

# Public Sector Employment and Management (General) Regulation 1996

[1996-427]



New South Wales

## Status Information

### Currency of version

Repealed version for 31 December 2008 to 31 August 2009 (accessed 25 November 2024 at 10:50)

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—

- **Previously named**  
Public Sector Management (General) Regulation 1996
- **Repeal**  
The Regulation was repealed by sec 10 (2) of the [Subordinate Legislation Act 1989 No 146](#) with effect from 1.9.2009.
- **Note**  
The [Public Sector Employment and Management \(General\) Regulation 1996](#) (formerly the [Public Sector Management \(General\) Regulation 1996](#)) made under the [Public Sector Management Act 1988](#) is on and from 9.9.2002 taken to be a regulation made under the [Public Sector Employment and Management Act 2002 No 43](#). See clause 4 of Schedule 4 to the [Public Sector Employment and Management Act 2002](#).

### 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 1 September 2009

# Public Sector Employment and Management (General) Regulation 1996



New South Wales

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# Public Sector Employment and Management (General) Regulation 1996



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

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

### 2 Commencement

This Regulation commences on 1 September 1996.

### 3 Definitions

(1) In this Regulation:

**HealthQuest** means the statutory health corporation of that name constituted by the *Health Services Act 1997*.

**member of staff** does not include a person who is employed as a casual employee under Part 2.6 of the Act.

**public service determination** means a determination referred to in section 130 of the Act.

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

**Note—**

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

**temporary work location** of a member of staff, means the place at or from which the member of staff temporarily performs official duty.

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

**Note—**

Expressions used in this Regulation that are defined in the Act have the meanings given by the Act (see section 11 of the *Interpretation Act 1987*).

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

#### **4 Availability of Act, Regulation and other relevant information**

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

#### **5 Determinations and approvals**

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

#### **5A Deductions for rent in certain cases** (1988 Act, s 99)

- (1) Except as provided in subclause (3), if any member of staff of a Department is allowed to use, for residential purposes, any premises belonging to the Government, the Public Employment Office may direct that a fair and reasonable sum as rent for the premises be deducted from the salary of the member of staff.
- (2) When giving a direction under subclause (1), the Public Employment Office 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 member of staff of a Department 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 member of staff and paid to that Authority.
- (4) In this clause, **rent** includes payment for board and lodging.
- (5) This clause is subject, in the case of a chief executive officer or senior executive

officer, to the contract of employment entered into by the officer under Part 3.1 of the Act.

## **Part 2 Appointments**

### **6 Pre-placement health assessments**

- (1) A person may not be appointed to an officer's position before the person's fitness to carry out the duties of the position has been confirmed by a health assessment.
- (2) Fitness to carry out duties includes the ability to carry out those duties without endangering the health and safety of the public, of other persons employed in the Department and of the person concerned.
- (3) The health assessment is to be in the form considered necessary by the appropriate Department Head.
- (4) That form may include (but is not limited to) any one or more of the following:
  - (a) a declaration (which may be a statutory declaration if required) provided by the person concerning any illness, disability or condition of which the person is aware that might make the person unfit to carry out the duties of the position,
  - (b) a medical examination by a medical practitioner approved by the Department Head,
  - (c) an examination by a medical practitioner, an optometrist or other appropriately qualified health care professional, approved by the Department Head, of a particular aspect of the person's health likely to detrimentally affect the person's capacity to carry out the duties of the position.
- (5) The appropriate Department Head is to give the health care professional providing a health assessment referred to in subclause (4) (c) any requested information about the duties of the position concerned that is reasonably required for the purpose of providing the assessment.
- (6) This clause does not limit any requirements made by the appropriate Department Head with respect to health assessments of persons employed as temporary employees.

### **7 (Repealed)**

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

The circumstances in which the approval of the Public Employment Office may be regarded as having been given for the purposes of section 101 (2) of the Act are where:

- (a) a person's services are obtained by means of the selection on merit of an applicant for an advertised vacancy, or

- (b) the person's services are to be used for the purposes of a specified project for a continuous period not exceeding 3 years or for 2 or more periods not exceeding 3 years.

## **9 Selection procedures for officers**

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

## **10 Selection in special cases**

- (1) A person (whether or not an officer) may be appointed to an officer's position (other than a senior executive position) in accordance with the special procedures prescribed by this clause.
- (2) The appropriate Department Head may, with the approval of the Public Employment Office, recommend the appointment of a person belonging to a disadvantaged group of persons to a position in the Department that the Department Head considers suitable for the person.
- (3) A disadvantaged group of persons is a group of persons in the community that the Public Employment Office has designated as a disadvantaged group for the purposes of this clause. The Public Employment Office may so designate any group of persons who suffer a disadvantage in employment, including but not limited to:
  - (a) Aborigines or Torres Strait Islanders, or
  - (b) persons who have a disability within the meaning of the [Anti-Discrimination Act](#)

1977.

