of this Act, the implementation date for the executive becomes the date on which the executive is so employed.
- (3D) If, as the result of a comparative assessment in accordance with the government sector employment rules, a transitional former senior executive:
- (a) is assigned to a different role in a part of the Public Service agency in which the executive is currently employed after the implementation date determined for that part of the agency, and
  - (b) enters into a contract of employment under this Act in relation to that role,
- the implementation date for the executive becomes the date on which the executive is so assigned.
- (3E) If a transitional former senior executive is, as the result of a comparative assessment in accordance with the government sector employment rules, employed and assigned to a role in a different agency after the implementation date determined for the agency or the part of the agency in which the role is located, the implementation date for the executive becomes the date on which the executive is so employed and assigned and enters into a contract of employment under this Act.
- (4) The Commissioner may determine a different date under this clause for a particular transitional former senior executive than the date otherwise determined for the agency or the part of the agency in which the executive is employed. The date determined for an agency, a part of an agency or for a particular transitional former senior executive may be changed by a further determination of the Commissioner (but only to a date before 24 February 2017).
- (5) Without limiting the date that may be determined under subclause (4) as the implementation date for a transitional former senior executive, the implementation date for an executive may be extended by the Commissioner to a date before 24 February 2017 that is beyond the implementation date for other executives in the Public Service agency concerned. The purposes for extending the implementation date may include knowledge transfer and continuity of service by the agency in the transition to the new executive employment arrangements under this Act or to enable the executive to take accrued leave before the termination of employment.
- (6) This clause applies to transitional former senior executives employed in the NSW

Electoral Commission Staff Agency as if references in this clause to 24 February 2017 were references to such later date (not being a date later than 23 August 2017) that the Commissioner may approve on the application of the Electoral Commissioner.

- (7) Determinations of implementation dates by the Commissioner under this clause are to be made in consultation with the relevant Secretaries of Departments and relevant heads of separate Public Service agencies.

## **8 Senior executives (other than Secretaries and other heads of agencies)—transitional arrangements**

- (1) In this clause:

**implementation date** for a transitional former senior executive—see clause 7A.

**transitional former senior executive** means a person who was, immediately before the repeal of the former Act:

- (a) an executive officer within the meaning of Part 3.1 of Chapter 3 of the former Act (a **former SES executive**), or
- (b) employed in the Government Service in the classification or grade of senior officer (or in any equivalent classification or grade determined by the Commissioner for the purposes of this clause) and whose salary was more than the maximum salary for a clerk (Grade 12) in the Public Service (a **former SO executive**),

but does not include a statutory officer or a person holding office as Secretary of a Department under clause 6 or holding office as the head of a Public Service agency (other than a Department) under clause 7.

- (2) Until the implementation date for a transitional former senior executive of a Public Service agency who is a former SES executive, this Act applies to the executive subject to the following:
- (a) the executive is employed under Division 4 of Part 4 of this Act in term employment in the band under the senior executive bands determination that includes the remuneration package to which the executive continues to be entitled under this subclause,
- (b) the term for which the executive is taken to be so employed is (subject to this clause):
- (i) the balance of the person's term of office as a former SES executive, and
- (ii) any additional period before the implementation date that the agency head may approve,
- (c) the executive is not required to enter into a contract of employment under this Act for the purposes of that temporary period of continued employment,

- (d) the executive has a remuneration package that is equivalent to the remuneration package of the person immediately before the repeal of the former Act (unless the remuneration package is increased as a result of a determination of the Statutory and Other Offices Remuneration Tribunal made under Part 3A of the *Statutory and Other Offices Remuneration Act 1975* or as a result of progression within the applicable remuneration range),
  - (e) if the executive's employment is terminated under section 41 of this Act on or after the commencement of this Act, the executive is entitled to the compensation provided under section 78 of the former Act (and is subject to any requirements under that section relating to the refund of that compensation) as if the termination had been a removal of the executive from office under the former Act.
- (3) Until the implementation date for a transitional former senior executive of a Public Service agency who is a former SO executive, this Act applies to the executive subject to the following:
- (a) the executive is employed under Division 5 of Part 4 of this Act in ongoing employment or, if the executive was a temporary employee under the former Act, in temporary employment,
  - (b) the executive is not employed in a band under the senior executive bands determination,
  - (c) the conditions of employment of the executive that are preserved by clause 9 are subject to this clause,
  - (d) if the executive's employment is terminated under section 47 of this Act on or after the commencement of this Act, the executive is entitled to such payments (such as a severance or redundancy payment) as are provided under this Act in connection with the termination (including under the conditions of employment preserved by clause 9).
- (3A) If a transitional former senior executive is (in accordance with this Act) assigned to a different role in a Public Service agency, or employed and assigned to a role in a different agency:
- (a) the person does not (except as provided by clause 7A (3D) or (3E)) cease to be a transitional former senior executive, and
  - (b) the remuneration package of the transitional former senior executive is, despite subclause (2) (d) and subject to section 38 (8), the remuneration package for the role to which the executive has been so assigned (or so employed and assigned).
- (4) On the implementation date for a transitional former senior executive of a Public Service agency:

