

Government Sector Employment Regulation 2014

[2014-60]



New South Wales

Status Information

Currency of version

Historical version for 31 October 2017 to 30 June 2023 (accessed 27 July 2024 at 12:58)

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**
[Government Sector Employment Amendment Regulation 2023 \(319\)](#) (not commenced — to commence on 1.7.2023)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 23 June 2023

Government Sector Employment Regulation 2014



New South Wales

Contents

Part 1 Preliminary	6
1 Name of Regulation	6
2 Commencement	6
3 Definitions	6
4 Decisions under Regulation to be notified	7
5 Statutory bodies included as part of the government sector for certain purposes	8
6 Application of certain provisions of Act to administrative employees of NSW Police Force	8
6A Government sector agencies excluded from section 68 of the Act	9
Part 2 Public Service employment	9
Division 1 General provisions	9
7 Employees not to undertake other paid work without permission	9
8 Deductions for rent in certain cases	9
9 Reporting charges and convictions for serious offences	10
10 Employee to report bankruptcy etc	10
10A Overseas trade employees	11
Division 2 General conditions of employment	11
11 Application of Division	11
12 Public holidays	12
13 Absence from duty	12
14 Increments	12

15 Fitness for duty	13
Division 3 Leave	14
16 Extended leave entitlements	14
17 Other leave entitlements for senior executives and certain other employees	14
18 Accrued leave of non-executive employees who become Public Service senior executives	15
Division 4 Allowances	15
19 Application of Division	15
20 Allowance for temporary assignments to higher non-executive roles	15
21 Allowance for temporary assignments to executive roles	16
22 Allowance for secondments	17
23 Payment where allowance not adequate or available	18
Part 3 Employment in Public Service and other government sector agencies	18
Division 1 General provisions	18
24 Repayment of severance or redundancy payments for non-executives on re-employment in public sector: section 88 (3) of Act	18
25 Employment pending cessation of employment	19
25A Transfer of services to non-government sector—no severance or redundancy payments if comparable employment offered or not applied for	20
Division 2 Cross-government sector leave arrangements	21
26 Definition	21
27 State industrial instruments	21
28 Recognition of prior service for extended leave	21
29 Annual leave	21
30 Sick leave	22
31 Maternity leave etc	23
32 Access to forfeited sick leave—transitional arrangements	23
33 Funding of leave entitlements	24

Division 3 Workforce diversity	24
Note.....	24
34 Prescribed agencies for purposes of workforce diversity.....	24
Division 4 Secondments to political office holders	25
Note.....	25
35 Secondments to staff of political office holders	25
Part 4 Additional provisions relating to Public Service senior executives	26
36 Contract of employment—additional matters to be dealt with in contract.....	26
37 Election to be paid money value of accrued leave	27
38 Allowances for Public Service senior executives.....	27
39 Compensation for termination of employment and calculation of proportionate amount to be refunded on re-employment in public sector	27
Part 5 Additional provisions relating to Health Service senior executives	28
40 Contract of employment—additional matters to be dealt with in contract.....	28
41 Compensation for termination of employment (except for misconduct) and calculation of proportionate amount to be refunded on re-employment in public sector	28
42 Accrued leave of non-executive employees who become Health Service senior executives.....	29
Part 6 Additional provisions relating to Transport Service senior executives and senior managers	30
43 Additional matters to be dealt with in contract of employment of Transport Service senior executives	30
44 Calculation of proportionate amount of compensation to be refunded on re-employment in public sector	30
Part 7 Additional provisions relating to NSW Police Force senior executives	30

45 Contract of employment—additional matters to be dealt with in contract	30
46 Compensation for termination of employment and calculation of proportionate amount to be refunded on re-employment in public sector	30
Schedule 1 Public Service extended leave entitlements	31
Schedule 2 Government sector employees extended leave entitlements—recognition of prior government service	35
Schedule 3 (Repealed)	41
Schedule 4 Additional savings, transitional and other provisions	41

Government Sector Employment Regulation 2014



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Government Sector Employment Regulation 2014*.

2 Commencement

This Regulation commences on 24 February 2014 and is required to be published on the NSW legislation website.

3 Definitions

(1) In this Regulation:

agency head means:

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

Note—

Section 3 of the Act provides that the head of any such government sector agency that is not a Public Service agency is the person who exercises employer functions in relation to the employees concerned. Accordingly, the following are relevant agency heads:

- (a) the Teaching Service—the Secretary of the Department of Education and Communities,
- (b) the NSW Police Force—the Commissioner of Police,
- (c) the NSW Health Service—the Secretary of the Ministry of Health,
- (d) the Transport Service of New South Wales—the Secretary of the Department of Transport.

employer of a Health Service senior executive means the person who, in accordance with section 116 of the *Health Services Act 1997*, exercises employer functions in

relation to the executive.

former Act means the [Public Sector Employment and Management Act 2002](#).

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

Health Secretary means the Secretary of the Ministry of Health.

Health Service senior executive means a person employed in the NSW Health Service as a NSW Health Service senior executive.

Industrial Relations Secretary has the same meaning as in section 49 of the Act.

NSW Police Force senior executive means a person employed in the NSW Police Force as a NSW Police Force senior executive.

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

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

State industrial instrument means an industrial instrument within the meaning of the [Industrial Relations Act 1996](#).

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

Transport Secretary means the Secretary of the Department of Transport.

Transport Service senior executive means a person employed in the Transport Service as a Transport Service senior executive.

Transport Service senior manager means a person employed in the Transport Service as a Transport Service senior manager.

Note—

The Act and the [Interpretation Act 1987](#) contain definitions and other provisions that affect the interpretation and application of this Regulation.

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

4 Decisions under Regulation to be notified

(1) Any decision by a relevant person under this Regulation is to be published or notified in such manner as the person considers necessary in order to bring the decision to the notice of the government sector employees to whom it applies.

(2) In this clause:

relevant person means any of the following:

- (a) the Public Service Commissioner,
- (b) the Industrial Relations Secretary,
- (c) the head of a government sector agency.

5 Statutory bodies included as part of the government sector for certain purposes

- (1) Each of the following is prescribed as a government sector agency for the purposes of section 16 of the Act (Provision of reports and information by agencies):
 - (a) a State owned corporation,
 - (b) a university referred to in clause 34 (but only in relation to the provision of reports and information relating to workforce diversity).
- (2) For the purposes of section 16 of the Act:
 - (a) the head of a body referred to in subclause (1) (a) is the person holding office as the chief executive (however described) of the body, and
 - (b) the head of any such university is the Vice Chancellor of the university.
- (3) The following State owned corporations are prescribed for the purposes of paragraph (g) of the definition of **government sector** in section 3 (1) of the Act but only in relation to section 73 of the Act (Appointment to position in government sector not affected by additional appointment):
 - (a) Landcom,
 - (b) Water NSW.

This subclause does not limit the operation of subclause (1) to the extent that it applies to those State owned corporations.

6 Application of certain provisions of Act to administrative employees of NSW Police Force

The part of the NSW Police Force comprising administrative employees under the [Police Act 1990](#) is prescribed as a government sector agency for the purposes of the following provisions of the Act:

- (a) section 69 (Misconduct—Public Service and other prescribed government sector employees),
- (b) section 70 (Suspension of employees from duty pending decision in relation to misconduct, criminal charge or corrupt conduct).

6A Government sector agencies excluded from section 68 of the Act

The following government sector agencies are excluded from section 68 of the Act (Unsatisfactory performance of government sector employees):

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

Part 2 Public Service employment

Division 1 General provisions

7 Employees not to undertake other paid work without permission

- (1) A Public Service employee is not to undertake any other paid work without the permission of the agency head.
- (2) This clause does not apply to a person who is:
 - (a) employed in casual employment, or
 - (b) working part-time,during the period that the person is not required to perform duties in the Public Service, but only if the performance of those duties is not adversely affected and no conflict of interest arises.