- (4) A person may be recommended for appointment under this clause only if the person belongs to the relevant disadvantaged group and, in the opinion of the appropriate Department Head, has the greatest merit of the eligible persons seeking appointment in accordance with this clause.
- (5) The Public Employment Office is to determine the general or selective advertising or search procedures to be used for the purposes of seeking eligible persons for appointment under this clause and the selection procedures to be used for selecting a person from among the eligible persons seeking appointment.

#### **10A (Repealed)**

#### **11 Non-application to chief executive officers**

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

### **Part 3 Conditions of service**

#### **12 Application of Part**

The provisions of this Part:

- (a) are subject to any State industrial instrument, and
- (b) unless the contrary intention appears, apply to all members of staff, and
- (c) in the case of chief executive officers or senior executive officers—are subject to the contract of employment under Part 3.1 of the Act between the officer and the officer's employer.

#### **13 Hours of attendance on duty**

- (1) The hours of attendance on duty of members of staff, and the manner of recording their attendance, are to be as determined from time to time by the appropriate Department Head. Any such determination is to be made in accordance with any direction of the Public Employment Office.
- (2) The appropriate Department Head or a person authorised by the appropriate Department Head may require a member of staff to perform duty beyond the hours determined under subclause (1), but only if it is not unreasonable for the member of staff to be required to do so.

#### **14 Public holidays**

- (1) In this clause:

**local holiday** means a public holiday that is not a public holiday throughout the

State.

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

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

## **15 Absence from duty**

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

## **16 Increments**

- (1) This clause does not apply to chief executive officers or senior executive officers.
- (2) The payment to any member of staff of an increment in accordance with any State industrial instrument or public service determination is, unless otherwise provided by the instrument or determination, to be made only with the prior approval of the

appropriate Department Head.

- (3) The payment of an increment to a member of staff is subject to the satisfactory conduct of, and the satisfactory performance of duties by, the member of staff as determined by the appropriate Department Head.
- (4) A member of staff must be promptly notified in writing by the appropriate Department Head of any decision to defer payment of an increment.
- (5) The payment of an increment may be deferred from time to time, but may not be deferred for more than 12 months at any one time.

## **17 Health and safety**

- (1) For the purposes of this clause, a member of staff is not fit for work if the health of the member of staff:
  - (a) may render the member of staff a danger to other members of staff or to the public, or
  - (b) is likely to be seriously affected by the staff member's remaining on duty or, if the member of staff is absent from duty, by the staff member's resuming duty.
- (2) The appropriate Department Head may direct a member of staff to submit to such medical examination or other health assessment as the Department Head may, on the advice of HealthQuest, consider necessary, if the Department Head has reason to believe that the member of staff is not fit for work.
- (3) If the appropriate Department Head has issued any such direction to a member of staff, the member of staff:
  - (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 HealthQuest is first obtained or a certificate is furnished by a medical practitioner that the member of staff is fit for work.
- (4) If the appropriate Department Head receives a health assessment from HealthQuest that a member of staff:
  - (a) is fit for work, the Department Head is to direct in writing that the member of staff, if absent from duty, must resume duty, or
  - (b) is not fit for work, the Department Head is to direct in writing that the member of staff must cease duty immediately or, if absent from duty, must not resume duty.
- (5) If a direction has been given to a member of staff under subclause (4), the nature of the leave, if any, to be granted to the member of staff during the absence from duty is

to be determined by the appropriate Department Head after consideration of any relevant advice of HealthQuest.

- (6) A member of staff to whom a direction has been given under subclause (4) (b) must not resume duty unless the appropriate Department Head, on the advice of HealthQuest, approves in writing.
- (7) The appropriate Department Head is to give the health care professional providing a health assessment of a member of staff under this clause any requested information about the duties of the staff member's position that is reasonably required for the purpose of providing the assessment.

## **18 (Repealed)**

## **Part 4**

## **19-30 (Repealed)**

## **Part 5 Allowances**

### **Division 1 Preliminary**

#### **31 Application of Part**

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

#### **32 Determination of rates and conditions of payment of allowances**

- (1) The rates and conditions of payment of allowances under this Part are, subject to this Part, to be as determined by the Public Employment Office from time to time.
- (2) The payment of an allowance under this Part to a member of staff is to be refused, or the amount of the allowance is to be reduced, if:
  - (a) any expenses of the member of staff for which the allowance is payable were not properly and reasonably incurred by the member of staff in the performance of official duties, or
  - (b) any purported expenses of the member of staff for which the allowance is payable were not in fact incurred by the member of staff.
- (3) If an allowance under this Part is payable at a daily rate, the amount to be paid for a portion of a day is to be the appropriate proportion of the daily rate and, for the purpose of calculating that amount, any fraction of an hour is to be corrected to the nearest half-hour.