- (a) the person ceases to be a transitional former senior executive, and
  - (b) the employment of the person in the agency is terminated unless the person is employed in the agency on and from the implementation date in accordance with this Act (whether as a Public Service senior executive or as a Public Service non-executive employee, and whether following recruitment action or redeployment as an excess employee), and
  - (c) any such termination of the employment of a person who was a former SES executive is taken to be a termination under section 41 of this Act to which subclause (2) (e) applies, and
  - (d) any such termination of the employment of a person who was a former SO executive is taken to be a termination under section 47 of this Act to which this Act (including the conditions of employment preserved by clause 9) applies, and
  - (e) section 58 of this Act applies to any such termination of employment of a person (whether a former SES executive or a former SO executive) on the basis that the person is an executive employee for the purposes of that section.
- (5) The following applies to the creation of a role within the new senior executive structure of a Public Service agency (other than agency head) and to the initial recruitment action under this Act to fill that role:
- (a) the work level and other employment arrangements relating to a new role within that new structure are to be determined under this Act and are not determined by the work level and other arrangements that applied to roles in the former executive structure of the agency,
  - (b) transitional former senior executives may be recruited to any such new role before or at the end of the period of their continued employment as transitional former senior executives,
  - (c) a person is to be recruited to any such new role in accordance with government sector employment rules on merit-based employment as they apply to the recruitment of a person who is not a Public Service employee,
  - (d) the initial recruitment action to fill any such new role is to be limited to the following candidates (having regard to the type and level of the role and any other relevant matter):
    - (i) any transitional former senior executives who occupy a similar role in the relevant parts of the agency,
    - (ii) any Public Service senior executives employed in the relevant parts of the agency in a similar role after the commencement of this Act,

(iii) any other Public Service employees (or groups of Public Service employees) in the relevant parts of the agency whom the agency head considers appropriate.

For the purposes of this paragraph, executives or other employees in a relevant part of the agency includes executives or other employees in any related agency (whether a Department or a Public Service executive agency) whose roles are being consolidated in connection with the recruitment action. Transitional former senior executives may be included in more than one pool for the purposes of initial recruitment action for different roles.

- (6) Initial recruitment action to fill a role within the new senior executive structure of a Public Service agency is not required to be limited as referred to in subclause (5) (d) if:
- (a) there are no candidates of the kind referred to in subclause (5) (d) (i) or (ii) for the recruitment action concerned, or
  - (b) the role is not similar to any role in the former executive structure of the agency.
- (7) If a transitional former senior executive is temporarily assigned to work in or outside the agency in which the executive is employed:
- (a) the person does not cease to be a transitional former senior executive, and the implementation date for the executive does not change, because of that temporary assignment, and
  - (b) the person retains his or her eligibility under subclause (5) as a candidate for initial recruitment action in that agency, and
  - (c) the person is also eligible under subclause (5) as a candidate for initial recruitment action in relation to a similar role in the other agency to which the person is temporarily assigned.

#### **8A Statutory senior executives**

- (1) This clause applies to the following statutory officers whose employment was, immediately before the repeal of the former Act, subject to Part 3.1 of Chapter 3 of the former Act:
- (a) President of the Board of Studies, Teaching and Educational Standards,
  - (b) Children's Guardian,
  - (c) Commissioner for the Commission for Children and Young People,
  - (d) Registrar of Community Housing appointed under section 10 of the *Community Housing Providers (Adoption of National Law) Act 2012*,
  - (e) Chief Executive Officer of Destination NSW,