8 Deductions for rent in certain cases

- (1) If a Public Service employee is allowed to use, for residential purposes, any premises belonging to the Government, the Industrial Relations Secretary may direct that a fair and reasonable sum as rent for the premises be deducted from the salary of the employee.
- (2) In giving any such direction, the Industrial Relations Secretary is to either fix the amount of rent to be deducted or specify a person by whom the amount of rent to be deducted is to be fixed.
- (3) If a Public Service employee is allowed to use, for residential purposes, any premises or any land vested in or managed by the Teacher Housing Authority of New South Wales, an amount fixed by that Authority in respect of rent is to be deducted from the salary of the employee and paid to that Authority.
- (4) This clause is subject, in the case of a Public Service senior executive, to the contract of employment of the executive.

(5) In this clause, **rent** includes payment for board and lodging.

9 Reporting charges and convictions for serious offences

- (1) A Public Service employee who is charged with, or is convicted of, a serious offence must immediately report that fact in writing to the agency head.
- (2) If the manager of a Public Service employee has reason to believe that the employee:
 - (a) has been charged with, or has been convicted of, a serious offence, and
 - (b) has not reported the matter to the agency head,the manager must immediately inform the agency head in writing that the manager has reason to believe that the employee has been charged with, or has been convicted of, the serious offence.
- (3) If the employee required to report under subclause (1) is the head of a Public Service agency, subclause (1) applies as if references to the agency head were references to a Minister to whom the agency is responsible.

(4) In this clause:

convicted of an offence includes being found guilty of the offence without the court proceeding to a conviction.

manager of a Public Service employee means the manager of the branch or other part of the Public Service agency in which the employee is employed.

serious offence has the same meaning as in section 69 of the Act.

10 Employee to report bankruptcy etc

- (1) If a Public Service employee (other than a person employed in casual employment) becomes bankrupt or makes a composition, arrangement or assignment for the benefit of the employee's creditors, the employee must:
 - (a) immediately notify the agency head in writing of the bankruptcy, composition, arrangement or assignment, and
 - (b) within such period as the agency head specifies, provide the agency head with such further information with respect to the cause of the bankruptcy or of the making of the composition, arrangement or assignment as the agency head requires.
- (2) If any such employee is the head of a Public Service agency, subclause (1) applies as if references to the agency head were references to a Minister to whom the agency is responsible.

- (3) An agency head may, as a condition of the engagement of a person in a role in the Public Service agency relating to financial management in the agency, require the person to declare, before the person is engaged in that role, whether or not the person has at any time been declared bankrupt or made a composition, arrangement or assignment for the benefit of the person's creditors.

10A Overseas trade employees

- (1) In this clause:

overseas trade employee means a person who:

- (a) is employed in the Department of Premier and Cabinet (the ***Department***) to work in the area of international trade and investment, and
 - (b) ordinarily resides and works in a country other than Australia while so employed.
- (2) The employment under the Act of an overseas trade employee is subject to such arrangements as may be determined by the Secretary of the Department in respect of the employee.
 - (3) Any arrangements determined by the Secretary under this clause in respect of an overseas trade employee:
 - (a) may be specified in the employee's contract of employment, and
 - (b) prevail to the extent of any inconsistency with any other provision of this Regulation or the government sector employment rules.
 - (4) An overseas trade employee who is a Public Service non-executive employee may be employed under a written contract of employment signed by the employee and by the Secretary of the Department.
 - (5) Persons may be employed as overseas trade employees without compliance with the government sector employment rules on merit-based employment. However, any decision to employ a person as an overseas trade employee must be based on the person's appropriateness for the role concerned having regard to the nature of the role and the person's qualifications, skills and experience.
 - (6) Any limitation under the government sector employment rules on the power of the Secretary of the Department to delegate his or her functions under the Act does not apply in respect of those functions to the extent that they relate to overseas trade employees.

Division 2 General conditions of employment

11 Application of Division

The provisions of this Division are subject to any State industrial instrument.

12 Public holidays

A Public Service employee is entitled to be absent from duty on the following days unless the employee is required to attend for duty by the agency head or by a person authorised by the agency head:

- (a) a day that is a public holiday throughout the State,
- (b) a day (or part of a day) that is a public holiday under the *Public Holidays Act 2010* in that part of the State at or from which the employee is working,
- (c) a day between Boxing Day and New Year's Day determined by the agency head.

13 Absence from duty

- (1) A Public Service employee must not be absent from duty unless reasonable cause is shown.
- (2) If a Public Service employee is absent from duty because of illness or other emergency, the employee must, as soon as practicable, provide an explanation for the absence.
- (3) If the Public Service employee fails to provide that explanation to the satisfaction of the agency head, the agency head is to cause to be deducted from the pay of the employee the amount paid to the employee for the period of absence.
- (4) This clause does not prevent any other action being taken under section 69 of the Act in relation to a Public Service employee who is absent from duty without authorised leave.

14 Increments

- (1) The payment to any Public Service employee of an increment in accordance with any State industrial instrument or determination by the Industrial Relations Secretary under section 52 of the Act is, unless otherwise provided by the instrument or determination, to be made only with the prior approval of the agency head.
- (2) The payment of an increment to a Public Service employee (including any decision by the agency head to accelerate the progression of an employee through the increment scale applying to the employee) is subject to:
 - (a) performance requirements under the agency's performance management system, and
 - (b) the satisfactory conduct of the employee as determined by the agency head.
- (3) The agency's performance management system is to set out the criteria for the payment of an increment in relation to performance.

- (4) Until such time as the agency head is satisfied that such criteria are set out in the agency's performance management system or until 1 July 2015 (whichever is the sooner), the payment of an increment to an employee is subject to the satisfactory performance of duties by, and the satisfactory conduct of, the employee as determined by the agency head.
- (5) The payment of an increment may be deferred from time to time, but may not be deferred for more than 12 months at any one time.
- (6) A Public Service employee must be promptly notified in writing by the agency head of any decision to defer payment of an increment. The notice must include the reasons for the decision.
- (7) This clause does not apply to Public Service senior executives.

15 Fitness for duty

- (1) For the purposes of this clause, a Public Service employee is not fit for duty if the health of the employee:
 - (a) may render the employee a risk to the health and safety of other Public Service employees or the general public, or
 - (b) is likely to be seriously affected by the employee remaining on duty or, if the employee is absent from duty, by the employee resuming duty.
- (2) If the agency head has reason to believe that a Public Service employee is not fit for duty, the agency head may direct the employee to submit to such medical examination or other health assessment as the agency head may, on the advice of a nominated medical assessor, consider necessary.
- (3) A Public Service employee to whom an agency head gives a direction under subclause (2):
 - (a) must, if on duty, cease duty immediately, and
 - (b) must not resume duty until the completion of the medical examination or other health assessment concerned unless the concurrence of a nominated medical assessor is first obtained or a certificate is furnished by a medical practitioner that the employee is fit for duty.
- (4) If the agency head receives a health assessment from a nominated medical assessor that a Public Service employee is fit for duty and the employee is absent from duty, the agency head is to direct in writing that the employee must resume duty.
- (5) If the agency head receives a health assessment from a nominated medical assessor that a Public Service employee is not fit for duty:

- (a) the agency head is to direct in writing that the employee must cease duty immediately or, if absent from duty, must not resume duty, and
 - (b) the employee must not resume duty unless the agency head, on the advice of a nominated medical assessor, approves the resumption of duty in writing.
- (6) If a direction has been given to a Public Service employee under subclause (4) or (5), the nature of the leave, if any, to be granted to the employee during the absence from duty is to be determined by the agency head after consideration of any relevant advice of the nominated medical assessor.
- (7) The agency head is to give the health care professional providing a health assessment of a Public Service employee under this clause any requested information about the employment of the employee that is reasonably required for the purpose of providing the assessment.
- (8) In this clause:

nominated medical assessor means a person or body, or a person who is a member of a class of persons, nominated by the Public Service Commissioner for the purposes of this clause.