### **33 Payment where allowance not adequate or available**

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

## **Division 2 Higher duties and acting allowances**

### **34 Entitlement to higher duties allowance when relieving in other positions**

- (1) This clause applies when the appropriate Department Head directs that the duties of a position which is vacant, or the holder of which is suspended, sick or absent, are to be performed by one or more other members of staff.
- (2) A member of staff who, during a period of relief in another position, satisfactorily performs, in the opinion of the appropriate Department Head, the whole of the duties and assumes the whole of the responsibilities of that position is to be paid by allowance any difference between the staff member's present salary or wage and the salary or wage to which the member of staff would have been entitled if appointed to that position.
- (3) A member of staff who, during a period of relief in another position, does not perform the whole of the duties or assume the whole of the responsibilities of that position is to be paid that proportion of the allowance referred to in subclause (1) that the duties satisfactorily performed and responsibilities assumed bear to the whole of the duties and responsibilities of that position. The amount of the allowance so paid is to be as determined by the appropriate Department Head.
- (4) In this clause, a reference to the duties and responsibilities of a position is a reference to those duties and responsibilities that, during the period of relief, the member of staff appointed to the position would ordinarily have performed or assumed.

### **35 Payment of allowance when relieving in other positions**

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

### **36 Allowance for acting or temporary appointments**

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

### **37 Member of staff not to suffer reduction in remuneration**

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

### **38 Provisions relating to executive positions**

- (1) For the purposes of this Division, the salary or wage of an executive officer is, subject to this clause, the amount of the remuneration package for the executive position concerned.
- (2) If the remuneration package for an executive position consists of a range of amounts, the salary or wage is the amount within that range to which the officer is entitled (in the case of the officer's present salary or wage) or the amount within that range determined by the officer's employer (in the case of the salary or wage to which the officer would have been entitled if appointed to the executive position concerned).

- (3) If an officer who is not an executive officer relieves or acts in an executive position, the salary or wage to which the officer would have been entitled if appointed to the executive position is to be reduced by the superannuation guarantee amount payable in respect of the officer.
- (4) In this clause, executive officer, executive position, employer and remuneration package have the same meanings they have in Part 3.1 of the Act.

## **Division 3 Meal allowances**

### **39 Application of Division**

This Division does not apply to a person:

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

### **40 Breakfast allowance**

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

### **41 Lunch allowance**

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

### **42 Evening meal allowance**

A member of staff, whether entitled to overtime payment or not, is to be paid an allowance at the rate determined by the Public Employment Office for an evening meal when required to work until or beyond 6 pm and until or beyond the expiration of the aggregate period, after commencing duty, of 8 half-hours plus the time taken for lunch.

### **43 Payment of meal allowance**

- (1) An allowance is not payable under this Division unless the appropriate Department Head is satisfied that:
  - (a) the performance of the work concerned at the time at which it was performed was necessary, and

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

## **Division 4 Remote area allowances**

### **44 Living allowances**

- (1) In this clause, **remote area** means the area of the State situated on or to the west of the line starting from the right bank of the Murray River opposite Swan Hill, then passing through the following towns or localities in the following order, namely, Conargo, Coleambally, Hay, Rankin's Springs, Marsden, Condobolin, Peak Hill, Nevertire, Gulargambone, Coonabarabran, Wee Waa, Moree, Warialda, Ashford and Bonshaw, and including any place situated in any such town or locality.
- (2) A member of staff who is:
- (a) indefinitely stationed, and resident, in a remote area, or
  - (b) not indefinitely stationed in a remote area but compelled, because of the difficulty in obtaining suitable accommodation, to be resident in a remote area,
- is to be paid an allowance for the increased cost of living and the climatic conditions in that area.
- (3) The rate of the allowance under this clause is:
- (a) except as provided by paragraph (b)—a single rate determined by the Public Employment Office, or
  - (b) in respect of such towns or localities in the western part of the remote area as are determined by the Public Employment Office—that single rate increased by one-quarter or by one-half or twice that single rate (as determined by the Public Employment Office in respect of each such town or locality).

#### **45 Travelling on recreation leave**

- (1) In this clause, **remote area** means:
  - (a) the area of the State that is situated to the west of the 144th meridian of longitude, or
  - (b) such other areas of the State situated to the west of the 145th meridian of longitude as the Public Employment Office may from time to time determine for the purposes of this clause.
- (2) A member of staff who:
  - (a) is indefinitely stationed in a remote area, and
  - (b) proceeds on recreation leave to any place which is at least 480 kilometres by the nearest practicable route from the staff member's work location in that area,is to be paid an allowance at the rate determined by the Public Employment Office for the additional costs of travel.
- (3) An allowance under this clause is not to be paid more than once in any period of 12 months.

