



New South Wales

# Public Sector Management Amendment Bill 1998

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The object of this Bill is to amend the *Public Sector Management Act 1988* as follows:

- (a) to provide for the employment of staff for Ministers and other political office holders as a special class of temporary Public Service employees (to be called special temporary employees) with other temporary employees to be called departmental temporary employees,
  - (b) to provide a mechanism for the appointment of certain long-term departmental temporary employees to permanent public service positions,
  - (c) to extend the power of the Public Employment Office (the PEO) to make determinations with respect to the remuneration of public servants so as to allow determinations with respect to the conditions and benefits of employment (including remuneration packaging, redundancy and severance payments),
-

Explanatory note

---

- (d) to provide specifically that Department Heads are responsible for the equitable management of staff of their Departments,
- (e) to enact consequential, savings and transitional provisions.

### Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides that the proposed Act commences on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the Schedule of amendments to the *Public Sector Management Act 1988*.

### Schedule 1 Amendments

#### Special temporary employees

**Schedule 1 [8]** inserts new provisions that deal with the appointment of persons as temporary employees in the Public Service to carry out work for a Minister, a Parliamentary Secretary or the Leader of the Opposition in the Legislative Assembly. These employees will be called special temporary employees. Their employment can be for a fixed or indefinite period. The services of a special temporary employee can be dispensed with at any time and the employee's employment is terminated when the next general election is held or the political office holder concerned dies or ceases to hold office. A matter relating to the employment of a special temporary employee is not an industrial matter for the purposes of the *Industrial Relations Act 1996* and is not subject to any award or industrial agreement.

**Schedule 1 [4]–[6]** amend existing provisions of the Act that deal with the employment of temporary employees to continue those provisions (with those employees to be called departmental temporary employees) subject to existing requirements and restrictions.

**Schedule 1 [1] and [3]** make consequential amendments.

#### Appointment of long-term departmental temporary employees to permanent positions

**Schedule 1 [7]** (new section 38A) provides a mechanism by which long-term departmental temporary employees (those who are in continuous temporary employment for at least 2 years) can be appointed to permanent public service positions. The new section contains a list of preconditions to such an appointment, including the following:

- (a) the employee must have been employed as a temporary employee in some form of open competition involving selection on merit,
- (b) the duties of the permanent position must be substantially the same as the duties to which the temporary employee was initially appointed on merit,
- (c) there must be on-going work available in respect of the employee in the Department.

An appointment under the new section is not subject to existing requirements for selection on merit and is not subject to a probation period unless the Department Head otherwise directs in a particular case.

#### **Power of PEO to make determinations on conditions and benefits of employment**

**Schedule 1 [9]** extends the power of the Public Employment Office to make determinations with respect to the remuneration of Public Servants so as to enable determinations to be made with respect to the conditions and benefits of employment of Public Service officers and temporary employees. The extended power includes power to make determinations with respect to the packaging of remuneration, and for redundancy and severance payments. Packaging of remuneration can involve salary sacrifice whereby an employee forgoes salary in return for employer funded benefits.

The amendment makes it clear that a Department Head is not prevented from determining conditions of employment under existing provisions, to the extent that is not inconsistent with a PEO determination.

The amendment also makes it clear that determinations can relate to a group or class of officers or temporary employees.

#### **Responsibility of Department Heads for equitable staff management**

**Schedule 1 [2]** provides that a Department Head is responsible to the appropriate Minister for the equitable management of staff of the Department.

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

**Schedule 1 [10]** makes consequential savings and transitional provisions, including a provision that converts the employment of existing temporary employees who are employed to do work for a political office holder to employment in the new category of special temporary employee.

First print



New South Wales

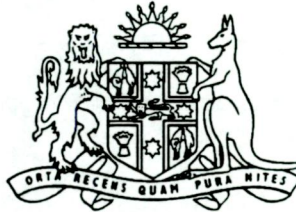
# Public Sector Management Amendment Bill 1998

## Contents

---

|   | Page  |
|---|-------|
| 1 Name of Act   | 2     |
| 2 Commencement  | 2     |
| 3 Amendment of Public Sector Management Act 1988<br>No 33 | 2     |
| <br>Schedule 1 Amendments                                 | <br>3 |

---



New South Wales

## Public Sector Management Amendment Bill 1998

No. , 1998

---

### **A Bill for**

An Act to amend the *Public Sector Management Act 1988* to make further provision for the employment of temporary employees, conditions and benefits of employment and the duties of Department Heads; and for other purposes.