- (f) chief executive of a development corporation appointed under section 6B of the *Growth Centres (Development Corporations) Act 1974*,
  - (g) Chairperson of the Environment Protection Authority,
  - (h) Commissioner of the Health Care Complaints Commission,
  - (i) Chief Executive of the Independent Transport Safety Regulator,
  - (j) Chief Executive of the Internal Audit Bureau,
  - (k) Chief Executive Officer of the Legal Aid Commission,
  - (l) Legal Services Commissioner,
  - (m) chief executive of a major event authority constituted under the *Major Events Act 2009*,
  - (n) Managing Director of the New South Wales Government Telecommunications Authority,
  - (o) Chief Executive Officer of the NSW Trustee and Guardian,
  - (p) Deputy or Assistant Ombudsman,
  - (q) Chief Executive of the Rural Assistance Authority,
  - (r) Commissioner of the Soil Conservation Service,
  - (s) Chief Executive of the Sydney Catchment Authority,
  - (t) Managing Director of the TAFE Commission,
  - (u) Chief Investigator of the Office of Transport Safety Investigations,
  - (v) Director of the Zoological Parks Board.
- (2) On the repeal of the former Act, the employment of a statutory officer to whom this clause applies is subject to Division 4 of Part 4 of this Act and this clause.
- (3) Any such statutory officer:
- (a) is employed in the band under the senior executive bands determination that includes the remuneration package to which the officer continues to be entitled under this subclause, and
  - (b) is not required to enter into a contract of employment under this Act, and
  - (c) has a remuneration package that is equivalent to the remuneration package of the officer immediately before the repeal of the former Act (unless the remuneration

package is increased as a result of a determination of the Statutory and Other Offices Remuneration Tribunal made under Part 3A of the *Statutory and Other Offices Remuneration Act 1975* or as a result of progression within the applicable remuneration range), and

- (d) if the officer's employment is terminated under section 41 of this Act on or after the commencement of this Act, is entitled to the compensation provided under section 78 of the former Act as if the termination had been a removal of the statutory officer from office under the former Act, and
- (e) cannot be removed from office (or otherwise have the officer's employment terminated) on a ground other than a ground on which the officer could have been removed from office immediately before the repeal of the former Act, and
- (f) is to be included in any initial recruitment action referred to in clause 8 (5) to fill a role that replaces the statutory office of the officer or that is a similar role.

**8B Transitional provisions relating to remuneration of senior executives**

- (1) For the purposes of clauses 6, 7, 8 and 8A, the remuneration package of a person under the former Act includes any of the following determined by the Statutory and Other Offices Remuneration Tribunal and payable to the person under the former Act:
  - (a) a remuneration package that is payable to the person as the holder of the relevant position under the former Act that exceeds the remuneration package otherwise determined for the senior executive level of the person,
  - (b) an additional amount payable as a recruitment allowance.
- (2) If a person referred to in subclause (1) to whom a recruitment allowance is payable is subsequently employed in accordance with the provisions of this Act as a Public Service senior executive, the person continues to be entitled to so much of that former recruitment allowance as will ensure that the remuneration payable after that subsequent employment is not less than the remuneration payable before that subsequent employment. Any general increase in remuneration packages to account for an annual determination of the Statutory and Other Offices Remuneration Tribunal is to be excluded and does not operate to reduce the amount of recruitment allowance payable.
- (3) This subclause applies to a former SES executive referred to in clause 8 (or an officer referred to in clause 8A) who is subsequently employed in accordance with the provisions of this Act as a Public Service senior executive and who is assigned to a new role (or subsequently assigned to a different role) that is of equivalent work value as the person's former position, office or role. The remuneration package of the person in any such new or different role is to be not less than the remuneration package of the person immediately before the person was so subsequently employed.



- (4) This subclause applies to a former SO executive referred to in clause 8 who is subsequently employed in accordance with the provisions of this Act as a Public Service senior executive and who is assigned to a role (when first so employed) that is of equivalent work value as the person's position under the former Act. The person may be paid an allowance, determined by the agency head in accordance with guidance provided by the Commissioner, to avoid any financial disadvantage as a Public Service senior executive in that role (or any other assigned role of equivalent work value) compared to the remuneration payable immediately before the person was so subsequently employed.
- (5) A retention allowance payable under the former Act to a person to whom clause 6, 7, 8 or 8A applies is payable for completed years of service (or pro rata for completed parts of years of service) on the date the person ceases to be a person to whom that clause applies (otherwise than by resignation).