### **Division 5 Allowances for absence on official duties**

#### **46 Allowances for absences on official duties**

- (1) A member of staff:
  - (a) who performs official duty at or from a temporary work location, and
  - (b) is thereby compelled to reside temporarily at a place other than the staff member's residence,is to be paid such travelling and other allowances as are prescribed by the applicable State industrial instrument.
- (2) A member of staff who is required to camp (whether or not in an established camp) in connection with any such official duty is to be paid an allowance at a rate determined by the Public Employment Office. If the member of staff is required to camp for more than 40 nights in any calendar year, the member of staff is to be paid an additional allowance at a rate determined by the Public Employment Office.

#### **47 Periods for which allowance under this Division payable**

- (1) An allowance under this Division is not payable for:
  - (a) any period that the member of staff returns to the staff member's residence at weekends or public holidays commencing with the time of arrival at that residence

and ending at the time of departure from that residence, or

- (b) any period of leave—except with the approval of the Public Employment Office or as otherwise provided by this Division, or
- (c) any other period that the member of staff is absent from the temporary work location of the member of staff otherwise than on official duty.

(2) A member of staff who is in receipt of an allowance under this Division:

- (a) may return to the staff member's residence on any weekend or public holiday, and
- (b) is entitled to be paid the actual expenses of travel properly and reasonably incurred by the member of staff (including any allowance under Division 6 if the member of staff uses a private motor vehicle),

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

**48 Member of staff may be required to return home or special purpose leave may be granted**

- (1) The appropriate Department Head may require a member of staff who is in receipt of an allowance under this Division to return to the staff member's residence if that return would achieve a cost saving to the Department equal to or greater than the amount determined by the Public Employment Office from time to time for the purposes of this clause.
- (2) If the member of staff cannot return to the staff member's residence without being absent from duty, the member of staff may, on the occasions and in the manner set out in subclauses (3) and (4), be granted special purpose leave sufficient to permit the member of staff to return to that residence at weekends and there to spend at least 2 consecutive days and nights.
- (3) Special purpose leave may be granted after the member of staff concerned has performed duty at the temporary work location for 3 weeks, and after that may be granted for each further period of duty of 4 weeks.
- (4) Special purpose leave:
  - (a) may be granted at Christmas and Easter, if special purpose leave for the appropriate 3 or 4 weekly period has not already been granted, and
  - (b) is forfeited for the appropriate 3 or 4 weekly period unless the leave is taken at the time at which it falls due or, if the leave could not be taken at that time because of Departmental convenience, unless the leave is taken on the next weekend convenient to the Department, and

- (c) if a period of service at one temporary work location is immediately followed by another such period at a different temporary work location—is to be calculated as though those periods of service were a single period at a single location.
- (5) Despite anything to the contrary in this Part, a member of staff who is in receipt of an allowance under this Division and who is granted special purpose leave under this clause is entitled to the allowance under this Division for the necessary period of travel:
  - (a) for the journey from the temporary work location to the staff member's residence, and
  - (b) for the return journey from the staff member's residence to the temporary work location.
- (6) Subject to subclause (7), a member of staff who is in receipt of an allowance under this Division and who, on ceasing to perform duty at or from a temporary work location, leaves that location is entitled to the allowance under this Division for the necessary period of travel to return to the staff member's residence or to take up duty at another location.
- (7) An allowance under subclause (6) is not to be paid for any travel referred to in clause 50.

## **Division 6 Allowances for work-related expenses**

### **49 Cost of travel to and from work**

- (1) A member of staff must bear the cost of travel to and from work, unless the appropriate Department Head otherwise determines or subclause (2) applies.
- (2) If a member of staff:
  - (a) is directed to report for duty at a locality other than the locality at which the member of staff reported for duty at the beginning of the day, or
  - (b) is directed to report for duty on any day or days at a locality other than the locality at which the member of staff is normally required to report for duty and has already incurred expenditure in relation to travel on that day or those days to the locality at which the member of staff is normally required to report for duty,the cost of travel on that day or those days (but not exceeding in total the maximum number referred to in subclause (3)) to the locality at which the member of staff is so directed to report for duty is to be borne by the Department.
- (3) For the purposes of subclause (2), the maximum number of days is 5 days in any period or, if the appropriate Department Head is satisfied that special circumstances exist, such greater number of days as the Department Head may determine.

## **50 Use of private motor vehicle on official business**

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

## **51 Uniforms and protective or other specialist clothing**

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

## **52 Camping equipment allowance**

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

equipment.

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

### **53 Allowances payable to CEO and SES officers**

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

### **54 Relocation expenses—senior executive officers**

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

## **Part 6 Leave**

### **Division 1 Preliminary**

#### **55 Application of Part**

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

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

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

#### **57 Pro-rata adjustments in leave for members of staff not working standard hours or period**

- (1) Entitlements to leave under this Part are based on a member of staff working on a full-time basis. The entitlements are to be adjusted pro-rata for a member of staff working

other than for 5 days a week on a full-time basis.

- (2) The operation of this clause is subject to any express provision or contrary intention in this Part.