Division 3 Leave

16 Extended leave entitlements

Schedule 1 applies to Public Service employees other than persons employed in casual employment. This clause is subject to Schedule 4 to the Act.

Note—

Under transitional provisions in clause 9 of Schedule 4 to the GSE Act, Schedule 1 to this Regulation does not apply to certain groups of staff to whom the general Public Service extended leave entitlements did not apply under the former Act. Schedule 1 also applies to members of the Transport Service (see section 68Q (2) of the [Transport Administration Act 1988](#) and clause 12 of Schedule 4 to the GSE Act).

17 Other leave entitlements for senior executives and certain other employees

- (1) This clause applies to:
- (a) Public Service senior executives, and
 - (b) Public Service non-executive employees whose entitlement to leave is not subject to a State industrial instrument.
- (2) The provisions of the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009* that relate to leave are taken to apply to a Public Service employee to whom this clause applies and any such employee is entitled to leave in accordance with that award subject to any conditions or limitation set out in that award as if the employee were covered by that award.

(3) This clause is subject to Schedule 4 to the Act.

18 Accrued leave of non-executive employees who become Public Service senior executives

(1) This clause applies to a person who, immediately before being employed as a Public Service senior executive, was employed as a Public Service non-executive employee.

(2) If the person:

(a) had a right to accrued extended or annual leave with pay immediately before being employed as a Public Service senior executive, and

(b) has not taken that leave before taking up duties as the executive,

the person is entitled, on taking up those duties, to be paid instead of that leave (or any part of that leave) the money value of that leave (or part) as a gratuity if the person so elects.

(3) An election under this clause is to be made within the time and in the manner determined by the head of the Public Service agency in which the person is to be employed as a Public Service senior executive.

(4) The money value of leave is to be calculated at the rate of pay of the person immediately before employment as a Public Service senior executive.

(5) A person who was employed in the public sector when employed as a Public Sector senior executive retains any right to extended, annual, sick or other leave accrued or accruing to the person immediately before the employment as a Public Sector senior executive (except any accrued leave which is paid out by a gratuity under subclause (2)).

(6) A reference in this clause to **employment in the public sector** has the same meaning as it has for the purposes of section 41 of the Act.

Division 4 Allowances

19 Application of Division

The provisions of this Division are subject to any State industrial instrument.

Note—

Other allowances are set out in the *Crown Employees (Public Service Conditions of Employment) Award 2009*.

20 Allowance for temporary assignments to higher non-executive roles

(1) A Public Service non-executive employee who is temporarily assigned by the agency head under the government sector employment rules to another non-executive role in the agency is entitled to be paid an allowance under this clause if the other role is at a

higher classification of work than the employee's current classification of work.

- (2) Subject to this clause, the amount of the allowance to be paid to the employee who is temporarily assigned to another role is the difference between the salary of the employee's usual role and the point in the salary range of the other role that the agency head determines is appropriate having regard to the employee's capabilities, knowledge and experience.
- (3) The amount of the allowance to be paid is proportionate to the duties to be performed by the employee in the other role and is to be determined by the agency head before the employee starts the temporary assignment.
- (4) An allowance under this clause is not to be paid:
 - (a) for a temporary assignment to another role that is for a single period of less than 5 ordinary working days (except where the agency head otherwise determines), or
 - (b) in the case where the temporary assignment is for a period of less than 3 months—for any unbroken period of leave of more than 5 ordinary working days taken by the employee during the temporary assignment.
- (5) Subclause (4) (a) does not prevent an allowance being paid under this clause to an employee who works part-time.

21 Allowance for temporary assignments to executive roles

- (1) **Non-executives assigned to executive roles** A Public Service non-executive employee who is temporarily assigned by the agency head under the government sector employment rules to an executive role in the agency is entitled to be paid an allowance.
- (2) Subject to this clause, the amount of the allowance to be paid under subclause (1) is the difference between the salary of the person's usual role and the notional salary of the executive role to which the person is temporarily assigned.
- (3) **Executives assigned to higher executive roles** A Public Service senior executive who is temporarily assigned by the agency head under the government sector employment rules to an executive role that is:
 - (a) in a band higher than the band in which the executive is employed, or
 - (b) in the same band in which the executive is employed but at a higher remuneration point within that band,is entitled to be paid an allowance.
- (4) Subject to this clause, the amount of the allowance to be paid under subclause (3) is the difference between the total amount of the executive's remuneration package and

the total amount of the remuneration package for the executive role to which the executive is temporarily assigned that corresponds to a point, as determined by the agency head for the purposes of the temporary assignment, within the remuneration range for that executive role.

- (5) **General provisions** The amount of an allowance to be paid under this clause is proportionate to the duties to be performed by the person in the other role and is to be determined by the agency head before the person starts the temporary assignment.
- (6) An allowance under this clause is not to be paid:
- (a) for a temporary assignment to another role for a single period of less than 5 ordinary working days (except where the agency head otherwise determines), or
 - (b) in the case where the temporary assignment is for a period of less than 3 months—for any unbroken period of leave of more than 5 ordinary working days taken by the person during the temporary assignment.
- (7) Subclause (6) (a) does not prevent an allowance being paid under this clause to a person who works part-time.
- (8) In this clause:

agency head in relation to a Public Service senior executive means the employer of the executive if the employer is not otherwise the agency head.

executive role means the role of Public Service senior executive.

notional salary in relation to an executive role to which a non-executive employee is temporarily assigned means the total amount of the remuneration package that corresponds to a point, as determined by the agency head for the purposes of the temporary assignment, within the remuneration range for the executive role, less the superannuation guarantee amount payable in respect of a person employed in the executive role at that remuneration point.

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

22 Allowance for secondments

A Public Service employee who is seconded under section 64 of the Act to another Public Service agency is entitled to be paid an allowance at the same rate as the employee would be entitled under clause 20 or 21 had the secondment been a temporary assignment for which an allowance is payable under those clauses.

23 Payment where allowance not adequate or available

- (1) If the agency head is satisfied that, but for this clause, the actual expenses properly and reasonably incurred by a Public Service employee in the performance of official duties:
 - (a) are not adequately covered by an allowance to which the employee is entitled under this Regulation, or
 - (b) are not covered by any allowance payable under this Regulation or under any State industrial instrument,the employee is to be paid an allowance equivalent to the amount of those additional expenses or the amount of those expenses (as the case requires).
- (2) An allowance is not payable under this clause unless the employee produces official receipts for the expenses incurred by the employee.
- (3) An allowance under this clause may be reduced if it exceeds without good cause any limit approved in advance by the agency head for the expenses concerned.

Part 3 Employment in Public Service and other government sector agencies

Division 1 General provisions

24 Repayment of severance or redundancy payments for non-executives on re-employment in public sector: section 88 (3) of Act

- (1) A government sector employee who receives a severance or redundancy payment because of a cessation of employment is not to be employed in the public sector during the period to which the payment relates unless arrangements have been made for a refund of the proportionate amount of the payment.
- (2) The proportionate amount of a payment to be refunded is to be calculated on the basis of the number of weeks (if any) that remain as part of the period to which the payment relates.
- (3) In this clause:

employment of a former government sector employee in the public sector includes:

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

employee to the employer.

public sector means the government sector, the service of a State owned corporation (or a subsidiary), any service in which persons excluded from the Act by section 5 of the Act are employed or a statutory office.

- (4) This clause does not apply to any of the following:
- (a) Public Service senior executives,
 - (b) Health Service senior executives,
 - (c) Transport Service senior executives and Transport Service senior managers,
 - (d) NSW Police Force senior executives.

Note—

In the case of Public Service senior executives, see section 41 (3) of the Act and clause 39 of this Regulation.

In the case of Health Service senior executives, see section 121H (3) of the [Health Services Act 1997](#) and clause 41 of this Regulation.

In the case of Transport Service senior executives and senior managers, see section 68N (3) of the [Transport Administration Act 1988](#) and clause 44 of this Regulation.