### **8C Existing temporary employees**

- (1) This clause applies to a person who, immediately before 24 February 2014, was employed on a temporary basis under the former Act (an **existing temporary employee**). This clause does not apply to persons employed under the former Act as special temporary employees.

**Note—**

Clause 5 provides that persons employed under the former Act are taken to be employed under this Act in the same kind of employment.

- (2) **Extension of existing term of temporary employment** If the term of employment of an existing temporary employee is due to expire before 24 February 2015, the person's temporary employment may be extended before it expires in accordance with the provisions of the former Act as if that Act had not been repealed. However, if the temporary employment is to be extended beyond 24 February 2015, the extension of the existing temporary employee's employment must satisfy the requirements of the government sector employment rules relating to temporary employment.
- (3) On and from 24 February 2015, any extension of an existing temporary employee's employment must be made in accordance with the provisions of the government sector employment rules relating to temporary employment.
- (4) **Conversion to ongoing employment** Despite its repeal, section 31 of the former Act continues to apply, until 24 February 2015, in relation to an existing temporary employee who is a long-term employee within the meaning of that section. Any appointment of the employee under that section as so continued by this clause is taken to be employment in ongoing employment under this Act in a relevant role.
- (5) On and from 24 February 2015, any conversion of an existing temporary employee's employment to ongoing employment must be made in accordance with the provisions of the government sector employment rules.

## 9 Existing conditions of employment under former Act

(1) In this clause:

**former non-Public Service group of staff** means a group of staff:

- (a) who, immediately before the commencement of this Act, were employed in the Government Service of New South Wales (but not in the Public Service of New South Wales) or in the NSW Health Service and who become Public Service employees on that commencement, and
- (b) who comprise a Public Service agency or a discrete branch or other part of a Public Service agency,

and includes any persons who become members of that group of staff after the commencement of this Act.

- (2) Conditions of employment applying to any group of Public Service employees immediately before the commencement of this Act (whether under State industrial instruments, determinations under section 4E of the former Act or contracts of employment) continue to apply, subject to this clause, to that group of Public Service employees. This subclause extends to members of a former non-Public Service group of staff.
- (3) The conditions of employment of Public Service employees who are members of a former non-Public Service group of staff do not include any conditions of employment relating to leave or other matters that are conferred by the regulations under this Act on Public Service employees generally unless they apply because of conditions of employment applying to that group of staff immediately before the repeal of the former Act. In this subclause, a reference to conditions of employment conferred by the regulations includes conditions relating to extended leave and to conditions under the *Crown Employees (Public Service Conditions of Employment) Award 2009* for groups of staff to which that award did not apply immediately before the repeal of the former Act.
- (4) A determination under section 130 of the former Act, or an industrial agreement under section 131 of the former Act, that is in force immediately before the repeal of the former Act is, subject to this clause, taken to be a determination under section 52 of this Act or an industrial agreement under section 51 of this Act (as the case requires).
- (5) A condition of employment that applies because of this clause applies until such time as provision is otherwise made under this Act or any other law.

## 10 Existing delegations under former Act

- (1) Any delegation of a function by the Division Head of a Division of the Government

Service under section 4F of the former Act and in force immediately before the repeal of the former Act is taken to be a delegation of a comparable function under this Act by the head of the corresponding Public Service agency under section 27 of this Act (in the case of a Department) or under section 32 of this Act (in the case of any other Public Service agency).

- (2) Any delegation of a function by the Director-General under section 123 of the former Act and in force immediately before the repeal of the former Act is taken to be a delegation of a comparable function under this Act by the Industrial Relations Secretary under section 53 of this Act.

### **11 Unsatisfactory performance, misconduct and suspension**

- (1) Sections 68, 69 and 70 of this Act extend to conduct occurring before the commencement of this Act.
- (2) Any proceedings for unsatisfactory performance or misconduct pending under Part 2.7 of Chapter 2 of the former Act immediately before the repeal of the former Act are to continue to be dealt with under the provisions of that Part as if it had not been repealed, subject to the regulations and the government sector employment rules.