### **58 References to full pay**

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

### **59 Leave for temporary employees**

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

### **60 Applications for leave**

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

## **Division 2 Adoption leave**

### **61 Entitlement to adoption leave**

- (1) A member of staff who adopts a child and is the primary care-giver of the child:
  - (a) is entitled to be granted adoption leave for a maximum period of 12 months if the child has not commenced school at the date of the taking of custody, or
  - (b) may be granted adoption leave for such period (not exceeding 12 months on a full-time basis) as the appropriate Department Head may determine if the child has commenced school at that date.
- (2) A member of staff who has been granted adoption leave may, with the permission of the appropriate Department Head, take leave:
  - (a) full-time for a period not exceeding 12 months, or
  - (b) part-time over a period not exceeding 2 years, or
  - (c) partly full-time and partly part-time over a proportionate period.

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

## **62 Rights of member of staff resuming duty**

A member of staff who resumes duty immediately at the end of adoption leave:

- (a) is entitled to be placed in the position occupied by the member of staff immediately before the commencement of that leave if the position still exists, or
- (b) is entitled to be appointed (subject to the availability of other suitable positions) to another position for which the member of staff is qualified in accordance with and subject to sections 57 and 87 of the Act if the position occupied by the member of staff has ceased to exist.

## **63 Payment for adoption leave**

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

- (2) A member of staff who:

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

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

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

## **Division 3 Maternity leave**

### **64 Definitions**

In this Division:

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

### **65 Entitlement to maternity leave**

- (1) A member of staff who is pregnant is, subject to this clause, entitled to be granted maternity leave:

- (a) for a period of not more than 9 weeks on a full-time basis before the expected date of birth, and

(b) for a further period ending not more than 12 months after the actual date of birth.

(2) A member of staff who has been granted maternity leave may, with the permission of the appropriate Department Head, take leave after the actual date of birth:

(a) full-time for a period not exceeding 12 months, or part-time over a period not exceeding 2 years, or

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

#### **66 Circumstances in which sick leave may be taken**

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

#### **67 Rights of member of staff on resuming duty**

A member of staff who resumes duty immediately at the end of maternity leave:

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

(b) is entitled to be appointed (subject to the availability of other suitable positions) to another position for which she is qualified in accordance with and subject to sections 57 and 87 of the Act if the position occupied by her has ceased to exist.

#### **68 Payment of maternity leave**

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

(2) A member of staff who:

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

(b) before the expected date of birth, completed not less than 40 weeks' continuous service,

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

### **Division 4 Parental leave**

#### **69 Department Head may grant parental leave**

(1) The appropriate Department Head may grant parental leave for a period not exceeding 12 months to a member of staff who becomes a parent but is not entitled to maternity leave or adoption leave.

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

#### **70 Rights of member of staff resuming duties**

A member of staff who resumes duty immediately at the end of parental leave:

- (a) is entitled to be placed in the position occupied by the member of staff immediately before the commencement of that leave if the position still exists, or
- (b) is entitled to be appointed (subject to the availability of other suitable positions) to another position for which the member of staff is qualified in accordance with and subject to sections 57 and 87 of the Act if the position occupied by the member of staff has ceased to exist.

#### **71 No payment for parental leave**

Parental leave is to be granted without pay.

### **Division 5 Family and community service leave**

#### **72 Department Head may grant family and community service leave**

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

#### **73 Maximum amount of family and community service leave**

- (1) The maximum amount of family and community service leave on full pay that may be granted to a member of staff is:

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

## **Division 6 Leave without pay**

### **74 Department Head may grant leave without pay**

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

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

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

## Division 7 Military leave

### 76 Department Head may grant military leave

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

### 77 Maximum amount of leave

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

### 78 Certificate of necessity for attendance

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

## Division 8 Recreation leave

### 79 Recreation leave—accrual

- (1) Recreation leave on full pay accrues to members of staff at the rate of 20 working days per year.
- (2) Subject to the approval of the appropriate Department Head, additional recreation leave on full pay accrues to members of staff indefinitely stationed in a remote area at the rate of 5 working days per year.
- (3) Recreation leave accrues from day to day.
- (4) In this clause, **remote area** means the Western Division or Central Division of the State.

### 80 Recreation leave—periods during which no accrual

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

exceeding 5 working days in any period of 12 months.

### **81 Recreation leave—limits on accumulation**

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

### **82 Calculation of recreation leave**

- (1) Recreation leave is not to be granted for a period less than a quarter-day or in other than multiples of a quarter-day.
- (2) Recreation leave for which a member of staff is eligible on cessation of employment is to be calculated to a quarter-day (fractions less than a quarter being rounded up).
- (3) The proportionate deduction to be made in respect of the accrual of recreation leave on account of any period of absence from duty without pay or without leave is to be calculated to a quarter-day (fractions less than a quarter being rounded down).
- (4) If a member of staff takes extended leave on less than full pay, the period of that leave is to be taken into account to the extent of the equivalent reduced proportion of the leave only in calculating the staff member's accrual of recreation leave.