In the case of NSW Police Force senior executives, see section 41 (2) of the [Police Act 1990](#) and clause 46 of this Regulation.

25 Employment pending cessation of employment

- (1) If a person who is employed in a government sector agency (the **incumbent employee**) notifies the person's employer in writing that the person:
- (a) intends to resign or retire from the employment on a specified date, or
 - (b) does not intend to seek re-employment on completion of the current term of employment,
- the employer may, before the person ceases to be employed, take action to recruit and employ another person (the **new employee**) in that employment.
- (2) The employment of the new employee may, if the instrument of employment so provides, take effect before the incumbent employee ceases to be employed.
- (3) In any such case, the incumbent employee and the new employee:
- (a) are both employed in the same role or position, and
 - (b) may jointly exercise the functions of that role or position.
- (4) If in the joint exercise of any statutory function of that role or position any

inconsistency arises in connection with the exercise of that function, the decision of the incumbent employee in relation to the matter prevails.

25A Transfer of services to non-government sector—no severance or redundancy payments if comparable employment offered or not applied for

- (1) A person whose employment in a government sector agency ceases as a result of the transfer to a non-government sector body of any of the services provided by the agency is not entitled to any severance or redundancy payment for that cessation of employment if:
 - (a) the person is offered employment by the non-government sector body that is comparable with the person's employment as a government sector employee, or
 - (b) the person fails to apply for any such comparable employment that has been notified to the person as being available.
- (2) For the purposes of subclause (1), employment by a non-government sector body (the **new employment**) is comparable with the person's employment as a government sector employee (the **former employment**) if:
 - (a) the person's prior service in the government sector is recognised for the purposes of the new employment, and
 - (b) the work to be performed by the person under the new employment is similar to the work performed by the person under the former employment, and
 - (c) the terms of any industrial instrument or agreement (however described) applying to the new employment are substantially similar to, and (when considered on an overall basis) no less favourable than, the terms of any government sector industrial instrument that applied to the former employment, and
 - (d) the new employment does not involve an unreasonable increase in the person's journey to work.
- (3) To avoid doubt, subclause (1) does not create an entitlement to any severance or redundancy payment.
- (4) Subclause (1) is subject to any State industrial instrument and to clause 39.
- (4A) Subclause (1) does not apply in relation to a person whose employment in a government sector agency is to cease as a result of the transfer to a non-government sector body of any of the services provided by the agency if:
 - (a) the non-government sector body was selected before 1 January 2015 by the Government of New South Wales, as a result of a process for the formation of a public-private partnership, to provide those services, and

(b) the transfer is not authorised by or under an Act, and

(c) the transfer was not completed before the commencement of this subclause.

(5) In this clause:

government sector industrial instrument means any of the following:

(a) a State industrial instrument,

Note—

State industrial instrument is defined in the [Interpretation Act 1987](#).

(b) a federal industrial instrument within the meaning of section 9A of the [Industrial Relations Act 1996](#),

(c) a determination made under any Act fixing conditions of employment of government sector employees.

non-government sector body means any of the following:

(a) a private sector entity (including a not-for-profit sector entity),

(b) a local council,

(c) a State owned corporation,

(d) a public authority or government agency of the Commonwealth or of another State or Territory.

services provided by an agency include functions exercised by the agency.

Division 2 Cross-government sector leave arrangements

26 Definition

In this Division:

cessation of employment includes cessation of employment by resignation, retirement or otherwise.

27 State industrial instruments

This Division applies in addition to any State industrial instrument.

28 Recognition of prior service for extended leave

Schedule 2 applies to government sector employees.

29 Annual leave

(1) A government sector employee who ceases to be employed in a government sector

agency and immediately commences employment in another government sector agency may elect:

- (a) to be paid the whole or part of the money value of the employee's accrued annual leave, or
- (b) to retain the entitlement to that accrued annual leave.

Note—

The right to cash out leave is, in the case of a Public Service employee, subject to the award requirement to take 10 days of annual leave each year.

- (2) A government sector employee who elects to retain the entitlement to accrued annual leave is taken to have, on commencing employment in the other government sector agency, the amount of accrued annual leave to which the employee was entitled immediately before the end of his or her previous employment. This leave is in addition to any annual leave which accrues after that commencement.
- (3) For the purpose of calculating an entitlement under this clause, the money value of accrued annual leave owing to a Public Service senior executive is to be determined on the basis of the person's notional salary.
- (4) In this clause:

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

notional salary, in relation to a Public Service senior executive, means the total amount of the remuneration package for the person as last determined before the time of payment, less the superannuation guarantee amount payable in respect of the person.

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

30 Sick leave

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

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

(3) In this clause:

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

31 Maternity leave etc

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

(2) For the purposes of determining a government sector employee's entitlement to leave referred to in this clause:

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

(b) service with any other former employers is taken to be service with the person's current employer, if the service was in other government sector agencies and the periods of service with those agencies were continuous with each other and the employee's previous employment in a government sector agency.

(3) Except as provided by this clause, the eligibility of a government sector employee for leave referred to in this clause is to be determined in accordance with the conditions applying to that leave in the employee's current employment.

(4) A reference in this clause to service with a previous or former employer extends to include a reference to any such service before 24 February 2014.

32 Access to forfeited sick leave—transitional arrangements

(1) If a government sector employee is eligible for sick leave for any absence from duty but has exhausted his or her sick leave entitlement, the employee's employer may grant to the employee any of the employee's forfeited sick leave as sick leave for the absence.

(2) An employee's **forfeited sick leave** is the total amount of sick leave that the employee ceased to be entitled to up to 13 October 1995, being sick leave that he or

she would presently be entitled to had clause 30 been in force from when the employee was first employed in a government sector agency.

- (3) Once any period of a government sector employee's forfeited sick leave has been granted as sick leave under this clause, it is no longer regarded as forfeited sick leave for the purposes of any further grant of sick leave to the employee under this clause (whether by the same or a different employer).
- (4) In determining whether or not a government sector employee is entitled to sick leave, all the employee's entitlements to sick leave are to be taken into account, including special sick leave and sick leave to which the employee is entitled by operation of clause 30.
- (5) The Commissioner may provide guidance to government sector employers as to the circumstances in which, and the matters to be taken into account in determining whether, forfeited sick leave should or should not be granted as sick leave under this clause.

33 Funding of leave entitlements

The Treasurer may give directions requiring the transfer of funds between government sector employers for the purpose of making due allowance and appropriate adjustments for liabilities incurred by reason of the operation of this Division and Schedule 1, or liabilities with respect to extended or long service leave.

Division 3 Workforce diversity

Note—

Under section 63 of the Act, the head of a government sector agency (which includes the service of a SOC) is responsible for workforce diversity within the agency and for ensuring that workforce diversity is integrated into workforce planning in the agency. See the definition of **agency head** in clause 3 (being the person who exercises employer functions in relation to the employees of the agency).

34 Prescribed agencies for purposes of workforce diversity

The following universities are prescribed for the purposes of the definition of **government sector agency** in section 63 of the Act:

- (a) Charles Sturt University,
- (b) Macquarie University,
- (c) Southern Cross University,
- (d) University of New England,
- (e) University of New South Wales,
- (f) University of Newcastle,

- (g) University of Sydney,
- (h) University of Technology Sydney,
- (i) Western Sydney University,
- (j) University of Wollongong.

Division 4 Secondments to political office holders

Note—

Part 6 of the [Government Sector Employment Rules 2014](#) provides for transfers and secondments of employees between government sector agencies as defined in section 3 of the Act.

35 Secondments to staff of political office holders

- (1) In this clause:

political office holder has the same meaning as in the [Members of Parliament Staff Act 2013](#).

staff of a political office holder means the group of staff who are employed by the political office holder under Part 2 of the [Members of Parliament Staff Act 2013](#).