### **12 Superseded references**

In any other Act, in any statutory or other instrument, or in any contract or agreement:

- (a) a reference to the Government Service of New South Wales (or to any Division of the Government Service) is to be construed as a reference to the Public Service of New South Wales (or to any Public Service agency), and
- (b) a reference to a Department or a Department head (within the meaning of the former Act) is to be construed as a reference to a Public Service agency or the head of such an agency, respectively, and
- (c) a reference to the Public Service Board, the Public Employment Industrial Relations Authority, the Public Employment Office or the Director of Public Employment (unless the reference relates to the functions exercised by the Industrial Relations Secretary under Division 6 of Part 4 of this Act) is to be construed as a reference to the Public Service Commissioner, and
- (d) a reference to the Public Service Board, the Public Employment Industrial Relations Authority, the Public Employment Office, the Director of Public Employment or the Director-General of the Department of Premier and Cabinet (if the reference relates to the functions exercised by the Industrial Relations Secretary under Division 6 of Part 4 of this Act) is to be construed as a reference to the Industrial Relations Secretary, and
- (e) a reference to an officer or to a temporary or casual employee of the Public Service (or a Department) or to a member of staff or employee of the Government Service (or

a Division of the Government Service) is to be construed as a reference to a Public Service employee, and

- (f) a reference to an order under Chapter 4 of the former Act is to be construed as a reference to an administrative arrangements order under Part 7 of the *Constitution Act 1902*, and
- (g) a reference to the former Act, the *Public Sector Management Act 1988* or the *Public Service Act 1979* or to a provision of any such Act is to be construed as extending to a reference to this Act or to the corresponding provision of this Act, except as provided by this clause or except in so far as a contrary intention appears in the Act concerned, and
- (h) a reference to Part 2.5 of the former Act or to a provision of that Part is to be construed as a reference to Part 2 of the *Members of Parliament Staff Act 2013*, and
- (i) a reference to Schedule 3 or 3A to the former Act (or that is required to be construed as such a reference) is to be construed as a reference to Schedule 1 or 2, respectively, to the *Government Sector Employment Regulation 2014*.

### **13 Saving of administrative changes orders under former Act**

An order made (or taken to have been made) under Chapter 4 of the former Act that has not been revoked is taken to be an administrative arrangements order under Part 7 of the *Constitution Act 1902*.

#### **13A Staff of certain statutory bodies**

Despite the repeal of the former Act, that Act continues to apply to the employment of staff under Chapter 1A of that Act:

- (a) in the Internal Audit Bureau Division to enable the Internal Audit Bureau to exercise its functions, but only until 1 July 2016 or until such time as the Internal Audit Bureau is authorised by legislation to employ staff (whichever is the sooner), and
- (b) in the Treasury Corporation Division to enable the Treasury Corporation to exercise its functions, but only until 1 July 2015 or until such time as the Treasury Corporation is authorised by legislation to employ staff (whichever is the sooner), and
- (c) in the SAS Trustee Corporation Division to enable the SAS Trustee Corporation to exercise its functions, but only until 1 January 2016 or until such time as the SAS Trustee Corporation is authorised by legislation to employ staff (whichever is the sooner).

### **13B (Repealed)**

### **13C Parliamentary officers**

- (1) During the period commencing 24 February 2014 and ending 30 June 2016, parliamentary officers may, despite sections 47 and 47A of the *Constitution Act 1902* (as inserted by the amendments made to that Act by Schedule 6.2 to this Act), continue to be appointed or employed under section 47 of the *Constitution Act 1902* as in force immediately before its substitution by Schedule 6.2 to this Act.
- (2) In this clause, **parliamentary officer** means a person appointed or employed as an officer of either House of Parliament or as an officer under the separate control of the President or Speaker, or under their joint control, but does not include the Clerk of the Parliaments or of either House of Parliament or any other officer of the Parliament designated by order of the Governor under section 47 of the *Constitution Act 1902* (as inserted by the amendments made to that Act by Schedule 6.2 to this Act).

## **Part 3 Provisions consequent on enactment of Schedule 3 to *Statute Law (Miscellaneous Provisions) Act 2014***

### **14 Continuation in office of statutory and other officers**

The appointment and term of office (and any conditions of employment that apply under clause 8A) of a person holding office as a statutory or other officer under an Act amended by Schedule 3 to the *Statute Law (Miscellaneous Provisions) Act 2014* on the commencement of the amendments made to that Act by Schedule 3 are not affected by that Schedule.

### **15 Savings and transitional regulations**

A regulation that may be made under clause 2 of this Schedule consequent on an amendment to an Act made by Schedule 3 to the *Statute Law (Miscellaneous Provisions) Act 2014* may be made instead under the Act as so amended.

## **Schedules 5, 6 (Repealed)**