---

---

**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Public Sector Management Amendment Act 1998*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.      5

**3 Amendment of Public Sector Management Act 1988 No 33**

The *Public Sector Management Act 1988* is amended as set out in Schedule 1.

---

## Schedule 1 Amendments

(Section 3)

### [1] Section 3 Definitions

Omit the definition of *temporary employee* from section 3 (1).  
Insert instead:

5

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

### [2] Section 11 General responsibility of Department Heads

10

Insert after section 11 (2):

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

### [3] Part 2, Division 5, heading

Omit the heading. Insert instead:

15

**Division 5 Departmental temporary employees**

### [4] Section 38 Appointment of departmental temporary employees

Insert after section 38 (1):

- (1A) Persons employed under this section are departmental temporary employees.

20

### [5] Section 38 (2)

Insert "departmental" before "temporary employees".

### [6] Section 38 (5)

Insert "departmental" before "temporary employee".

**[7] Section 38A**

Insert after section 38:

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

- (1) For the purposes of this section, a *long-term departmental temporary employee* is a departmental temporary employee whose employment as such an employee falls within a continuous employment period of at least 2 years. 5
- (2) A long-term departmental temporary employee may, with the approval of the Public Employment Office, be appointed to an officer's position (other than a senior executive position) in a Department if the appropriate Department Head has made a recommendation in accordance with this section for the appointment of the employee to the position. 10 15
- (3) A recommendation for the appointment of a long-term departmental temporary employee to an officer's position may be made only if each of the following requirements is satisfied: 20
- (a) the duties of the position concerned must be substantially the same as the duties performed by the employee at the time of the employee's initial employment on merit (that is, the employment referred to in paragraph (e)), 25
- (b) the rate of salary or wages proposed to be payable to the holder of the position concerned at the time of appointment must not exceed the maximum rate payable for Grade 12, Administrative and Clerical Division, of the Public Service, 30
- (c) the appropriate Department Head must be satisfied that on-going work is available in respect of the employee in the Department,



- 
- (d) the appropriate Department Head must be satisfied that the employee has the relevant skills, qualifications, experience, work performance standards and personal qualities to enable the employee to perform the duties of the position concerned, 5
- (e) the employee must (initially or at some later stage) have been employed as a temporary employee in some form of open competition involving the selection of the employee as the person who, in the opinion of the then relevant Department Head, had the greatest merit among candidates for appointment. 10
- (4) An appointment under this section is not an appointment to which section 26 (Selection for appointment to be on merit) applies. 15
- (5) Section 28 (Appointments on probation) does not apply to an appointment under this section unless the Department Head otherwise directs in a particular case.
- [8] Part 2, Division 5A** 20
- Insert after Division 5 of Part 2:
- Division 5A Special temporary employees**
- 38B Meaning of "political office holder"**
- In this Division:
- political office holder* means: 25
- (a) a Minister, or
- (b) a Parliamentary Secretary, or
- (c) the Leader of the Opposition in the Legislative Assembly.

**38C Employment of special temporary employees**

- (1) The Director-General of the Premier's Department may, if of the opinion that it is necessary to do so, employ temporarily a person who has appropriate qualifications to carry out work for a political office holder. 5
- (2) Persons employed under this section are special temporary employees.
- (3) The instrument of employment of a special temporary employee must specify the name of the political office holder concerned. 10
- (4) This section does not prevent the appointment or employment of staff to or in an office of a political office holder in any other manner.

**38D Period of employment of special temporary employees**

- (1) A person may be employed as a special temporary employee for an indefinite term or for a term specified in the instrument of employment. 15
- (2) However, the employment of a special temporary employee terminates:
  - (a) if the political office holder concerned dies, or 20
  - (b) if the political office holder concerned ceases to hold the office by reason of which he or she was a political office holder (even if he or she immediately or subsequently becomes a political office holder after ceasing to hold that office), or 25
  - (c) on the day appointed for the taking of the poll for the next general election, or
  - (d) if the employee resigns by letter addressed to the Director-General of the Premier's Department, or
  - (e) if the services of the employee are dispensed with. 30

- 
- (3) The Director-General of the Premier's Department may direct in a particular case that the employment of a special temporary employee that would otherwise terminate because of the operation of subsection (2) (a), (b) or (c) does not terminate. 5
- (4) The Director-General of the Premier's Department may dispense with the services of a special temporary employee at any time.