- (2) A government sector employee may, at the request of the employee, be seconded to the staff of a political office holder by agreement between the head of the agency in which the person is employed and the political office holder.
- (3) Any such agreement is to set out the following:
- (a) the period of the secondment,
 - (b) the financial responsibilities relating to the employee's entitlements,
 - (c) the procedure to be followed on completion of the secondment,
 - (d) the circumstances in which the secondment may be terminated and the form of notice to be given to terminate the secondment before the end of the agreed period of secondment.
- (4) A copy of the agreement must be provided to the seconded employee.
- (5) The political office holder to whose staff an employee is seconded under this clause is responsible for ensuring that the employee is assigned a suitable role while seconded to that office.
- (6) The seconded employee is, while seconded to the staff of a political office holder under this clause, subject to the conditions of employment applying to the members of that staff under Part 2 of the [Members of Parliament Staff Act 2013](#).

- (7) Any annual leave accrued by the seconded employee in the service of a government sector agency may be taken while on secondment to the staff of a political office holder.
- (8) On completion of the secondment, the seconded employee:
 - (a) retains any rights to leave accrued by the person while on secondment, and
 - (b) is entitled to return to the government sector agency from which the employee was seconded at the same work level at which the person was employed immediately before being seconded.
- (9) The period of a person's secondment under this clause is, for the purposes of calculating the person's extended leave entitlements as a government sector employee, taken to be a period of employment in the government sector agency from which the person was seconded.
- (10) Despite any other provision of this clause, the secondment of a government sector employee to the staff of a political office holder may be terminated at any time by the political office holder.
- (11) A political office holder may delegate to a member of the political office holder's staff any of the office holder's functions under this clause.
- (12) The chief executive of a local health district or specialty network governed health corporation (within the meaning of the *Health Services Act 1997*) may not be seconded to the staff of a political office holder under this clause without the concurrence of the Health Secretary.
- (13) The reference in subclause (2) to the head of the agency in which a person is employed is, in the case where the person is a Health Service senior executive, taken to be a reference to the employer of the executive.

Part 4 Additional provisions relating to Public Service senior executives

36 Contract of employment—additional matters to be dealt with in contract

The following matters are prescribed for the purposes of section 39 (4) (i) of the Act:

- (a) matters relating to confidentiality and intellectual property,
- (b) capability-based assessments,
- (c) matters of an administrative or ancillary nature that, in the opinion of the Commissioner, are necessary or convenient to be dealt with in the contract of employment.

37 Election to be paid money value of accrued leave

A Public Service senior executive may elect at any time to be paid the whole or part of the money value of the executive's accrued annual or extended leave.

Note—

The right to cash out leave is subject to the award requirement (as applied by clause 17) to take 10 days of annual leave each year.

38 Allowances for Public Service senior executives

(1) Subject to section 40 (3) of the Act and this clause, a Public Service senior executive is entitled to be paid:

- (a) such travelling and subsistence allowances, and
- (b) such allowances in relation to reasonable relocation expenses (whether at the time of being selected for the executive role or during the term of the executive's employment), and
- (c) such other allowances in relation to expenses incurred in the discharge of the executive's duties,

as the executive's employer may from time to time determine in respect of the executive.

(2) The payment of an allowance determined by the employer in respect of a Public Service senior executive is subject to any determination by the Public Service Commissioner as to the circumstances in which an allowance of that kind may be paid and the amount of the allowance.

39 Compensation for termination of employment and calculation of proportionate amount to be refunded on re-employment in public sector

(1) The contract of employment of a Public Service senior executive is to provide for the payment of the following compensation to the executive on the termination of the executive's employment by the employer:

- (a) if the employment is terminated under section 41 of the Act during or at the end of any period of probation imposed as a condition of the executive's engagement—an amount equal to the executive's remuneration package for a period of 4 weeks,
- (b) if the employment is otherwise terminated under section 41 of the Act—an amount equal to the executive's remuneration package for a period of 38 weeks or for the period remaining on the term of the contract (whichever is the lesser),
- (c) if the employment is terminated under section 68 of the Act for unsatisfactory performance—an amount equal to the executive's remuneration package for a

period of 13 weeks.

- (2) No compensation is payable if the executive's employment is terminated under section 69 of the Act for misconduct.
- (3) The proportionate amount of a payment to be refunded under section 41 (3) of the Act is to be calculated on the basis of the number of weeks (if any) that remain as part of the period to which the payment relates.
- (4) The amount of compensation payable in accordance with this clause to a Public Service senior executive on the termination of the executive's employment by the employer is, in the case of a senior executive who is employed part-time, to be calculated on a pro-rata basis.

Part 5 Additional provisions relating to Health Service senior executives

40 Contract of employment—additional matters to be dealt with in contract

The following matters are prescribed for the purposes of section 39 (4) (i) of the Act in relation to Health Service senior executives:

- (a) matters relating to confidentiality and intellectual property,
- (b) capability-based assessments,
- (c) matters of an administrative or ancillary nature that, in the opinion of the Health Secretary, are necessary or convenient to be dealt with in the contract of employment.

41 Compensation for termination of employment (except for misconduct) and calculation of proportionate amount to be refunded on re-employment in public sector

- (1) The contract of employment of a Health Service senior executive is to provide for the payment of the following compensation to the executive on the termination of the executive's employment by the employer of the executive:
 - (a) if the employment is terminated under section 121H of the [Health Services Act 1997](#) (except for misconduct) during or at the end of any period of probation imposed as a condition of the executive's engagement—an amount equal to the executive's remuneration package for a period of 4 weeks,
 - (b) if the employment is otherwise terminated under section 121H of the [Health Services Act 1997](#) (except for misconduct)—an amount equal to the executive's remuneration package for a period of 38 weeks or for the period remaining on the term of the contract (whichever is the lesser),
 - (c) if the employment is terminated under section 68 of the Act for unsatisfactory

performance—an amount equal to the executive’s remuneration package for a period of 13 weeks.

- (2) No compensation is payable if the Health Service senior executive’s employment is terminated under section 121H of the *Health Services Act 1997* for misconduct.
- (3) The proportionate amount of a payment to be refunded under section 121H (3) of the *Health Services Act 1997* is to be calculated on the basis of the number of weeks (if any) that remain as part of the period to which the payment relates.
- (4) The amount of compensation payable in accordance with this clause to a Health Service senior executive on the termination of the executive’s employment by the employer is, in the case of a senior executive who is employed part-time, to be calculated on a pro-rata basis.

42 Accrued leave of non-executive employees who become Health Service senior executives

- (1) This clause applies to a person who, immediately before being employed as a Health Service senior executive, was employed in the NSW Health Service otherwise than as a Health Service senior executive.
- (2) If the person:
 - (a) had a right to accrued extended or annual leave with pay immediately before being employed as a Health Service senior executive, and
 - (b) has not taken that leave before taking up duties as the executive,the person is entitled, on taking up those duties, to be paid instead of that leave (or any part of that leave) the money value of that leave (or part) as a gratuity if the person so elects.
- (3) An election under this clause is to be made within the time and in the manner determined by the employer of the Health Service senior executive.
- (4) The money value of leave is to be calculated at the rate of pay of the person immediately before employment as a Health Service senior executive.
- (5) A person who was employed in the public sector when employed as a Health Service senior executive retains any right to extended, annual, sick or other leave accrued or accruing to the person immediately before the employment as a Health Service senior executive (except any accrued leave which is paid out by a gratuity under subclause (2)).
- (6) A reference in this clause to **employment in the public sector** has the same meaning as it has for the purposes of section 41 of the Act.

Part 6 Additional provisions relating to Transport Service senior executives and senior managers

43 Additional matters to be dealt with in contract of employment of Transport Service senior executives

The following matters are prescribed for the purposes of section 39 (4) (i) of the Act in relation to Transport Service senior executives:

- (a) matters relating to confidentiality and intellectual property,
- (b) capability-based assessments,
- (c) matters of an administrative or ancillary nature that, in the opinion of the Transport Secretary, are necessary or convenient to be dealt with in the contract of employment.