### **83 Payment for untaken leave where member of staff ceases to be employed or dies**

- (1) A member of staff is, on cessation of employment (except by death), entitled to be paid immediately, instead of recreation leave accrued and remaining untaken or unforfeited, the money value of that leave.
- (2) A member of staff to whom subclause (1) applies may elect to take either the whole or part of the recreation leave accrued and remaining untaken or unforfeited at cessation of active duty as recreation leave on full pay instead of taking the money value of that leave.
- (3) If a member of staff dies, the money value of any recreation leave accrued and remaining untaken or unforfeited is to be paid to the same persons as the money

value of accrued extended leave is to be paid in the same circumstances under Schedule 3 to the Act.

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

## **Division 9 Sick leave**

### **84 Granting of sick leave**

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

### **85 Requirements for medical certificate**

- (1) A member of staff absent from duty for more than 3 consecutive working days because of illness must furnish a medical certificate in respect of the absence to the appropriate Department Head.
- (2) A member of staff absent from duty for 3 consecutive working days or less because of illness must, if required to do so by the appropriate Department Head, furnish a medical certificate in respect of the absence to the Department Head.
- (3) The appropriate Department Head may at any time require a member of staff who has been granted sick leave to furnish medical evidence of the inability of the member of staff to resume duty.

### **86 Action to be taken where medical certificate considered inadequate**

- (1) If a member of staff applying for sick leave furnishes a medical certificate which appears to the appropriate Department Head to indicate that the condition of the member of staff does not warrant the grant of sick leave, the application together with the medical certificate is to be referred immediately by the Department Head to HealthQuest for consideration.
- (2) The nature of the leave to be granted to the member of staff is to be determined by the appropriate Department Head on the advice of HealthQuest.

- (3) If sick leave is not granted, the appropriate Department Head must, as far as practicable, take into account the wishes of the member of staff concerned when determining the nature of the leave to be granted.

## **87 Confidentiality**

A member of staff may elect to have an application for sick leave dealt with confidentially by HealthQuest in accordance with such procedures as may be determined from time to time by the Public Employment Office.

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

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

## **89 Calculation of sick leave**

- (1) Sick leave on full pay accrues to a member of staff at the rate of 15 days each calendar year, and any such accrued leave which is not taken is cumulative.
- (2) Sick leave on full pay accrues at the beginning of the calendar year, but if a member of staff is appointed during a calendar year, sick leave on full pay accrues on the date the member of staff commences duty at the rate of 1¼ days for each complete month before the next 1 January.
- (3) In the case of a member of staff employed at 1 May 1988:
  - (a) sick leave on full pay for the calendar year commencing 1 January 1988 accrues at the rate of 10 days, and
  - (b) in addition to that 10 days, the member of staff is to be credited with sick leave on full pay in relation to service before 1 May 1988 for the following number of days less the number of days of sick leave on full pay previously granted to the member of staff:
    - (i) after completion of the first year of service and before completion of the second year of service—20 working days,

- (ii) after completion of the second year of service and before completion of the fifth year of service—40 working days,
  - (iii) after completion of the fifth year of service—60 working days plus an additional 10 working days for each completed year of service after that.
- (4) Except as otherwise provided by this Division or otherwise determined by the Public Employment Office, only service as a member of staff is to be taken into account for the purpose of calculating sick leave due.
  - (5) Sick leave without pay is not to be counted as service for the accrual of sick leave.
  - (6) For the purposes of determining the amount of sick leave accrued if sick leave is granted on less than full pay, the amount of sick leave granted is to be converted to its full pay equivalent.

#### **90 Payment of sick leave during initial period of service**

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

#### **91 Workers' compensation**

- (1) This clause applies if a member of staff is or becomes unable to attend for duty or to continue on duty in circumstances which may give the member of staff a right to claim compensation under the [Workers Compensation Act 1987](#).
- (2) If a member of staff has made a claim, the member of staff may, pending the determination of the claim and subject to this Division, be granted by the appropriate Department Head sick leave on full pay for which the member of staff is eligible, and if that claim is accepted the equivalent period of sick leave is to be restored to the credit of the member of staff.
- (3) A member of staff who continues in receipt of compensation after the completion of the period of 26 weeks referred to in section 36 of the [Workers Compensation Act 1987](#) may, subject to this Division, be paid an amount representing the difference between the amount of compensation payable under that Act and the ordinary rate of pay of the member of staff, but sick leave equivalent to the amount of the difference so paid is to be debited against the member of staff.
- (4) If a member of staff referred to in subclause (1) notifies the appropriate Department

Head that the member of staff does not intend to make a claim, the Department Head may direct that sick leave on full pay is not to be granted to the member of staff.

