

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 Employment and Management Act 2002 (the principal Act) as follows:

- (a) to enable long-term Departmental temporary employees to be appointed on merit to vacant Public Service officer positions that have not been advertised,
- (b) to make it clear that the period for which a Public Service officer is appointed on probation may be extended,
- (c) to make it clear that the period of suspension of a Public Service officer who is charged with a serious criminal offence includes (if the person is found guilty) the period until any remedial or disciplinary action that the appropriate Department Head is considering taking in relation to the officer has been dealt with,
- (d) to enable the Director of Public Employment to waive the citizenship and permanent residency requirements for Public Service officers,
- (e) to make it clear that a public sector employee who is on a long-term (ie at least 2 years) internal secondment within the same agency can be appointed to a

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new position in the agency without the position having to be advertised or requiring the person to serve a period of probation,

- (f) to make it clear that appointments may be made to an executive position (or to any other position in the Government Service) pending the position becoming vacant,
- (g) to extend the delegation power of the Director of Public Employment,
- (h) to modify the membership of the State Contracts Control Board (the SCCB),
- (i) to authorise the Director-General of the Department of Premier and Cabinet to conduct inquiries into public sector agencies (other than the NSW Police Force and the service of either House of Parliament),
- (j) to make other amendments of a minor or consequential nature.

The Bill also amends the Public Sector Management (Goods and Services)

Regulation 2000:

- (a) to enable the SCCB to enter into arrangements with overseas public authorities that conduct activities in New South Wales so that the overseas bodies can have access to the contracts established by the SCCB for the NSW public sector, and
- (b) to make a consequential amendment in relation to the quorum for a meeting of the SCCB.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 is a formal provision that gives effect to the amendments to the Public Sector Employment and Management Act 2002 set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Public Sector Management (Goods and Services) Regulation 2000 set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Public Sector

Employment and Management Act 2002

Schedule 1 [1] and [5] modify the criteria for determining merit for the purposes of the principal Act by replacing references to a person's abilities and personal qualities with references to a person's capabilities.

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Schedule 1 [2] will allow a Department Head to appoint a long-term temporary employee in the Department to a vacant officer position that has not been advertised. Any such appointment must be made on merit. At present, only officers employed in the Department concerned can be appointed to a position that has not been advertised. Schedule 1 [3] is a consequential amendment.

Schedule 1 [4] makes it clear that the period for which a person is appointed on probation to a position in the Public Service may be extended by the appropriate Department Head at any time before the person's appointment is confirmed or annulled.

Schedule 1 [6] and [7] update references relating to the Department of Premier and Cabinet and correct a cross-reference to a provision of the principal Act.

Schedule 1 [8] makes it clear that if a Public Service officer who is charged with a serious criminal offence is found guilty, the officer may be suspended from duty until any remedial or disciplinary action that the appropriate Department Head is considering taking under section 48 of the principal Act in relation to the officer has been dealt with.

Schedule 1 [9] enables the Director of Public Employment to exempt a person from the requirement that the person be an Australian citizen or permanent resident in order to be a Public Service officer.

Schedule 1 [10] and [11] separate section 86 of the principal Act (which deals with temporary staff transfers or secondments) into 2 provisions. Section 86 (as amended) will continue to deal with transfers from one agency to another. The new section 86A replicates section 86 but will deal only with temporary transfers within the same agency. As with secondments to other agencies, an employee who is on a long-term (ie at least 2 years) "employee-initiated" internal secondment can be appointed, subject to certain requirements, to a new position in the same agency without the position having to be advertised or requiring the person to serve a period of probation.

Schedule 1 [12] provides that public sector staff may be temporarily assigned to other public sector agencies specifically to assist in disaster recovery activities.

Schedule 1 [13] makes it clear that when a person is employed in 2 or more Departments (or in the Public Service and in any other public sector service) a separate staff position is not required to be created in each of the 2 agencies in which the person is employed.

Schedule 1 [14] makes it clear that a person may be appointed to an executive position (or to any other position in the Government Service) pending the position becoming vacant.

Schedule 1 [15] removes a provision relating to the use of Teaching Service staff by Departments. The provision is obsolete largely as a consequence of the staff mobility provisions under Part 3.2 of the principal Act.

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Schedule 1 [16]–[18] will enable the Director of Public Employment to delegate the Director's functions to all public sector agency heads (or to any other member of staff of a public sector agency) and not just to Department Heads and Departmental staff (as is the case at present).

Schedule 1 [19] provides for the SCCB to consist of at least 4 persons appointed by

the Minister (one of whom is to be appointed as the Chairperson).

Schedule 1 [20] makes it clear that regulations may be made for or with respect to the acquisition or disposal of goods or services for each of the public sector services.

Schedule 1 [21] provides for the conduct of inquiries by the Director-General of the Department of Premier and Cabinet (or any person authorised by the Director-General) into any matter relating to the administration or management of any public sector agency (other than the NSW Police Force or the service of either House of Parliament).

Schedule 1 [22] enables regulations of a savings or transitional nature to be made as a consequence of the proposed Act.

Schedule 1 [23] includes savings and transitional provisions as a consequence of the proposed Act.

Schedule 2 Amendment of Public Sector
Management (Goods and Services)

Regulation 2000

Schedule 2 contains the amendments to the Regulation as described in the above Overview.