44 Calculation of proportionate amount of compensation to be refunded on re-employment in public sector

The proportionate amount of compensation to be refunded under section 68N (3) of the [Transport Administration Act 1988](#) is to be calculated on the basis of the number of weeks (if any) that remain as part of the period to which the compensation relates.

Part 7 Additional provisions relating to NSW Police Force senior executives

45 Contract of employment—additional matters to be dealt with in contract

The following matters are, for the purposes of section 38 (3) (h) of the [Police Act 1990](#), prescribed under section 39 (4) (i) of the Act in relation to NSW Police Force senior executives:

- (a) matters relating to confidentiality and intellectual property,
- (b) capability-based assessments,
- (c) matters of an administrative or ancillary nature that, in the opinion of the Commissioner of Police, are necessary or convenient to be dealt with in the contract of employment.

46 Compensation for termination of employment and calculation of proportionate amount to be refunded on re-employment in public sector

(1) The contract of employment of a NSW Police Force senior executive is to provide for the payment of the following compensation to the executive on the termination of the executive's employment:

- (a) if the employment is terminated under section 40 of the [Police Act 1990](#) during or

at the end of any period of probation imposed as a condition of the executive's engagement—an amount equal to the executive's remuneration package for a period of 4 weeks,

- (b) if the employment is otherwise terminated under section 40 of the *Police Act 1990*—an amount equal to the executive's remuneration package for a period of 38 weeks or for the period remaining on the term of the contract (whichever is the lesser),
- (c) if the employment is terminated under section 68 of the Act for unsatisfactory performance—an amount equal to the executive's remuneration package for a period of 13 weeks.

Note—

Section 68 of the Act does not apply to police officers.

- (2) No compensation is payable if the NSW Police Force senior executive's employment is terminated for misconduct.
- (3) The proportionate amount of a payment to be refunded under section 41 (2) of the *Police Act 1990* is to be calculated on the basis of the number of weeks (if any) that remain as part of the period to which the payment relates.
- (4) The amount of compensation payable in accordance with this clause to a NSW Police Force senior executive on the termination of the executive's employment is, in the case of an executive who is employed part-time, to be calculated on a pro-rata basis.

Schedule 1 Public Service extended leave entitlements

(Clause 16)

Note—

See clause 16 of the Regulation for provisions relating to the application of this Schedule.

1 Definition of "service"

- (1) For the purposes of this Schedule, **service** includes:
 - (a) in the case of a Public Service employee who has completed at least 10 years' service—any period of leave without pay, not exceeding 6 months, taken after 13 December 1963, and
 - (b) service occurring before 24 February 2014, including service of the kind referred to in paragraph (a).

Note—

See also Schedule 2 as to the recognition of former service with certain Government agencies.

- (2) Subject to clauses 2 (3) and 3 (3), for the purpose of determining whether or not a Public Service employee has completed at least 10 years' service, as referred to in subclause (1) (a), the employee's period of service is taken:
- (a) to include any period of leave without pay taken before 13 December 1963, and
 - (b) to exclude any period of leave without pay taken after 13 December 1963.

2 Extended leave entitlements generally

- (1) After service for 7 years or more but not more than 10 years, a Public Service employee is entitled to extended leave, proportionate to his or her length of service, calculated at the rate of:
- (a) 2 months on full pay, or
 - (b) 4 months on half pay, or
 - (c) one month on double pay,
- for 10 years served.
- (2) After service for more than 10 years, a Public Service employee is entitled to extended leave under subclause (1) in respect of the first 10 years and additional extended leave, proportionate to his or her length of service, calculated at the rate of:
- (a) 5 months on full pay, or
 - (b) 10 months on half pay, or
 - (c) 2.5 months on double pay,
- for each 10 years served after the first 10 years.
- (3) For the purposes of this clause, **service** includes any period of leave without pay taken before 13 December 1963.

3 Entitlement to extended leave if employment terminated in special circumstances

- (1) This clause applies to a Public Service employee with at least 5 years' service but less than 7 years' service whose services are terminated:
- (a) by the employee for reasons of illness, incapacity or domestic or other pressing necessity, or
 - (b) by the employer for reasons other than for misconduct.
- (2) The Public Service employee is entitled to:
- (a) for 5 years' service—one month's leave on full pay, and

(b) for further service in excess of 5 years—additional leave proportionate to the employee's length of service (up to but not including 7 years), calculated at the rate of 3 months' leave for 15 years' service.

(3) For the purposes of this clause, **service** does not include any period of leave without pay, whether taken before, on or after 13 December 1963.

4 Payment of accrued leave on termination of employment

(1) If a Public Service employee has acquired a right to extended leave and his or her services are terminated, the employee may not take the extended leave but is instead to be paid the money value of the extended leave.

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

5 Leave to be paid out to dependants in cases of death

(1) If a Public Service employee has acquired a right to extended leave and dies before starting it, or after starting it dies before completing it:

(a) the employee's spouse, or

(b) if there is no such spouse, the employee's children, or

(c) if there is no such spouse or child, the person who, in the opinion of the agency head, was, at the time of the employee's death, a dependent relative of the employee,

is entitled to receive the money value of the extended leave not taken or not completed.

(2) If a Public Service employee with at least 5 years' service but less than 7 years' service dies:

(a) the employee's spouse, or

(b) if there is no such spouse, the employee's children, or

(c) if there is no such spouse or child, the person who, in the opinion of the agency head, was, at the time of the employee's death, a dependent relative of the employee,

is entitled to receive the money value of the extended leave that would have accrued to the employee had his or her services terminated as referred to in clause 3 (1).

(3) If there is a guardian of any child referred to in subclause (1) (b) or (2) (b), the payment to which the child is entitled may be made to the child's guardian for the

child's maintenance, education and advancement.

(4) If:

(a) no person is entitled to receive a payment under subclause (1) or (2), or

(b) it appears to the agency head that more than one person is entitled as a spouse to a payment under subclause (1) or (2),

the payment must instead be made to the employee's personal representatives.

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

(6) In this clause, **spouse** of a Public Service employee includes a de facto partner of the employee at the time of his or her death.

Note—

De facto partner is defined in section 21C of the [Interpretation Act 1987](#).

6 Calculation of money value of extended leave

For the purpose of calculating the amount of an entitlement under this Schedule, the money value of extended leave accrued or payable to a Public Service senior executive is to be determined on the basis of the persons's notional salary within the meaning of clause 29 (Annual leave) of this Regulation.

7 Certain periods to be disregarded

Any period during which a Public Service employee is not employed, as referred to in clause 3 (2) of Schedule 2, is to be disregarded for the purpose of calculating his or her extended leave entitlement.

8 Leave entitlement reduced by leave already taken or paid out

(1) The following amounts of extended leave are to be deducted from a Public Service employee's extended leave entitlement:

(a) for each period of extended leave taken on full pay—the number of days (or parts of a day) so taken,

(b) for each period of extended leave taken on half pay—half the number of days (or parts of a day) so taken,

(c) for each period of extended leave taken on double pay—twice the number of days (or parts of a day) so taken,

(d) for each period of extended leave in respect of which the employee has been paid the money value—the number of days of extended leave on full pay that is equivalent to the money paid.

- (2) If a public holiday occurs while a Public Service employee is taking extended leave, the amount of extended leave to be deducted is to be reduced by the length of the holiday (one day or half a day, as the case requires).
- (3) In subclause (2), **public holiday** means any special or public holiday for which the Public Service employee is entitled to payment.

9 Extended leave may be postponed for employees not employed in ongoing employment

If, in the case of a Public Service employee who is not employed in ongoing employment, the period of extended leave to which the employee is entitled under this Schedule exceeds the period for which the employee is employed in the Public Service, the balance of the period of extended leave may be taken during subsequent periods of employment in the Public Service, but only if each subsequent period of employment commences on the termination of a previous period of employment in the Public Service.