**38E Industrial arbitration or legal proceedings excluded**

- (1) In this section, a reference to the employment of a special temporary employee is a reference to: 10
- (a) the employment of, or failure to employ, a person as a special temporary employee, or
  - (b) dispensing with the services of, or other termination of the employment of, a special temporary employee, or 15
  - (c) any disciplinary proceedings or disciplinary action taken against a special temporary employee, or
  - (d) the remuneration or conditions of employment of a special temporary employee. 20
- (2) The employment of a special temporary employee, or any matter, question or dispute relating to any such employment, is not an industrial matter for the purposes of the *Industrial Relations Act 1996*. This subsection applies whether or not any person has been appointed to a vacant position of special temporary employee. 25
- (3) Part 6 (Unfair dismissals) of Chapter 2 of the *Industrial Relations Act 1996* does not apply to the employment of a special temporary employee.
- (4) Any State industrial instrument (whether made before or after the commencement of this section) does not have effect in so far as it relates to the employment of special temporary employees. 30

- (5) Subsection (4) does not prevent the regulations or other statutory instruments under this Act from applying the provisions of a State industrial instrument to the employment of a special temporary employee.
- (6) This section does not affect the operation of any determination under section 63 or agreement under section 64, in its application to special temporary employees. 5
- (7) An appeal does not lie to the Tribunal in relation to the employment of a special temporary employee. 10
- (8) No proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, lie in respect of the employment of or failure to employ a person as a special temporary employee, the entitlement or non-entitlement of a person to be so employed or the validity or invalidity of any such employment. 15

**38F Delegation by Director-General**

- (1) The Director-General of the Premier's Department may delegate any function of the Director-General under this Division (other than this power of delegation) to any other Department Head. 20
- (2) The power of delegation conferred by this section is in addition to and does not limit the power conferred by section 12 (Delegation by Department Head). 25

**38G Status of special temporary employees**

- (1) All special temporary employees are taken to constitute a branch of the Premier's Department, except any who are employed by a Department Head as delegate of the Director-General of the Premier's Department. 30

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

**38H Regulations**

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

**[9] Section 63 Public Employment Office may determine employment conditions**

Omit section 63 (1) and (2). Insert instead:

- (1) The Public Employment Office may from time to time make determinations fixing the conditions and benefits of employment of officers and temporary employees (or any group or class of officers or temporary employees) and their salary, wages and other remuneration. Such a determination can provide for redundancy and severance payments and for remuneration packaging.
- (2) The conditions, benefits, salary, wages and other remuneration of an officer or temporary employee is, except in so far as provision is otherwise made by law, such as may be fixed by a determination made under this section.
- (2A) This section does not prevent the relevant Department Head from determining conditions of employment of officers and temporary employees under section 11 or under any other law. However, a determination by the Public Employment Office under this section prevails to

the extent of any inconsistency with a determination of a Department Head, unless the Public Employment Office approves of the Department Head's determination.

**[10] Schedule 7 Savings, transitional and other provisions**

Insert after Part 5: 5

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

**38 Meaning of "1998 amending Act"**

In this Part: 10

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

**39 Saving of existing appointment of temporary employees**

(1) An amendment made by the 1998 amending Act does not affect the employment of a person as a temporary employee that commenced before the commencement of the amendment, except as provided by this clause. 15

(2) The employee becomes a departmental temporary employee unless a determination is made under subclause (3) in relation to the employee. 20

(3) The Director-General of the Premier's Department can make a determination that the employee was, immediately before the commencement of section 38B, employed to do work for a political office holder as defined in that section, and such a determination has the following effect: 25

(a) the employee becomes a special temporary employee,

- (b) the employee is to be issued with an instrument of employment specifying the name of the political office holder concerned and specifying an indefinite term as the term of that employment.

**40 Appointment of long-term departmental temporary employees** 5

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

**41 Determinations of PEO**

A determination in force under section 63 immediately before the commencement of the amendment of that section by the 1998 amending Act is taken to have been made under that section as so amended. 10