- (5) If a member of staff, who is required to submit to a medical examination under the *Workers Compensation Act 1987* in relation to a claim for compensation under that Act, refuses to submit to or in any way obstructs the examination, the member of staff is not to be granted sick leave on full pay until the examination has taken place and a medical certificate has been given indicating that the member of staff is not fit to resume duty.
- (6) If as a result of the medical examination:
- (a) a certificate is given under the *Workers Compensation Act 1987* setting out the condition and fitness for employment of the member of staff or the kind of employment for which the member of staff is fit, and
  - (b) the appropriate Department Head makes available to the member of staff employment falling within the terms of that certificate, and
  - (c) the member of staff refuses or fails to resume or perform the employment so provided,

all payments in accordance with this clause are to cease from the date of that refusal or failure.

- (7) Despite subclauses (2) and (3), if there is a commutation of weekly payments of compensation by the payment of a lump sum in accordance with section 51 of the *Workers Compensation Act 1987*, no further sick leave is then to be granted on full pay.

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

- (1) This clause applies to a claim for damages or to compensation, other than compensation under the *Workers Compensation Act 1987*.
- (2) If the circumstances of any injury to or illness of a member of staff may give rise to a claim, sick leave on full pay may, subject to and in accordance with this Division, be granted to the member of staff on completion by the member of staff of an undertaking, in a form approved by the appropriate Department Head:
- (a) that any claim to which this clause applies if made will include a claim for the value of any period of sick leave on full pay granted, and
  - (b) that, in the event that the member of staff receives or recovers damages or compensation from that claim for loss of salary or wages during any such period of sick leave, the member of staff will repay to the Crown any money paid by the Crown in respect of any such period of sick leave.

- (3) Sick leave on full pay is not to be granted to a member of staff who refuses or fails to complete an undertaking, except with the express approval of the appropriate Department Head given on the grounds that the refusal or failure is unavoidable in the circumstances.
- (4) On repayment made to the Crown in accordance with an undertaking given by a member of staff, sick leave equivalent to that repayment, calculated at the ordinary rate of pay of the member of staff, is to be restored to the credit of the member of staff.

## **Division 10 Special purpose leave**

### **93 Special purpose leave—general**

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

### **94 Special purpose leave—jury service**

- (1) A member of staff must, as soon as possible, notify the appropriate Department Head of the details of any jury summons served on the member of staff.
- (2) A member of staff who, during any period when otherwise required to be on duty, attends a court in answer to a jury summons must, on return to duty after discharge from jury service, furnish to the appropriate Department Head any certificate of attendance issued by the Sheriff or by the Registrar of the court giving particulars of the following:
  - (a) attendances by the member of staff during any such period,
  - (b) the details of any payment or payments made to the member of staff under section 72 of the *Jury Act 1977* in respect of any such period.
- (3) The appropriate Department Head must, in respect of any period during which a member of staff was required to be on duty:
  - (a) on receipt of any such certificate of attendance—grant, in respect of any such period for which the member of staff has been paid out-of-pocket expenses only, special purpose leave on full pay, or
  - (b) in any other case—grant at the sole election of the member of staff:
    - (i) subject to this Part, recreation leave on full pay, or
    - (ii) leave without pay.

### **95 Special purpose leave—witness at court**

- (1) This clause does not apply to a member of staff who is subpoenaed or called as a witness in an official capacity.
- (2) A member of staff who is subpoenaed or called as a witness by the Crown (whether in right of the Commonwealth or in right of any State or Territory):
  - (a) is to be granted, for the whole of the period necessary to attend as a witness, special purpose leave on full pay, and
  - (b) must pay into the Treasury all money paid to the member of staff under or in respect of the subpoena or call other than any money so paid in respect of reimbursement of necessary expenses properly incurred in answer to that subpoena or call.
- (3) A member of staff who is subpoenaed or called as a witness otherwise than as referred to in subclause (2) is, for the whole of the period necessary to attend as a witness, to be granted at the sole election of the member of staff:
  - (a) subject to this Part, recreation leave on full pay, or
  - (b) leave without pay.

### **96 (Repealed)**

## **Division 11 Study leave**

### **97 Study leave—time for study for approved courses**

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

### **98 Study leave—approved examinations**

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

### **99 Study leave—other studies**

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

## Division 12

### 99A (Repealed)

## Part 7 Miscellaneous

### 100A Report of charges and convictions for serious offences

- (1) A member of staff who is charged with having committed, or is convicted of, a serious offence must immediately report that fact in writing to the appropriate Department Head.
- (2) If the senior officer has reason to believe that a member of staff:
  - (a) has been charged with having committed, or has been convicted of, a serious offence, and
  - (b) has not reported the matter to the appropriate Department Head in accordance with subclause (1),

the senior officer must immediately inform the appropriate Department Head in writing that the senior officer has reason to believe that the member of staff has been charged with having committed, or has been convicted of, a serious offence

- (3) In this clause:

**senior officer**, in relation to a member of staff, means the senior officer in the branch or section of the Department in which the member of staff is employed.