Schedule 2 Government sector employees extended leave entitlements—recognition of prior government service

(Clause 28)

Part 1 Preliminary

1 Definitions

In this Schedule:

Australian Defence Force includes the armed forces of the Commonwealth, however described.

Commonwealth or interstate agency means:

- (a) a body that:
- (i) is established under an Act of the Commonwealth or another State or Territory, and
 - (ii) is under the control of a Minister of the Commonwealth or other State or Territory, and
 - (iii) is part of the public service (however described) of the Commonwealth or other State or Territory, and
 - (iv) is a body in which persons are employed under conditions substantially equivalent to the conditions under which Public Service employees are employed under the Act, or
- (b) a body that is declared to be a Commonwealth or interstate agency for the purposes of this Schedule pursuant to an order under clause 2,

but, subject to paragraph (b), does not include:

- (c) a local government authority, or
- (d) a university or the governing body of a university, or
- (e) a corporation owned by the Commonwealth or another State or Territory, or by the Crown in right of the Commonwealth or another State or Territory, or
- (f) a body that is declared not to be a Commonwealth or interstate agency for the purposes of this Schedule pursuant to an order under clause 2.

continuous—see clause 3.

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

immediately follows—see clause 4.

recognised service, in relation to a government sector employee, means service that is recognised service in relation to the employee pursuant to Part 2.

related government service means any service in which persons excluded from the Act by section 5 of the Act are employed.

2 Declarations concerning Commonwealth or interstate agencies

- (1) The Public Service Commissioner may, by order in writing, declare that a specified body is, or is not, a Commonwealth or interstate agency for the purposes of this Schedule.
- (2) An order under this clause:
 - (a) takes effect on such day as is specified in the order, being a day occurring before, on or after the day on which the order is made, and
 - (b) may be subject to specified limitations, but not so as to operate to the prejudice of any person who was a government sector employee immediately before the order took effect.
- (3) There are to be made publicly available on a website provided and maintained by the Public Service Commissioner:
 - (a) a list of the names of each body that is declared under this clause to be a Commonwealth or interstate agency, and
 - (b) a list of the names of each body that is declared under this clause not to be a Commonwealth or interstate agency.
- (4) Any declaration by the Commissioner under clause 2 of Schedule 3A to the former Act

and having effect immediately before 24 February 2014 is taken to be a declaration by the Commissioner under this clause.

3 Meaning of “continuous”

- (1) For the purposes of this Schedule, a person’s employment by an employer is **continuous** in relation to a period if the person remains employed by that employer for the whole of the period.
- (2) The person is taken to remain employed by the employer for the whole of any period even if, during that period, the person ceases to be employed by the employer on the grounds of retrenchment or reduction of work but is re-employed by the employer within the next 12 months.

4 Meaning of “immediately follows”

- (1) For the purposes of this Schedule, a person’s period of employment **immediately follows** another period of employment if:
 - (a) the later period commences:
 - (i) except as provided by subparagraph (ii), within 2 months after the end of the earlier period, or
 - (ii) if the earlier period comprises full-time war service as a member of the Australian Defence Force, within 12 months after the end of the earlier period, and
 - (b) the earlier period ends otherwise than by reason of the person’s dismissal for disciplinary reasons.
- (2) For the purposes of subclause (1) (a) (ii), **war service** means:
 - (a) service occurring during, or partly during, a period of war in which the Australian Defence Force is engaged, or
 - (b) service of a kind referred to in subclause (3).
- (3) The following kinds of service are declared to be war service:
 - (a) war service within the meaning of Division 8 of Part III of the [Repatriation Act 1920](#) of the Commonwealth,
 - (b) service outside Australia as a member of the Interim Forces within the meaning of the [Interim Forces Benefits Act 1947](#) of the Commonwealth,
 - (c) Malayan service within the meaning of the [Repatriation \(Far East Strategic Reserve\) Act 1956](#) of the Commonwealth,
 - (d) special service within the meaning of the [Repatriation \(Special Overseas Service\)](#)

Act 1962 of the Commonwealth,

as those Acts were in force immediately before their repeal on 22 May 1986.

Part 2 Recognition of former government service for government sector employees generally

5 Object of Part

The object of this Part is to provide for the recognition of former government service in the calculation of a government sector employee's extended leave entitlement, whether such an entitlement arises:

- (a) under Schedule 1 (in the case of a Public Service employee), or
- (b) under some other Act or law, such as an award or industrial agreement (in any other case).

6 Recognition of former government service

- (1) For the purpose of calculating a government sector employee's extended leave entitlement, the government sector employee's service with his or her current employer is taken to include his or her recognised service.
- (2) The person's employment in a government sector agency or a Commonwealth or interstate agency or in a related government service (the **former agency**) is **recognised service** in relation to the person's subsequent employment in a government sector agency (the **current agency**) if:
 - (a) the period of employment in the former agency has been continuous, and
 - (b) either:
 - (i) the person's employment in the current agency has immediately followed the person's employment in the former agency, or
 - (ii) the person is entitled, by law or administrative practice, to have the service in the former agency form part of the service in the current agency for the purpose of calculating the person's extended leave entitlement.
- (3) A period of recognised service may not be counted more than once for the purpose of calculating the person's extended leave entitlement.

7 Exclusion of leave already taken, paid or deemed to have been taken

- (1) The following amounts of leave are to be deducted from a government sector employee's extended leave entitlement:
 - (a) the amount of any extended leave taken by the government sector employee in

relation to recognised service,

(b) the amount of any extended leave in respect of which the government sector employee has elected to be paid the money value under clause 8 in respect of recognised service,

(c) the amount of any extended leave that the government sector employee is deemed to have taken under clause 9 in respect of recognised service.

(2) For the purposes of subclause (1) (a), the government sector employee is deemed to have taken extended leave if he or she has been paid the money value of that leave.

(3) A period of extended leave is not to be deducted more than once under this clause.

8 Government sector employee may elect to be paid money value of accrued leave if commencing work in another agency

(1) A government sector employee who ceases to be employed in a government sector agency and immediately commences employment in another government sector agency or in a related government agency may elect:

(a) to be paid the whole or part of the money value of the government sector employee's accrued extended leave, or

(b) to retain the entitlement to that accrued extended leave.

(2) This clause does not apply to a Public Service employee who has been paid the money value of his or her accrued extended leave under clause 4 of Schedule 1.

Note—

Whichever election the government sector employee makes, his or her service with the current employer will, pursuant to clause 6 of this Schedule, be deemed to include service with the former employer.

9 Employee who has recognised Commonwealth or interstate service and was entitled to take leave in former agency deemed to have taken leave

(1) For the purposes of clause 7 (1) (c), a government sector employee:

(a) whose employment in a government sector agency (the **current agency**) immediately follows employment in a Commonwealth or interstate agency (the **former agency**), or

(b) who is entitled, by law or administrative practice, to have the service in the former agency form part of the service in the current agency,

and who, at any time during his or her employment in the former agency, has been entitled under the relevant Commonwealth or interstate law to take extended leave or be paid the money value of extended leave is deemed to have taken the leave.

- (2) The amount of extended leave that the government sector employee is deemed to have taken is calculated as if:
- (a) leave had accrued in relation to his or her service in the former agency at the same rate as leave accrues in relation to his or her service in the current agency, and
 - (b) the service in the former agency in respect of which leave accrued was the whole of the service recognised by the former agency for the purpose of calculating his or her extended leave entitlement, and
 - (c) the amount of leave taken before the calculation of the entitlement was nil, and
 - (d) the money value of leave paid before the calculation of the entitlement was nil.

Part 3 Additional provisions for former members of Australian Defence Force and for holders of certain statutory offices

10 Recognition of service with Australian Defence Force

For the purposes of this Schedule:

- (a) a government sector employee who has previously been employed, on a full-time basis, as a member of the Australian Defence Force is taken to have been employed in a Commonwealth or interstate agency during the period for which he or she was so employed, and
- (b) the Australian Defence Force is taken to have been the government sector employee's employer during that period.