**serious offence** means an offence referred to in section 48 of the Act.

### 100AA Bodies prescribed as public sector services

- (1) For the purposes of paragraph (g) of the definition of **public sector service** in section 3 (1) of the Act, Catchment Management Trusts constituted under the [Catchment Management Act 1989](#) are prescribed as a class.
- (2) For the purposes of paragraph (g) of the definition of **public sector service** in section 3 (1) of the Act, State owned corporations are prescribed as a class but only in relation to sections 102 and 103 of the Act.
- (3) For the purposes of paragraph (g) of the definition of **public sector service** in section 3 (1) of the Act, Rail Corporation New South Wales is prescribed, but only in relation to Division 2 of Part 3.2.

### 100AB War service

The following kinds of service are declared to be war service for the purposes of clause 4 of Schedule 3A to the Act:

- (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 before their repeal, which occurred on 22 May 1986.

### **100 Repeal**

- (1) The *Public Sector Management (General) Regulation 1988* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Public Sector Management (General) Regulation 1988*, had effect under that Regulation continues to have effect under this Regulation (but only to the extent that it relates to this Regulation and it is not inconsistent with this Regulation and the acts, matters or things done under this Regulation).

### **101 Savings and transitional provisions**

Schedule 1 has effect.

### **102 Transitional provision relating to provision of fringe benefits**

- (1) This clause is taken to have commenced on 17 March 2006.
- (2) Section 4K (1) (c) of the Act does not apply to a reference in any instrument to a statutory corporation to the extent that the reference relates to the provision of benefits that are subject to the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth.
- (3) This clause is taken to have ceased to have effect at the end of 31 March 2006.

### **103 Transitional provision: final audit of WYDCA financial reports**

- (1) The Director-General of the Department of Premier and Cabinet may sign and give to the Auditor-General a statement of the kind referred to in section 41C (1B) of the *Public Finance and Audit Act 1983* in relation to a financial report of the World Youth Day Co-ordination Authority.
- (2) The statement of the Director-General referred to in subclause (1) is taken for the purposes of section 41C of the *Public Finance and Audit Act 1983* to be a statement made in accordance with a resolution of the World Youth Day Co-ordination Authority

and signed by the chief executive officer of that Authority.

- (3) Despite section 41D of the *Public Finance and Audit Act 1983*, after all the functions conferred by section 41C of that Act in relation to the financial report of the World Youth Day Co-ordination Authority have been performed, the Auditor-General or a person authorised by the Auditor-General is to submit the financial report and the opinion under that section to the Director-General of the Department of Premier and Cabinet for submission to the Minister for Planning (being the minister administering the *World Youth Day Act 2006* before its repeal).

## Schedule 1 Savings and transitional provisions

(Clause 101)

### 1 Definitions

In this Schedule:

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

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

### 2 Confirmation or annulment of appointments on probation

If a person was appointed to a position on probation under the former Act but the appointment had not been confirmed or annulled by the Governor under the former Act as at 9 September 2002, the person's appointment to the position may be confirmed or annulled by the appropriate Department Head in accordance with the new Act.

### 3 Pending appointments

The appropriate Department Head may formally appoint a person to a position in the Department on or after 9 September 2002 even though the selection process for that position occurred before that date.

### 4 Dispensing with services of excess staff

The services of a person are taken to have been dispensed with in accordance with section 51 (3) of the former Act if the dispensing of that person's services was, before 9 September 2002, recommended by the appropriate Department Head but not formally approved by the Governor.

### 5 Continuation of former provisions relating to Departmental temporary employees

- (1) Despite the repeal of the former Act and the commencement of Schedule 7.7 [4] to the new Act, the following provisions continue to have effect in relation to the appointment of Departmental temporary employees as if those provisions formed part of the new Act:

(a) sections 38 and 38A of the former Act,

(b) clause 7 of this Regulation as in force immediately before 9 September 2002.

(2) Subclause (1) ceases to have effect on the commencement of Part 2.4 of the new Act.

#### **6 Continuation of former provisions relating to breaches of discipline**

(1) Despite the repeal of the former Act and the commencement of Schedule 7.7 [10] to the new Act, the following provisions continue to have effect in relation to breaches of discipline by officers in the Public Service as if those provisions formed part of the new Act:

(a) sections 65A, 66, 74–78 and 81 of the former Act,

(b) Part 4 of this Regulation as in force immediately before 9 September 2002.

(2) Subclause (1) ceases to have effect on the commencement of Part 2.7 of the new Act.

#### **7 Determination of non-statutory SES positions**

Until such time as the Minister makes a determination under section 65 (1) (a) of the new Act, the positions referred to in Part 1 of Schedule 3B to the former Act (as in force immediately before 9 September 2002) are taken to be the senior executive positions determined by the Minister for the purposes of that section.