11 Recognition of service in certain statutory offices

(1) For the purposes of this Schedule:

- (a) a person who:
 - (i) in relation to a body referred to in the Table to clause 11 of Schedule 3A to the former Act as in force immediately before its repeal, holds or acts in an office specified in that Table, on a full-time basis, and
 - (ii) has previously been a government sector employee,is taken to be employed in a government sector agency during the period for which the person holds or acts in that office, and
- (b) the body concerned is taken to be the person's employer during that period.

(2) For the purposes of this Schedule:

- (a) a government sector employee who, in relation to a body referred to in the Table

to clause 11 of Schedule 3A to the former Act as in force immediately before its repeal, has previously held or acted in an office specified in that Table, on a full-time basis, is taken to have been employed in a government sector agency during the period for which he or she held or acted in that office, and

(b) the body concerned is taken to have been the government sector employee's employer during that period.

(3) Without limiting any other law preserving rights to extended leave, a person who, in relation to a body referred to in the Table to clause 11 of Schedule 3A to the former Act as in force immediately before its repeal, holds an office specified in that Table, on a full-time basis, is entitled to have his or her recognised service as a government sector employee recognised as service for the purposes of the law or arrangement that provides for his or her entitlement, as the holder of the office, to extended leave.

Schedule 3 (Repealed)

Schedule 4 Additional savings, transitional and other provisions

1 Existing inquiries under former Act

- (1) Any inquiry under section 3K of the former Act that was commenced but not completed before 24 February 2014 may continue to be conducted by the Commissioner under section 83 of the new Act. For that purpose, any authorisation under section 3K or 3L of the former Act that had effect immediately before 24 February 2014 continues to have effect under section 83 of the new Act.
- (2) Any special inquiry under section 159 of the former Act that was commenced but not completed before 24 February 2014 may continue to be conducted under section 82 of the new Act.
- (3) Any inquiry under section 159A of the former Act that was commenced but not completed before 24 February 2014 may continue to be conducted by the Secretary of the Department of Premier and Cabinet under section 83 of the new Act. For that purpose, any authorisation under section 159A of the former Act that had effect immediately before 24 February 2014 continues to have effect under section 83 of the new Act.

2 Existing directions by Commissioner

Any direction given by the Commissioner under section 3J of the former Act is, to the extent that it had effect immediately before 24 February 2014 and is consistent with the new Act, taken to be a direction given under section 13 of the new Act.

3 Recruitment action

- (1) Any recruitment action commenced within the period of 12 months immediately

before 24 February 2014 but not completed before that date may be completed as if the former Act had not been repealed.

- (2) Without limiting the operation of subclause (1), the head of a Public Service agency may, in relation to any recruitment action that was pending under the former Act immediately before 24 February 2014 or that is commenced under the new Act before 24 February 2015, choose to proceed:
 - (a) under the provisions of the former Act and the regulations made under that Act relating to the recruitment of employees (the **former recruitment provisions**), in which case those provisions continue, despite their repeal, to have effect in relation to the recruitment action, or
 - (b) under the provisions of the new Act, the regulations made under the new Act and the government sector employment rules relating to the recruitment of employees (the **new recruitment procedures**).
- (3) However, if a person is employed in the Public Service under the former recruitment provisions, the person is to be assigned to a role in the Public Service and not be appointed to a position.
- (4) A person may not be employed in temporary employment under the former recruitment provisions for a period that extends beyond 24 February 2015.
- (5) Any recruitment action taken by the head of a Public Service agency on and from 24 February 2015 must comply with the new recruitment procedures.

4 Eligibility lists

- (1) An eligibility list that was current under section 20 of the former Act immediately before 24 February 2014 may continue to be used in relation to a role that is comparable to the position for which the list was created, but only until such time as the list would otherwise cease to have effect under section 20 (3) of the former Act.
- (2) If, in accordance with clause 3 (2) (a) of this Schedule, recruitment action is taken under the provisions of the former Act and the regulations made under that Act, an eligibility list for the purposes of that recruitment may be created under section 20 of the former Act as if the former Act had not been repealed.
- (3) Any such eligibility list ceases to have effect on 24 February 2015.

5 Pending promotion appeals before IRC

The amendments made to the *Industrial Relations Act 1996* by Schedule 6.4 to the new Act do not apply in relation to a promotion appeal that was lodged under Part 7 of Chapter 2 of the *Industrial Relations Act 1996* before 24 February 2014 and any such appeal may continue to be heard and dealt with as if those amendments had not been made.

6 Existing appointments on probation

Any appointment on probation made under section 23 of the former Act that had effect immediately before 24 February 2014 continues to have effect under the government sector employment rules as a condition of the person's engagement as a Public Service employee.

7 Existing acting appointments

Any appointment to act in a position under section 24 of the former Act that had effect immediately before 24 February 2014 is taken to be a temporary assignment under the new Act to a role that is comparable to the position concerned.

8 Retirement on medical grounds

If any action to retire a person under section 25 of the former Act was commenced but not completed before 24 February 2014 that action may be completed under section 56 of the new Act.

9 Dealing with excess employees under former Act

If any action was being taken in respect of a person under section 56 of the former Act immediately before 24 February 2014, the person may continue to be dealt with under that section as if it had not been repealed. For that purpose, section 103A of the former Act continues to apply despite its repeal.

10 Existing EEO plans

- (1) The head of a government sector agency is taken to have complied with the requirements of section 63 of the new Act in relation to workforce diversity within the agency if the agency head complies with an equal employment opportunity management plan in force under Part 9A of the [Anti-Discrimination Act 1977](#) immediately before 24 February 2014.
- (2) This clause ceases to have effect on 24 February 2015.

11 Existing transfers and secondments

- (1) Any transfer (whether by way of secondment or otherwise) under section 86 or 87 (1) of the former Act that had effect immediately before 24 February 2014 is taken to have effect under section 64 of the new Act.
- (2) In the case of any such existing transfer that is by way of a temporary secondment, the person is entitled to return to the government sector agency from which the person was seconded under the former Act at the same work level at which the person was employed immediately before being assigned.

12 Existing temporary assignments

- (1) Any assignment under section 88 or 88A of the former Act that had effect immediately before 24 February 2014 is taken to have effect under section 66 of the new Act.
- (2) In the case of any such existing assignment involving a person who is a Public Service employee, the person is entitled to return to the Public Service agency from which the person was assigned under the former Act at the same work level at which the person was employed immediately before being assigned.

13 Existing performance management systems

Any performance management system in operation under section 101A of the former Act immediately before 24 February 2014 is taken to be a performance management system under section 67 of the new Act.

14 Preservation of contracts of employment of Landcom staff transferred to UrbanGrowth NSW Development Corporation Staff Agency

- (1) This clause applies in relation to a person (a **transferred employee**) who:
 - (a) is transferred to the UrbanGrowth NSW Development Corporation Staff Agency pursuant to an order under clause 22 of Schedule 6 to the [Growth Centres \(Development Corporations\) Act 1974](#), and
 - (b) was, immediately before that transfer, employed by Landcom under a contract of employment (the **existing contract**).
- (2) During the transition period (as referred to in clause 23 of Schedule 6 to the [Growth Centres \(Development Corporations\) Act 1974](#)) for the transferred employee, the employee's existing contract (including any variation made to it during the transition period):
 - (a) continues to apply to the employee's employment in the UrbanGrowth NSW Development Corporation Staff Agency, and
 - (b) has effect despite anything to the contrary in the Act, this Regulation or the rules made under the Act.
- (3) If the term of the transferred employee's existing contract expires before the end of the transition period for the employee, the Chief Executive of the UrbanGrowth NSW Development Corporation may extend the term of the contract for a period that concludes on or before the end of the transition period.
- (4) This clause ceases to apply in relation to a transferred employee if the employee is employed as a Public Service senior executive during the transition period for the employee.